THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED
Oct 27 2020
SC Court of Appeals

APPEAL FROM ORANGEBURG COUNTY
Court of Common Pleas

Edgar W. Dickson, Circuit Court Judge, First Judicial Circuit

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App. Case No. 2020-0006713

South Carolina State University, Respondent,

v.

Denise Simmons, Appellant.

MOTION FOR AN ORDER TO SETTLE RECORD AND STAY APPELLATE PROCEEDINGS

Respectfully submitted, October 27, 2020

/s Martin S. High
Martin S. High,
Martin S. High, P.C.
OK Bar #20725, SC Bar #102735,
TX Bar # 24108819
PO Box 33190
Clemson SC 29733-3190
Phone:864.300.2444
Fax: 866.232.1096
Email: marty@martyhigh.com
ATTORNEY FOR APPELLANT,
Denise Simmons

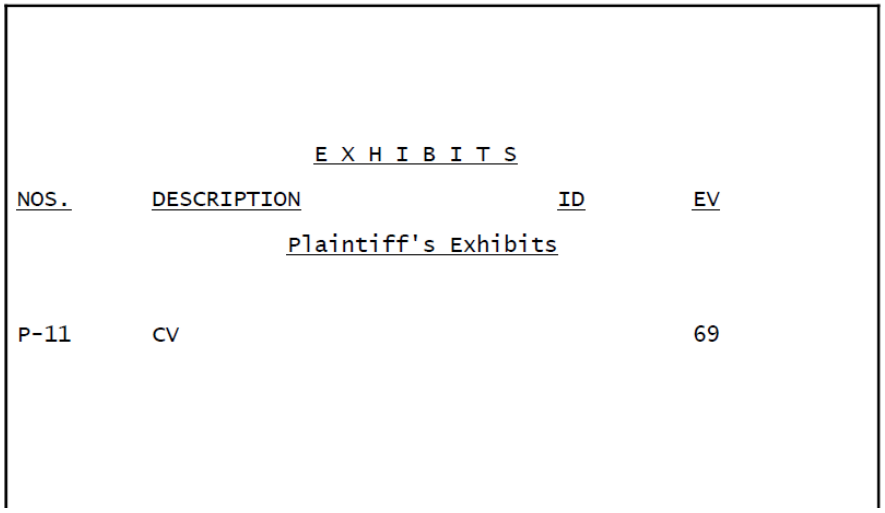
The Appellant hereby moves this Court to issue an order to settle the record on appeal and issue a stay in the proceedings in this appeal until such time as the record is settled. The Appellant provides the following in support of this motion:

1. Appellant's counsel has exercised due diligence to acquire the record in this case.
2. The original court reporter in the Orangeburg County retired sometime during the period after the trial and before this case was appealed.
3. To litigate post-trial motions before Circuit Judge Edgar W. Dickson a second reporter, Michael Watson, was asked to provide an edit transcript which prepared. Mr. Watson prepared only a partial transcript of the case with no trial exhibits identified.
4. On Apr 23, 2020, the day the appeal was filed, Appellant's counsel ordered a transcript from the South Carolina Court Administrator ("Administrator"). *See* Ex. 1, Letter ordering Transcript.[1]
5. On Jun 29, 2020, Appellant's counsel notified the Administrator and the Court of Appeals, that a transcript had not been received. *See* Ex. 2, Letter to Tonnya K. Kohm.
6. A third court reporter, Pamela E. Green, prepared a two-volume transcript of the case that was received by Appellant's Counsel on Sep. 23, 2020, *See* Ex. 3, Sep 23, 2020 Email from Pamela E. Green to Martin S. High; *See* Ex. 4, Trial Transcript Vol I; *See* Ex. 5, Trial Transcript Vol II (note that in several locations in this volume of the transcript it refers to testimony as "WHEREUPON, the following testimony

[1] Exhibits to this motion are provided in a PDF file with bookmarks for the Court's convenience so that to the individual exhibits referenced in this motion can be more readily located.

of … was transcribed previously and provided by another reporter." However, this testimony appears in Vol I. transcribed by Ms. Green).

7. This transcript contained no exhibits and the transcript only referenced one exhibit:



E X H I B I T S

NOS.	DESCRIPTION	ID	EV
	Plaintiff's Exhibits		
P-11	CV		69

8. On review of the proceedings, Plaintiffs Exhibits 1-10, and 12 were admitted into evidence. Appellant's can find no reference that Plaintiff's Trial Exhibit 11 was entered into evidence by the trial court.

9. In order to assemble the record, on Aug 6, 2020 Appellant's Counsel requested that the Orangeburg County Court Clerks office provide a copy of the exhibits entered into evidence at the trial court. On the same day, the Orangeburg County Clerk responded with two volumes of purported exhibits. *See* Ex. 6, Aug 6, 2020 - Email communication between Martin S. High and Clerk's Office. The two volumes of purported exhibits are provided as Ex. 7, 2015CP3800553-A and Ex. 8, 2015CP3800553-B.

10. Ex. 7, 2015CP3800553-A contains documents with separator sheets "Exhibit 1" and "Exhibit 2" however these documents do not comport with the trial testimony. For example, Trial "Exhibit 1" is the "Memorandum of Agreement between South

Carolina State University and Denise Grant." But, in the transcript, Trial Exhibit 1 is described as a different document:

> Q Now, Ms. Pyles, I would like to show you what I've marked as Plaintiff's Exhibit 1. And do you recognize these documents?
> A Yes.
> Q Okay. What are they?
> A These are documents that -- this is Denise Simmons' application for support to go to Clemson.
> Q Okay. And are there also documents at the back of that packet that are approval documents as well?
> A Yes. These are all documents where she signed, and when she requested funds each time, and what she said she was going to do after she was received her degree.
>
> Ex. 9, Testimony of Gloria Dean Pyles at 7:3-18.

11. The documents described in Ms. Pyles testimony above, are presumably the documents described as "Exhibit 2" in Ex. 7, 2015CP3800553-A.
12. The documents provided by the Orangeburg County Clerk's office in Ex. 8, 2015CP3800553-B are Defendant's Memorandum and Record Appendices In Opposition to Plaintiff's Motion For Summary Judgment with the exhibits accompanying this memorandum. <u>These documents are not trial exhibits</u>.
13. No other exhibit separator sheets are contained in the Ex. 7, 2015CP3800553-A or Ex. 8, 2015CP3800553-B.
14. The trial exhibits labels have not be maintained in the county clerk's records.
15. The trial exhibits are either misidentified or missing from the document set provided by the Clerk.
16. The Court Reporter asserts that she did not have the trial exhibits and that they were kept with the Clerk's office. *See* Ex. 11 - Email Communication between Martin S. High and Pamela Green.

17. Appellant's Counsel only became aware of the missing exhibits upon filing of Appellee's Designation of Matter on Oct. 22, 2020 which designated Plaintiff's Trial Exhibits 3, 5, 7-12.
18. Appellant's counsel attempted to resolve this matter by reaching out to Appellee's counsel and requesting that they provide their trial documents to settle the record.
19. Appellee's counsel has not responded to that request even though the missing exhibits presumably support the Appellee's case. Plaintiff's Trial Exhibits 3, 5, 7-12 were referenced in Appellee's Designation of Matter. *See* Ex. 12, Email communication between Martin S. High and Kimberly Blackburn.
20. Appellant has confirmed with her counsel at the trial below that he does not have copies of the trial exhibit. See Ex. 13, Email communications between Martin S. High and Charles Ormond.
21. Even after requests to the court reporters, the SC Court Administer, the Orangeburg Clerk's office, and a request for assistance to Appellee's counsel, Appellant's counsel is unable to assemble Plaintiff's Trial Exhibits 3, 5, 7-12 for the record.
22. The Appellant can only surmise that the record was disordered by the retirement of the initial reporter, handing off the transcript to two other reports, and the COVID-19 pandemic.
23. Regardless of the cause, the Plaintiff's Trial Exhibits 3, 5, 7-12 are unavailable to the Appellant to construct the record.
24. The Appellant has no alternative but to ask this Court for help in settling the record in this case.
25. The Appellant's reply brief is due Monday, Nov. 2.

26. To assemble the record and reply to Appellee's initial brief, additional time is required by the Appellant.

27. The Appellant respectfully requests that this Court stay proceedings in this Court.

28. The Appellant respectfully requests that this Court order the parties to settle the record.

29. If the parties cannot settle the record remand this case to the trial court to settle the record.

PRAYERS FOR RELIEF

For these reasons, Dr. Simmons respectfully requests that this Court

A. Stay proceedings for this case in this Court;

B. Set the deadline for Appellant's Reply brief for 10 days after the record is settled;

C. Order the parties to settle the record; and

D. If the parties cannot settle the record remand this case to the trial court to settle the record.

Respectfully submitted, October 27, 2020

s/Martin S. High
Martin S. High,
Martin S. High, P.C.
OK Bar #20725, SC Bar #102735,
TX Bar # 24108819
PO Box 33190
Clemson SC 29733-3190
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Fax: 866.232.1096
Email: marty@martyhigh.com
ATTORNEY FOR APPELLANT,
Denise Simmons

Motion to Settle Exhibit 1

MARTIN S. HIGH, P.C.

MARTIN S. HIGH, P.E., PH.D.
REGISTERED PATENT ATTORNEY
ACCREDITED VA REPRESENTATIVE
LICENSED IN OK, TX & SC

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FAX: 866.232.1096

EMAIL: MARTY@MARTYHIGH.COM
WEB: WWW.MARTYHIGH.COM
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MAILING ADDRESS:
P.O. BOX 33190
CLEMSON, SC 29633-3190

OKLAHOMA OFFICE:
123 W. SEVENTH AVE., STE. 203
STILLWATER, OK 74074-4029

SOUTH CAROLINA OFFICE:
301 SILVER PINE PL
SENECA, SC 29672-8008

April 23, 2020

Hilda Johnson
c/o Desiree Allen, Manager,
Court Reporting and Court Interpreters
1220 Senate Street, Suite 200
Columbia SC 29201-3739

VIA EMAIL to retiredcr@sccourts.org & dallen@sccourts.org

RE: South Carolina State University, Respondent, v. Denise Simmons, Appellant, Case No. 2015-CP-38-553

Dear Ms. Jordon,

On July 31, 2017 and August 1, 2017, the above case was tried before the Honorable Edgar W. Dickson, Circuit Court Judge, in Orangeburg County. My records indicate that you were the court reporter for this case.

I request that you provide me with a transcript of the proceedings. Please transcribe the entire record. I agree to pay the per page charge for this transcript as provided by Rule 607, SCACR.

Sincerely,

s/ Martin S. High
Martin S. High, SC Bar #102735
Attorney for Appellant,
Denise Simmons

cc: 1) S.C. Court Administration, via USPS First Class Mail to 1220 Senate Street, Suite 200, Columbia SC 29201-3739.

2) Clerk, Court of Appeals, via FAX (803-734-1839) and USPS First Class Mail to 1220 Senate Street, Columbia SC 29201.

3) John M. Reagle, Esq. via EMAIL (jreagle@hmwlegal.com)

4) Dwayne T. Mazyck, Esq. via EMAIL (dmazyck@hmwlegal.com)

Motion to Settle Exhibit 2

MARTIN S. HIGH, P.C.

MARTIN S. HIGH, P.E., PH.D.
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STILLWATER, OK 74074-4029

SOUTH CAROLINA OFFICE:
301 SILVER PINE PL
SENECA, SC 29672-8008

June 29, 2020

The Honorable Tonnya K. Kohn
Director, South Carolina Court Administration
1220 Senate Street Rm 200
Columbia SC 29201-3769

Via USPS First Class Mail and FAX (803.734.1821)

Subj: South Carolina State University v Simmons, Appellate Case No. 2020-000671

Dear Ms. Kohn:

On April 23, 2020, the transcript of the proceedings in this case was ordered. See attached letter from Martin S. High to Desiree Allen. To my knowledge, the Court has not granted any extension of time to submit a transcript in this case. By my calculations, the transcript was due to be delivered on June 22. As of today, the appellant has not received the transcript from the court reporter.

Sincerely,

Martin S. High

Martin S. High, Esq.
Attorney for Appellant

cc:
1. Michael C. Watkins, Court Reporter via EMAIL (MWatkins@sccourts.org)
2. Desiree Allen, Manager, Court Reporting and Court Interpreters via EMAIL (dallen@sccourts.org)
3. John M. Reagle, Esq. via EMAIL (jreagle@hmwlegal.com)
4. Dwayne T. Mazyck, Esq. via EMAIL (dmazyck@hmwlegal.com)
5. Clerk, Court of Appeals, via FAX (803-734-1839) and USPS First Class Mail to P.O. Box 11629, Columbia SC 29211-1629.

Enclosure(s) 1. Copy of letter from Martin S. High to Desiree Allen ordering transcript

Exhibit
A

MARTIN S. HIGH, P.C.

MARTIN S. HIGH, P.E., PH.D.
REGISTERED PATENT ATTORNEY
ACCREDITED VA REPRESENTATIVE
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STILLWATER, OK 74074-4029

SOUTH CAROLINA OFFICE:
301 SILVER PINE PL
SENECA, SC 29672-8008

April 23, 2020

Hilda Johnson
c/o Desiree Allen, Manager,
Court Reporting and Court Interpreters
1220 Senate Street, Suite 200
Columbia SC 29201-3739

VIA EMAIL to retiredcr@sccourts.org & dallen@sccourts.org

RE: South Carolina State University, Respondent, v. Denise Simmons, Appellant, Case No. 2015-CP-38-553

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Sincerely,

s/ Martin S. High
Martin S. High, SC Bar #102735
Attorney for Appellant,
Denise Simmons

cc: 1) S.C. Court Administration, via USPS First Class Mail to 1220 Senate Street, Suite 200, Columbia SC 29201-3739.

2) Clerk, Court of Appeals, via FAX (803-734-1839) and USPS First Class Mail to 1220 Senate Street, Columbia SC 29201.

3) John M. Reagle, Esq. via EMAIL (jreagle@hmwlegal.com)

4) Dwayne T. Mazyck, Esq. via EMAIL (dmazyck@hmwlegal.com)

Motion to Settle Exhibit 3

From: Green, Pamela E.
To: Martin S. High
Subject: Re: South Carolina State University v Simmons, Appellate Case No. 2020-000671
Date: Thursday, July 23, 2020 12:02:27 AM
Attachments: SC STATE V. SIMMONS.pdf
SC State Invoice - High.pdf

Enclosed is the transcript and invoice. Thank you.

_____
From: Martin S. High <marty@martyhigh.com>
Sent: Thursday, July 16, 2020 5:04 PM
To: Green, Pamela E.
Cc: jreagle@hmwlegal.com; dmazyck@hmwlegal.com
Subject: RE: South Carolina State University v Simmons, Appellate Case No. 2020-000671

*** EXTERNAL EMAIL: This email originated from outside the organization. Please exercise caution before clicking any links or opening attachments. ***

Thank you, Pamela. I will get payment sent ASAP.

Marty

-----Original Message-----
From: Green, Pamela E. <PGreen@sccourts.org>
Sent: Thursday, July 16, 2020 11:10 AM
To: Martin S. High <marty@martyhigh.com>
Subject: Re: South Carolina State University v Simmons, Appellate Case No. 2020-000671

Mr. High,

I have this transcript ready for you. The cost is $620.50. If you could please send a check in that amount to my address of 240 West Lakeview Drive, Duncan, SC 29334. I will then forward the transcript on to you when I receive payment. Thank you.

Pamela E. Green
Circuit Court Reporter
At-Large

_____
From: Martin S. High <marty@martyhigh.com>
Sent: Wednesday, July 8, 2020 11:04:38 AM
To: Watkins, Michael C.
Cc: jreagle@hmwlegal.com; dmazyck@hmwlegal.com; Green, Pamela E.
Subject: RE: South Carolina State University v Simmons, Appellate Case No. 2020-000671

*** EXTERNAL EMAIL: This email originated from outside the organization. Please exercise caution before clicking any links or opening attachments. ***

Mr. Watkins,

Thank you for the information.

Marty

-----Original Message-----
From: Watkins, Michael C. <MWatkins@sccourts.org>
Sent: Wednesday, July 8, 2020 11:02 AM
To: Martin S. High <marty@martyhigh.com>
Subject: Re: South Carolina State University v Simmons, Appellate Case No. 2020-000671

Hi Mr. High,

I will not be preparing this portion of the transcript. I believe Pam Green will be preparing it and she's top notch!!!

Sorry for any confusion.

Mike

_____
From: Martin S. High <marty@martyhigh.com>
Sent: Monday, June 29, 2020 10:02:07 AM
To: 18037341821@myfax.com
Cc: Watkins, Michael C.; Allen, Desiree; jreagle@hmwlegal.com; dmazyck@hmwlegal.com; 18037341839@myfax.com
Subject: South Carolina State University v Simmons, Appellate Case No. 2020-000671

*** EXTERNAL EMAIL: This email originated from outside the organization. Please exercise caution before clicking any links or opening attachments. ***

June 29, 2020

The Honorable Tonnya K. Kohn

Director, South Carolina Court Administration

1220 Senate Street Rm 200

Columbia SC 29201-3769

Via USPS First Class Mail and FAX (803.734.1821)

Subj: South Carolina State University v Simmons, Appellate Case No. 2020-000671

Dear Ms. Kohn:

On April 23, 2020, the transcript of the proceedings in this case was ordered. See attached letter from Martin S. High to Desiree Allen. To my knowledge, the Court has not granted any extension of time to submit a transcript in this case. By my calculations, the transcript was due to be delivered on June 22. As of today, the appellant has not received the transcript from the court reporter.

Sincerely,

[cid:image005.jpg@01D64DF3.F62F1240]

Martin S. High, Esq.

Attorney for Appellant

cc:

1. Michael C. Watkins, Court Reporter via EMAIL (MWatkins@sccourts.org<mailto:MWatkins@sccourts.org>)
2. Desiree Allen, Manager, Court Reporting and Court Interpreters via EMAIL (dallen@sccourts.org<mailto:dallen@sccourts.org>)
3. John M. Reagle, Esq. via EMAIL (jreagle@hmwlegal.com<mailto:jreagle@hmwlegal.com>)
4. Dwayne T. Mazyck, Esq. via EMAIL (dmazyck@hmwlegal.com<mailto:dmazyck@hmwlegal.com>)
5. Clerk, Court of Appeals, via FAX (803-734-1839) and USPS First Class Mail to P.O. Box 11629, Columbia SC 29211-1629.

Enclosure(s)

1. Copy of letter from Martin S. High to Desiree Allen ordering transcript (see attachment)

[cid:image001.jpg@01D23C25.30775870]

Martin S. High, Ph.D., P.E., J.D., Reg. Patent Attorney

Martin S. High, P.C. | Member of OK, TX & SC Bar

864.300.2444 (o) | 405.747.7113 (m) | 866.232.1096 (f) | highms (Skype)

https://urldefense.com/v3/__http://www.martyhigh.com__;!!JHVHxrUang!Cwn4SydJnyYx_7vzx1sfkr2gSV8Uq3VXmlmNhRoemRy7ytabwrwie7IcmCanfDs$ <https://urldefense.com/v3/__http://www.martyhigh.com/__;!!JHVHxrUang!C8oXFzbVabBPMVHe1X3YQXBMHAbTphIpZXAvVDTpD2Ttl7IPAVKlrcoH_l3UkfHQ$> | PO Box 33190 Clemson SC 29633-3190

[cid:image002.jpg@01D23C25.30775870] <https://urldefense.com/v3/__https://www.linkedin.com/in/martyhigh__;!!JHVHxrUang!C8oXFzbVabBPMVHe1X3YQXBMHAbTphIpZXAvVDTpD2Ttl7IPAVKlrcoH_krdgoqZ$>

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message and any attachments.

Motion to Settle Exhibit 4

STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

COUNTY OF ORANGEBURG

2015-GS-38---553

South Carolina State University

Vs.

Denise Simmons

Orangeburg, South Carolina

July 31/August 1, 2017

Before the Honorable Edgar Dickson

APPEARANCES

For the Plaintiff: Kimberly Blackburn, John Reagle

For the Defendant: Charles Ormond

Reported by: Michael C. Watkins (Edited)

Official Court Reporter

(Recorded by Hilda Jordan)

Gloria Dean Pyles:	3
Deborah Darby:	20
Dr. Kenneth Okafor:	61
Dr. Stanley Ihekweazu:	95
Dr. Larry Luke:	121
Denise Rutledge Simmons:	144
Julie Martin:	215
Jury Verdict:	223
Certificate:	224

The witness, GLORIA DEAN PYLES, was first duly sworn
And testified as follows:

DIRECT EXAMINATION

BY MS. BLACKBURN:

Q Good afternoon, Ms. Pyles.

A Good afternoon.

Q Thank you for being here today. Can you -- you've stated your name for the record. Can you briefly describe your educational and professional background for us?

A I'm Gloria Dean Pyles again. I graduated from high school in New York City, graduated from South Carolina State University with a Bachelors Degree. And then went back home and graduated from Columbia University with two degrees, a Masters and a Masters of Education. Then returned to South Carolina State University to work.

Q Thank you. And what is your current position at South Carolina State University?

A I'm the director of title three program at South Carolina State college -- University, I'm sorry, it was a college whether I was there first, which is a federally funded program that was established by the federal government in 1965 to provide federal funds to institutions to historic black colleges and universities to upgrade their university, to develop programs, keep their accreditation Also provide a professional development plan for faculty to

go to school to get their degrees. Also provide funds for our IT system. Provide funds to construct and renovate buildings. So those funds come in every year to South Carolina State University.

Q Okay. Thank you. And how long have you been the title three director at South Carolina State University?

A Thirty-six years.

Q And what are your job responsibilities as Title III director?

A My job as Title III director is to make sure all of these activities are well written, sent to the federal government for funding and then I disperse the funds. But all of this has to go through -- all through paperwork where they have to get approved by other people before it gets to me, such as a dean, a chairperson and then the provost, then it comes to me and then I will sign off on them.

Q Okay. Thank you. And as part of your job, do you oversee the commitment of Title III funds then to various activities or areas in the university?

A Yes.

Q And you told us a little bit about what Title III is. Are there parameters on how Title III grant funds can be allocated?

A Well, the parameters are whenever you write in your grant have to make sure that you are following everything

that you say you are going to do. And the faculty development activity that Ms. Simmons was in, there's a statement in there that indicates that you will return to the institution and give us a year for every year that we pay for you to go to school. The others have different type of parameters, but that was the parameter in that one. And that gets approved through a dean, and then a chairperson approves the application -- well, that application goes through a process. First of all the university will choose people to get their Ph.D's, and sometimes an employee will request the funds. So in order to get the funds there's an application that they have to fill out, which is a professional development plan. And in this plan they will have to go through the process of having a dean chair -- a chairperson, I'm sorry, complete it first, and then a dean, then the provost. Once that is completed, then all I have to do is make sure there are funds for those funds, and the person will be eligible to attend graduate school.

Q Thank you. And are there other areas besides faculty development that Title III grants can be spent on?

A Yes. We spend funds on equipment, renovations of buildings. We maintain our accreditations by using federal funds. We pay for resources in the library. There are many other things that we use for it.

Q Okay. And as Title III director then, are you familiar

with Title III faculty development program leaves?
A Familiar with what?
Q With factory development program leaves of absence?
A Yeah.
Q Okay. And is South Carolina State University a Historically Black College or university?
A Yes, it is.
Q Okay. And as Title III director, are you familiar with Denise Simmons?
A Yes.
Q How did you come to know Denise Simmons?
A I was became familiar -- I knew Denise on campus because she was very good in the engineering department. She had -- I knew the summer program that she had, the summer institute down there in Akin where she worked sith students in math, science and engineering. And when she applied for the application, she applied to go to graduate school I saw her application, and then we spoke about it. And then she would always send her information to the provost requesting her funds, and they would also cc me a copy and I would get it. So that's how I knew Denise.
Q So in 2008 then did Denise Simmons submit a factory development application?
A Yes, she did.
MS. BLACKBURN: Your Honor, I have in my hand a

document I would like to have marked for identification as Exhibit One. Your Honor, may I approach?

THE COURT: That's Plaintiff's Exhibit One?

MS. BLACKBURN: Yes, Your Honor.

THE COURT: Are you going to want her to look at it?

MS. BLACKBURN: Yes, Your Honor.

Q Now, Ms. Pyles, I would like to show you what I've marked as Plaintiff's Exhibit 1. And do you recognize these documents?

A Yes.

Q Okay. What are they?

A These are documents that -- this is Denise Simmons' application for support to go to Clemson.

Q Okay. And are there also documents at the back of that packet that are approval documents as well?

A Yes. These are all documents where she signed, and when she requested funds each time, and what she said she was going to do after she was received her degree.

Q Okay. Thank you. And how are you familiar with these documents?

A Each semester Denise would have to submit -- let's say the first semester -- she went to summer school but let's say the first semester that August. She would submit to us requesting two-thirds of her stipend, which we would send to her. Then she would receive the her stipend after he were

after her grades were received. She did this each semester and we would make sure she received the funds. Also she would submit how much it cost to go to Clemson, and then we would submit those funds to Clemson University.

Q Okay. And can I ask you, are you familiar with Dr. Simmons' signature?

A Yes, I think I am.

Q Okay. And how are you familiar with her signature?

A Well, you know, I didn't take it and see if it's the same each time, but I would recognize it when I saw it on the application.

Q Okay. And I'm going to ask you to look at page two of the document in front of you --

A Page two?

Q -- page one and two. If you would just look at that.

A Okay. This is Denise Grant.

Q And is that Dr. Simmons' signature on that second page?

A Yes.

Q And what is your understanding of what the first two pages are?

A This is the -- she was writing to submit the application, and she was informing the Provost and informing the Dean what she wanted to do.

Q Okay. So this letter is addressed to whom?

A Dr. Stanley.

Q And when you say Dr. Stanley, is that Dr. Stanley Ihekweazu.
A Ihekweazu, I'm sorry.
Q And this letter is from Denise Simmons?
A Right.
Q And it says Denise Grant, was had that her name at --
A Her maiden name, uh-huh.
Q Now, I'm going to ask you to look at the back of the document, the back four pages of this document. And can you tell me what those four pages specifically are?
A One document reads that she agreed that she would remain in active service with the South Carolina State University after completing her agreement equivalent to the amount of time for assistance was received for purposes of this agreement. A summer session as well as each conference, workshop, improvement is considered. Failure in any part to carry out the above agreement will result in the lump sum payment or the entire amount expended by South Carolina State University on my behalf.
Q Okay. And is Dr. Simmons' signature on these documents as well?
A Yes.
Q Okay. And is your signature on these documents?
A My signature is on the last document after it was signed by the President and all of the other appropriate

signatures are there, and then I'm the last one to sign.
Q Okay. Ad so was Dr. Simmons' application for faculty leave and support approved.
A It was approved.
Q And do the signatures on this document indicate that Dr. Simmons' proposal for professional faculty development leave approved?
A Yes.
Q And is this true and correct copy of the Denise Simmons' grant application and approval records for her faculty development leave?
A Yes, it is.
Q Only I'm going to ask you again to look at page one and two of this exhibit. Can you read aloud the second paragraph on the second page?
A The second paragraph?
Q The second complete paragraph?
A When doctor -- okay. "My entire objective for pursuing the Ph.D Degree has always to bring my independence back to South Carolina State University, provide the goal of exposing students" -- now, this is very, very small writing, I'm sorry -- "to my area of specialty for performing scholarly work in my specialties. Recruiting students to attend the University, and enhancing the academic and research capabilities of the University. I only need the

time and financial support from SCSU in order to accomplish this objective. My expected graduation date from the Ph.D program is December 2011. I will stipulate as many -- I will stipulate as many of the years employment as you deem appropriate in exchange for your support of this proposal and my degree completion at Clemson University.

Q Thank you. And did you understand that paragraph to describe Dr. Simmons' stated objectives for seeking the faculty development leave?

A Yes.

Q And is the objective for her request for leave as stated in her application records consistent with your understanding of the position as Title III Director with South Carolina State University's purpose --

A Yes.

Q -- for providing Dr. Simmons that leave and support?

A Yes.

Q Okay.

MS. BLACKBURN: And, Your Honor, I would like to offer Exhibit One into evidence.

THE COURT: Any objection.

MR. ORMOND: No objection.

THE COURT: Plaintiff's Exhibit Number One is in evidence without objection.

MS. BLACKBURN: Thank you.

Q And, Ms. Pyles, to your knowledge, did Dr. Simmons remain in the active service of South Carolina State upon completion of her degree?
A No.
Q Okay. Is it your understanding that she obtained a position elsewhere?
A Yes. After she didn't come back, yes, uh-huh.
Q Okay. How did you discover that she had obtained a position elsewhere?
A Well, you know, I was going through my files and we realized that she had not come back. And then I was asking around if anyone knew where she was and no one knew. So someone mentioned to me that she might be in Virginia. So I researched it, and I -- you can go on the web pages at the university be find out where people are and I found out she was at Virginia Tech.
Q Okay. Thank you. And as the Title III Director, what was South Carolina State University's expectation about whether Denise Simmons would be returning to teaching at South Carolina State after the completion of her degree program?
A The goal was that Dr. Simmons was an excellent professor there and he she really loved the young students that we had and worked with them. And in her application she said that she wanted to come back and expose our

students to her specialty, and also enhance our research. So it would have been best for her to come back because we expected her to come back, but she didn't, so --

Q Okay. And what was your understanding about what funds would be provided to support Denise Simmons' degree program at Clemson?

A Well, we provided all of her stipend, we provided all of her tuition and fees, and we purchased a few books for her.

Q And was your department responsible for making sure that the Title III funds were dispersed?

A Yes.

Q And were your Title III funds for Dr. Simmons faculty development leave disbursed in one lump sum?

A No. There was -- each semester she received four checks. She received two-thirds of her stipend and one-third for the first semester, and the same for the second semester. And then when she went to summer school she received checks also.

Q Okay. And did Dr. Simmons request her funds every semester as she was required to?

A Yes, she did.

Q Did Dr. Simmons contact -- I'm sorry, I'm going to change that question. As Title III Director, did you determine the entire amount was expended by South Carolina

State University on Dr. Simmons' behalf?
A Yes.
Q And what was the entire amount as funds from the Title III grant program that was expended on her behalf?
A $134,157.
Q Now, did you ever tell Denise Simmons that she did not have employment at South Carolina State University before she took a position with Virginia Tech.?
A No. I never talked with her.
Q And are you aware of anyone else telling her that she did not have employment at South Carolina State before she took a position with Virginia Tech.?
A No.
Q Now, tell me this, do you think the Title III program is important?
A Oh, yes.
Q Why do you think it's so important?
A Because we could have -- well, it enhances our university. It gives us a lot of funds to do things that are needed. We could have used those funds to send someone else to school that would come back to the institution, and we could have used them for deferred maintenance, which is a great need on our campus now.
MS. BLACKBURN: All right. Nothing further at this time, thank you, Ms. Pyles. Answer any questions Mr. Ormond

may have.

THE COURT: Mr. Ormond, any questions of this witness?

MR. ORMOND: Yes, Your Honor, just a couple.

CROSS EXAMINATION

BY MR. ORMOND:

Q Ms. Pyles, the Title III program is federal money; is that correct?

A Yes.

Q And the federal government doesn't just give the college money to do whatever it wants to do with it, it has to be a specific program, right?

A Yes, sir.

Q And in this case with Denise Simmons, the federal money was to go to her education tuition and so forth, correct?

A That particular activity, yes.

Q Okay. And that you tell us now is 134,157, is that correct is? That's the amount of money?

A Yes, sir.

Q And that's the amount that have federal government gave the state to help with the Ph.D?

A To help with that activity, yes, sir.

Q Now, are you asking, or is South Carolina State asking for Dr. Simmons to return federal money to you?

A To the university.

Q Yes.

A Yes, to the university.
Q And this was federal money. Were you going to return it to the federal government?
A We can take that money and use is in any other activities that we have, either in the faculty development area or another area with permission or approval from the federal government.
Q Have you sought that approval?
A No, not yet.
Q Have you asked for federal grant money for these things -- these other things that you're talking about and been denied?
A No.
Q Now, during this time in 2008 Dr. Ihekweazu was the chair of the department; is that correct?
A Yes.
Q And Ken Lewis was the Dean of the school --
A Yes.
Q -- the college. Were you aware that Dr. Ihekwaezu and Dean Lewis were the two people who came and brought up the Title III program to Denise Simmons regarding her Ph.D?
A No, I'm not.
Q But if they had, one would still need to go ahead and write this letter and do what she did, correct?
A Yes.

Q And that's part of the process.
A That's the process.
Q You write a letter and you ask for the funds.
A Yes, sir.
Q Now, you mentioned in direct that you said after she didn't come back. Did you have any knowledge that she was still actually working for South Carolina State and in Akin in August of 2012?
A No, I did not. That's the academic side of it.
Q Well, if she was retained during that summer under contract by South Carolina State University, would you at least have an idea of where to look for her?
A No.
Q Okay. She could be anywhere, not just Akin but anywhere?
A Well, that would not have been my job to look for her at that time.
Q I understand that, ma'am, it may not be your job and I appreciate that, thank you so much. Now, were you aware that when she went up and worked on this post-doc. program, she didn't arrive in Virginia until September?
A No. I don't know when she arrived.
Q Well, when did you look for her on the internet? Was that September or later?
A That was either late September or October.

Q I see. And classes at South Carolina State University had already started by then, correct?
A Yes, sir.
MR. ORMOND: That's all I have.
THE COURT: Anything on redirect?
MS. BLACKBURN: Yes, Your Honor.

REDIRECT EXAMINATION

BY MS. BLACKBURN:
Q Ms. Pyles, how does the federal government determine the amount of money that SC State gets for Title III funds?
A The money is formula driven, and it's determined by the total number of students that receive pell grants, which is a financial assistance for students. It also depends on how many -- your graduation rate. And it also depends on how much students -- how many of your graduate students -- how many of your undergraduate students go to graduate school, so it's formula driven.
Q Okay. So you get a certain amount of money that -- the university gets a certain amount of money from the federal government under the Title III grant --
A Right.
Q -- to expend on various areas within the university?
A Yes.
Q Is that correct?
A Yes.

Q Okay. So would you have applied to the federal government for grant money specifically and in a specific amount for Dr. Simmons to use on faculty development?
A When we send the applications we do not indicate the person's name, we just indicate the department that we're sending someone to school in. So it could be any department. It could be math and computer science, it could be engineering or it could be english. But we don't indicate a person's name, we just indicate the area and how much it's going to cost.
Q And are all of the Title III funds directed to that one individual or do they go in other areas?
A Title III money goes in several areas because we get several dollars. It's not just in a certain area, there are about 12 other activities.
Q Okay. And do you have to reapply for these grants?
A Every year. It's a five year grant but we apply within the five years.

MS. BLACKBURN: Okay. Thank you. No further questions, Your Honor.

THE COURT: Anything on recross?

MR. ORMOND: No, Your Honor.

The witness, DEBORAH DARBY, was first duly sworn and Testified as follows:

DIRECT EXAMINATION

BY MS. BLACKBURN:

Q Good morning, Ms. Darby, or good afternoon, I should say, Ms. Darby.

A Good afternoon.

Q You've stated your name for the record. Can you describe for us your educational and professional background?

A Sure. I received both of my degrees, my Masters and undergrad degree from South Carolina State University. And I am employed at South Carolina State University in the Office of the Provost.

Q Okay. And what is your current position in the Office of the Provost?

A Administrative coordinator.

Q And how long have you been an administrative professional in the Academic Affairs Office, or in the Office the Provost.

A It has been over 30 years.

Q And what are your job responsibilities as an administrative coordinator in the Office of the Provost?

A I assist the Provost with payroll documents, hiring. I also attend meetings on his behalf, attend meetings with

him. Also coordinate special assignments, such as workshops, institutes.

Q Okay. And do you ever coordinate employment agreements or assignment letters?

A Yes.

Q Okay. And do you also coordinate forms that are related to salaries and positions?

A Yes.

Q And do you make decisions regarding hiring faculty?

A No, I do not.

Q Okay. Who makes those decision regarding hiring faculty?

A It's the Provost.

Q And how about decisions regarding the termination of an employee or the firing of an employee?

A No, I do not .

Q And as an administrative coordinator in the Provost's office, were you familiar with Denise Simmons?

A Yes.

Q And how did you come to know Denise Simmons?

A She was employed in the civil engineering department and we would prepare her agreements.

Q And have you ever spoken with Denise Simmons?

A Yes, I have.

Q On one occasion or multiple occasions?

A It was multiple occasions.
Q Okay. And was she on the South Carolina State campus during the time that you knew her?
A Yes.
Q Okay. And were you aware that she had left the South Carolina State University campus to pursue her Ph.D at Clemson under a faculty development leave?
A Yes.
Q How did you become aware of her faculty development leave?
A Her paperwork, her application would have had to come through our office for the approval of the Provost.
Q Okay. And did Dr. Simmons remain employed with South Carolina State University while she was at Clemson?
A Yes, she did.
Q Okay. And did she receive any sort of salary?
A Yes.
Q Okay. Did she receive her entire base salary or did she receive a percentage of her salary?
A It was a percentage.
Q Okay. And did you have interactions with her while she was at Clemson?
A Yes.
Q Tell me what kind of interactions you would have with her while she was at Clemson?

A Well, she would basically just call to ensure that paperwork was submitted properly so that she would be able to continue to receive her salary.
Q Okay. And does your office coordinate and process a lot of assignment letters or employment agreements?
A Yes.
Q Okay. And is it the typical case for professors to be on professional development for four years in your experience at South Carolina State University?
A Yes.
Q And is that something that a lot of professors do or is it something that only a few professors do?
A It's a few professors that will do that.
Q Okay. And when a professor on a faculty development plan returns to campus to teach, is it your experience that the professor has to be rehired?
A No, not rehired.
Q Okay. In your experience as a professor whose returning to campus to teach after a faculty development plan leave considered a brand new hire?
A No.
Q Okay. And were employment agreements issued to Dr. Simmons annually before she left campus to attend Clemson for her faculty development program leave?
A Yes.

Q Okay. And when during the year were employment agreements typically issued?
A Anywhere between July and August.
Q Okay. And did Dr. Simmons ever sign her employment agreements in August to your knowledge?
A No, she did not.
Q Okay. Let me show you a document.
MS. BLACKBURN: Your Honor, I have a document in my hand that I would like to have identified as Plaintiff's Exhibit Two.
THE COURT: All right.
MS. BLACKBURN: May I approach, Your Honor?
THE COURT: Sure.
Q Ms. Darby, I'm showing you what has been marked for identification as Exhibit 2. Do you recognize these documents?
A Oh yes, she did sign.
Q Okay. What are these documents?
A These are her employment agreements.
Q Okay. And what years were there, are represented in that document?
A Okay. 2008, 2007, 2006, 2005. Yes.
Q Okay. So 2005 through 2008 --
A Right.
Q -- is what's represented in that exhibit; is that

correct?
A That's correct.
Q Okay. And were these agreements developed annually before Dr. Simmons' Clemson University leave?
A Yes.
Q Okay. And did she sign them every year?
A She did.
Q Are you familiar with her signature?
A I am.
Q Okay. And so when asked if she signed them every year, you recognize her signature on that document?
A Yes, I recognize her signature.
Q Okay. And would your office have processed these agreements?
A Yes, that's correct.
Q And were these documents prepared in your office for each year that's represented there?
A Yes.
Q And are they kept in the normal course of business by South Carolina State in your office?
A Yes.
Q Okay. And are these true and accurate copies of Dr. Simmons' employment agreements from 2005 through 2008?
A Can you repeat that, please?
Q Are these the true and accurate copies of Dr. Simmons'

employment agreements between 2005 and 2008?
A Yes.
Q Okay. Now, I'm going to ask you, if you'll look at 2005.
A Uh-huh.
Q Would you tell me what the date is on that document that Dr. Simmons signed the agreement?
A The date that she signed it?
Q The date that she signed, yes.
A August 10th, 2005.
Q Can you look at the 2006 agreement for me, please?
A Yes. The date is August 16th, 2006.
Q Okay. And can you look at the 2007 agreement for me and tell me what date she signed that agreement?
A August 15th, 2007.
Q Okay. And the agreement for 2008, can you tell me when she signed that agreement based on the date on the paper?
A August 13th, 2008.
Q Okay. And I'm also going to ask you to look back at the 2007 agreement if you will on page two.
A Uh-huh.
Q And can you tell me if it's indicated on that agreement when that contract was received by Dr. Simmons?
A It was received August 10th.
Q I'm going to ask you to look under paragraph 14 on page

two of the 2007 agreement.
A Oh, I'm sorry, yes. It was -- it says signed contract when received on August 15th, 2007.
Q Okay. So what is your understanding of when Dr. Simmons actually received the 2007 agreement?
A She's saying here she received it on August 15th.
Q Okay. And can you tell me based on paragraph 14 when that contract was actually due?
A It was due by August 10th --
Q Okay.
A -- of 2007.
MS. BLACKBURN: Your Honor, I offer Exhibit Two into evidence.
THE COURT: Any objection.
MR. ORMOND: No, Your Honor.
THE COURT: Plaintiff's Number Two is in evidence without objection.
Q Did South Carolina State issue employment agreements or assignment letters to Dr. Simmons each year while she was at -- while she was on leave?
A Those were P4's that was submitted.
Q Okay. And what is a P4?
A A P4's are submitted to HR, which would keep her salary in the system, her base salary. And also on that P4 a percentage of her salary was recorded as well. And it's a

personnel action form.
Q A personnel action form is what a P4 is.
A Yes.
Q So instead of get an employment agreement while she was on leave you had a P4 in the system.
A Right.
Q Why did you have had a personnel action form or a P4 in the system for her while she was away on leave?
A That would maintain her base salary in the system, so when she returned that salary would roll over.
Q Okay. So does the P4 form then document that Dr. Simmons would continue to receive pay while she was on leave?
A Yes.
Q Now, did there come a time when South Carolina State University began to send assignment letters that didn't require faculty member signatures rather than employment agreements?
A Yes.
Q Okay. And when was -- when was that? When did you begin to do assignment letters instead of employment agreements?
A In 2012.
Q And did Dr. Simmons receive an assignment letter during the summer of 2012 to your knowledge?

A No, she did not.
Q Okay. And do you know why that was?
A She had been away for four years on professional development and other documentation was needed in regards to her salary.
Q Okay. Now, you indicated that her salary would roll over after the P4 marked her place in the system; is that correct?
A Yes.
Q Okay. And so was it your understanding that Dr. Simmons salary would be her base salary when she returned?
A Yes.
Q So was it your understanding that Dr. Simmons would be returning to campus to teach during the fall semester of 2012?
A Yes.
Q Okay. And had anyone ever told you during the summer of 2012 that Dr. Simmons would not have her teaching position in the fall of 2012?
A No.
Q Okay. And did Dr. Simmons ever contact you before the academic year started in 2012 about her assignment letter?
A No.
Q Okay. So she never called and said, "Where is my assignment letter?"

A No.
Q Okay. And would you have considered it appropriate for Dr. Simmons to contact your office to ask about her assignment letter or employment agreement if she had concerns prior to the start of the academic year?
A Yes. It wouldn't have been a problem.
Q Okay. So would you have considered it unprofessional for her to contact you if she had concerns to inquire about where it was?
A No.
MR. ORMOND: I'll object, that calls for speculation?
MS. BLACKBURN: I asked would she consider it unprofessional.
THE COURT: You mean Ms. Darby.
MS. BLACKBURN: Yes, Your Honor.
THE COURT: Okay. Overruled. Go ahead.
Q Okay. And had Dr. Simmons ever contacted you prior to 2012 to inquire about employment agreements before?
A Yes.
Q Okay. Can you tell me about the circumstances of her contacts with you prior to 2012?
A Yeah. She would just usually call to find out when the employment agreements would be mailed.
Q Okay. Now, as you understood it, what was South Carolina State University's expectation about whether Denise

Simmons would be returning to campus to teach at South Carolina State University after she completed her degree program?

A That, yes, she would return back to the University.

Q Okay. And did you send Denise Simmons an email in August 2012 asking her to give you a call?

A Yes.

Q Okay. And why did you send her that email?

A Because her letter of assignment had not been sent yet. But I was calling to find out if she was on campus, and if she had been on campus that she could come by and get a copy of her letter of appointment.

MS. BLACKBURN: Your Honor, I have in my hand a document I would like to have marked for identification as Plaintiff's Exhibit 3.

THE COURT: All right.

MS. BLACKBURN: May I approach?

THE COURT: You may.

Q Okay. Ms. Darby, I would like for you to look at what I've marked as Exhibit 3.

A Uh-huh.

Q Is this the email that you were referring to earlier that you sent to Dr. Simmons?

A Yes.

Q Okay. And what is the date on that email? What's the

date that it was sent?
A August 23, 2012.
Q Okay. And can you read what it says for us?
A It says, "Good morning, Dr. Simmons. Please give me a call today. Thanks much and have a good one."
Q Okay. And is that a true and accurate copy of the email that you sent Dr. Simmons on August 23rd?
A It is.
Q And that's 2012?
A Yes.
MS. BLACKBURN: And, Your Honor, I would like to offer Exhibit Three into evidence.
THE COURT: Any objection?
MR. ORMOND: No objection.
THE COURT: Exhibit 3 -- Plaintiff's Exhibit 3 is in evidence without objection.
Q Okay. And did you ever tell Denise Simmons that she did not have employment at South Carolina State University prior to her taking a job with Virginia Tech.?
A No.
Q Did you tell her on August 23rd that she did not have a job at South Carolina State University?
A No.
Q Would it have been in your authority to tell her that she did not have a job at South Carolina State University?

A No.
Q Okay. And to your knowledge, did Dr. Simmons receive all of the funds she was supposed to receive while she was on leave at Clemson?
A Yes.
Q And to your knowledge in August 2012, did Dr. Simmons remain in the active service of South Carolina State University as is required by her grant agreement?
A Can you --
Q To your knowledge in August of 2012, did Dr. Simmons remain in the active service of South Carolina State University when she came back from Clemson?
A Yes.
Q So if she did -- so she did have a position?
A Yes.
Q Did she come to the campus in the fall of 2012?
A No, she did not report. No, she did not report.
Q So did she remain in the active service of South Carolina State as required by her agreement?
A No.
Q Did you see her on campus in the fall of 2012?
A I did not.
Q Okay.
MS. BLACKBURN: Your Honor, I have in my hand documents that I would like to have identified as Plaintiff's

Exhibit 4.

THE COURT: All right.

MS. BLACKBURN: May I approach?

THE COURT: You may.

Q Ms. Darby, I am going to ask you to take a look at this exhibit that I have marked as Exhibit 4. Now, do you recognize that document?

A Yes, I do.

Q Okay. Can you tell me what it is?

A Okay. It says here, "Thank you for your call" -- and this is from Dr. Simmons, and she was Grant at that time. "I've attached my 2009/10 contract. Let me know if you need anything else. Funny thing, I do not have a copy of my 2010/11 contract. Can you send me a scanned copy via email?"

Q Okay. So this an email from Dr. Simmons to you?

A Yes, it is.

Q And what is the date of that email?

A It's dated July 7th, 2010.

Q Okay. And did you receive this email?

A Yes, I did.

Q Is there an attachment to the email?

A Yes, it's is an employment contract.

Q Okay. So this employment agreement, is it signed by Dr. Simmons?

A It is signed by Dr. Simmons.
Q Okay. But is it signed by the University --
A No, it's not.
Q -- or a representative.
A It's not.
Q Okay. Now, what did you understand the purpose of this email to be.
A She was looking to receive a copy of her 2010/2011 contract.
Q Okay. And did she need a 2010/2011 contract?
A No. The personnel action form took the -- replaced this.
Q Okay. And did you contact Dr. Simmons to answer her questions about her contracts with her employment agreement?
A Can you restate that please.
Q Did you reply to Dr. Simmons' email?
A Well, I called her.
Q Can you tell me what you told Dr. Simmons during that phone call?
A I shared with her that the P4 would take place rather than this agreement.
Q Okay. So she emailed you a question about where her contract was, where her employment agreement was.
A Right.
Q Okay. And then you answered her question --

A Yes.
Q -- is that correct? And is this a true and accurate copy of the email and the agreement that was attached to your knowledge?
A It is, yes.
MS. BLACKBURN: Your Honor, I would like to offer Exhibit 4 into evidence.
THE COURT: Any objection?
MR. ORMOND: No objection.
THE COURT: Plaintiff's Number 4 is in evidence without objection.
MS. BLACKBURN: All right. No further questions at this time, Your Honor. Please answer Mr. Ormond's questions, Ms. Darby.
THE COURT: Mr. Ormond?
MR. ORMOND: Thank you, Your Honor.

CROSS EXAMINATION

BY MR. ORMOND:
Q So looking at Exhibit 4, after 2000 at least Dr. Simmons would know that while she's doing her Ph.D she doesn't need to have contracts each year; is that correct?
A That's correct.
Q But that wouldn't be so if she's actually working as a faculty member there, correct?
A Okay. Pardon me?

Q She would need a contract if she was working as a faculty member there, right?
A Yes.
Q And she was working summers. She was the director in the field station, correct, in Akin?
A That's true.
Q And she got a contract each year for that, correct?
A No. I know she received P4's. Well, the P4's were on file, personnel action request forms.
Q Okay. And she would receive those.
A She would receive copies if she requested, yes.
Q Okay. And it would be required for someone to send a contract to a professor, mail them out, right?
A Right.
Q And they would get them after they were mailed out.
A Yes.
Q So they would be sent before they were received.
A Right.
Q And then when they would be received they wouldn't be signed because they hadn't gotten them yet.
A Okay. Repeat that, please?
Q Well, somebody that gets sent a contract, a form contract and there's a little signature line, they wouldn't have signed it yet because they just got it.
A That's true.

Q And the University folks hadn't signed it yet, right?
A Right.
Q And the reason for that would be maybe there was an error or maybe somebody thought they were getting more money or something like that, correct?
A Okay. I don't follow you, I'm sorry.
Q Well, you would get a contract and it would say here's how much and so on and so forth, and that person would be able to say, "Well, hold it, this isn't right."
A Right.
Q And maybe that happens sometimes, correct?
A Well, there have been times that some folks may have had those type issues, but not many.
Q Okay. Now the P4 form that you're talking about, that's an internal form.
A It is.
Q And you're talking about in the system or in the computer system.
A That's right.
Q And you've been with the University for 30 years, and in 2011 and 2012 you were with the Academic Affairs Department essentially?
A That's true.
Q Okay. And the Academic Affairs Department, that's part of their job, I'm sure they have many, many others, send out

the contracts, right?
A Repeat that.
Q Do you guys, the Academic Affairs Department, send out the contracts?
A Yes.
Q And Dr. Evans at that time in 2008 -- I'm sorry, in 2012 was your supervisor?
A Yes.
Q And someone coming back from professional development like Dr. Simmons would have to go through the hiring process, wouldn't they?
A No.
Q All right. Do you remember chatting with me several months ago, maybe even a year ago, in a deposition? Do you remember talking to me with the court reporter there?
A I can't recall.
Q You don't remember?
THE COURT: Your Honor, permission to break the seal?
Q That court reporter -- you were under oath and you were sworn to tell the truth and the court reporter was taking it all down, do you remember that?
A Yes.
Q I'm going to give you a copy and tell me if that's your deposition. Do you remember if you looked over that deposition afterwards?

A Yes. It looks familiar, uh-huh.
Q If you would take a look at page 14, please.
A Page 14.
Q If you would like to read the whole page 14 to yourself. We were talking about the hiring process. I can give you a little bit of time to take a look at that.
MS. BLACKBURN: Your Honor, I'm going to object to Mr. Ormond's question there. She's already testified that she was not referring to the hiring process.
THE COURT: When she was talking about --
MS. BLACKBURN: He asked her about the hiring process and she has already testified to this.
MR. ORMOND: That's true, Your Honor, contrary to what she says in her deposition.
MS. BLACKBURN: She testified that Dr. Simmons was not in the hiring process, and now he's reading from the deposition about the hiring process.
THE COURT: Okay. She testified just a few minutes ago that Ms. Simmons did not have to go back through the hiring process.
MS. BLACKBURN: That's right.
THE COURT: And I'm assuming that there must be something in the deposition that he believes is contrary to that?
MR. ORMOND: Yes, sir.

THE COURT: Well, at this time, Ms. Blackburn, I overrule your objection. I need to kind of find out -- I don't have the deposition in front of me so I'll see how it plays out.

A And what page?

Q Have you had a chance to read page 14.

A I did.

Q Okay. The last lines, the last four lines, you answer when we're talking about the return of a person or a faculty member, would you agree with that?

A Yes.

Q And you say and you say, answer, "Okay" -- so we're talking about the professional development now, or just and there's a bunch of dashes. Do you recall that?

A Yes, I see that.

Q And then ask my question someone who wasn't working as a professor at the University and is now coming back, in other words like Dr. Simmons, correct?

A Right.

Q And then go ahead and look on the next page. And the answer is. "Okay. Well, yeah, they would have to go through that same process, that hiring process. And that would include a contract," I asked. Are you reading along with me.

A I am.

Q And the answer you said was yes. And then I further asked, "Is there ever a professor at the University that's hired without a written contract?" And you answered, "No, not to my knowledge." Is that something that's not true now?
A Right. It's apparent I didn't understand your question at that time.
Q You didn't understand my question?
A Right.
Q So she doesn't have to go through a hiring process.
A No.
Q Did she have to get a contract?
A Yeah. She would have had -- at that time it would have been a letter, an assignment letter.
Q Okay.
A Uh-huh.
Q But she would have to at least go through the contract process.
A Assignment letter, yes.
Q She doesn't have to get a contract. Which one is it?
A Okay. Assignment letter. She didn't get an assignment letter, she didn't get that, right.
Q And she didn't get a contract either.
A Right.
Q And she needed an assignment letter, right?

A She wouldn't have need an assignment letter to return back to the University.
Q Okay. But she would have needed a contract to be considered an employee of the University, correct?
A Not really because she was already in the system.
Q Well, you looked -- I'll just use my own exhibit.
MR. ORMOND: I'll mark for identification purposes and I don't have the things like they do.
THE COURT: Is that one of the ones we've already got?
MR. ORMOND: Well, it's part of one but I can't find which one it is. Defendant's 1.
THE COURT: Do you have a copy for Ms. Blackburn to see?
Q I would ask you to take a look at the last page and read number 13.
A Okay. "This agreement must be signed by the employer and returned to the Office of the Vice President of Academic Affairs by 12 noon on August 16, 2005. Failure to return this agreement by 12 noon on August 16th of 2005 shall be deemed a rejection of the offer of continued employment."
Q Okay. And I just showed you one, but they're all the same, right? They all say that.
A Right.
Q They said it in 2010, correct?
A Correct.

Q Said it in 2011, correct?
A Uh-huh.
Q 2012.
A Yes.
Q The year that she was there during the summer? They always say that, right?
A Yeah, right.
Q "You sign this or you're no longer an employee."
A Right. But we still accept them afterwards.
Q Okay. And we just talked, these are form contracts. They vary a little bit from person to person, or from faculty member to faculty member, but they're generally very similar; is that correct?
A Yes. They are templates that we use.
Q Okay. And they're almost all for an academic year, each year you get them, right?
A Yes.
Q Okay. And they all have the amount of compensation and other terms, like the duties and how long it's going to be and thing like that, right?
A Yes.
Q And for faculty they have whether they're tenure or non-tenure, correct?
A Right.
Q And that's important for a faculty member to know

whether he's tenure track or non-tenure track, right?
A Yes.
Q Can you remember if professor -- or Denise Simmons was tenure track prior to her going to Clemson University?
A I think she was non-tenured tenure track.
Q She wasn't tenured, but she was tenure track.
A Tenure track.
Q And tenure track means you're on the way to getting tenure hopefully. It doesn't guarantee it.
A Right, it doesn't guarantee.
Q And tenure is granted after you've been there a certain amount of time, and many other factors?
A Well, many other factors are included in that.
Q And professor and faculty contracts are generally delivered to each faculty member at the end of June or July usually, right?
A It's between July and August, it depends on what the vice president directs.
Q All right. Well, let's take a look, again, at that deposition that you have there. If you would like at page 15, please.
A Uh-huh.
Q Look at line 17. My question to you, "Would professor contracts have been delivered or signed by the professors?" Do you read with me?

A Yes.
Q "It depends on what the vice president asks us to forward them. There have been times when I think at one point one set was sent -- the one year they were sent I think the end of May. But for the most part they usually send toward the end of July -- I mean, June and then, July." Is that untrue?
A Well, as I said, it depends on what the vice president directs, yes.
Q If the university sends out a contract the end of July, let's say it's July 31st, today, it's not going to get to the faculty member until sometime later, correct?
A That's correct.
Q Okay. And when it's sent is not the same thing as when it's signed, right?
A Repeat that for me.
Q When a contract is sent out by your department, it's not the same thing as when it's signed. It will be signed later than that.
A Yes, it will be signed later.
Q And there was never a time when a contract was sent to Denise Simmons in 2012, was there?
A Right. A letter of assignment, yes.
Q The letter of assignment wasn't sent and neither was the contract.

A Right.
Q Now, the deans and the department chairs are the ones who negotiate and authorize salaries, correct?
A That's true.
Q And somebody coming in with a new Ph.D would have some negotiating to do as far as salary, right?
A That's true.
Q And Dr. Okafor was the chair of the department at that time in 2012, correct?
A Right.
Q And he would have been the one to have been negotiating her salary?
A Right.
Q Were you aware that he never did that?
A Oh, no. I had a conversation with the administrative support staff personnel asking them whether the documentation had been prepared, to let us know whether she would be getting an increase for receipt of her doctorate.
Q Well, but she had no idea of that, did she? Would she have known that?
A Yeah, she would have known that.
Q How?
A Well, because she's the one who would have possibly prepared it.
Q She didn't prepare something like that.

A Well, she told -- well, she did say that she would get with Dr. Okafor and let us know.
Q And that was on August 23rd, wasn't it?
A Yes.
Q Okay. So that was three days after school had started.
A I had spoken with the officer a couple of days before that just inquiring as to whether the documentation had been prepared.
Q But she didn't know whether you had talked to the office two days prior to the 23rd, did she?
A Did she?
Q She meaning Dr. Simmons.
A Oh, now I would not know that.
Q No. And she did remain at the field station in Akin during the whole four year period of time.
A Yes.
Q And she noticed -- she notified y'all in academic affairs in late November of 2011 that she would be finished in the spring of 2012, correct?
A Yes.
Q And in April of 2012 she sent her transcripts, the initial one, she wasn't completely done yet, but her transcripts, the initial ones, to South Carolina State University, right?
A Yes.

Q And she had the final transcripts sent from Clemson to South Carolina State University, the ones that are formal in June or early July of 2012, right?
A Right.
Q And the reason she did that because she's coming back to work for South Carolina State.
A Yes.
Q Okay. And she would need that to be eligible to become a faculty and get a contract employment to work there, right?
A Yes.
Q And I understand that you prepared a draft of an appointment letter to Dr. Simmons in 2012, do you recall that?
A Yes.
MR. ORMOND: I'm placing this in as Defendant's 2 for identification only at this time.
Q Now, this has a date of July 23 of 2012 on it, and my understanding is that you did draft this but it was from a form, correct?
A Yes, a template.
Q Right -- or a template. Was that like on Word where the date comes up or did you have to type in the date?
A No. It was in -- well, it's an Excel document that we use as a merge file.

Q But you didn't really even type this up or put it in until some time in August, right?
A This was put in around -- this was entered in -- well, when we entered the other faculty members, yes. When we entered the other faculty members this was entered around -- it may have been first of June maybe.
Q All right. Well, I'll tell you that we got this document from South Carolina State University on what we call discovery. Would you agree that Dr. Simmons would have never gotten this document or any one like it in 2012?
A No.
Q She didn't get it.
A She didn't get this one is.
Q And I'm trying to understand what you said, when did you prepare this letter?
A Well, it may have been around -- we probably entered it into our system probably July 1.
Q July 1?
A Yes. But when we printed it out it had the July 23rd date in it as we had entered in our Excel file.
Q All right. If you could turn to page 26 in your deposition then. First of all, the person from whom this is sent, or at least it says it's sent but it's not signed it's Cynthia Warrick (phonetically.) She's the interim president. Did she ever even look at this letter?

A No, she did not see this.
Q And it says the 23rd but that's not the date it was drafted, right?
A No.
Q Okay. Now, are you saying it was drafted earlier than this?
A Yes. It's been a minute now, but it may have been around July 1 or the first part of July as we usually enter the information, as I said, in our Excel file.
Q Okay. Look at page 27 -- sorry, 26 of your deposition.
A Uh-huh.
Q And line 14 through 17. I ask you -- and we're talking about this letter here, correct?
A Uh-huh, right.
Q "Okay. When was it prepared?"
A Okay. Since August.
Q It may have been prepared in August, I don't know, August 1st. It may have been around August 1st. And then I asked if was it ever sent out and you said it was not, correct?
A Right.
Q Okay.
A I should have said -- it should have been around July.
Q Well, I mean, do you remember doing it? Do you remember the dates or are you just thinking about when it

should have been?
A Well, it has been awhile but it should have been around July 1.
Q All right. But it wasn't ever sent.
A It wasn't sent.
Q Now, there's a salary figure on that letter. How did that get there?
A This is her base salary.
Q But she never knew that she might be making her base salary, did she?
A Now I would not -- she would have had to get with her chair and dean on that.
Q But her chair had never contacted her about that, did he?
A I'm not sure.
Q You don't have to deliver these appointment letters in person, do you?
A I don't have to, but they can come by and get a copy if they choose to.
Q Many of them are mailed?
A Yes.
Q And didn't you first notice that she had not received an appointment letter on the 23rd of August or thereabouts?
A Pardon me?
Q Did you not -- I'm sorry. Did you not notice that

there had been some sort of oversight or something that she had not actually received or been sent, I should say, an appointment letter on the 23rd of August?
A Yes.
Q And you emailed her to call you.
A Yes.
Q And you had that conversation. She did call you immediately back, didn't she?
A Yes.
Q And you told her that the chair is the one to negotiate salaries during that conversation, right?
A I don't recall talking to her about a -- yes, yes. The chair would have been the one to negotiate that salary.
Q And you told her that was the case, that the chair would be negotiating salaries.
A Right.
Q Okay. And you also told her that you would try to contact Okafor, correct?
A Yes.
Q And you had told her that you had tried to contact -- at least a couple of times, tried to contact Okafor a couple of times prior to that, correct, about this?
A Now, I did have a small conversation with him, but I don't think I tried contacting him several times, no. When I contacted him he returned the call.

Q Okay. Well, let's look at page 42. And I'm asking you more of whether or not you told Dr. Simmons that you had tried to contact Dr. Okafor but was unsuccessful in this phone call of August 23rd.
A Okay. I do know I did try to contact him and did he return the call. What page is this now?
Q Forty-two line 21. I'm sorry, line 21, start at that. Let's start on line 13.
A Okay.
Q Question -- and I finish, she had not had any contract negotiations. You agree with that? And then you answered, "Oh, okay, with Dr. Okafor. Okay, all right. Would you agree that happened or might have happened?" Answer, "Might have happened. Okay. Did you tell her that you had left several messages -- and again, this is around late August -- for Dr. Okafor? I don't recall several messages but I know there may have been one or two."
A Right. Uh-huh.
Q What did Dr. Okafor tell you when you called him? What did he say?
A He stated that he had been trying to reach her several times but she had not returned the call.
Q But you just talked to her on the phone. Did you give him her phone number?
A No, I don't think I did.

Q Did you understand that he had actually been talking -- or calling her office on campus, which, of course, she never was at in the summer because she was in Akin.
A Could you repeat that?
Q Do you recall that she told you that it appears the number he was calling her on was the her office number?
A No, I can't recall.
Q In other words a number she could never be at.
A I can't recall.
Q And she told you that she had not gotten a contract yet. This is on August 23rd.
A Right.
Q And she'd applied for another job, correct?
A Yes.
Q And did she also tell you that this job was going to be -- she had to formally commit that day?
A No, she did not.
Q Did you discuss with Dr. Okafor what they spoke about after he called her?
A No.
Q Or she called him, I'm not sure which one it was.
A No.
Q Did you send her a contract?
A No, I did not.
Q She was upset and concerned that she hadn't gotten a

contract of employment yet, right?
A No, she wasn't upset.
Q She wasn't upset?
A No.
Q Did you go to anyone and say, "Look, we need to get a contract of employment or at least some terms to Dr. Simmons. It's late, it's the 23rd. It has been three days of classes already." Did you do any of that?
A I just spoke with our vice president.
Q What did you say?
A I just let him know that she said that she had procured employment elsewhere.
Q Well, she had applied for another job is what she told you, right?
A Yes, uh-huh.
Q Okay. Applied and procured are two different things, would you agree with that?
A Yes.
Q Okay.
MR. ORMOND: Your Honor, that's all I have.
THE COURT: Anything on redirect?
MR. ORMOND: Oh, yes. I would like to enter that into evidence.
THE COURT: Which one?
MR. ORMOND: Defendant's 2.

THE COURT: Ms. Blackburn, any objection to Defendant's 2?

MS. BLACKBURN: No, objection, Your Honor.

THE COURT: Okay. Defendant's 2 is in without objection. We're not doing anything with 1, correct?

MR. ORMOND: Yes, I would like to get that in too. Did I not get that in? I don't think I did.

THE COURT: Ms. Blackburn, any objection to Defense 1?

MR. ORMOND: I will say part of it is the same is what you have there.

MS. BLACKBURN: No, Your Honor.

THE COURT: All right. Defendant's 1 is in without objection as well.

MS. BLACKBURN: Okay. I just have brief redirect, Your Honor.

THE COURT: Okay.

REDIRECT EXAMINATION

BY MS. BLACKBURN:

Q Ms. Darby, Mr. Ormond made reference to the field station position that Dr. Simmons had.

A Uh-huh.

Q Was it your understanding that the field station position was a summer position, not part of her nine month professorship?

A Right.

Q Okay. And also Mr. Ormond made reference to an assignment letter. Did anyone ever say to you, "Ms. Darby, don't send Dr. Simmons the assignment letter because we don't want her to come back?"
A No.
Q Okay. And did Dr. Simmons ever call you and ask you, "What is my salary? Because I haven't gotten a contract or an assignment letter?"
A No.
Q Could she have called you and asked you, "Where is my assignment letter and what is my salary?"
A She could have.
Q And did you understand that her salary would be at least her base salary?
A Yes.
Q And certainly her salary would not have gone down when she came back from getting her Ph.D.
A No.
Q Okay. And are you -- do you have the authority to hire or fire faculty at SC State University?
A No, I don't.
THE COURT: Anything else?
MS. BLACKBURN: Nothing further, Your Honor.
THE COURT: All right. Anything on recross?
MR. ORMOND: One follow-up, Your Honor.

RECROSS EXAMINATION

BY MR. ORMOND:

Q In this phone call with Dr. Simmons on August 23rd, you asked her if she had a contract, right?

A Yes.

Q And she said she hadn't gotten one.

A Right.

Q And you said that Okafor should have -- Dr. Okafor, I'm sorry, should have negotiated that with her awhile ago, correct?

A Well, I don't know whether I said awhile ago, but, yes, he should have negotiated it.

MR. ORMOND: Okay. That's all I have .

The witness, DR. KENNETH OKAFOR, was first duly sworn
And testified as follows:

DIRECT EXAMINATION

BY MR. REAGLE:

Q Good afternoon, Dr. Okafor. What is your current position at South Carolina State University?

A I'm a Professor of Nuclear Engineering.

Q All right. And in 2012, what was your position with South Carolina State University?

A I was interim chair of the Department of Civil, Mechanical and Nuclear Engineering.

Q All right. Is that the department that Dr. Denise Simmons was to serve under?

A Yes, sir.

Q And briefly describe your educational and professional background.

A I received a Ph.D in Nuclear Engineering from the Ohio State University, and that was in 1988. I came down to South Carolina to the Savannah River Site, worked there for about 16 years, and then came to SC State in 2005.

Q And as a professor at South Carolina State, were you familiar with Denise Simmons?

A Yes, sir.

Q And could you please describe your relationship with Denise Simmons?

A It was cordial, of course, she was a colleague. We all hung around the building and talked and so on and so forth about stuff, different stuff.
Q In 2012 as chair of the engineering department, what was your responsibilities regarding Denise Simmons?
A Just do something for any of the faculty members which we had in the department.
Q What were those?
A Making sure that everybody was covered concerning classes. Encouraging professional development. Making sure that the students were taken care of as far as the advisement and development concerns.
Q And was Denise Simmons assigned by the engineering department to take courses at South Carolina State University for the fall semester of 2012?
A Yes, sir.
Q Did you, in fact, have an email exchange with her regarding her course assignments in April of 2012?
A Yes, sir.
MR. REAGLE: May I have this marked for identification, Plaintiff's 5?
Q Dr. Okafor, can you identify what's been marked as Plaintiff's Exhibit 5 for identification?
A Yes.
Q And what is this document that's been marked as number

5?
A It's an email thread between Dr. Simmons and I.
Q Okay. And where does this thread start on April 9th?
A Just a minute. At the bottom.
Q All right. On April 9th of 2012, did Janice Guinyard with South Carolina State email to Dr. Simmons a copy of a teacher's schedule for her for the fall semester of 2012?
A Yes, sir.
Q If you look at that back page it had a teachers schedule. Does that identify the semester on it?
A Yes, fall of 2012.
Q Okay. And how does that indicate whether she's part-time or full-time?
A There is a check on the full-time.
Q Okay. And this -- and below it, does this list out three courses that were assigned for her to teach in the fall of 2012?
A Yes, sir.
Q Is this schedule a schedule for a full-time professor for the fall of 2012?
A It is a schedule for a faculty member that has the release time, 25 percent of release time. So you get to teach three courses, and then the rest of 25 percent you use for like research.
Q Was that your decision to give her 25 percent of her

time to use her research?
A Or it's just University policy.
Q What is that policy?
A In other words if you have a grant, a research grant, or the University gives you 25 percent of the time for you to execute the grant and then it's combined with the classes that you teach. So that requirement is the three classes plus the 25 percent of time that you take to do your work.
Q Okay. And did Dr. Simmons write you about this teaching schedule on April 9th, 2012?
A Yes, I think she did.
Q Okay.
A Yes.
Q In fact, it looks like she wrote to you within almost two hours of receiving the proposed schedule, correct?
A Yes.
Q And then you responded to her on April 11, 2012?
A Yes, sir.
Q And can you read to the jury, please, just what you wrote in response?
A Okay. This was my response to Dr. Simmons on the 11th. It says, "Ms. Simmons, how are you doing? I hope fine. I saw your email and I wanted to call you but could not reach you on your campus phone number provided. Regarding your question, it may not be possible to exchange the courses

were shared between you and two other professors in the program, unless you can arrange privately with one of them to make the exchange. If you have any further questions please let me know. Thanks."

Q Okay. And do you recall then the next time you received an email from Dr. Simmons?

A Not particularly.

Q Okay. But after April 11th when you wrote if you have any further questions please let me know, did you hear from her with any questions?

A Not really.

Q And then did you see Dr. Simmons in person in June of 2012?

A Yes, sir.

Q What were those circumstances?

A I was at a meeting, a ASEE meeting in Atlanta, Georgia, was there for a conference.

Q How did you come to see Dr. Simmons at that meeting?

A Oh, there were too many people there, so I ran into her in the hall, the hallway. And it just happened that I was walking behind her and I saw her phone drop, so I picked up the phone and chased her and called her attention, gave her back the phone. And there was no exchanges, and I turned around and left.

Q Did she ask you where her contract was?

A No.
Q Did she ask you where her assignment letter was?
A No, sir.
Q Did she ask you that she had concerns with her salary, didn't know what that would be?
A She did not utter a word to me.
Q Did she say thank you for giving her back her phone?
A No.
Q The courses that were assigned in April of 2012 for Dr. Simmons to teach in the fall semester, did she ever teach those courses?
A You mean before that?
Q No, I mean in the fall of 2012.
A No, she did not.
Q Did she ever show up on campus in the fall of 2012?
A Not that I know of.
Q Did Dr. Simmons ever tell you where she was going to teach when she didn't return to SC State?
A No, sir. I found out from the very last email she sent to me, I think, August the 23rd.
Q Now, are you familiar with a Title III Professional Development Grants?
A Yes, sir.
Q And can you generally describe your understanding of those grants?

A Title III is a federal program run through the Department of Education to support and to enhance HBCU's. There are two parts to it. There's a part A, that is concentrated to the majority schools. And there is a part B that's specifically for the HBCU's that are used for programs like professional development endowment fund, all kinds of stuff concerning students, so on and so forth. In other words, the program is to enhance the student outcome.

Q And did Denise Simmons receive a professional development grant from South Carolina State University?

A Yes, sir.

Q What was your understanding of the agreement between South Carolina State and Denise Simmons profession in the grant?

A That she would return at the end of her studies to continue teaching the students.

Q And what were your expectations as chair of the engineering department about whether Denise Simmons would be returning to teach at South Carolina State in August of 2012?

A I expected her to return and teach the assigned classes.

THE COURT: Mr. Reagle, did you want to do anything about Plaintiff's 5?

MR. REAGLE: I move Plaintiff's 5 be put into evidence.

MR. ORMOND: No objection.

THE COURT: All right. Plaintiff's 5 in evidence with no objection.

Q Please identify Plaintiff's 6.

A Yes.

Q What is Exhibit 6?

A It's an announcement from the administrative secretary of the department announcing a departmental meeting.

Q Okay. And was this sent -- did you look at the email distribution list? Was this sent to Denise Simmons?

A Yes, sir.

Q And then did you resend it to your department?

A I did.

Q And in doing that, did you send it to Denise Simmons as well?

A Yes, sir.

Q So this would have been sent twice to each of your faculty.

A Yes, sir.

Q And there was a memorandum attached?

A Yes, with the agenda.

Q And that says in the memorandum, "Please do everything to attend this plea meeting, it is critically important;"" is that correct?

A Yes.

Q And it's lived as a memorandum the faculty staff civil and mechanical engineering, technology and nuclear engineering.
A Yes, sir.
Q Why did you send this to Denise Simmons?
A Because she was a member of the faculty in the department.
Q And were you expecting her to attend this meeting?
A Yes, sir.
Q And did she attend the meeting?
A No, sir.
Q Did you hear from her for this meeting if you recall?
A No, I don't.
MR. REAGLE: I would move Exhibit 6 into evidence.
THE COURT: Any objection?
MR. ORMOND: No objection.
THE COURT: Plaintiff's Exhibit 6 in evidence without objection.
Q All right. I'll mark for identification Exhibit 7. Can you please identify Exhibit 7?
A Yes.
Q And what is that document?
A That's another email thread between Dr. Simmons and I.
Q Okay. So on August 13th you sent what was marked as Exhibit 6, the notice of the faculty meeting, correct?

A Yes.
Q And then on August 16th Dr. Simmons did not show up at the faculty meeting but did write you on that day.
A No. I think there was the following day, it was August 17th.
Q If you look at the bottom of Exhibit 7 it says from Denise Simmons to Okafor, Kenneth C.?
A The bottom? Oh, okay. Yes, I can see that.
Q So 4:53 p.m. Dr. Simmons sent you an email?
A Yes, sir.
Q And can you read, please, what her email to you was on August 16th?
A It says, Dr. Okafor, I hope that you had a productive summer. I have not received an employment contract to date and have not otherwise heard from you or your office. I am a bit distressed but have sought and secured employment. Please call me if you would like to discuss the matter further."
Q And did you respond to that email on August 17th?
A I did.
Q And what did you write to her?
A I wrote, "Dr. Simmons, thanks for your email. I hope your summer went well based on your email there is no viable number to call you at. There is a school number and you have not been here for awhile. I had also contacted you for

our semester departmental meeting, or did you not get the email? If possible can you call me at that number so we can discuss. By the way, a lot of people have not yet received their contracts so that should not discourage you. Thanks."

Q Were you surprised to learn that Dr. Simmons had, let me use her words, sought and secured employment elsewhere?

A I was.

Q Why were you surprised?

A Because I never expected that she was doing differently from what everybody expected concerning the PIP.

Q And that's a professional improvement plan?

A Yes.

Q And how many days -- August 16th when you were informed she had sought and secured other employment, how many days before that approximately did classes start?

A Classes started on the 17th, so just one day.

Q And did Denise Simmons not returning to teach at South Carolina State adversely affect the engineering department and its students?

A Of course it did.

Q And how is that?

A Because the students, especially the students in the classes assigned to her, did not have coverage. And we did something to make that -- to cover those students, which meant that the faculty members that were assigned to those

classes had extra work to do, which meant that we couldn't be sure about their efficiency in their assigned classes, let alone the additional classes assigned to them because of the situation.

Q Do you know if the University was able to replace that year Dr. Simmons with a Ph.D level engineering faculty member?

A That year?

Q Yeah.

A No.

Q Does it benefit the department to have Ph.D faculty?

A Of course. Every University boasts like how many percentages of their faculty members that have Ph.D's, so it's no different with SC State.

Q And you were not chair of the engineering department in 2008 when Denise Simmons PIP was approved, correct?

A No, I wasn't.

Q We have heard testimony that she wrote to Dr. Ihekweazu saying, "My entire objective for pursuing the Ph.D Degree has always been to bring my experience back to SCSU with the goal of exposing SCSU students to my areas of specialty, offering scholarly works in my specialties, recruiting students to attend the University, and enhancing the academic and research capabilities of the University." In 2012 you were chair of engineering department. Did the

engineering department realize any of those benefits promised by Dr. Simmons?

A No, we didn't.

Q And on August 23rd, if you look at Exhibit 7, the last email, the top of that email stream I believe is from Dr. Simmons to you?

A Yes.

Q And what does that email say?

A You want me to read it?

Q Yes, please.

A It says, "Hi, Dr. Okafor. I left you a phone message. My cell phone number has not changed (same that's on record with the department." Ms. Darby and I spoke this morning. She has a time related issue that needs to be resolved today and she needs to hear from you. We need to speak regarding employment."

Q And had you tried to call Dr. Simmons?

A Yes I did.

Q Were you ultimately able to reach her?

A Yes, I did.

Q And do you recall about when you were able to reach her on the telephone?

A I was coming back from a conference in Jackson State, Mississippi, and on my way driving back I gave her a call and we talked.

Q Do you recall the substance of that conversation?
A It concerned the same -- the course she was complaining about. And I remember, I told her, I said, "Why don't you come to the campus and let's discuss all of your issues?" That was the message I left on that afternoon.
Q Do you recall her saying she was concerned she didn't have a contract?
A No. She didn't tell me anything about a contract.
Q Did she say she was concerned she didn't know what her salary was?
A No. We did not discuss anything about salaries.
Q Did she say she was concerned about whether she would be tenure track or not tenure track?
A No, we did not discuss that. What she told me was that she had a death in the family and that was it.
Q Are you aware of whether or Dr. not Ihekweazu wrote to Dr. Simmons on August 23rd of 2012?
A Yes, I'm aware of that.
Q Okay. And why was Dr. Ihekwaezu -- what was your involvement in Dr. Ihekwaezu writing to Dr. Simmons?
A Dr. Ihekwaezu was the Dean, or he's still the Dean today, but he was the Dean at the time. And when I got the email from Dr. Simmons saying that she found employment somewhere else, as far as I was concerned as the chair the case was closed. So I have to go to the next step, so I

took it to the Dean. I said this is the situation we have right now, and then that was it.

Q And did Dr. Ihekwaezu copy you on this correspondence with Denise Simmons?

A He did.

MR. REAGLE: I will mark this as Exhibit 8.

Q It is identified Plaintiff's Exhibit 8. Can you identify that document?

A Yes.

Q And what is it?

A It's between the Dean and Dr. Simmons.

Q What did the Dean write to Dr. Simmons?

A It reads, "Hello, Denise. I have been informed that you have not reported to SC State since the beginning of the semester. According to our teaching schedule you were assigned three courses. I need you to return to SC State while the University addresses your concerns about your letter of employment. Any delay in your returning to classes will not bode well with our students. Please, do not forget that you owe an obligation to the University and we need your services. Thank you."

Q And what did -- on that same day, what did Dr. Simmons write back to Dr. Ihekwaezu?

A The email reads, "Hello, Dr. Stanley. I believe you have not been accurately informed. I have received so far

one email last week from Dr. Okafor and phone calls today from Dr. Okafor. I have responded to both. Deborah Darby has also called leaving a message yesterday and we spoke early a.m. today. Please let me know if I have missed something else."

Q So she did not say, "Of course will come back and work out my concerns with my letter of employment," did she?

A No she did not.

Q She doesn't even say whether she will come back to the University, does she?

A No, she did not.

Q And at this point, were you involved in the issues involving Dr. Simmons?

A No, sir.

Q Once it went up to the Dean you were not involved?

A Yes, sir.

Q And do you know whether Dr. Simmons was tenure track?

A Yes, she was tenure track faculty.

Q And forgive me if I have already asked this, how did you learn that Denise Simmons had taken employment at Virginia Tech.?

A I learned that from the -- I didn't know it was Virginia Tech., but I learned she got employment somewhere else from her last email to me on the 23rd.

Q Do you recall how you learned it was Virginia Tech.?

A It was floating around the campus.
Q Did Denise Simmons ever tell you "I'm going to Virginia Tech.?"
A We never discussed anything concerning whatever she was doing.
MR. REAGLE: I move to admit 7 and 8 into evidence.
THE COURT: Any objection?
MR. ORMOND: No, Your Honor.
THE COURT: Plaintiff's 7 and 8 are in evidence without objection. All right. Mr. Ormond, on cross?
MR. ORMOND: Thank you, Your Honor.

CROSS EXAMINATION

BY MR. ORMOND:
Q When Denise Simmons wrote you in April of 2012 about the three courses she had been assigned for the academic year, did you understand her to be upset about that?
A Upset?
Q Yes.
A Why would I be upset?
Q No, was she upset?
A I don't think so.
Q Was there anything that would lead you to believe that she wasn't coming back to South Carolina State University?
A No.
Q Now, when you saw her in June at the -- I believe it

was the ASEE meeting --
A Yes, sir.
Q -- you hadn't gotten your contract at that time yet, had you?
A I don't remember.
Q Contracts are usually sent out in late June or late July?
A I don't remember.
Q But in early June your contracts wouldn't have been sent out.
A I don't know their schedule.
Q Well, if she didn't ask you about her contract problems in June of 2012 that would make very sense since contracts weren't sent out that early, were they?
A I have no idea.
Q Neither were appointment letters.
A Sir, I don't know.
Q Let's turn to --
THE WITNESS: Can I add something, Your Honor?
THE COURT: Pardon me?
THE WITNESS: Can I add something to --
THE COURT: To your answer?
THE WITNESS: Yes.
THE COURT: In response to --
THE WITNESS: Yeah, in response.

THE COURT: Okay.

A Sir, the mere fact that she was talking to somebody who is supposed to be the chair, is there any doubt that she still had her job there or not? To me -- it makes sense to me that if there was such a situation I would have told her.

Q So you would have told her if you would have known that there was a problem with the --

A That there wasn't a job for her.

Q You would have told her that.

A I would have told her as the chair.

Q And she should have known that.

A If I told her.

Q And this would have been in June.

A Anytime.

Q Now, you were an associate professor prior to 2011, correct?

A Yes, sir.

Q And then you became the interim chair?

A Yes, sir.

Q And each year you were an associate professor, before the beginning of each academic year you got a contract, right?

A Yes, sir.

Q It was a written contract.

A Yes, sir.

Q Had your salary.
A Yes, sir.
Q Had whether you were tenure track or tenured, correct?
A Yes, sir.
Q Provided your duties?
A Yes, sir.
Q And from 2008 until 2012 Dr. Simmons wasn't a faculty member at South Carolina State, or at least she wasn't teaching courses there, right?
MR. ORMOND: I'm going to object, I think it's a compound question.
MR. REAGLE: I will rephrase.
THE COURT: Yeah, if you don't mind.
Q From 2008 until 2012 Dr. Simmons was not teaching at South Carolina State University --
A Yes, sir.
Q -- is that correct?
A Yes, sir.
Q Okay. And you've gone over some Title III grants. Is Title III grant money, is that all federal money?
A Yes.
Q And in 2012 the other professors there other than yourself in your department were Dr. Danjani, Dr. Ilia Mandori both phonetically, Dr. Chang, Dr. Lagru and Mr. Laurie (all phonetically) is that correct?

A Yes, sir.
Q And even at that time in 2012 you didn't know that Dr. Simmons had continued on as Director of the Environmental Field Study in Akin, right?
A No.
Q So if she wasn't going to be on the campus of South Carolina State, she would be at Akin?
A I don't know.
Q Have you ever been to the Akin Field Station?
A No, sir.
Q And do you know that Dr. Simmons had her transcripts sent from Clemson to South Carolina State University in June and July?
A I did not know that.
Q Now, on the 16th you wrote Dr. Simmons or emailed and said, "I hope you had a productive summer -- I'm sorry. Dr. Simmons wrote you on the 16th. That's the problem with these emails, you have to read them from back to front. "I hope you had a productive summer. I have not received an employment contract to date and have not otherwise heard from you and your office." And then she said she's a bit distressed, she sought other employment. Do you recall that?
MR. REAGLE: I object that's not -- if we're going to read it but that's not what it says. He should read it

verbatim I think rather than paraphrase it.

THE COURT: Yeah. I don't remember exactly but if you would just read what it says.

Q All right. "I am a bit distressed but I have sought and secured employment. Please call me if you would like to discuss the matter further." Do you recall that? That was on the 16th of August?

A Yes.

Q Classes are starting the next day.

A Yes.

Q But you didn't call her.

A I don't remember. But first of all --

Q Well, first of all, do you remember if you called her or not?

A I don't remember. Do you want me to finish my sentence?

Q Sure?

A I don't see the connection between being distressed and finding a job. Like I said, here is the department chair talking to you about classes already assigned. Why are we talking about being distressed and finding another job? That's something I don't understand.

Q Okay. And then you responded, and I will read it verbatim, "Thanks for your email. I hope your summer went well. Based on your email there is no viable number to call

you at since the number there is a school number and you have not been here for a while. Of course you didn't know she was in Akin at the South Carolina Field Station.

A I didn't know that.

Q But she did have her cell number on file, right?

A Okay. I don't know.

Q And her administrative assistant, Ms. Eckles, was right there in the department with those numbers.

A I don't know.

Q Okay. "I had also contacted you about our special department meeting, or did you not get the email?" Now this was a forwarded email, correct?

A Yes.

Q To a whole bunch of people.

A To the department and faculty members and staff.

Q Okay. "By the way, a lot of people have not yet received their contracts so that should not discourage you." And you put contracts in quotes?

A Uh-huh.

Q You want to see it?

A Yeah.

Q Why did you do that?

A Because that's the kind language she was using.

Q She was using the language of contracts.

A Yeah. I did not get any contract, so on and so forth.

Q Did you think that was silly or a concept you didn't understand?
A No. Does it say anything about silly there?
Q No, no, it just has quotes.
A Yeah.
Q Sometimes --
A Quotes means it is something that somebody else said.
Q So you were quoting it as this is what her concern was.
A Yeah, that's the concern.
Q Did you contact anybody and say, "Hey, let's get her a contract?"
A No. I told her to come to campus and we will discuss all of her issues.
Q Well, what were her issues other than not getting a contract?
A The primary issue was her inability to teach one course, Plane Surveying.
Q And you're talking about in April when she said she didn't have a lot of experience in that, maybe somebody else did.
A Including August.
Q Did she ever mention that in August?
A But that was primary stuff. What I discussed with her mostly was that particular course.
Q Well, I asked you earlier if you thought she was upset

about the fact she had to teach a course --
A No.
Q Well, then she wasn't upset in August either, was she?
A No. But what connection do we have there?
Q Fair enough. Do you remember taking a deposition with me?
A Yes.
Q Do you remember that at that deposition you didn't recall calling her at all in August?
A Yeah. I mean, it has been a long time, I can forget stuff.
Q So you forgot it then, but now you remember calling her?
A Yeah. When I look at stuff, when I look at papers, emails and so on and so forth things start coming together.
Q You don't remember I showed you all of these emails in the deposition?
A I don't recollect.
Q Now, you said in the email that a lot of persons hadn't gotten their contracts yet. But in truth you had absolutely no way of knowing whether that was true or not, did you?
A It's customary -- in other words, over the years I could tell you, I could tell you whether people got it in June or in July or in August, okay? I could say that. So I wasn't just saying -- pulling from the air. I had some

background to be able to have said that.
Q Okay. You do remember you were under oath in that deposition, correct?
A Yes, sir.
Q Is this your deposition?
A Yes, sir.
Q Do you notice all of those tabs in the back? Can you see if those were all of those emails that we're talking about where you were involved?
A Some of them.
Q Okay. Turn to page 34, please.
A Okay.
Q If you would read along with me starting on line three, that would be on the left-hand side of your page. I asked, "Okay. Did she have a contract to come back and teach at South Carolina State University in 2012 -- I'm sorry, in the fall of 2012? Yes, she did. Did any of the professors not have a contract? And I'm talking about professors here that taught engineering under you in 2012?" You answered, "The contract is a confidential document." Do you recall that?
A Yes.
Q "So I wouldn't know." Did you say that? Answer, "I wouldn't know." Correct?
A Yes.
Q "So you don't know whether there were any professors

who were working without a contract? I don't know." Do you agree that that's what you answered?

A Say that again.

Q Look at line 14, that was my question.

A Okay.

Q "Okay," I said. I wish I hadn't but I said it. "So you don't know whether there were any professors who were working without a contract." I'm asking you?

A Okay.

Q And this is all in relationship to your August 17th email. "I don't know."

A Yeah.

Q "And you would have no idea or knowledge whether the professors had gotten a contract at that time or not; is that correct? Say that again. Would you have any knowledge in August or July of 2012 whether s the professors that were under you had gotten a contract? I'm not supposed to know." Okay. The next page, 35. This is my question, "So you wouldn't know. I wouldn't know, yes." Do you agree --

A Yes, yes. However, the fact that that professor came back for semester means that he or she got a contract, that's how I can affirm that. I don't have to see he or her contract, that professor is back to class.

Q Okay. So if a professor is back to class then you assume they must have gotten a contract.

A Yes.
Q And if they're not back at class you probably assumed they didn't get a contract, right?
A Obviously.
Q Okay. Thank you. So on the 17th Dr. Simmons emails you -- or the 16th, and the 17 you replay that lots haven't got and contracts. By that time, and this is August 17th, school has started.
A Yes.
Q But you really didn't know whether they had gotten contracts or not, you just knew that they were there; is that correct?
A Sir, if you didn't have a contract you would not have appeared in the August 16th meeting as a faculty member.
Q And Dr. Simmons may or may not have gotten an email, but she didn't appear at that August 16th meeting and she didn't have a contract, did she?
A I don't know whether she got a contract or not. But I did invite her to the meeting, which means that there is nothing wrong or nothing amiss about her contract. That's what it meant at the time. I don't have to see her contract. I don't have to issue any contracts to her.
Q Okay. A contract would contain your salary, correct?
A Yes.
Q Were you responsible for negotiating her salary when

she came back?
A Yes, I can do that.
Q Was that you that was supposed to do that?
A Yes, I can do that.
Q Did you do that?
A I didn't have a chance to do that.
Q But we're talking about you didn't speak to her until August 23rd, correct?
A Yes. No. I spoke to her before that.
Q When?
A I don't remember but we talked before that.
Q Well, how long before that?
A I don't quite remember.
Q Did you talk to her about salary?
A No. Let me repeat. We discussed about her not being able to teach one of the classes assigned to her.
Q And that was in April, six or seven months prior.
A That's not the only time. I meant from April all of the way to August 17th when classes had started.
Q So when you testified earlier in direct that after that April email exchange about the courses and one of the courses she thought she didn't have a lot of experience for, when you said that you didn't talk to her about it again, that was not true?
MR. REAGLE: We object. I don't think that's a fair

characterization of his testimony.

THE COURT: If you would let him explain it I would like to clarify that.

Q All right. Did you ever talk in April when there was an email exchange about the course work that Dr. Simmons had after April of 2012.

A I can't remember. We talked. However, all I tried to do was -- that's why I told you that when I was coming back from Jackson, Mississippi I told her that let her stop by the University so that we can discuss all of her issues including the Plane Surveying course and whatever else it is that might be an issue for her.

Q And she didn't tell you that that day was the last day she had to sign that alternate employment agreement?

A No. We did not discuss any other thing.

Q And she didn't ask you about a contract, where is it or negotiating a contract?

A No.

Q Did you understand that Ms. Darby that same day called her and told her that you were the one to do it and that she should talk to you?

A No, I wasn't aware of the call. Like I said, I was not in school, I was at a conference. That was why I called her on my way back to school.

Q Now, when we discussed you calling her, you could not

remember the number you tried to call her.
A No, I don't remember. Probably her cell phone, I don't remember.
Q If she checked her cell phone from any messages from you and didn't find it, it is possible maybe you didn't call that cell phone or had the wrong number?
A I don't know. But what I know is that I talked to her on my way back to school.
Q And you couldn't remember in your deposition whether or not it ran to voice mail or you left any messages?
A No, I don't remember.
Q Student population was down in 2012, correct?
A Yes, sir.
Q And it was also down in the engineering department?
A Yes, sir.
Q Now, when you did your Ph.D at the Ohio State University, you financed that by taking an assistantship, teaching and research assistantship, true?
A I didn't take any assistantship, they gave me assistantship.
Q Okay. And that waived tuition, or paid partial tuition and gave you a stipend, right?
A Yes, sir.
Q And that's how engineering students, especially Ph.D level, can finance their education.

A Most of them.
Q And that way they can do it without taking out loans and things like that, right?
A It is rare that you take out loans to do a Ph.D. You can take a fellowship, you can -- the government has all kinds of programs. There are fellowships and all kinds other ways to pay for it.
Q There's lots of ways for someone who is wanting to get a Ph.D in engineering to finance that without going through Title III, would you agree with that?
A Yes.
Q And there was no faculty hired in your department until Dr. Farajapoor (phonetically) in the fall of 2014.
A Yes, sir.
Q So that was two years later.
A Yes, sir. And by the way, we had a hard time in the department because the program was coming under a better accreditation. That's why we were hurrying to find somebody to replace Dr. Simmons.
MR. ORMOND: All right. Thank you, Your Honor that's all I have.
THE COURT: Anything on redirect?
MR. REAGLE: Just briefly.

RECROSS EXAMINATION

BY MR. REAGLE:
Q As chair of the department, you indicated you had invited Dr. Simmons to the faculty meeting, correct?
A Yes, sir.
Q Had she come to the faculty meeting, had she come to campus at all to talk to you, would you have ensured she got an assignment letter?
A No.
Q Okay. Why not?
A Because it wasn't my responsibility to do that.
Q Okay. Whose responsibility was it?
A Whether you call it a contract or assignment or whatever comes from the academic affairs.
Q Now, whether she taught those classes and was paid, would it have mattered if she had the assignment letter?
A At the time we are talking about she didn't need all of that to teach those classes. She was already a faculty member in the department. She just went for a professional development and she was supposed to come back and teach, and if she had any issues we would have been able to resolve them when she was back to the department.
Q So those issues -- and the only issue she raised with you were her schedule, class schedule?
A Class schedule. That was why -- if you notice on one of the last -- I don't remember the date -- emails that she

sent to me, she informed me that she was distressed and finding another job.

Q And she told you on the 16th that she had sought and secured other employment, correct?

A Yes.

MR. REAGLE: Thank you.

THE COURT: Anything on recross?

MR. ORMOND: No, Your Honor.

The witness, STANLEY IHEKWEAZU, was first duly sworn
And testified as follows:

DIRECT EXAMINATION

BY MR. REAGLE:

Q Good morning, Dr. Ihekweazu. Can you please state your current position at South Carolina State University?

A I'm currently serving as Interim Dean of the College of Science --

Q Would are your responsibilities as Dean?

A As Dean of College my major responsibility is to oversee the running of the college, and that includes supervising the department chairs, making sure we have enough budgets, requesting for budgets, ensuring that classes have been scheduled, faculty are assigned classes. Everything that has to do with efficient running of the college rests with me.

Q And in the fall of 2012, what was your position with South Carolina State?

A At that time I was the Interim Dean of the college.

Q And can you briefly describe your educational and professional background please?

A I have a Master of Science Degree in Mechanical Engineering. A Master of Science in Engineering Management. A diploma in Industrial Management. A Ph.D in Engineering and Science. I'm also a certified manufacturer engineer.

Q And how long have you been employed by South Carolina State University?
A I have been employed by SC State for 25 years plus. I joined the University in January of 1988.
Q Okay. Thank you. So in 2012 as Interim Dean, what were your responsibilities regarding Denise Simmons?
A My responsibility was to ensure that she was assigned classes to teach knowing that she was coming back to us and that to ensure that she had a schedule given to her.
Q Okay. Was it your understanding that she did have a course schedule given to her?
A Yes, that's what I was told.
Q And in 2012, August of 2012, what did you understand Denise Simmons' responsibilities as a professor at South Carolina State to be?
A To come back and teach classes, engage in committee assignments, community assignments, do research. Help us with accreditation efforts. Everything that a faculty member was supposed to do was her expectations.
Q And did Denise Simmons show up teach classes at South Carolina State in the fall in August of 2012?
A That would be no.
Q And do you have an understanding of why Denise Simmons did not show up at South Carolina State to teach the engineering courses assigned to her in August of 2012?

A Initially I did not know. But later on I found out that the reason was because she took a job somewhere else.
Q Did Denise Simmons tell you where she took a job?
A No.
Q Do you recall how you found out where she had gone?
A I heard it from a faculty member and a staff member who told me that she had gone to Virginia.
Q In 2012 who would have had the authority to modify Denise Simmons' salary or other terms of her employment with South Carolina State University?
A Well, the process begins in the same way that when she sent her application, it begins with the department chair. The chair, she looks at that and then makes a recommendation, it goes to the Dean. The ultimate approval comes from the Provost.
Q So could her salary have been changed without the approval of the Provost?
A No.
Q And if Denise Simmons had concerns about the terms of her employment with South Carolina State University in August of 2012, as Dean, how do you believe she should have raised those concerns?
A Well, because we have a process, what she would have done is to go to the chair first. If that issue is not resolved then she would come to the Dean, and then the Dean

will make effort to resolve those issues. If the Dean is unable then the Dean will go to the Provost.

Q And are you familiar with the Title III Professional Developmental Grants?

A Yes, I am.

Q Please describe generally your understanding of those grant?

A Well, the Title III, we have used those funds extensively to help us in many ways; acquiring equipment, helping faculty improve their professional careers, dealing with accreditation. It has been funds we have used in many ways to help us.

Q And were you involved in Denise Simmons' professional leave application grant in 2008?

A Yes, I was.

Q I'm going to show you what has been marked as Plaintiff's Exhibit 1 as her professional leave application. Can you identify that document, please?

A Yes, I can.

Q And what is that?

A This is an application she sent to me. This was done June 12th of 2008. I read this and I did approve it.

Q Okay. If you would look at the back page, did the University approve it?

A Yes, the University did.

Q And you can go one page into the document in the last page. Is there something called faculty administrator compliance statement?
A Yes, there is.
Q Okay. And that's signed by Denise Grant?
A That's correct.
Q Was that Denise Simmons' name back in 2008?
A Yes.
Q And can you please read for the jury what Denise Grant signed in the faculty administrator compliance statement?
A It says, "I, Denise Grant, agree that I will remain in active service with South Carolina State University upon completing this agreement for a period equivalent to the amount of time for which financial assistance was received. For the purpose of this agreement a summer session as well as each conference workshop, seminar, et cetera, for which assistance was provided as outlined in the professional development plan is considered to be the equivalent of a semester. Failure on my part to carry out the approved agreement will result in the lump sum payment of the entire amount expended by South Carolina State University." It is signed Denise Grant, and there were witnesses.
Q All right. And after completing her Ph.D, did Denise Grant return to the services of South Carolina State?
A Unfortunately not.

Q Did she, to your knowledge, make a lump sum repayment to the University?
A Not to my knowledge.
Q And going the first page, this professional leave request actually begins with a letter to you, Dr. Stanley Ihekweazu, correct?
A Yes.
Q And if you can go to page two, there's the third paragraph, Dr. Ihekweazu. Does she state there her entire objective for pursuing her Ph.D?
A That's correct.
Q And can you read what she wrote to you in 2008?
A It says, "Dr. Ihekweazu, my entire objective for receiving the Ph.D degree has always been to bring my experience back to SCSU, with the goal of exposing SCSU students to my areas of specialty. Offering scholarly works in my specialty -- including students to the enter University and enhancing the students research capabilities of the University. I only need the time and financial support from SCSU to accomplish this objective. My expected graduation date from the Ph.D degree program is December of 2011. I will stipulate to as many years of employment as you deem appropriate in exchange for your support of this proposal and my degree completion at Clemson University."
Q And did you support her proposal?

A Absolutely.
Q I'm going to show you what's been marked for identification as Plaintiff's Exhibit Number 9 be ask you to identify that document, please.
A Yes. This was a letter I wrote to the vice president at that time asking her to grant salary to Denise Grant to enable her to pursue her Ph.D at Clemson University.
Q So this letter is dated -- what is the date at the top?
A The date is January 18th of 2008.
Q And this was written in support of her application for study leave to obtain a Ph.D?
A Yes.
Q And it says, "I am writing to indicate that the Department of Civil and Mechanical Engineering and Technology fully supports Ms. Grant's application for study leave to obtain her Ph.D in civil engineering with financial support from the University up to 80 percent of her current salary;" is that correct?
A That is correct.
Q And that 80 percent of her current salary was to be as financial support as part of the grant?
A That is correct.
Q And there's an indication there -- a note. Are you familiar with that note?
A The note from --

Q In the lower left-hand corner.
A Yes.
Q And what was that note indicating?
A The note says, "$20,000 must be left to pay adjunct for fall and spring."
Q So there was a cost to letting Denise Simmons on professional leave.
A Yes. This is in additional to granting her the -- that the University is going to leave some money to pay adjunct to cover the classes that we assigned to her.
Q And that cost was at least estimated there $20,000 a year?
A That's correct.
Q And as the Dean, the Interim Dean, was it important for you for Denise Simmons to return to South Carolina State in the fall of 2012 to teach the assigned courses?
A It was absolutely very important. You must understand that at that point in time we had no African-American female professors in the college. So our goal was to do what we can to encourage them, because they -- so when she brought the application we enthusiastically supported it. And this was the first time I ever approved anybody to go on study leave with such salary allocation. In the past I did not approve that.
Q And how -- did it adversely effect the University when

she did not return in August of 2012?
A Yes. It affected us negatively in the fact we lost her services, we had nobody to help us. We had people to help us but we didn't have the high expertise with accreditation, doing research, or most importantly to teach students. As you can see from the letter she sent to us that she would bring these expertise back for our students, and her not coming back we lost those.
Q And you're referring to the services and the things she would bring back outlined in the letter that she wrote to you in Plaintiff's Exhibit 1?
A Yes.
Q Did you or anyone at South Carolina State to your knowledge ever tell Denise Simmons she did not have continued employment at South Carolina State prior to her taking a job with Virginia Tech.?
A Absolutely not.
Q And do you recall how you learned Denise Simmons had gone to work at Virginia Tech. instead of teaching at South Carolina State?
A I learned it from staff and a faculty member, they're the ones who told me that, yes.
Q And I apologize, I had already asked that question.
A No problem.
Q Let me ask if you can identify what's been marked as

Exhibit 8 already. That's an email from you to Denise Simmons.

THE COURT: Now, Mr. Reagle, while he's looking at it, did you want to do anything with 9?

MR. REAGLE: Yeah. I move that Exhibit 9 be in evidence.

THE COURT: Any objection?

MR. ORMOND: No objection.

THE COURT: Plaintiff's 9 is in evidence without objection.

A This was the email that I sent to her when I learn that (inaudible) informed me there was some issues that she had not come back. So I literally panicked and sent her this email to reassure her of her position with us, if she would come back that the University was going to work out any obstacles or difficulties that may -- any concerns she may have, that we were going to work those out.

Q Okay. And when did you write this email to her?

A This was written on August 23, 2012.

Q Okay. And what time, does it indicate that?

A At 1:36 p.m.

Q Okay. And can you read what you wrote to her?

A It says, "Hello Denise. I have been informed that you have not reported to SC State since the beginning of the semester. According to our teaching schedule you were

assigned three courses. I need you to return to SC State while the University addresses your concerns about your letter of employment. Any delay in returning to your classes will not bode well with our students. Please do not forget that you owe an obligation to the University and we need your services. Thank you, Stanley Ihekweazu."

Q In August of 2012, did Denise Simmons then after getting your letter return to South Carolina State?

A No.

Q Did you have an opportunity to work out any concerns she had?

A I did not have because I wasn't given the opportunity to work out any concerns.

Q When Denise Simmons went to work for Virginia tech. instead of teaching at South Carolina State in August of 2012, did she reimburse South Carolina State the grant money it had paid for her to get her Ph.D?

A To my knowledge, no.

Q Did it reimburse the salary money that -- or the financial support that you had outlined in your letter of June 18th?

A No.

Q And as you sit here today you're confident had she come to South Carolina State you would have worked out any concerns she had about her professional agreement.

A Absolutely.

MR. REAGLE: Thank you very much.

THE COURT: Mr. Ormond?

MR. ORMOND: Thank you, Your Honor.

CROSS EXAMINATION

BY MR. ORMOND:

Q Dr. Ihekweazu.

A Yes, sir.

Q I think it's the exhibit you're looking at now, can I take a look at it to see which one it is? Would you read Dr. Simmons' response to you?

THE COURT: That's Number 9?

MR. ORMOND: I don't think it's 9.

THE COURT: What's the number on that one?

MR. ORMOND: Exhibit 8.

THE COURT: Thank you, I'm sorry.

A Read it?

Q Yes, sir.

A It says, Hello, Dr. Stanley. I believe you have not been accurately informed. I have received so far one email last week from Dr. Okafor and the phone calls today from Dr. Okafor. I have responded to both. Deborah Darby has also called leaving me a message yesterday and we spoke earlier on today. Please let me know if you have missed something else."

Q If she had missed something else; is that correct?
A Yes.
Q Now, were you aware that she hadn't received an appointment letter or a contract on the 16th of August?
A I was unaware of that.
Q Okay. And the 17th of August is when school started, correct?
A That's correct.
Q And are you aware that she informed Ms. Darby and Dr. Okafor on the 16th of August that she had not gotten a contract, to say the least she was distressed about that?
MR. REAGLE: I'm going to object. I don't believe that accurately reflects Ms. Darby's testimony.
THE COURT: All right. If you would just rephrase the question I think --
Q Were you aware of Dr. Simmons stating to anyone, whether it be Dr. Okafor or Deborah Darby or both, that she hadn't received a contract?
A I was unaware of that.
Q Okay. Now, professors get contracts before they start working, correct?
A Well, we -- by that time we're getting the assignment that's what we're getting.
Q All right. So prior to when Dr. Simmons was a faculty member she would get a contract each year, correct?

A She will get a letter or something ensuring -- telling her that she has -- all classes she is going to teach and what her salary was going to be. And that has changed over the years depending on the president we have at that time. Because some presidents when they came in did some modifications sometimes to get letter of assignment, able to get a contract, depending if you are on tenure track or non-tenure track.

Q Well, Dr. Simmons might not have known whether she was tenure track or not tenure track at this point, would she?

A She would have known.

Q She would have known. How would she have known?

A When the document is given to her says on the assignment whether you are tenure track or not tenure track.

Q But in 2012 we've established that no document was given to her in any form or shape, correct?

A That I do not know.

Q Okay. Now, the contracts that she had up until she went to get her Ph.D looked like this, and this is a group of contracts. Would you agree with that?

A Yes.

Q Okay. Could you read when that contract was made, the very top line?

A This was made on the first day of July of 2005.

Q Okay. And that's generally when contracts are sent

out, some time in July, would you agree with that?
A It does vary. Sometimes in July and sometime it comes in August, it depends on -- it does change.
Q Well, it comes before classes start, right?
A Yes. There have been a few occasions when they came after classes started, yes.
Q All right. Can you read the last -- second page, the last paragraph? I believe it's number 13.
A Second page here?
Q Yeah. Let me make sure I'm right on that. Yes, number 13.
A Okay. It says, "This agreement must be signed by the employee and returned to the Office of the Vice President for or Academic Affairs by noon on August 16th of 2005. Failure to return this agreement by 12 noon on August 16, 2005 shall be deemed a rejection of the offer of continued employment."
Q Okay. Would you agree that that says -- well, first of all is it all caps?
A Yes. They are in all caps, all of them.
Q Would you agree that that says if you don't sign this and return it you're not employed by South Carolina State, would you agree with that?
A Well, this is what this says. But University has really enough forms that this was designed to make sure that

people are brought back --
Q But you understand why Dr. Simmons would think that you need one of these things, that you needed to sign this and return it, and obviously you would have to get it first in order to sign it and return it, in order to be employed by South Carolina State as a faculty member?
A Yes.
Q Now, when Dr. Simmons got her Title III funds, can you remember if you and the Dean at the time, I believe --
A Dr. Lewis.
Q -- Dean Lewis, approached her about the possibility of a Title III grant?
A Yes. That's what I was saying before, that we really wanted her to go and get her Ph.D so that we can --
Q And she had never heard of a Ph.D grant -- I'm sorry, a Title III grant before that, had she?
A I'm not sure what she has heard in the past or not.
Q And then she went through the letter writing and the --
A Right.
Q -- and the summary and the chronology and all of the stuff that she needed to do, right? Of course, first she had to get in the Clemson Ph.D program, correct?
A I would assume so, yes.
Q Now, you indicated that the chair would be responsible at least initially to negotiate contracts; is that correct?

A She would come -- just the way she applied, she would come to the chair telling the chair I finished my studies. I referenced this to another faculty member who went to North Carolina State University, finished her Ph.D, came back, came back and approached the chair and said "I'm back now, now let's talk about my salary and review." This is what I was hoping would happen in this case.
Q Okay. So you felt like it was Dr. Simmons' job to approach her chair.
A Yes.
Q Okay. And she did approach the chair at least on August 23rd, would you agree with that -- I mean, August 16th.
A Yes.
Q And the chair is Dr. Okafor, correct?
A That's correct.
Q And Dr. Okafor never did negotiate any salary with Dr. Simmons, correct?
A But has to initiate that.
Q She has to initiate it?
A Yes.
Q Well, she did mention it on the 16th of August, I don't have a contract, does that not count?
A Well, normally in the contract she has a base salary that she was receiving when she left. So what happens --

you have to come back and officially report to duty, and then the process to reevaluate your salary would then begin.
Q Well, once -- at least on the 23rd there shouldn't be any question that all of the folks there, Dr. Okafor, Ms. Darby, knew that her problem was she didn't have a contract. Did you all ever write up a contract? Did you all ever determine what her salary would be?
A She has to have the initiative. Just like when she was about to leave she came to me and said, "I'm applying to go to Clemson for my Ph.D. I need in support." In the same manner she would have come to me, I'm the next person in line as Dean of the College. "I'm having issues with Dr. Okafor handling my contract." In the email I sent to her if she would have told me what the problem was that no admission was made what the problem was. I had to take it upon myself to go to the Provost and say, "We need to give her what she needs so that she can come back. We've invested in her so she can come back." I would have gladly done that.
Q Well, she did write you back on the 23rd of August and said that you had been misinformed by some of the folks underneath you. Do you agree with that?
A Yeah. That's what the email says, yes.
Q Give me a call if there's something she's missed. Did you talk to anybody about what happened at that time?

A At that time by the time -- when I wrote this email and this email came back on the 28th -- on the 23rd, I began to realize that she may not come back, or she has taken a job somewhere else so that was the --

Q Wouldn't it have easy to just to send her a contract? Wouldn't that have been an easy thing? Did the department have the money to do it?

A Of course the University had the money.

Q Well, South Carolina State was having some troubles at this time, was it not?

A Not by that time. It wasn't a problem by the time -- we had stability in terms of faculty employment -- we did not -- it wasn't a problem you would say that will prevent her from coming back and taking up her assignment.

Q Were there newspaper articles and news shows indicating that in 2012 that South Carolina State was having financial trouble?

A Not the extent that the faculty members were affected.

Q Were there eight members of the administration fired for breach of trust?

MR. REAGLE: Let me object because that was --

MR. ORMOND: I think I can ask him that question, he remembers it.

THE COURT: You can ask the question -- right now we're dealing just with her situation with the University, so

don't go too far afield.

MR. ORMOND: Can I ask him that question?

THE COURT: You can ask him and you're going to be stuck with his answer.

Q Can you recall that?

A Can you repeat the question, please?

Q There were six to eight members of the administration terminated in early February, or in February of 2012 from South Carolina State for breach of trust. Do you recall that?

A Yes, but they were not faculty members.

Q Right, administrators.

A They were not faculty.

Q So you understand why someone might worry or be concerned that maybe they hadn't gotten a contract because there was a difficulty in funding that contract?

A Nothing was said of any faculty being in jeopardy, all awful us were still there.

Q All right. Now, Dr. Simmons also continued as the Environmental Field Station Director at the South Carolina State University program, right?

A Right. You have to understand how the field station was. The field station, while Denise was at Clemson, we had employed somebody else, two staff members who were doing everything that she used to do while she was on campus;

sending letters to students who were coming to do their summer -- interviewing them. So we relieved her of most of her responsibilities while she was -- she was exchanging emails telling them what to do and they were doing all of those on campus.

Q In the summer she went to Akin and she directed that field camp, correct? I'm sorry, I said field camp, field station.

A Field station, yes.

Q And during the academic year, although certainly not full-time, she wrote grants and recruited students and did that kind of thing, too, correct?

A I don't know about recruiting students. But we have staff members who were also working with her, because I was working in close proximity with them.

MR. ORMOND: That's all I have, Your Honor.

THE COURT: Anything on redirect?

MR. REAGLE: Yes.

REDIRECT EXAMINATION

BY MR. REAGLE:

Q Let's start, Dr. Ihekweazu, with this email. When Denise Simmons wrote back to you at 9:05 p.m. on August 23rd, did she mention that she has any concern with not knowing her salary?

A No, she did not. And I was hoping that -- if she had

told me there was a problem, quite frankly I would have personally gone to the Provost and saying, "I need this resolved. This has been something" -- that's the way I operate. I would have gone there and say, She needs a contract so she can do what she needs to do." She didn't tell me that.

Q Does she mentioning anything in there that she doesn't know if she's will be tenured or tenure track or adjunct?

A No.

Q She doesn't identify any particular concern in her response to you, does she?

A No.

Q So you would have had no way to address any particular concerns that she may or may not have had.

A No.

Q You would have been told there was a concern about not having a professional -- the assignment letter.

A Absolutely. I would have addressed that.

Q And on September -- August 23rd as well when she writes to Dr. Okafor, does she mention any particular concern that she has?

A No. There's no particular concern except that I was misinformed. That they left messages or send a message, there was nothing striking to alert me that there was problems.

Q Okay. And that's Exhibit 7 you're looking at which is an email from Dr. Simmons to Dr. Okafor on August 23rd, correct.
A Yes.
Q On Exhibit 7, on August 16th Denise Simmons writes to Dr. Okafor, and did she mention any particular concerns when she writes to Dr. Okafor on the 16?
A No.
Q In fact, she tells him she's sought and secured employment elsewhere, doesn't she?
A Yes.
Q She doesn't say, "I don't know if I'm tenure track?"
A No.
Q She doesn't say, "I don't know what my salary is?"
A No.
Q And she was on professional leave the entire time she was studying at Clemson?
A That's correct.
Q And can you look at this as part of Exhibit 2, a package of employment agreement, tenure track faculty that Mr. Ormond asked you to look at.
A Yes.
Q That top contract, is that for the 2008 and 9 school year?
A Yes.

Q That would have been the year that she went on professional leave, correct?
A Yes.
Q And that indicates that the she's tenure track faculty, correct?
A Yes.
Q Does she also indicate her base salary?
A Yes, it does indicate it.
Q And what is her base salary?
A It is $55,719.
Q And when she came off of professional leave, would either of those -- either the tenure track position or the base salary have changed?
A It wouldn't have changed, to the contrary it would only go higher.
Q So the only question when she came back I think as you discussed was to whether she would get a raise or not?
A Yes.
MR. REAGLE: Thank you very much.
THE COURT: Anything on recross?
MR. ORMOND: Two follow-ups.

RECROSS EXAMINATION

BY MR. ORMOND:
Q If you would take a look at Exhibit 7. She did raise the issue of the fact that she hadn't gotten a contract,

didn't she?
A Yes.
Q And contract is terms, there's here is what we're going to do, like the salary, right?
A Yes.
Q The term, how long it's going to last, correct?
A That's correct.
Q Whether you're tenure or not tenure track?
A Yeah.
Q Right?
A Yes.
Q Duties?
A Yes.
Q This 2008 agreement that he showed you, Exhibit 2, it shows her reduced salary is for the academic year '08 and '09, correct?
A Yes.
Q You signed one of these each academic year, correct?
A Yeah. We signed -- at times we would get a letter of assignment, not necessarily a contract.
Q But again, and I don't want to belabor this too much, but in 2012 she never got a letter of assignment or a contract, correct?
A Yes.
MR. ORMOND: That's all I have, Your Honor.

THE COURT: Thank you, sir, you may step down.

The witness, DR. LARRY LUKE, was first duly sworn and Testified as follows:

DIRECT EXAMINATION

BY MR. REAGLE:

Q Good morning, Dr. Luke. Can you please tell the jury what your position is at South Carolina State University?

A I'm the Provost and Vice President for Academic Affairs.

Q What are your responsibilities for Provost and Vice President for Academic Affairs?

A I oversee the entire academic enterprise, all of the deans of the colleges. Determine policies for the University, and guide the running of academic units, such as the library, et cetera.

Q All right. And in the fall of 2012, what was your position at South Carolina State?

A In 2012 I was the Interim Associate Vice President for Academic Affairs.

Q What were your responsibilities in that capacity?

A I provided and gathered oversight of all of the academic support units, assisted the Vice President for Academic Affairs in many matters coming to her or him. And generally provided a general oversight of the support units for the division.

Q And can you please describe generally your education

and professional background?
A I have a Bachelors Degree in Theology and History and a Masters Degree in History and a Doctorate in History.
Q I think you're the first person that's not an engineer. Well, when did you start at South Carolina State University?
A 2001.
Q And while you were at South Carolina State University, did you become familiar with Denise Simmons?
A I did.
Q And let me show you what has been marked already as Exhibit 1 and ask if you can identify this document. What is that?
A This is Denise Simmons' request for professional leave to complete a Ph.D at Clemson.
Q And if you would flip to the back page I would ask, was that request approved?
A Yes. It was approved up to by myself, including the President and the Vice President for Academic Affairs and the Title III Coordinator.
Q So in 2008 what was your position when you approved the professional leave for Denise Simmons?
A I was Interim Associate Vice President for Faculty and Programs.
Q Okay. So you've worn a lot of hats at South Carolina State.

A A lot.
Q What was your understanding of the purpose for Denise Simmons requesting professional leave and support?
A Dr. Simmons, it was Simmons at the time, requested financial support to earn a Ph.D. And in this document she vowed to return to the University, and signs this agreement to return to the University to teach, et cetera.
Q Okay. And if you would go to page two of the document on the third paragraph, it actually states her objective for the professional leave?
A Yes. It says, "Dr. Ihekweazu, my entire objective for pursuing the Ph.D degree has always been to bring my experience back to SCSU with the goal of exposing SCSU students to my area of specialty, authoring scholarly works in my specialties, recruiting students to attend the University, and enhancing go the academic and research capabilities of the University. I only need the time and financial support from SCSU in order to accomplish this objective. My expected date of graduation from the Ph.D program is December 2011. I will stipulate to as many years of employment as you deem appropriate in exchange for your support of this proposal and my degree completion at Clemson University."
Q And if you would go to the next to the last page of the document, and I ask if she signed a compliance statement?

A Yes. It says, "I, Denise S. Grant agree that I will remain in the active service for South Carolina State University upon completing this agreement for a period equivalent to the amount time for which financial assistance was received. For the purpose of this agreement a summer session as well as each conference workshop seminar, et cetera, et cetera, for which assistance was provided as outlined in the Professional Improvement Plan is considered to be equivalent of a semester. Failure on my part to carry out the above agreement will result in the lump sum repayment of the entire amount expended by South Carolina State University on my behalf."

Q So what would be your understanding of the obligations that Denise Simmons assumed and agreed to in the professional leave that she was provide by the University?

A That she would return to work for the University. That she would teach, provide scholarly support, engage in scholarly activities. That she would basically return to work for the University.

Q Okay. And what's your understanding of what South Carolina State's responsibility under the agreement was?

A We provided financial support while she pursued her Ph.D, or in order for her to pursue the Ph.D, pay tuition, pay a salary, pay her stipend, those type of things.

Q And did South Carolina State fulfill its obligation?

A It certainly did, to the tune of over $300,000.
Q And Denise Simmons fulfill her obligations to the University?
A She did not.
Q And how so?
A She has not yet returned to the University.
Q Now, in addition to the Title III funds that were -- that the University spent on behalf of Dr. Simmons, were there additional funds utilized for her financial support while she was on professional leave?
A Yes. Denise Simmons made a request for financial support endorsed by her Dean and approved by university administration. She got 80 percent of her salary at the time.
Q And let me show you what has been marked previously as Exhibit -- Plaintiff's Exhibit 9 and ask if you can identify that document, please?
A This is a document I returned to Vice President, Dr. (inaudible). By Dr. Ihekweazu was the Chairman of Civil and Mechanical Engineering and Technology Department at the time. And he writes to request -- he indicates his support for Ms. Grant's application for study leave, to obtain a Ph.D and for support up to 80 percent of her current salary at the time.
Q Okay. And did you agree with the request for

80 percent, for financial support based on 80 percent of her salary?

A The request also came with a note to the vice president saying that there was a request for additional funding to pay for adjunct faculty to teach in Ms. Simmons' place. And my recommendation to the vice president was that instead of 80 percent the amount should be 64 percent to ensure we had enough funding to pay these adjuncts.

Q Do you know whether your recommendation or Dr. Ihekweazu's recommendation was ultimately agreed to by the University?

A Ultimately Vice President approved the original request of 80 percent.

Q Now, let me show you what has been --

MR. REAGLE: Let me have this marked for identification, please. And I just want to be clear, this document has a social security number of, the copy that I have given to the clerk does not have that on it. I want that to be clear that the record will not have her --

Q Can you identify what's been marked as Plaintiff's 10?

A The Plaintiff's 10 is a personnel actions request form which call a P4 form, and it's dated in 2008, September. And what it does, it authorizes the -- it authorizes the salary to be paid to Denise Simmons while she was in study leave to tune of 44,575.

Q And that's what she was paid each year while she was on leave.
A That's correct, from her salary.
Q For four years.
A This is from her base salary. This does not include the funding from the Title III support for tuition and stipends, et cetera.
Q Okay. So this was in addition to anything she was receiving from the Title III.
A The request had to do with both financial support for tuition, et cetera, as well as other financial support, you know, just generally.
Q And this indicates on it that it's a temporary salary adjustment.
A Right. So because the salary is reduced by 20 percent it's just for that period when it will be in effect.
Q Okay. So once that period of leave is over her base salary would go back in to full affect?
A Right, definitely.
Q And what is her base salary indicated on this form to be?
A $55,719.
Q And there's some account listed below under the justification.
A Right. So account number 5730 is the account for the

civil and mechanical engineering department, or program actually. And the field station -- Dr. Simmons served as the interim director of field station, and the account 5040 we show the salary split accounts for which salaries are drawn to reflect faculty's work load or work time. And as coordinator or director of the field station the salary would be drawn from an account associated with that unit.

Q And this indicates there's $11,143 per year of this financial support was drawn from the field station account, correct?

A Right.

Q Was that -- did she receive additional money from the field station account for work she actually performed at the field station?

A In the summer the my understanding her field station work was mostly paid from grants. The University through its professors, et cetera, write grants to get funding for the field station, federal grants, and summer salary tends to be drawn from there.

Q But what she received for her summer salary was above and beyond this 11,000.

A Yeah. Certainly above and beyond her nine month contract would be.

Q Okay. And when she was at the field station, did she have an assignment letter placing her at the field station

telling her what she would make?
A Those would be what we call temporary, we call those P13's, we have a lot of P's. So I'm more familiar with the abbreviations. So the P13, which is like a temporary work assignment, says what your salary would be for the summer, what the title of your position is, and it usually is associated, especially the first time, with the job duties, list of duties.
Q And this P4 that we're looking at here, Exhibit 10, indicates on it what her salary is?
A This is a nine month salary.
Q Okay.
A Faculty at SC State are nine month faculty. Generally they have no obligation under that nine month contract so to speak for the summer. In the summer -- if they work during the summer they get paid additional money.
Q But this P4 that we're looking indicates a base salary of 55,719?
A That's correct.
Q And it indicates her position, Assistant Professor of Engineering Technology, correct?
A Yes.
Q Just like the P13 for the field station would indicate what her salary and title was for that?
A That's correct.

Q There would not have been for the field station a contract such as Exhibit 2?
A No. This Exhibit 2 specifically and only pertains to a nine month faculty assignment.
Q And there wasn't a professional assignment letter for the field station.
A No. Not of that nature, no.
Q So it's possible to be paid and work and be employed by South Carolina State University without having an employment agreement or an assignment letter?
A That's correct.
Q And was Denise Simmons a tenure track employee at State in 2008?
A She was.
Q When she came off of professional leave in 2012, would her status as a tenure track employee change?
A No. Faculty are on the tenure track, as we say, until they are required to submit a dossier or binder for tenure.
Q And could Denise Simmons have been demoted from tenure track position without formal notice to her by South Carolina State University?
A No. Once you're put on tenure track you are given X amount of years to apply for tenure.
Q And could her salary have been reduced from her base salary without notice to her at South Carolina State

University?
A Not at all.
Q And could she have been fired by South Carolina State University or terminated following her professional leave without affirmative advance notice to her by South Carolina State University?
A No. The faculty handbook specifically says that once you're employed at the University for at least 12 months we must give you a -- we must give you -- a notice 12 months in advance.
Q So if she came off of professional leave, her base salary was established and couldn't have been changed without notice by South Carolina State.
A Typically salaries are negotiated. So Dr. Simmons certainly had the opportunity to approach the administration concerning her salary.
Q If she wanted a raise.
A If she wanted a raise.
Q But it wouldn't have been reduced?
A No, it would not have been reduced. In fact, the University would generally give you an increase for getting a doctorate degree.
Q And we just talked to about as set out in the employee faculty handbook you said?
A Excuse me?

Q What we just talked about, that's set out in the faculty handbook?
A The increase for the Ph.D?
Q No. That she couldn't be demoted or reduced in salary or removed from tenure track without notice and process by South Carolina State University.
A Right, definitely termination. There was termination set out how and when faculty can be terminated. The rights of faculty are laid out in the faculty handbook.
Q When Dr. Simmons didn't return to South Carolina State University for the fall semester in August of 2012, did South Carolina State receive any of the benefits that she had indicated it would receive in the letter to Dr. Ihekweazu dated June of 2008?
A No. The University actually suffered a loss because Dr. Simmons did not return as she stated in that letter of June of 2008. You know, she intended to return to share expertise with those students. Our students lost the benefit of someone with this high level of education and expertise and exposure. The University lost from having the benefit of a faculty member with higher credentials, the prestige that comes with that. Dr. Simmons had served on the accreditation committee in her department and her engineering programs at the University accredited by (inaudible) and therefore the high level of expertise

that comes with her Ph.D, the contribution she could have made to our accreditation effort, we lost that. So the students in her department lost the whole mentoring that she would have provided them with this high level of education. So in many ways the University just got the rotten end of the stick with this agreement.

Q Now, in 2012 was South Carolina State in financial trouble?

A Not that I can recall in 2012, no. I mean, we weren't even on furloughs then, no.

Q And there has been questions about controversy or financial trouble at state in 2012. Do you know what that would be in reference to?

A I mean, the financial woes of the University are pretty recent. So they were -- there was serious financial trouble at the University it may have been '14. I'm in academic affairs. I understand the general operation of the University, but when we talk about financial trouble and whether we pay faculty or not, financial -- was only recently pled in 2015, so I guess it all depends on what you call financial trouble. But in terms of paying off faculty, et cetera, I mean, 2012 that would not have been an issue.

Q Okay. If Dr. Simmons had shown up to teach at South Carolina State in August of 2012, would she have been issued an assignment letter?

A She would have.
Q Does it happen from time to time that faculty are not given employment agreements or assignment letters by the start of classes?
A Faculty, you know, is pretty much secure in their tenure at SC State, especially in light of fact that the faculty handbook recognizes that they can't be terminated without a years notice if they had been there for a year except for cause, of course, and from time to time that would have happened. I think last year we had two faculty in the speech department, they were working and getting paid and said, "I didn't get my letter." Because they are employed through our HR system so the employment is secured there. We send them these reappointment letters every year but there is no insecurity as to whether they will be paid, whether they will work, anything like that. And faculty --
MR. ORMOND: I would just object to the faculty, whether they would be insecure or not, I think that's speculative.
MR. REAGLE: I think he's put the whole reasonableness of thinking she didn't have a job and does --
THE COURT: I'll let him answer the question. I will note your objection on the record, it will be preserved. Go ahead.
Q Go ahead.

A Right. So I don't think the faculty not having the reappointment letter, especially if they continue to get paid, I don't see why they would worry much.
Q And was Ms. Simmons paid all through the summer for the field station in 2012?
A She was paid for work at the field station, yes.
Q So she was getting paid by South Carolina State all through that summer of 2012.
A She continued to get paid.
Q And this is part of Exhibit 2, the collected employment agreement tenure track faculty document. I'll show you the signature page for what would be the 07/08 school year. And it says at the bottom, "This agreement must be signed by the employee and returned to the Office of the Vice President for academic affairs by 12 noon on August 10th of 2007," right?
A Right.
Q And there's a notation there that says, "Sign contract when received on August 15, 2007." Is it common that contracts are signed and received after what might be stated in the bottom as their expiration date?
A Yes. Sometimes faculty travel in the summer and would effected when they are away, so signing is pretty much a formality.
Q And you mentioned before about the employment being

secure when they're in your HR system?
A Yes, they are.
Q Is that what the form P4 would be is --
A Right. The P4 authorizes salary increases or decreases. But the -- remember, her employment started since like 2004, I can't remember the exact year. But her employment with the faculty, once she was not terminated within her first year, the employment just continues and it just rolls until you're informed that you'll be terminated. And again, it's either for cause or we must give you a years notice after you pass a year.

MR. REAGLE: That's all. Thank you very much, Dr. Luke.

THE COURT: Anything on cross?

CROSS EXAMINATION

BY MR. ORMOND:
Q Dr. Luke, it's your opinion that signing those contracts by faculty are just a formality?
A Faculty are very important, but faculty signed them and they are not always signed on the date that we say that they should be signed, and in that sense they're a formality.
Q So --
A We don't terminate a faculty that didn't sign it on that date.
Q So if their -- if another witness with academic affairs

stated their professors never work without a contract, that would be untrue?
A If that contract is not -- the professor must -- let me put it this way. The professor cannot be terminated unless notice is given to the appropriate period. So yes, a professor can work without signing that and they will get paid.
Q Now, Dr. Simmons hadn't been working there as a faculty member for four years, right?
A She had not -- I didn't hear you clearly.
Q Oh, I'm sorry. She had not -- Dr. Simmons was at Clemson getting a Ph.D for four years, she was not work at a faculty member.
A She is a faculty member on professional leave as she requested.
Q I see.
A We don't -- her rank and status of the faculty is not diminished because she's on study leave. She continues to be on faculty at South Carolina State University.
Q Is that statement in the handbook?
A The statement that Dr. Simmons it not a faculty member.
Q No. That if you're on professional leave you're still a faculty member.
A Faculty members request leave, therefore they continue to be faculty.

Q But she didn't sign any contracts for faculty at that time, she wasn't teaching.
A The P4 document that we referenced earlier, it gives the parameters of her employment status for the University.
Q And that's an internal HR document, right? She doesn't get that.
A It authorizes her pay so she gets the salary.
Q Right, she gets a salary. But for the field station she would get an assignment letter and it was called a P13, right?
A Well, that's her assignment, yeah.
Q And that would have all of the stuff on it, like how much she was making and so forth.
A It would. Similarly her -- because she continues to get paid through the P4 during the nine months, the money appears in her bank account or a check is sent to her or whatever. So all of these documents do demonstrate her continued employment at whatever capacity and her salary.
Q You do at least agree that faculty contracts are yearly for the academic year, right?
A They're nine month contracts, yes.
Q Now, when she was doing the field study, you're aware that she not only worked full-time in the summers, but also did certain duties during the academic year? Were you aware of that, sir?

A I know she is -- she worked in the summer. I am not clear on the specific things she did.
Q Were you aware that she wrote the grant that funded that program?
A Denise Grant can't take responsibility or credit for writing the grant that funded the field station. There was funding when she was there, and certainly she would have a hand in continuing to write grants to fund the field station. But certainly the field station as an entity didn't start with Denise Simmons, of course.
Q I didn't say that. But do you know or do you not know whether or not she wrote the grants for funding as federal funding for these grants when she was there?
A I think it was reasonable to assume that she wrote a grant while she was there.
Q And she did that during the academic year.
A I can't tell you that for sure.
Q Okay. Did she ultimately recruit students and colleges for the field camp during the academic year?
A As director of the field station she would.
Q And some of this money that you used as her stipend while she was going to Clemson as a Ph.D student was from those field station grants?
A Let's be very careful about what funding for her study and what is the compensation for her summer employment.

Q It says, "5840 field station." That refers to the field station grant, correct?
A I don't know the exact index number, but let's clarify your statement before. So you wanted to find out during the nine months Dr. Simmons is an employee, a faculty member, in the summer she can choose to work and not to work. In her letter requesting professional study leave, she specifically ask to continue to work as the field station director in the summer, that was a specific request.
Q Okay. The field station was 100 percent funded by federal grants, correct?
A In some operations.
Q Not all of the operations.
A Well, Denise Simmons and anyone who is the current director, they are in the nine month capacity, they're still director of the field station.
Q It was really a pretty simple question, let me try again.
A Yeah.
Q The field station, the South Carolina State Environmental Field Station in Akin, South Carolina is 100 percent funded by a federal grant.
A I don't know if I would categorize it that way at all.
Q Do you know it or not?
A Because the University has to provide personnel to

administer the field station, and that's for 12 months of the year. During the summer there is specific funding for the field station from federal grants, but the entire oversight of the field station for the entire 12 months, some that is coming from the University's --

Q Okay. The portion of Dr. Simmons' stipend, the 25 percent that's here in this letter, and I believe it is Exhibit 10, was from that federal grant, correct?

A No. If you would note that there are only four digits in the account number or ING accounts for education general, which comes from the State of South Carolina, only have four digit account numbers. Federal grants would have more than four digits. So this is not from a federal grant at all, not for the nine months. So that's why you have to be very careful for insinuating all the money is coming from federal grants.

Q Do you have any reason to believe that Dr. Simmons was not on the Akin Campus during the summer of 2012 at the field station, or at least for the most part?

A Dr. Simmons completed her degree from Clemson in May of 2012, I believe.

Q Right.

A And your question is whether she was at the field station in the summer of 2012.

Q Do you have any reason to believe that she was not,

sir?
A I'll be honest with you, I'm not sure what Dr. Simmons did after she graduated from Clemson University after May of 2012. What I know is that she did not come back to the University in the fall.
Q When you're saying come back to the University, are you saying --
A Teach and carry out the obligations of a faculty member.
Q And there's no dispute she had not received a contract and not received an appointment letter or anything from South Carolina State University even by August 24th of 2012, correct?
A That's correct.
MR. ORMOND: Okay. That's all I have.
THE COURT: Anything on redirect?
MR. REAGLE: Two things. First I would move Exhibit 10 into evidence.
THE COURT: Okay. Any objection?
MR. ORMOND: No, Your Honor.
THE COURT: Okay. So plaintiff's 10 is in without objection.

REDIRECT EXAMINATION

BY MR. REAGLE:
Q Did Dr. Simmons ever question to your knowledge her

status as a faculty member?

A Not to me.

MR. REAGLE: Thank you.

THE COURT: Anything on recross?

MR. ORMOND: No, Your Honor.

THE COURT: You may step down.

The witness, DENISE RUTLEDGE SIMMONS, was first duly Sworn and testified as follows:

DIRECT EXAMINATION

BY MR. ORMOND:

Q Dr. Simmons, where were you born and raised?

A Charleston, South Carolina.

Q Did you go to primary schools there?

A I did.

Q Did you go to college?

A I did.

Q How did you manage to go to college?

A I worked my way through college.

Q Did you take student loans?

A I did. So between working during school and in the summers I was able to finance part, and then a significant piece was student loans.

Q Where did you go?

A Clemson University.

Q After -- well, what was the degree in?

A Civil Engineering.

Q Did you work after that?

A I did.

Q Where did you work after college?

A I was immediately employed by Duke Energy in Charlotte, North Carolina.

Q Did you work anywhere else?
A I did. I have worked for a couple of energy companies and then in a consulting firm.
Q Did you obtain a Masters Degree in Engineering?
A I did.
Q When did you do that?
A Right around '95.
Q How long had you been working before you did that?
A About four, four and a half years.
Q Are you married?
A I'm not, I'm divorced.
Q After your Masters Degree, did you go back and work in the industry?
A I did.
Q Where did you work?
A Immediately after the Masters, that was for SCE&G.
Q What did you do at the utilities?
A For SC&G particularly I was a systems engineering, so I had a responsibility for natural gas systems across the three states that they had facilities.
Q Did you work anywhere else?
A I did. I worked for awhile for Memphis Light Gas and Water. At the time my spouse had found employment there in Memphis, I followed him. And then we returned to the State of South Carolina where I was doing consulting work at that

time.
Q Did you earn a professional engineering license during this time?
A I did. I earned that, yes, somewhere around 1995/96ish, somewhere around in there it seems like.
Q And that's the license you need to practice engineering, if you will?
A Exactly. It allows me to stamp drawings and gives me a little bit more freedom in terms of professional and what I can do, and also the value I would add to my employer.
Q Can you describe very briefly the process that is required to get a professional engineering license?
A Sure. It's a minimum of four years of practice under another professionally licensed engineer, and then it's a day long exam.
Q How many years did you work in private industry?
A Just shy of 15 years.
Q Now, did you come to work at South Carolina State University in about 2005?
A That's correct.
Q Why did you make that change?
A So as my responsibilities in industries sort of grew I had gained a passion around mentoring and developing my employees, and I thought I could have a larger platform doing that in academia. If you asked my mom she would say

she always knew I was going to be a teacher, but I didn't want to be a teacher anywhere. I wanted it to be particularly at an HBCU.

Q Okay. What's an HBCU?

A An Historically Black College and University.

Q From private industry did you take a bit of a pay cut to go teach at college?

A I did.

Q Did you determine during your time teaching at South Carolina State whether you liked it or not?

A I did.

Q Would you tell us a little bit about that?

A I did. So I came -- it was made clear to me I would not be able to progress through tenure without the terminal degree, and I guess I wanted to be sure that I actually really liked it before I pursued it. Because pursuing a Ph.D is not for the faint of heart, it's quite a bit of work and commitment and effort and time and energy. And not only did I like it, I think it was clear to me from some of the reviews I was receiving that I was being -- that it was being impactful, that it was having a positive impact in that environment. So that was rewarding to me and sort of fueled my passion to say, okay, I think this is the right path for me.

Q About when did you make that decision, do you recall?

A Probably after I was there for about a year.
Q When you were at South Carolina State University, did you work on yearly faculty contracts?
A I did.
Q These have already been admitted into evidence as Defendant's 1. Were these the contracts that you worked on before, or were given before?
A Yes, uh-huh.
Q When were you given those contracts?
A Usually the earliest I would have seen them would be in July. Typically it would cluster late July, definitely early, like early August.
Q Were these form contracts? Were they about the same each time you got them?
A They were about the same. Sometimes they would be maybe a new class or something. They did evolve slightly because there would be places, and I'm reminded because I see where, where I would have to initial, where before in a previous year I didn't have to initial. You would also know if there was a change or if you got a raise you would know that as well on the contract.
Q Did you understand these contracts to be important?
A Yes.
Q Did you understand that if you didn't sign this contract you weren't an employee there?

A Yes.
Q Why did you understand that?
A When I was originally hired in the department, the department chair at the time was Tom Whitney, and I was mentored for awhile by Tom Whitney. And I was just coming from industry so I know industry lingo really very well and what was to be expected. I had no idea what was to be expected in academia, and so he really helped me a lot understand. And the first thing he told me was without a contract you will not be paid, so you should definitely have a contract before you show up.
Q Now, how would you receive the contracts? By mail or email? Can you recall?
A It seems -- it's not by mail. It seems like -- I think I would always -- it never came -- I don't remember.
Q Okay.
A I really --
Q Did you get the contracts, or contract, in some form and then have an opportunity to take a look at it to see if it was right or to see if it what was agreed to and so forth?
A Usually. And there's -- since it typically followed a particular form I would look in key places. Like for instance, it would be called out to my attention if there was a new place where I needed to initial, which I always

appreciated because that let me know maybe something changed so they were drawing our attention to maybe a new condition or something.

Q Did you ever engage in discussions with your mentor or your faculty chair prior to signing a contract about salary or about any of the terms of the agreement?

A Say that again.

Q Did you ever engage in conversations or discussions prior to you signing an academic year agreement about any of the terms, whether it be tenure or salary or anything like that? Did you have any idea of what that was prior?

A No. You would just know by the terms here. I wouldn't even know before if I was getting a raise, it would just be noted there.

Q If you felt you should have gotten a raise or if it raise you would had been told about was not reflected in the contract, would you have an opportunity before signing it to go ask questions?

A No. That was not my understanding of how things -- how we -- or how we operated in my department.

Q All right. Now, in 2007 apparently you signed a contract that was after the stated deadline within the contract, do you recall that?

A I do.

Q Can you tell us the circumstances?

A Yes. Because they had changed some of the forms to make us initial in certain places, since that was bolded it caught my attention, so I was used to paying attention to things that were bold or underlined. And because it said if I didn't sign it by then I wouldn't have a valid contract, I thought it should be noted that I didn't get it until that date, so I wrote it in.

Q Now, was this still prior to classes starting?

A Yes.

Q Have you ever signed or been given a contract after classes had actually already started?

A Never.

Q Did you have any knowledge of what a drop dead date would be for getting a contract if it were an academic year contract?

A Not formally. But the implied -- to me it seemed implied that right around the 15th or the 16th should be like that's the absolute last day.

Q Okay. Now, you indicated earlier that you had made -- come to some decision to try to get a Ph.D degree. What reason did you have for doing that?

A To maintain my employment at South Carolina State and to progress through the ranks.

Q Now, did you have any option on how to finance that degree?

A Uh-huh, yeah, lots of options.
Q Tell me some of them.
A There's many federal funding opportunities to fund particularly engineering students or any STEM programs. So you can access those directly through the federal government, so apply just like a student who first enters, you can apply for external scholarships. I could have applied to Clemson for consideration of funding at Clemson, so what would be considered sort of funds at the University. Those are I would say the primary sort of bundles.
Q Are there things like fellowships?
A Uh-huh. And that would be on the federal side, those are federally funded.
Q Do colleges like Clemson have a resident research assistant or teaching assistant?
A Exactly. So those would be things that you would access through the University.
Q And would those supply tuition and a stipend?
A It would.
Q Did you decide on Title III to fund your Ph.D?
A I didn't know about Title III originally. I had spoken first with my Dean at the time, who was Kenneth Lewis, who made me aware that -- who first brought that to my knowledge, that this was a possibility as one of the avenues for funding my studies.

Q Did Dr. Ihekweazu have any influence on that?
A Uh-huh, he did.
Q What did he do?
A I understood from Dean Lewis that approval for it first had to be initiated at the Chair's level, and then it would work its way sort of up the progression. And then it required everyone to agree that this was something they were willing to do.
Q So did you decide to request a Title III Grant?
A I did.
Q Denise, I'm giving you a portion of the application process, things you wrote. This would be Defendant's 3. And take at that look at it. Okay. In is Defendant's 3, could you take a look at that and tell me if you prepared that?
A Yes, I did.
Q It's long and it has been read in, or at least parts of it read into the record in earlier testimony. But in essence it says you want to return to South Carolina State and you want to teach those kind of students; is that correct?
A Absolutely.
Q Tell me why -- tell me why you wanted to continue on with South Carolina State.
A I think at this point in my career having been a part

of sort of a corporate entity where sometimes plans are made for you, at some point I took charge of my career and said I think I need to stay quiet for a moment and figure out what my passions are. And when I started mentoring my employees and see how they were able to progress in positions and sort of get to places they wanted to be, I thought, well, that was just personally rewarding to me. So the passion of the teaching, particularly I wanted to bring that passion to -- I only have brothers so I would say sisters only figuratively to people that would be like my brothers and sisters. So I said, I think I may want to share with people that don't really know this and they look more like my brothers and my sisters. So I really wanted to stay and then stay within the state as well.

Q When leaving industry with a Masters Degree, were there other options at other colleges that you could have gone to and taught?

A Oh sure.

Q Did you consider any of those?

A No. For me, especially coming from Charleston, South Carolina State has a great reputation. In fact, my very best friend who I grew up with graduated from South Carolina State. And that's not just one example, a lot of my friends attended the institution. I think I learned a lot from hearing about the institution through them that further sort

of made me think this is where if I'm going to have a teaching impact I want to have it, I want to have it there.

Q Was there any time during -- prior to going to Clemson University that you thought twice about trying to remain or trying to continue with South Carolina State University?

A No, absolutely not.

Q Were you accepted by Clemson in the Ph.D Engineering Program?

A I was.

Q What do you know about the Title III Program?

A What I understood about Title III was it was available to help, particularly -- my characterization was under represented faculty members to obtain a Ph.D. And I wasn't sure if it was particularly targeted towards them, that was any understanding. I could be wrong on that understanding but that was my understanding. And that particularly for faculty members who were already in teaching positions who didn't yet have the terminal degree who were under represented to obtain that terminal degree.

Q And were you accepted in the program at some point?

A I was.

Q And did you sign the documents that have been entered into evidence already, like the memorandum of understanding?

A I did.

Q And the memorandum of understanding was at the end of a

group of other contracts, or other documents; is that correct?

A It is.

Q Now, after you were admitted to Clemson in 2008, did you and the administration of South Carolina State discuss remaining as field director -- field station director?

A Yes. At this point I guess I had been field station director maybe like three years. And at the time I became the director the field station's funding had dwindled, and Dean Lewis had brought -- had asked that I take on this position and see what can be done to revitalize these relationships and return the funding to it. And I particularly felt obligated to continue because I was successful at that and transitioning it to someone else might actually cause a set back. I was successful at it and it seemed it was almost sort of -- I sort found is niche, it sort of hit a strength of mine so I was able to do that and actually even to let my adviser know that this is something I would be continuing to do.

Q Very briefly, what is the South Carolina State Environmental Field Station?

A The South Carolina State Environmental Field Station is a consortium of 29 institutions, 21 of those being HBCU's it was created by a faculty member at South Carolina State named Dr. Anuro (phonetically.) And Dr. Anuro sort of had

this vision around students who were in the biological sciences who had progressed through to a certain point in their career undergraduate wise, and were thinking they were going to medical school but did not maybe, and either decided they were going to change their mind and didn't have a plan B. With this the field station allowed a number of institutions to sort of co-locate at a national lab, the Savannah River lab, which is run by the Department of Energy, and we could bring in teaching faculty from whatever institution to teach them courses in environmental sciences, environmental engineering, biology. And the curriculum was designed around giving them minimum competencies to be hired at the Department of Energy and USDA, thereby offering these students an option for their career paths so it is one of these sort of capacity building sort of opportunities for students.

Q Now, prior to each summer in doing the field station, did you receive some sort of appointment letter?

A I did.

Q And was that a P13?

A I did, yes.

Q And that had your salary and what was going to happen and all of that.

A Correct.

Q Did you ever work without a P13 or employment letter

even at the field station?
A Never.
Q Did you continue on as director of the field station during the time you were at Clemson?
A I did.
Q Did this also require some time during the academic year?
A Absolutely.
Q What kinds of things did you need to do during the academic year?
A So I met with my staff weekly. So through the grant we hired two persons to remain here at South Carolina State. They were working with me before I left and we were able to employ them -- I was able to employ them through the grant money. And for these persons they maintained both the fiscal side and some of the operating things that needed to be done on campus, so I met with them weekly. I also maintained a vehicle that was funded through the field station which allowed me to travel freely if I needed to go to Akin to meet with folks. I also actively recruited students, so I would make campus visits through the nine months to recruit for the field station. I also maintained relationships with our funding agencies to make sure I understood what grant opportunities were coming up and how funding was going to be handled in case budgets are going to

be cut or something, so I could understand the priorities of our funders so that I could react and make sure the field station was positioned to receive those funds.

Q Now, was the Clemson Ph.D program relatively intense in engineering?

A Yes.

Q Did you take courses?

A Yes.

Q Did it require a dissertation?

A Yes.

Q What was your dissertation topic?

A I'd studied first generation college students and how the influence of mentors and faculty help them succeed in engineering.

Q Now, in November of 2011 you were beginning to wrap up your Ph.D program; is that correct?

A That's correct.

Q Did you inform South Carolina State University that you would be graduating?

A I did.

Q Did you keep up with the paperwork and the requirements of the Title III grant during this time?

A I did.

Q Was that once a semester or was it more often than that?

A It was more often than that.
Q Did that require reporting your grads and your status?
A Exactly. Typically what I would have to do is report a course schedule once I had signed up for courses. I would also have to report grades at the end of the semester. I also had to, you know, sort of give them sort of this progress update in terms of my expected sort of graduation date so they would know when I was returning.
Q In April of 2012, did you receive an email from Dr. Okafor?
A I did.
Q If you could take a look at Defendant's 4 and see if you recognize that.
MR. ORMOND: At the same time I would ask the Court if we could enter into evidence Defendant's 3?
THE COURT: Any objection Defendant's 3, which was part of plaintiff's --
MR. REAGLE: No objection. Yeah it was part of exhibit -- Plaintiff's Exhibit 1. No objection.
THE COURT: All right. Defendant's 3 is in without objection.
Q Did you recall that?
A Yes, I do.
Q And this is an email in which they were talking about what courses you might teach the following fall.

A Yes.
Q Did you have any thought that you might not be teaching the following fall at South Carolina State University?
A No. This let me know clearly that I definitely had to have a course schedule set aside.
Q Okay. And apparently one of the courses was something you hadn't done before. Can you discuss with us just briefly what that issue was?
A Yes. Probably on my record I had taught about six to eight different kinds of courses at South Carolina State, and when I got my teaching schedule one class was something I hadn't taught before. And so two concerns that were raised in my mind, the first time you teach a class, first of all there's a lot of effort on the front end, which in and of itself is not a problem, but this one also required quite a bit of instruments that I had not yet operated. And because I was involved in (inaudible) accreditation for the department faculty had been cited before in courses where they were operating instruments that we were unfamiliar with. I was concerned that -- and in my email pointed to two other professors who I knew had done the class before that might have more competency in that area so that the students would get a good experience.
Q Essentially Dr. Okafor, if you would look at it, wrote you back and said essentially, sorry, and unless you can

work with somebody else you're going to have to teach this. Was that a problem for you?

A No. I figured I would figure it out.

Q Okay. Did it make any difference in your determination to return to South Carolina State University?

A No.

Q Did you graduate from the Clemson program some time in the spring of 2012?

A I did.

Q Did you finish your dissertation?

A I did. I successfully defended it at the end of April.

Q And if you defend a dissertation you are essentially in front of faculty members and asked questions about it and so forth, correct?

A Correct.

Q It's a relatively grueling situation?

A It's very stressful.

Q In the spring of 2012, did you request that Clemson fill out the paperwork and get the transcripts from Clemson to South Carolina State University?

A Yes. And I did that actually before I applied for graduation. You can request that -- upon graduation transcript get sent to different places, so I would have to wait until I graduated to do that. And because I was going to be on campus to defend I wanted to take care of that

documentation while I was on campus, so I made sure to do that. And I did it at the end of April.
Q And why did you do that?
A Because I understood for me it was the final process of notifications of things that I needed to do in terms of my responsibility for professional leave.
Q You needed to do that before you could return and teach?
A Exactly.
Q If you weren't going to return and teach, did you need to do that?
A No.
Q Did you make sure that final transcript were sent to Clemson -- from Clemson to South Carolina State in the summer of 2012?
A I did. In fact, I got notification from Title III that they had a copy. But then in the summer Ms. Darby had contacted me and said she didn't have it in her office. So I forwarded her the copy of the email I had gotten from Title III and said, you know, they got it like in May, and she says, "Got it, located it."
Q Now, were you working that summer, this is the summer of 2012, full-time at the field station?
A I was.
Q Did that require you to be in Akin?

A Yes.
Q Did you do traveling also?
A Uh-huh, I did.
Q Was that true for the past seven or eight years?
A Uh-huh, yes.
Q And you did confirm, in fact, that the final transcripts in July had been accepted and gotten or received by South Carolina State University?
A Yes, I did.
Q And did you keep your Columbia home?
A I did.
Q Why did you do that?
A Number one, I loved it and I was returning, so it made no sense. The Clemson thing was just temporary.
Q When you worked at South Carolina State prior, did you live in Columbia and commute?
A I did.
Q Did you look for teaching positions or faculty positions in other colleges at all during the summer or spring of 2012?
A I did not look for faculty positions in the summer or spring of 2012. There was a visiting professor position available at Virginia Tech. that I had a mentor at the time that said in terms of sort of, you know, you might want to put your name in just to get some experience in looking at

what, you know, sort of interviews do. You're getting ready for putting in your -- at South Carolina State. You might want to get some experience in case you don't get tenure, go and sort of look at it. I wasn't selected for the visiting professor's. The same mentor told me, you know, you weren't selected, this is why. There were certain deficiencies in terms of my dossier or my CV, explained to me that I wasn't a candidate and she used it as a mentoring opportunity to show me how to sort of improve my experience and training.

Q What would you have done had you been accepted? Was this a short term --

A No. The position was just a year, the visiting professorship.

Q Would that have interfered if you had taken it with any obligation to coming back to South Carolina State University?

A Ask that again.

Q Would that have interfered with coming back to South Carolina State University?

A The visiting professorship?

Q Yes.

A If I accepted the position it would have interfered with me going for that year.

Q Would you have accepted that position if offered?

A For the -- so thinking about it, I went into it just as

my mentor had introduced it, it was a professional development thing. I don't know that I had processed it beyond accepting.

Q Was there any time in the summer or the spring of 2012 that made you think you did not want to come back to South Carolina State University?

A No.

Q Now, were there anything that was happening that maybe concerned you that South Carolina State University might be having some issues?

A I was concerned about their financial stability. There was quite a bit of news going on both in print and on TV about what was happening at South Carolina State. I guess I understood their budget to come from student tuition and from the state primarily. And what was in the news was state funds were being cut to the institution and enrollment was down, and so it was going to be a challenging financial situation. Also in the news was --

MR. REAGLE: Let me object to the reports of what's in the news as hearsay. I think if it's to her state of mind, fine --

THE COURT: Sustain the objection?

A So --

MR. ORMOND: It's not offered for the truth of matter, it's offered just for her state of mind, what she was

thinking and why she was thinking it.

THE COURT: Okay. Whatever is in the news or anything like that -- she's already mentioned what her state of mind. She was concerned about the financial situation at State, that's good, she can stop there.

Q Did there come a time -- well, did you look for any faculty positions anywhere else in the summer of 2012?

A No.

Q Did you continue working at the South Carolina State Field Station in the summer of 2012?

A I did.

Q Did you talk to Virginia Tech.? And this is before mid-August of 2012.

A No.

Q Did there come a time when you began to be concerned that you would not or were not being given a contract, there might not be contract by South Carolina State University?

A I think it was always me my mind after -- in terms of just sort my state of mind after learning what I learned. But there would be little things. So the teaching schedule says, okay, good I'm going to be hired. But then there would be a conversations, like my conversations with the chair that seemed like, well, maybe I'm not going to be hired. So there was -- I had no idea. I really thought -- my state of mind was they didn't have the money to hire me

and that I wouldn't, you know -- seems like I would not be hired back.

Q Had you gotten an appointment letter?

A No.

Q Had you gotten the form contract?

A No.

Q Now, did school start at about August 17?

A That's what I understand, now. I don't think I knew at the time when school started.

Q Had you been sent an employment contract by any means?

A No.

Q Had anybody discussed salary or what would be different or the academic year contract, any of the terms?

A No.

Q Did anybody call you at all?

MR. REAGLE: I'm going to object. I don't know if she knows if they called her.

MR. ORMOND: I'll rephrase.

THE COURT: Thank you.

Q Do you recall getting a phone call from anyone at South Carolina State University prior to August 23?

A The only person I spoke to was Deborah Darby.

Q Was that on August 23 or was that before then?

A So in getting the transcripts I don't know if this was through phone calls or through emails or both, but that was

the only -- that was the only person.
Q Now, apparently in June of that summer you ran into at an ASEE meeting Dr. Okafor. Do you recall that exchange?
A Yeah. I -- not before he recounted it I hadn't remembered it. But I do remember -- I remember as he recounted it, which was when I first noticed he was there, clearly he had the vantage point of walking behind me, I had no idea. I think I dropped my phone. I probably almost coincident with hearing it drop I think I remember turning around and all you're doing is looking at your phone, here is a hand handing it back. I turned around, it was him and he sorted of pivoted and went the other direction. I also remember, which is what he sort of recounted yesterday, I do remember that happening.
Q I assume you didn't discuss anything with him about your contract status.
A No.
Q Why?
A For one there wasn't an opportunity. If your phone drops -- I was focusing on let me get my phone, here is somebody helpful, you want to say thank you, so he sort of went in the other direction. But at the time in June -- I had never received a contract as early as June, so it wasn't in my mind.
Q In June of 2012, did you assume that you were going to

be hired by South Carolina State University?
A Oh, yeah.
Q All right. By August of 2012, did you begin to get concerned that you might not be hired by South Carolina State University?
A By which day?
Q August.
A Yes.
Q Why was that?
A Because we're fitting what in my mind was the drop dead. The drop dead date is always August 15th or August 16th. Yeah. So I was beginning to think this may not occur.
Q Did you take any action for a backup plan?
A I began speaking with my adviser about how I was concerned.
Q Who was your adviser?
A Julie Martin.
Q Okay. Is she an engineering professor at Clemson?
A She is.
Q What did she do regarding this?
A So Julie was in the process of taking a temporary position but had just obtained grant funding for a grant that she was working with someone at Virginia Tech. And I had been involved as a grad student with the earlier

starting of this project, and she said, "You know, if you're not going to be employed I could probably try to work out something where you could work on this project while I'm taking this temporary position."

Q Tell me exactly -- you said it was a temporary position. Was there any possibility that this position lasted more than an academic year, nine months?

A The position I was taking?

Q Yeah, the position you were looking at.

A The post-doc. typically is a continuation of your training anyway. So it's -- you know, if you found another job or something like that you can leave that, so it's not -- it's not anything that's permanent for sure.

Q Okay. Is this that post-doc. position you discussed?

A Yes.

Q If you could take a look at the left and above, it says date of offer. Can you read that?

A The date of offer says August 15th.

Q Is that about correct when this was roughly offered at that time?

A That seems about right.

Q Okay. And the response due date was August 22, 2012?

A Yes.

Q Okay. Did you wait to sign this?

A Yes.

Q Why did you wait to sign this?
A Because I was still hopeful that something was going to occur at South Carolina State.
Q Did you write Dr. Okafor an email on the 16th?
A I did.
Q I would like to put that in.
THE COURT: Defendants 5?
MR. ORMOND: Defendants five.
THE COURT: Any objection?
MR. REAGLE: That's the email she wrote to Dr. Okafor.
THE COURT: No, this is post doctorate document.
MR. REAGLE: Yeah, no objection.
THE COURT: Defendant's 5 is in evidence without objection.
MR. ORMOND: Your Honor, I would ask that Defendant's 4 be moved into evidence, I didn't realize it hadn't been.
THE COURT: All right. Defendant's 4 was that the email that she sent -- Mr. Reagle, any objection to Defendant's 4 going in?
MR. REAGLE: No objection.
THE COURT: So Defendant4 four is in without objection also.
Q This has been read in before. Let me ask you this, did Dr. Okafor ever call you prior to August 16th?
A No, he didn't.

Q I'm going to ask you a little bit different way. Did you receive a call from Dr. Okafor prior to August 16th?
A No.
Q Did you receive a message on voice mail regarding a contract regarding your hire before this email went out?
A No.
Q Do you have a cell phone?
A I do.
Q Does it have voice mail?
A It does.
Q And you have an email?
A I do.
Q And this -- would you agree that you indicated to him you hadn't received a contract to date and otherwise hadn't heard from him?
A Correct.
Q You go on to say, "I'm a bit distressed and have sought and secured employment. Please call me if you would like to discuss the matter further." Is that what you said?
A Yes.
Q Did he call you to discuss the matter the next day?
A I don't recall if it was the next day but he did call.
Q Did he send you an email on the 17th?
A Yes.
Q And he essentially said there's no viable number to

call you?
A Yes. And he offered -- so maybe -- perhaps I might have called him. He offered his phone number in that email on the -- yeah, his phone number, on that email on the 17th.
Q All right. He states in there a number of people haven't received their contract. How did that make you feel?
A It literally made the hairs on the back of my neck stand up. Because I thought for me it's further supporting what I was thinking before, there's not money to hire folks, because why would contracts not be sent out to more than just me. So I thought that this isn't going.
Q On August 23rd, did you respond to his email of the 17th?
A I did.
Q Why don't you go ahead and read that for us.
A So I said, "Hi, Dr. Okafor. I left you a phone message. My cell phone number hasn't changed, same as is on record with the department" -- and I gave them the number. I said, "Ms. Darby and I spoke this morning. She has a time related issue that needs to be resolved today and she needs to hear from you. We need to speak regarding employment."
Q Now, had you already heard from Deborah Darby that day?
A I did, uh-huh.
MR. ORMOND: I would like to move that in as 7 -- 6.

THE COURT: Defendants 6?

MR. REAGLE: No objection.

THE COURT: Defendant's six 6 is in without objection.

Q Now, Defendant's 5, your the post-doc. offer, it says in response the date was due on August 22nd. Did they move that to the 23rd?

A Yes.

Q So on the 23rd of August, was this the last day to take this post-doc. position?

A Yes.

Q And again, was a post-doc. position a grant that was between Clemson and Virginia Tech.?

A It was.

Q The salary there is $48,000; is that correct?

A That's correct.

Q Is that significantly less than you may the last year as a faculty member at South Carolina State University?

A It is.

Q Tell me what you and Deborah Darby spoke about on the 23rd.

A So the first thing she told me was that she had learned that I hadn't received -- I'm going to continue to use the word contract because I believe that was the word that was used with me -- that I hadn't received an employment contract. She was trying to figure out why. She also told

me that she had left several messages for Dr. Okafor and he hadn't returned her phone calls, and so that's why I wrote the email to him letting him know that she and I had spoken and she is trying to contact him. She says, "If he gets in contact with me we can resolve it."

Q Did you speak -- were there any other substantive discussions you had with Ms. Darby?

A No.

Q Did you speak with Dr. Okafor that day on the 23rd?

A I don't recall that we spoke on the 23rd. I recall we had a phone conversation, but my recollection was it was before the 23rd. I don't recall after the 23rd us speaking by phone.

Q Okay. Well, tell -- on the 23rd you wrote, "Dr. Okafor, I left you a phone message, my cell phone hasn't changed." Do you recall if he called you after that, or if he called?

A He must have called -- he had to have called after I left the message and also gave him my phone number in this 23rd.

Q Tell me what you can remember you two discussed, you and Dr. Okafor.

A So the phone conversation with Dr. Okafor was he wanted -- he wanted to ask me what was my concern and I said, "I hadn't gotten a contract." And so he said to me

two things, he said -- number one he says, "I didn't know you were returning and you haven't been in contact with me since you left." And I told him that "I'm sorry you didn't know I was returning, but I had been in contact through what I thought were the formal channels that were laid out for me during the professional development program. What was concerning to me after the phone call was it didn't make sense to me that he didn't know I was returning after the phone call because he had sent me a teaching schedule.

Q What was the tone of the conversation?

A He was very firm and terse with me, that I needed to return, and this is even after I had told him I was working through the death of my grandmother. So it sort of struck a certain tone with me that I thought was just, you know, he's just like "You need to come."

Q Did you tell him you needed a contract?

A I absolutely on the phone call told him if he sends the contract then I would be happy to return.

Q Did he say he was going to send a contract?

A I don't recall him on that phone call saying he was going to do anything related to the contract.

Q Okay. Was it possible he said it but you just don't remember that?

A No. Because the thing that stood out to me was his tone.

Q Did you understand you could go to work there without a contract?
A No.
Q At least on the 16th did he know that you felt like you needed a contract?
A Yes.
Q Had you known of any other professor there that didn't have a contract before starting classes?
A Not that I knew of.
Q What did you come away from -- come away with from this conversation on the 23rd?
A I think a feeling of uneasiness. I think for me if I was trying to weigh out am I going to be hired or not, him saying he didn't know I was going to return after I thought about him sending the teaching contract, I thought -- the only conclusion I could sort of come to in my mind I said maybe if it was not a financial situation maybe he doesn't want me to return. So I just couldn't reconcile why he would say he did not know I was coming back that fall.
Q Did you understand that classes had been going on for six days by now?
A I think the first reference I knew to classes was the email from Dr. Ihekweazu that had stated classes had started in the fall of 2012. I don't think I had a recollection of the actual start date for classes. So after Dr. Ihekweazu

said classes had started I knew then.
Q Okay. If you had been given a contract at any time, would you have returned to South Carolina State University?
A Absolutely.
Q Was that your goal and desire?
A It's the only reason I went to the Ph.D program.
Q Did you on the last possible date sign this post-doc. agreement?
A I did.
Q And that was on 8/23/2012, that would be Exhibit 5?
A Yes.
Q Did you begin to engage in that work then?
A I did.
Q Now would this post-doc. position be anymore academic work?
A No.
Q Did this employment this post-doc. assist you with a year of tenure at any University?
MR. REAGLE: Your Honor, I object as to it relates to what any University might do in the future.
THE COURT: I'm going to let him ask it?
A Like I said, the post-doc. is actually considered education, it's not necessarily counted towards tenure.
Q Would you have had a chance if you started in August to get a faculty position at another University?

A No.
Q Why?
A Because most universities hire for their faculty at certain times of the year, and August is a contracting period that is in place for most universities. There's some universities that are on maybe quarter systems where that date might slide just a little bit, but if you're on a semester system, mid-August is that date, that drop dead date for a vast majority of the colleges and universities in this country.
Q Even after the 23rd, did anyone at South Carolina State University ever send you a contract or an appointment letter or describe to you what the terms of your employment might be?
A No.
Q Did anyone ever call you or discuss with you or email you or communicate in any way with South Carolina State University about the following academic year?
A No.
Q What was the next -- after -- did you discuss or have email exchanges with Dr. Okafor and some others in September in 2012? Do you recall that?
A I do recall that.
Q Did you intend to leave open the possibility of your returning at some point?

A It was always open in my mind.
Q In conversations, did you make that clear to -- over the phone with Darby and Dr. Okafor?
A Yes. My email says, "We need to discuss employment contracts."
Q Would you have returned the year, I guess would be academic 13/14, had you been asked to and had you been given a contract to do so?
A Absolutely.
Q Now, in February or so of 2013, did you get something from South Carolina State University?
A I did.
Q What was it?
A I was served with legal documents that they were going to take me to court.
Q Was it a letter from a lawyer?
A Yes.
Q Dr. Simmons, were you planning to return a contract with South Carolina State in the year from 2012?
A Absolutely.
Q Did you change your mind from any of these statements that you made if your Title III application?
A Absolutely not, I still affirm them. In fact, it was asked to hear them read, and read several times. It made me smile and remember the passion of why I was pursuing the

Ph.D.

Q Why didn't you begin teaching at South Carolina State University in the fall of 2012?

A Because there were no terms offered to me in terms of employment so I could -- to actually seal that particular employment arrangement.

Q Did you understand that -- what did you understand about your employment as field director, which was that summer and partial academic year program at South Carolina State University after 2012?

A After 2012 I would continue in that role, and, in fact, the spring teaching contract indicates that. Because I've got a 25 percent release time noted there. That 25 percent release time was so that I could continue the work as director of the field station.

Q Did you learn at some point that you had been terminated as director from that program?

A Yes.

Q When did you learn that?

A I saw -- there was an outline interface that I could look up and it says -- when I looked up my employment number it said that I had been terminated, and that was in September.

Q September of what year?

A 2012.

Q Dr. Simmons, do you have any other relevant facts that would be related to this lawsuit brought against you that the jury needs to know?

MR. REAGLE: I object to the question, he's got to ask.

THE WITNESS: You can answer the question but we are not doing any fishing.

MR. ORMOND: Your Honor, I'm not trying to fish. I was just asking if I missed something or have any knowledge that might be relevant --

THE COURT: Well, no. If you have got a question ask her.

MR. ORMOND: I guess that's all I've got.

THE COURT: Anything on cross?

MR. REAGLE: Yes, I hope briefly.

CROSS EXAMINATION

BY MR. REAGLE:

Q Good afternoon, Dr. Simmons.

A Good afternoon.

Q In 2008 it was your entire goal in going to Clemson and getting your Ph.D to return to South Carolina State as a professor, correct?

A That's correct.

Q And that continued to be your entire goal right up until August of 2012?

A It continued beyond that.

Q Okay. And it was your understanding while you were studying in Clemson from 2008 to 2012 South Carolina State would provide you financial support, correct?
A That's correct.
Q Did you also receive financial support from Clemson University?
A During --
Q While you were getting your Ph.D?
A From Clemson?
Q Yes. An IRA or a TA or any of those, research assistant, teaching assistant, things that -- things that Mr. Ormond mentioned in his opening?
A No.
Q Okay. In 2008 you understood that your failure to carry out the terms of your faculty development plan agreement professional leave could result in your lump sum repayments of the entire amount expended by South Carolina State on your behalf, correct?
A I understood that if I wasn't going to be employed or that I willfully didn't return, that yes.
Q So that was your understanding, if you didn't willfully return then you would have to repay the lump sum amount that the State had expended on your behalf in getting your Ph.D.
A My expectation was they would send me an employment contract, then if for some reason I didn't sign that

employment contract that would be a willful not return and that I would have to repay.

Q Do we have Plaintiff's Exhibit 1? Let me show you what has been marked as Plaintiff's Exhibit 1. Can you identify section C there where your name appeared?

A Yes.

Q Can you read that, please?

A Yes. It says, "I, Denise S. Grant, agree that I will remain in the active service with South Carolina State University upon completing this agreement for a period equivalent to the amount of time for which financial assistance was received. For the purpose of this agreement a summer session as well as each conference, workshop seminar, et cetera, for which assistance was provided as outlined by the professional improvement plan is considered to be the equivalent of a semester. Failure on my part to carry out the above agreement will result in a lump sum repayment of the entire amount expended by South Carolina State University on my behalf."

Q And it doesn't say there South Carolina is obligated to give a document called an assignment letter, does it?

A It doesn't say that there, but it doesn't -- there's a lot of things missing from that, though. So there was written and then there's implied, and it is the implied piece that's missing.

Q Well, the implied piece is you were to remain under the employment.
A No. The implied piece says they would actually extend an employment document. The written piece is that I would have remained.
Q And Doctor, could you please read page two of that agreement? This is your letter dated June 12th of 2008 to Dr. Ihekweazu?
A It is.
Q Okay. And go to page two, that's your signature at the bottom?
A It is.
Q Can you read that third paragraph, please?
A Uh-huh. It says, "Dr. Ihekweazu, my entire objective for pursuing the Ph.D Degree has always been to bring my expertise back to South Carolina State with the goal of exposing South Carolina State students to my areas of specialty, offering scholarly works in my specialties, recruiting students to attend the University, and enhancing the academic and research capabilities of the University. I only need the time and financial support from SCSU in order to accomplish this objective. My expected graduation date from the Ph.D program is December 2011. I will stipulate to as many years of employment as you deem appropriate in exchange for your support of this proposal and my degree

completion at Clemson University."
Q And you wrote those words, correct?
A I did.
Q And if you could go back to the compliance statement that you read before that says you'll repay a lump sum repayment, second page of the back?
A Yes.
Q Is that your signature under that compliance statement?
A It is.
Q And Dr. Simmons, did you prepare a CV, a curriculum vitae?
A Have I -- can you ask --
Q Did you have a curriculum vitae or a CV?
A I do.
Q And do you recall, did you have one in 2012?
A I feel certain I did.
Q Can you please identify Plaintiff's 11, which says Denise Simmons' CV, December 2, 2012?
A Yes.
Q And is that your CV on or around December of 2012?
A I'm going to say yes. It's the file name, the file name says December 2nd, 2012.
Q And this document of professional experience starts in 2012 to present, Post-doctorial Assistant, Virginia Tech.?
A That's correct.

Q So this would have been some time in the fall/winter of 2012?
A I don't recall. I said that's the file name. I don't want to say the file name is the exact date of when this was, I don't know.
Q Is this a CV that you prepared?
A Yes, it definitely looks like it.
Q And why do you prepare a CV?
A Similar to a resume' when you're working. You always keep a current resume', you keep a current CV to show your education, your professional experience and things of that nature.
Q Okay. And it's important that this be an accurate document? This is something you share with professional colleagues and other institutions?
A I would say yes.
Q And if you could turn to page four of seven on the CV.
A Uh-huh.
Q And down under engineering education professional development, under 2010 you write, correct me if I misread, it, 2010 Virginia Tech. Future Faculty Development Program participant. So Virginia Tech. Future Faculty Development Program is exciting and rewarding two day event for a small group of doctoral students and post-doctoral students in pursuing academic careers. The program brings together

post-doctorate candidates and post-doctoral scholars to Virginia Tech. for an all expense paid workshop. As part of experience participants are hosted by a Virginia Tech. department to tour research facilities and meet with current faculty to gain a greater awareness of research and teaching opportunities, and to discuss their career prospects and academic work. The program is part of comprehensive strategic recruitment in Virgina Tech." Is that correct?

A That's correct.

Q And that was an all expense paid workshop for strategic faculty recruitment at Virginia Tech. that you attended in 2010.

A That's correct.

Q And then in addition to attending the all expense paid workshop at Virginia Tech. in 2010, you also while at Clemson helped with a collaborative grant between Clemson and Virginia Tech., correct?

A I'm not sure the characterization --

Q We talked about you discussed this in your deposition, do you recall that?

A I do.

Q I show you the original of that deposition.

A Yes.

Q And can you please turn to page 60?

A Yes.

Q Okay. And at line 22 you were asked, And she indicated that there was funding for a post-doc. Can you tell me how you came to be employed by Virginia Tech.?" First I ask you who is she that you are referring to there?
A Which line are you on?
Q Line 22 on page 60.
A I think she is referring to Julie Martin.
Q And that's your mentor professor at Clemson.
A Correct.
Q So you were asked, "She indicated there was funding for a post-doc. Can you tell me how you came to be employed by Virginia Tech.?" You answered, "Yes. So this particular project, I had helped write the grant for and the grant was a collaborative grant between Clemson and Virginia Tech." Is that correct?
A Yes.
Q And what was the time period that Clemson and Virginia Tech. were collaborating on that grant?
A What was the time period?
Q Time period. Did they start collaborating on that grant in 2011, 2001, do you know?
A So I think the -- so I think the grant was awarded in 2012.
Q Okay. When did Clemson and Virginia Tech. start collaborating on it?

A So I would probably -- this funding is not immediate, I would imagine it started three, it could have been four years prior.
Q Okay. And when did you start -- become involved in collaborating of that grant?
A So just a correction here, not collaborating on the grant. This particular grant was written and encouraged to be written based on a conference paper I had presented three to four years prior, and it was encouraged that that research be continued. So I didn't write the grant, but it was certainly based on that paper that I had written.
Q Okay. And it's your words, not mine, where you say that the grant was a collaborative grant between Clemson and Virginia Tech.
A That's correct.
Q In the three to four years approximately before the grant was awarded, 2009 or so, you were involved in the grant project?
A No, I wouldn't say that.
Q So did Julie Martin and someone at Virginia Tech. write the grant --
A Correct.
Q -- just based on your paper.
A I wouldn't -- no. I wouldn't characterize it that way.
Q Did they consult you in the grant writing process?

A No.
Q And in March of 2012 you applied for a visiting professor position at Virginia Tech., correct?
A That's true.
Q And then on August 23rd of 2012 you accepted an offer of employment from Virginia Tech., correct?
A Yes, as a post-doc.
Q And isn't it correct that you actually signed that document right around the same time you received it?
A I don't recall that.
Q Well, let's look at 73 -- page 73 in your deposition, please. Line seven. And the question was put to you, "Can you tell me when you did receive an offer of employment from Virginia Tech.?"
A Which line?
Q Line seven.
A Got it.
Q And you answered, line nine, "On or about August 23rd." And the question was, "Okay. So are you saying that where this document says August 15th, that's inaccurate?" Answer, That's not accurate, that's not when I got offer. Okay. And it says -- it was a question. Question, "Okay. It says response to date August 22, 2012." Answer, "Uh-huh." Question, "So you signed it on the 23rd?" Answer, "Uh-huh." And then the question, "And you indicated that you received

it on or about the 23rd. So August 22nd being the response due date, you did not have this document on August 22?" Answer, "I didn't say that. I know it was near the 23rd, that's why I said on or about. So I can't make a more determined statement than on or about the 23rd because that's when I affixed my significance." Question, "Okay. Do you recall if you signed it as soon as you received it?" Answer, "Yes, correct." But did you or not sign it as soon as you received it?

A So to clarify, the document that I signed as soon as I received it had fixed signatures, and I had seen prior to that probably an early version so drafting in that. So I was aware that this document might have been being prepared, and I think this is why some of the conversation my mind was unsure about it. But certainly once I got it on the 23rd -- and I can look back at the document if you show me which one of the exhibits, it would have had someone else's signature already on it. So by the time I got it with that person's signature, yes, I signed it on that day.

Q Okay. That's exhibit -- Defendant's Exhibit 5.

A Yes. So all of the signatures were prior to mine. So I probably saw some early draft version and sort of signed it maybe on or about the 23rd.

Q So you were waiting to see what State would do? You had, in fact, not received the finalized offer from Virginia

Tech., correct?
A That's not correct.
Q Okay. I thought you said you didn't receive the offer with the signatures on it until the 22nd or 23rd.
A No. But your original part of that was I was not waiting for South Carolina State, that's the incorrect piece. I was waiting on South Carolina State. Can I add one thing? Not only was I waiting, this was never a permanent position and it was training, I could have gotten out of it at anytime.
Q Okay. You didn't write them that in September, did you? You didn't say -- you wrote twice, I think the testimony was, to Dr. Okafor call me or let's talk about this. You never once in either of those correspondence said, you know, "This is just a one year position. Can I have professional leave for another year?" That's not in those emails, is it?
A We never discussed at all about what my position was. I said -- because I didn't want them to think I was not coming back because I was coming back. I wanted them to help me negotiate the contract with them.
Q In September you were still writing them on South Carolina State email, correct?
A I don't recall.
Q They didn't even know you were at Virginia Tech., did

they?
A I don't know what they knew.
Q You didn't tell them, did you?
A I didn't tell them, they didn't ask. What I did tell them was I had employment, so if they wanted to know they could have asked.
Q And that was on the 16th, you told Dr. Okafor you had obtained and secured other employment.
A Yes.
Q And then on the 23rd you were surprised when he said, "I thought you weren't coming back?" You told him on the 16th you had secured and obtained other employment.
A That's not what I said.
Q That's exactly what you said, ma'am. I'm sorry.
THE COURT: Now, if you want to pull the email and ask her, we're not going to get argumentative.
MR. REAGLE: I understand. I apologize, Your Honor.
THE COURT: That's okay.
Q Let me show you what has been marked as Plaintiff's Exhibit 7. And you state, "I am a bit distressed but have sought and secured employment," correct?
A That's what I said.
Q Okay. Thank you.
A I think I also note in here later, because you asked me about the 23rd what I said, because that's not what I said

on the 23rd. On the 23rd I said, "I would like to discuss employment."

Q I think what you testified to was that you were surprised at Dr. Okafor's tone when said, "I thought you weren't coming back?"

A No.

Q And that was --

A That's not what I said.

Q Well, the jury will just have to remember what you testified to.

A What I said was he told me, "I did not know you were coming back this fall." After the phone call I found that surprising because he had sent me a teaching contract several months before, which is an indication that he, in fact, did know I was returning.

Q Correct. And he told that after you had written to him saying, "I have sought be secured other employment."

A He told me -- I don't see -- I'm not sure I understand the question.

Q Now, you had never contacted South Carolina State about the concerns that you had testified to regarding the financial condition of the University, or your position at SC State prior to August 16th, did you?

A I would not even think about doing that. I don't write emails about my stream of consciousness to my employer.

Q So the entire time from January through August 16, 2012 when you wrote Dr. Okafor an email saying you sought and obtained other employment, you never inquired of the University about your concerns over a contract, or the financial condition of South Carolina State, correct?
A I let them know on the 16th that I was concerned that I hadn't gotten a contract.
Q That's right. So from January to August 16th you never raised a concern with South Carolina State, correct?
A I didn't have a concern about any contract prior to 16th, because 16th was the drop dead date.
Q Really? Because I thought you had a concern and you spoke to Julie Martin about it and that's when she arranged for you to get the job at Virginia Tech.
A My stream of consciousness about them not being able to offer a contract was actually realized on the August 26th date. So my stream of consciousness speaking with a colleague or friend about it, absolutely I did do.
Q So you didn't call anyone at South Carolina State about a concern, you didn't send an email to anybody at South Carolina State about the concern prior to August 16th, correct?
A As I said I wouldn't have -- the concern wouldn't have been raised until the drop dead date. So at that date, the drop dead date, I absolutely sent an email.

Q But you sent the email saying you had obtained other employment. You didn't say, "I'm concerned, let's --"
A I did say I'm concerned.
Q -- "send me my contract."
A I said I'm concerned, I said I'm actually distressed. In fact, that was mild, I was more than distressed.
Q Okay. But Dr. Okafor -- you did receive an email on April 9th about your teaching assignments, correct?
A That is correct.
Q And you said that's evidence that they were intending to give me a job, correct?
A That seemed positive in my mind.
Q And, in fact, you wrote back that same day to Dr. Okafor with the concern, "I'm not sure I'm the best person to teach the class," correct?
A I would have to look at the full email to see what exactly I said.
Q Plaintiff's Exhibit 5.
A I said, "Hi, Dr. Okafor. I had a quick question/concern about one of the courses appearing on my fall schedule, Plane Surveying. I have no experience in the course, not even the instruments, however I have loads of experience elsewhere. I do have experience with the codes and contracts course, and even Engineering Econ. I can teach the waste water course. Can you make a change in the

schedule?"
Q And you wrote that back, what, the same day you got the initial email with your course schedule.
A Yes.
Q Okay. And then two days later, April 11th, Dr. Okafor writes back to you, correct?
A Correct.
Q And on this email, the first one came from Janice Guinyard. Who is she?
A She would have been the administrative support person for the department.
Q Okay. And she, in fact, concludes her email to you saying, "Looking forward to seeing you in August;" is that correct?
A Correct.
Q And Dr. Okafor concludes his email saying, "If you have any further questions please let me know. Thanks." Isn't that's correct?
A That's correct.
Q And you didn't let him know any questions you had until August 16, 2012.
A Well, this email is about my courses. I had no other questions about any courses. I still don't have questions about the courses.
Q That says, "Let me know if you have any other questions

or concerns."
A You're asking me about the email, so I'm looking at this saying in my mind I read it as the context of the email for the courses, so I didn't have any other questions.
Q All right. In fact, it wasn't until after Dr. Okafor had again rewritten you sending you the course schedule on August 13th that you even responded at all back to him saying, "I sought and obtained other employment," correct?
A That's not correct.
Q It's not? You responded to him before you received the notice of the faculty meeting on August 13th?
A That's not what you just said. You asked if on the 13th I received a course schedule, I didn't.
Q Oh, I'm sorry. On August 13th you received the notice of faculty meeting.
A I don't recall receiving that email.
Q It was sent to you twice, even though it was sent to you twice?
A That's correct, yeah. My grandmother had passed away within days of that email, so I was not -- I was not even looking at emails during that time.
Q Well, how did you get the Virginia Tech. offers then?
A They were calling.
Q Well, you said you had seen documents, draft documents.
A They were calling saying they were sending.

Q So, in fact, as soon as you -- okay. So you had not seen any draft documents of the Virginia Tech. offer until you got the final version.
A I'm saying in looking at -- as you reviewed my deposition with me and my sort of trying to recall when did I see things, then it seems apparent to me that I remembered there were signatures on that document, that it was most likely that I probably saw an earlier version. But I'm just trying to, you know -- I was answering your question at that time, so --
Q So it must have been sent by fax or some other thing in the email?
A I don't recall how it was sent.
Q But you did send it on the 16th email to Dr. Okafor.
A I did send an email to Dr. Okafor on the 16th.
Q And you got his email the very next day, correct?
A I don't recall.
Q Do you have 7 in front of you by chance?
A I don't. Yes, I do. Yes, I do. So yes, I sent him an email on the 16th and he wrote back on the 17th.
Q So you got that email that he sent on the 17th?
A I don't know when I got it. I didn't respond, and it looks like the next thing is the 23rd. But at some point I must have gotten this email, I don't know when though.
Q In fact, you didn't respond until after Ms. Darby had

sent you an email saying, "Call me."
A I didn't respond to --
Q To Dr. Okafor's letter on the 17th.
A I don't recall.
Q On the 23rd, the day you signed the contract with Virginia Tech., do you recall getting an email from Dr. Ihekweazu?
A I would prefer to see the document. I don't remember the date exactly.
Q I show you Exhibit 8. Dr. Ihekweazu writes you on August 23, 2012 shortly after 1:00 in the afternoon, correct?
A Yes.
Q Okay. Do you recall getting that email from Dr. Ihekweazu?
A I do.
Q Why don't you read what Dr. Ihekweazu wrote to you.
A He says, "Hello, Denise. I've been informed that you have not reported to SC State since the beginning of the semester. According to our teaching schedule you were assigned three courses. I need you to return to SC State while the University addresses your concern about your letter of employment. Any delay in your returning to classes will not bode well with our students. Please do not forget that you owe an obligation to the University and we

need your services."
Q And on that same day you signed the agreement with Virginia Tech., correct?
A That's correct.
Q And in March of 2013, within about six months of being at Virginia Tech., you received another employment offer from them, didn't you?
A Say that again.
Q In March 2013, about six months after starting there, you received another employment offer from Virginia Tech., correct?
A That's correct.
Q I show you this document. Is this your signature at the bottom of this document that's been marked as Exhibit 12?
A Yes.
Q Okay. And it's dated February 25, 2013? I'm sorry, you tell me when it's dated.
A It's March.
Q Okay. And is this your tenure track employment offer contract from Virginia Tech.?
A It is the offer letter, yes.
Q Which you signed --
A I did.
Q -- on March 25th of 2013, correct?

A That's correct.
Q And this says tenure track employment carries a salary of $82,500, correct?
A Correct.
Q Okay. But that wasn't all. In fact, additionally it had $11,000 for relocation and moving expenses, correct?
A Correct.
Q $15,000 towards purchase of computers and software, correct?
A That's correct.
Q $15,000 for University approved expenses, correct?
A That's correct.
Q Three months of summer salary and fringe benefits to be used by August 9th of 2015. So that would be 25 percent of $82,500 as additional salary? No?
A You're quicker on your math than I am.
Q But that would mean you would be a 12 month employee instead of -- no?
A No.
Q What would that mean three summer months salary and fringe benefits?
A So at a research intensive institution the standard package that is offered to a faculty includes all of the things to get that person started, including some time that they will provide funding for summer salary so that you

don't have to seek that funding on your own, so as you get yourself started along that path.
Q So they paid you three additional months worth of salary.
A They agreed to pay me three months of salary over the probationary period towards tenure.
Q Okay. And then one semester course release in the awful 2013?
A That is correct.
Q And a two course -- two course release in the fall of 2013?
A Beyond that -- now my recollection is fading. So if you would let me see I'm happy.
Q I'm not sure that means too much. And also additional allocation of $5,000 to support mentors travel to conference or prospect sponsors with new hire, correct?
A That is correct.
Q And a Provost Assistant Professor Mentoring Project allocation of $1,500 subject to Provost approval for project.
A That is correct.
Q So this is 82,500, plus an additional 40 some thousand dollars, correct?
A I haven't done the math on the package piece of it.
Q But that seems -- this page where it's listing other

terms of this employment it has got DRS, is that your initials?
A They are.
Q That accurately lists out other benefits that were provide in addition to the $82,500?
A Correct.
Q Okay. And then the following year in 2014, did you receive an additional salary increase of $7,500?
MR. ORMOND: I don't think any of that is relevant.
THE COURT: Yeah, I'm not sure where we're going with that. Did you want to move 12 in?
MR. REAGLE: I would move 12 into evidence, yes.
THE COURT: Any objection?
MR. ORMOND: No objection, Judge.
THE COURT: Plaintiff's 12 is in evidence without objection.
Q And one of the things -- your proposal to SC State in 2008 indicated is that you would publish articles and that would be a benefit to State, correct?
A Can you show me the phrase?
Q Okay. I think you wrote to Dr. Ihekweazu, Offering scholarly work it in my specialties," correct?
A Scholarly works is a broad term, so it's --
Q You, in fact, have done that with Julie Martin, haven't you?

A Authored scholarly works? Yes. It's part of Ph.D program, you write with your mentor, that's standard.
Q You are now listed on those articles as a Virginia Tech. professor, correct?
A I'm sorry.
Q You are listed on those articles as a Virginia Tech. professor.
A If they were published after I was hired at Virginia Tech., yes.
Q You don't know -- as you sit here today you don't know whether you are published as a Virginia Tech. professor or not?
A You're asking two to three things at one time. Have I published with Julie? Yes. If I published after a certain date where I was employed at Virginia Tech., yes, that would note my affiliation with Virginia Tech.
Q Okay. So for examples, developing effective engineer -- to support undergraduate first generation college students. Denise R. Simmons S and Julie P. Martin. You wrote that; is that correct?
A I would like to see what --
MR. REAGLE: We mark that for identification.
Q And can you identify that, please?
THE COURT: That's 13, correct?
MR. REAGLE: Exhibit 13.

A This is a manuscript that I published in 2014.
Q Correct. And that issue is being a professor with Virginia Tech.?
A Yes, because I was in 2014.
Q So is offering scholarly works such as you there is not a benefit that South Carolina State ending up getting from its investment if your professional development, correct?
A No, because they didn't employ me. The benefit goes to your employer, so --
Q Did you believe the University was investing over 300,000 for you to go to another institution to teach?
A I don't know that I had a thought one way or another. I'm not sure I understand the question.
Q Have you attempted to repay any of the funds that were disbursed on your behalf since you received your Ph.D?
A Have I attempted?
Q Yes.
A No.
Q And the 2008 agreement that you signed said that you would either remain in service to South Carolina State or repay the funds to disbursed by South Carolina State on your behalf, correct?
A That is correct. They didn't provide the mechanism for the employment so that -- it prevented me from doing that piece of it.

Q And you never questioned your status as a faculty member while you were on faculty leave getting your Ph.D, did you?
A I don't understand the question.
Q Did you question, ever write to anybody at South Carolina State or call them and say, "I'm not sure if I'm still a faculty member at State?"
A No.
Q Now, you had testified you did some other traveling in the summer of 2012 in addition to the field station. What other traveling did you do?
A I don't recall. Can you show me?
Q No. I would rather you answer the question from Mr. Ormond. You said you were at the field station and you did other traveling and traveled regularly in the summers.
A Traveled in the summer of 2012 would have been associated with the field station. So I typically will go -- if a student -- if a funder is needing to meet about some matter then I will go and travel related to that.
Q And also you accepted the position with Virginia Tech. in August of 2012 because you didn't want the grant, that collaborative grant that you had worked on between Clemson and Virginia Tech. to go dormant; isn't that correct?
A That's false. It wouldn't have gone dormant.
Q Okay. Let's look at your deposition, page 60, please.

And you remember that was sworn testimony, correct?
A I do.
Q Okay. Just like today, you're under oath, right?
A Correct.
Q So page 60, and we've already read a little bit of this but I think we need to go back over it. Because line 18 you were asked, "Okay. You indicated that you talked to Julie Martin and told her that you were not employed at South Carolina State; is that correct?" Answer, "Correct." Question, "And she indicated that you were funding -- there was funding for a post-doc. Can you tell me then how you came to be employed by Virginia Tech.?" Answer, "Yes. So this particular project I had helped write the grant for and the grant was a collaborative grant between Clemson and Virginia Tech. And I guess, you know, sort of back tracking I think she was well aware of the news in the state as I was about what was happening at South Carolina State earlier prior to that year with the arrests that had occurred and the financial pressure that was going. And so she was like, 'Are you still going back to Clemson -- I mean back to SC State?' Oh yeah, I'm going back. And so I think when I called I think there was -- I was the only one probably sure of that perhaps. I don't know. But I was definitely sure about it. But with this funding being available, she was going to NSF, could not really run the project herself at

the same time. So she started a position at NSF, the funder for the grant at the same time in the fall. And so the project would have gone dormant had I not been available as post-doc., and because the collaborative person was at Virginia Tech. I was going to Virginia Tech." That's your testimony, correct?

A It is.

MR. REAGLE: Thank you.

THE COURT: Is that it?

MR. REAGLE: That's it, Your Honor.

(A lunch break was taken.)

(Resuming the testimony of Dr. Simmons.)

REDIRECT EXAMINATION

BY MR. ORMOND:

Q Ms. Simmons, Mr. Reagle asked you about whether or not you had gotten a RA or a TA or other forms assistance at Clemson University, and I believe you answered that you didn't.

A Correct.

Q When I asked that with you, were we discussing options that you had prior to going into a Ph.D program?

A Yes.

Q And I guess my question to you was were there many other options for you to fund a Ph.D program other than Title III?

A Many and numerous.
Q And we talked about RA and TA and fellowships and so on and so forth.
A Correct.
Q But you didn't request such assistance from Clemson because you had a Title III.
A Right.
Q Now, if you take a quick look at Defendant's 6 again. Do you recall that you asked Dr. Okafor to speak about your employment?
A Yes.
Q And then there was a call from Dr. Okafor?
A Correct.
Q Okay. Did you tell Dr. Okafor that what you needed was an employment contract during that conversation?
A Yes. Because I'd referenced it here that we needed to speak regarding a employment contract.
Q Do you recall it on the phone call whether you asked him that you needed a contract?
A Yes.
Q And then Dr. Ihekweazu wrote you an email, do you recall that?
A I do you recall an email exchange with him.
Q Okay. That's on Plaintiff's 8. Can you tell me the time you were able to respond? Was the date of August 23rd,

can you tell me the time you responded to Dr. Ihekweazu?
A It says -- I responded the time? 9:05 p.m.
Q Now, had you already signed the interim post-doc. agreement?
A I don't recall what time on the 23rd I signed the post-doc. agreement.
Q Do you recall if it was the last day that you had the ability to sign it?
A Absolutely.
Q Now, I think we spoke earlier, in February of 2012 you got a letter from South Carolina State University and an attorney representing them?
A It wouldn't have been February of 2012.
Q Was it early 2012? I'm sorry, 2013, my fault.
A It would have been right around in that time, that's right.
Q And a month or so later you were offered a job at Virginia Tech.
A Correct.
Q And then you went ahead and took that job.
A I did. At that time I knew I -- if they're bringing an action against me, I already saw that I was terminated back in September, so the lawyer or legal proceedings didn't leave me thought that they were going to hire me, so --
Q When did you first discuss this interim post-doc.

position with Dr. Julie Martin?
A I don't really recall.
Q Can you tell me what month it was in 2012?
A Most -- so first discussing it as an option or possibility probably would have been some time in July or August.
Q Okay. Had you received an employment contract with South Carolina State University, would you be working there?
A Absolutely.
MR. ORMOND: That's all I have, Your Honor.
THE COURT: Anything on recross?
MR. REAGLE: No, Your Honor.

The witness, JULIE MARTIN, was first duly sworn and Testified as follows:

DIRECT EXAMINATION

BY MR. ORMOND:

Q Doctor Martin, where do you reside?

A In Greenville, South Carolina.

Q And where do you work?

A At Clemson University.

Q What is your position there?

A I'm an associate professor.

THE COURT: Ms. Martin, you're facing the right way but you need to talk loud, Doctor, because I an old man, I need to be able to hear you, too. So even though I need you looking at the jury and the attorney, I need to be able to hear you, too.

Q I think I asked you where you worked.

A I work at Clemson University.

Q And the position there, ma'am?

A I'm an associate professor.

Q How long have you been there?

A I have been at Clemson since 2008.

Q All right. And have you prior to that taught at other colleges?

A Yes.

Q Which colleges?

A Virginia Tech. for one year, the University of Houston for four years.
Q Was the University of Houston before you went to Clemson?
A Yes, both of those were.
Q Was your first University Virginia Tech.?
A Yes.
Q And were you there just a year?
A One academic year, two semesters.
Q Did you come to know Denise Simmons at some point in the last five, six, seven years?
A In 2008.
Q How did that come about?
A It came about when she was pursuing a Ph.D at Clemson University.
Q And what was the nature of the relationship?
A We decided that I would be her adviser for her dissertation.
Q And does one start working on their dissertation almost with the beginning of a Ph.D or any graduate program?
A There's classes involved, but yes, also a plan for a dissertation topic.
Q Did you get to know Dr. Simmons?
A Yes, I did, very well.
Q Did you she end up in completing the Ph.D at Clemson?

A Yes, she graduated in 2012.
Q Now, during the time that you knew her and worked with her during her Ph.D program, did you come to know what her plans were after she was to graduate from Clemson?
A Yes, I did. And, in fact, during the first time that we met, which was actually a phone meeting, she indicated to me that her intention was to return to South Carolina State once she had completed her Ph.D.
Q Okay. Did she ever waiver from that?
A No.
Q Now, at some point, say in 2012, did you ever come to Dr. Simmons -- and she probably wasn't a doctor at the time, but Denise Simmons and discuss that there might be some issues with South Carolina State?
A I had seen some things on the news, so.
Q Did you discuss those with Dr. Simmons?
A We discussed them in a general nature, not anything specific that I can recall.
Q Did you get any indication that she was not still going to go back to South Carolina State University?
A I did not get any indication, she still intended to go back.
Q Now, in your experience as a faculty member at several colleges you have been with, do faculty get the contracts prior to the academic year?

MS. BLACKBURN: Your Honor, I'm going to object to that we. How they document assignments at other universities is not relevant to the issues in this case.

THE COURT: Tell me how it's relevant?

MR. ORMOND: Well, it's relevant if that that's what she was used to at Clemson, she was used to at South Carolina State, that's what they do in colleges.

THE COURT: Well, let me ask you, the question is not whether Ms. Simmons was used to that at Clemson. She wasn't hired at Clemson, she didn't work at Clemson.

MR. ORMOND: Well, she was able to see that and understand that.

THE COURT: Well, she may have been able to see that and whatnot, but she was working at State and she was on leave from State. There's been no testimony that she worked for Clemson. She said she didn't work at Clemson.

MR. ORMOND: No, Your Honor, I'm not saying she worked at Clemson.

THE COURT: Then I'll sustain the objection, it's not relevant to this part of the testimony.

Q Did you come to learn that Dr. Simmons had not received a contract from South Carolina State University?

A Yes.

Q Can you tell me about when that was?

A It was some time during the late summer of 2012, I

believe.
Q Did there come a time that you began to assist her in trying to get a back-up temporary position?
A Yes. That's when I assisted her in trying to obtain a position for the next academic year.
Q Could you tell me more about what that was and how that came about?
A Sure. So the position that I suggested for her was -- it's called a post-doc. position. It just means after your doctoral studies, it's a -- a postop position is normally conducted under the mentorship of another faculty member. So it's a continuation of your professional training after you've received a doctoral degree. And so this particular position was through -- to do research with a grant that I had with a colleague at Virginia Tech.
Q Would the pay for something like this be a lot less than what a faculty member would get?
A It's a fraction of well less than half.
Q Is there any guarantee that you get a continuation of your job?
A No, not at all.
Q Can you tell me when you -- well, let me ask you about the grant. How long had this collaboration between Clemson and Virginia Tech. been going on?
A It was a relative -- I don't remember the exact year,

it was a relatively new grant. I was working with Dr. Adams at Virginia Tech. to conduct research. It was funding by the (inaudible) foundation.

Q When did you first decide that maybe Dr. Simmons could fill that position?

A It had to have been late July or early August somewhere in there of 2012. My concern for her, and the reason that I suggested this, was because she didn't have a contract for the upcoming year. And in my experience at three universities, if you didn't have a contract by that time of year you wouldn't have a job for the next year.

Q Do you know when that position started?

A I believe it was in late August or early September.

Q Now, if she hadn't been placed in that position, what would have happened with that grant?

A We would have hired a graduate student, or my colleague at Virginia Tech. would have taken over the research portion of that for that academic year.

Q Now, if you can think back to 2008 or thereabouts, can you describe to this jury how a student with Dr. Simmons' prior credentials could finance a Ph.D degree?

A Sure. So there are at least three, maybe more, mechanisms that I can think of. The first is a teaching assistantship, which means when a grad student has an assistantship it means you work for 20 hours a week, that's

a commitment. So that would be -- a teaching assistantship would mean working for 20 hours a week teaching a course and receiving a stipend and tuition reimbursement. The other is reserve assistantship. So if a professor had a research grant from like the National Science Foundation or other federal agencies and had money to pay a graduate student to perform their research that was necessary for that, that would have also been another mechanism. Again, that comes with stipend and tuition reimbursement. There are also fellowships such as the National Science Foundation Graduate Research Fellowship. And the four mechanism would be what's called a startup package. So when a professor gets hired at a research institution, the university gives the professor enough money -- they call it a startup package because it's enough to get you started. And that generally comes with money to pay a graduate student stipend and tuition for a couple of years until the faculty member can get really established in the field and start bringing in a lot of grant money to pay for research assistantships.

Q And when you say hire a graduate student, the graduate student would be someone like Dr. Simmons?

A Yes.

Q While she was in school.

A Yes.

Q Would any of those means require that student to return

or go to any specific college afterwards?
A No.
MR. ORMOND: That's all I have, Your Honor.
THE COURT: Anything on cross examination?
MS. BLACKBURN: No, Your Honor, we have no --
THE COURT: No questions? Thank you, ma'am, you may step down.

(JURY VERDICT)

THE COURT: In the case of South Carolina State, plaintiff, versus Denise Simmons, the defendant. We, the jury, by unanimous consent find for the plaintiff in the amount of $414,260. Signed by the forelady and dated today. All right. Anything for the jury before I dismiss them, from the plaintiff?

MR. REAGLE: No, Your Honor. Thank you.

THE COURT: Anything from the defendant?

MR. ORMOND: No, Your Honor.

Motion to Settle Exhibit 5

STATE OF SOUTH CAROLINA)
) COURT OF COMMON PLEAS
COUNTY OF ORANGEBURG)

SOUTH CAROLINA STATE UNIVERSITY, PLAINTIFF, vs. DENISE SIMMONS, DEFENDANT.	TRANSCRIPT OF RECORD 2015-CP-38-553

July 31st and August 1st, 2020
Orangeburg, South Carolina

B E F O R E:

THE HONORABLE EDGAR W. DICKSON, Judge; and a jury.

A P P E A R A N C E S:

KIMBERLY BLACKBURN and JOHN REAGLE ESQ.
Attorneys for the Plaintiff

CHARLES ORMOND ESQ.
Attorney for the Defendant

HILDA JORDAN
Circuit Court Reporter

Transcribed by Pamela E. Green, Circuit Court Reporter

Mot. to Settle Ex. 5 - 001

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P R O C E E D I N G S

THE COURT: Ladies and gentlemen, we still have more questions to ask.

This case that we're getting -- that we're gonna try this week is the case styled State of -- I mean South Carolina State University, Plaintiff, versus Denise Simmons, Defendants -- Defendant. It has been given the Docket Number of 2015-CP-38-553. 2015 just simply tells you the year that it was filed. CP means it's a Common Pleas case. Thirty-eight is the county number for Orangeburg, and the case 553 is the case number they're given in order as they are filed.

Now, the Plaintiff in this case, the people bringing this lawsuit, is South Carolina State University, and they are represented by Mr. Reagle and Ms. Blackburn.

Would y'all mind standing, introducing yourselves to the jury?

Also introduce any of the people with you that may be called as witness, as witnesses.

MR. REAGLE: I'm John Reagle of the law firm of Halligan Mahoney & Williams.

MS. BLACKBURN: And I'm Kim Blackburn of -- also with the law firm of Halligan Mahoney & Williams, and this is Mercedes Fabers who is with South Carolina State University,

and this is our colleague, Dwayne Mazyck, who's also with the law firm of Halligan Mahoney & Williams.

THE COURT: Okay. And your name again?

MS. FABERS: Mercedes Fabers.

THE COURT: Okay. And, Ms. Fabers, you -- who do you work --?

MS. FABERS: South Carolina State University General Counsel.

THE COURT: Okay. And you're not called -- you're not being called as a witness?

MS. FABERS: No, sir, Your Honor.

THE COURT: Okay. All right. Thank you, ma'am.

All right. Appreciate it.

Now, the Defendant in this action is represented by Mr. Ormond.

Mr. Ormond, would you mind introducing yourself and your client --

MR. ORMOND: Okay.

THE COURT: -- Ms. Simmons.

MR. ORMOND: My name is Chuck Ormond and I work with the firm of Ormond & Dunn up in Columbia, South Carolina, and this is Denise Simmons, and she lives in Virginia.

THE COURT: Thank y'all.

Now, is any member of the jury related by blood or marriage or close personal friend of anyone who presently

works at South Carolina State University, if so, please stand at this time.

(WHEREUPON, no one stands at this time.)

THE COURT: All right. No one is standing.

Is any member of the jury panel, member of -- a member of your immediate family, or, or a member of your immediate family been employed at South Carolina State University within the last 10 years, if so, please stand at this time.

(WHEREUPON, jurors respond at this time.)

THE COURT: Okay. Let me get the gentleman in the back.

Your name please, sir?

THE JUROR: Walter Cummings.

THE COURT: Okay. Hold on one second.

(Pause.)

THE COURT: And you're Juror Number 45?

THE JUROR: Yes, sir.

THE COURT: And, Mr. Cummings, was it you or some member of your family that was employed at the State---

THE JUROR: My wife.

THE COURT: Your wife was employed at the State?

THE JUROR: She was.

THE COURT: How long ago?

THE JUROR: It, it was in the last 10 years.

THE COURT: Okay. Was she a professor or secretary?

THE JUROR: She worked in the Athletic Department --
THE COURT: Okay.
THE JUROR: -- with some college student academics.
THE COURT: Okay. Mr. Cummings, the fact that your wife at one time has worked at State, would that affect your ability to listen to the evidence in this case and render a fair and impartial verdict for either one of these parties?
THE JUROR: I don't think so.
THE COURT: Okay. Mr. Cummings, if you would then stay with us please, sir.
THE JUROR: Yes, sir.
THE COURT: Okay. Thank you, sir.
And, ma'am, you, you stood up?
THE JUROR: Yes.
THE COURT: And, again, your name please?
THE JUROR: Julie White.
THE COURT: And, Ms. White, you're the lady that hadn't changed her driver's license, right?
THE JUROR: Yes.
THE COURT: Ms. White, you, you have a member of your family has worked at State?
THE JUROR: Yes, my godmother.
THE COURT: Okay. What, what department at State did she work at?
THE JUROR: She worked in the (indiscernible).

THE COURT: Okay. All right. The fact that you had a family member that worked at the State, would that affect your ability to listen to the evidence in this case and render a fair and impartial verdict?

THE JUROR: No, sir.

THE COURT: Okay. Ms. White, if you'd also stay with us please, ma'am.

Okay. Now, Mr. Reagle, I'm kind of looking over your, your questions list. That looks -- I think, and you tell me, but it looks like that would kind of take care of your Questions 6 and 7, and also, Mr. Ormond, it looks like that might take care of your Questions 4, 5, and 5, and 5, the second 5 as well, doesn't it?

MR. REAGLE: Yes.

THE COURT: Do y'all, do y'all---

MR. REAGLE: Yes sir.

THE COURT: Anything else about that?

Are we okay with that?

MR. REAGLE: That's correct, Your Honor.

THE COURT: Okay.

MR. ORMOND: Agreed.

THE COURT: We're okay?

MR. REAGLE: Could we approach though?

THE COURT: Oh, yeah. Come on up.

(WHEREUPON, a bench conference was held out of the

hearing of the jury at this time.)

THE COURT: Okay. Well, let me -- Ms., Ms. Asbury?

Hey, Ms. Asbury.

(WHEREUPON, a juror stands.)

THE COURT: Did you tell me you were working at Belton School?

THE JUROR: Yes.

THE COURT: And Belton's still part of State, right?

I mean y'all---

THE JUROR: Yes.

THE COURT: All right. Let me, let me ask you the question just so I can make sure.

The fact that you're working at Belton, which is a part of State, would that affect your ability to listen to the evidence in this case, and render a fair and impartial verdict?

THE JUROR: No, sir.

THE COURT: Okay. All right. Thank you, ma'am.

All right. You can stay with us then.

All right. Now, is any member of the jury panel related by blood or marriage or close personal friend of Mr. Reagle, Ms. Blackburn, or any of the attorneys that work at the law offices of Halligan Mahoney Williams Smith Barlow & Reagle in Columbia?

Isn't that correct?

Columbia?

MR. REAGLE: That's correct.

THE COURT: Okay. If so, please stand at this time.

(WHEREUPON, no jurors stand at this time.)

THE COURT: All right. No one is standing.

Has any member of the jury panel or a member of your immediate family been represented by any of those -- these attorneys or any of the attorneys that work at that law firm, if so, please stand at this time.

(WHEREUPON, no jurors stand at this time.)

THE COURT: No one is standing.

And, finally, has any member of the jury panel or a member of your immediate family been involved in a lawsuit where these attorneys represented the other side, if so, please stand at this time.

(WHEREUPON, no jurors stand at this time.)

THE COURT: All right. No one is standing.

All right. Now, has any member of the jury panel or a member of your immediate family been a -- is related to or a close personal friend of Mr. Ormond or Mr. Ormond's -- or members of Mr. Ormond's law firm, which is Ormond Dunn Law Firm, if so, please stand at this time.

(WHEREUPON, no jurors stand at this time.)

THE COURT: No one is standing.

Has any member of the jury panel or a member of your

immediate family been represented by Mr. Ormond or a member of his law firm, if so, please stand at this time.

(WHEREUPON, no jurors stand at this time.)

THE COURT: No one is standing.

And, finally, has any member of the jury panel or a member of your immediate family been involved in a lawsuit in which Mr. Ormond or a member of his law firm represented the other side?

(WHEREUPON, no jurors stand at this time.)

THE COURT: All right. No one is standing.

Gentlemen, I, I think that takes care of a few more of these.

Now, ladies and gentlemen, there are a number of people that may be called as witnesses in this case, and I'm gonna try and go through the witness list, and this is a proposed witness list. This could change.

But is any member of the jury panel related by blood or marriage or a close personal friend of Ms. Gloria Pyles, if so, please stand at this time.

(WHEREUPON, a juror responds at this time.)

THE COURT: Yes, ma'am, your name please, ma'am?

THE JUROR: Margaret Johnson.

THE COURT: And, Ms. Johnson, you're Juror Number 93?

THE JUROR: That's correct.

THE COURT: And, Ms. Johnson, the fact that Ms. Pyles

may be called as a witness in this case, would that affect your ability to listen to the evidence in this case and render a fair and impartial verdict?

THE JUROR: No, I don't think it would.

THE COURT: Okay. You stay with us then please, ma'am. Thank you.

Ms. Deborah Darby may also be called as a witness in this case.

Is any member of the jury panel related by blood or marriage or a close personal friend of Ms. Deborah Darby, if so, please stand at this time.

(WHEREUPON, no jurors respond at this time.)

THE COURT: No one stands.

Is -- Doctor Kenneth Okafor, and if I don't pronounce some of these names right, y'all need to correct me, okay, but may also be called as a witness in this case.

Is any member of the jury panel related by blood or marriage or a close personal friend of Doctor Okafor, please stand at this time.

(WHEREUPON, no jurors respond at this time.)

THE COURT: Now I'm gonna need help with the Dean of the College of Science and Math and Engineering.

How do I pronounce I-E --?

MR. REAGLE: Ihekweazu, Your Honor.

THE COURT: Ihekweazu?

MR. REAGLE: Yes, Your Honor.

THE COURT: Ihekweazu.

Okay. That's got to be Nigerian, right?

MR. REAGLE: Yes, Your Honor.

THE COURT: Okay. All right. Doctor Stanley Ihekweazu is the Dean of the College of Science, Math, and Engineering at State.

Any member of the jury panel related by blood or marriage or a close personal friend of his, if so, please stand at this time.

(WHEREUPON, no jurors respond at this time.)

THE COURT: Doctor Larry Luke may also be called as a witness. He is the Provost of Academic Affairs at State.

Any member of the jury panel related by blood or marriage or close personal friend of Doctor Luke, if so, please stand.

(WHEREUPON, no jurors respond at this time.)

THE COURT: No one is standing.

And y'all have already met the Defendant, Doctor Denise Simmons.

Any member of the jury panel related by blood or marriage or close personal friend of Doctor Simmons, if so, please stand at this time.

(WHEREUPON, no jurors respond at this time.)

THE COURT: No one is standing.

Doctor Julie Martin may also be called as a witness.

Any member of the jury panel related by blood or marriage or close personal friend of Doctor Julie Martin, if so, please stand at this time.

(WHEREUPON, no juror respond at this time.)

THE COURT: No one's standing.

And I believe -- is, is that everybody on the witness list for both of y'all?

(WHEREUPON, there was no audible response.)

THE COURT: Okay. All right. Now, has any member of the jury panel ever been a defendant in a lawsuit?

In other words, have you ever been sued for any, for reason y'all ever been a -- involved as a defendant in a lawsuit, if so, please stand.

(WHEREUPON, one juror responds at this time.)

THE COURT: All right. Your name please, ma'am?

THE JUROR: Totana Lowden, 108.

THE COURT: Juror number what?

THE JUROR: 108.

THE COURT: Juror Number 108, Ms. Lowden.

Okay. Ms. Lowden, you said -- you have been a defendant in a lawsuit before?

THE JUROR: Yes.

THE COURT: All right. And was a -- brief---

THE JUROR: Automobile accident.

THE COURT: Automobile accident.

THE JUROR: Yes.

THE COURT: Okay. The fact that you've been a defendant in a lawsuit, would that affect your ability to listen to the evidence in this case and render a fair and impartial verdict?

THE JUROR: No, it would not.

THE COURT: Okay. You please stay with us please, ma'am. Thank you.

THE JUROR: All right. Thank you.

THE COURT: All right. No one else is standing.

And has any member of the jury panel or a member of your immediate family ever had a dispute with a college or a university or made a claim for money against a college or university, if so, please stand at this time.

(WHEREUPON, no jurors respond at this time.)

THE COURT: No one is standing.

And, Mr. Reagle, I, I -- what about four?

MR. REAGLE: Would you say that's already been covered, Your Honor, or --?

THE COURT: Well, I, I just -- I'm not exactly -- you, you mean like not just as a fan, right?

MR. REAGLE: Right. Often public entities are subject to public criticism.

THE COURT: Oh, okay. Oh, okay. So -- all right.

All right. Ladies and gentlemen, let me try and -- since I hadn't -- has any member of the jury panel ever publicly spoken out against or lobbied against a college or university either as an individual or as a member of an organization, and that doesn't mean that since I'm a Carolina fan I might say anything bad about Clemson or UNC or anything like that. That's not what we're talking about.

MR. REAGLE: No.

THE COURT: We're talking about having an, an actual petition or something like that, actively participated in, in some kind of organized effort against a, a college or university, and specifically we want to know if, if there -- if you have any problems with State.

Okay. I've noticed some Claflin people here working. I know they're not doing that.

Okay. All right. Anybody?

(WHEREUPON, no jurors respond at this time.)

THE COURT: Okay. No one is standing.

Has any member of the jury panel ever filed a grievance or a complaint against any of your employers or been terminated from employment, if so, please stand.

(WHEREUPON, one juror responds at this time.)

THE COURT: Yes, ma'am, your name.

THE JUROR: Megan Jones.

THE COURT: Ma'am?

THE JUROR: Megan Jones.
THE COURT: Okay. Ms. Jones, you're Juror Number 98?
THE JUROR: Yes, sir.
THE COURT: Okay. You have had a -- filed a grievance or complaint against one of your employers?
THE JUROR: Yes, sir.
THE COURT: Okay. The fact that you have done that, would that affect your ability to listen to evidence in this case, render a fair and impartial verdict?
THE JUROR: No, sir.
THE COURT: Okay. You please stay with us then. Thank you, ma'am.
Has any member of the jury panel or a member of your immediate family ever been employed by Virginia Polytechnic Institute and State University, if so, please stand.
THE JUROR: South Carolina State?
THE COURT: Pardon me?
THE JUROR: Did you say employed by South Carolina State?
THE COURT: No, ma'am. Just Virginia Polytech Institute.
Is that -- that's the name of the university, Virgina Tech and State---
MR. ORMOND: Yes.
THE COURT: ---University?

MR. ORMOND: Yes, it's---

THE COURT: Yeah. This is Virginia Tech.

Okay. Anybody ever work for Virginia Tech?

(WHEREUPON, no jurors respond at this time.)

THE COURT: Nobody was a -- what is it, a Gobbler?

No.

Okay. All right. I think that takes care of those questions.

Okay. Has any member of the jury panel ever been employed as a professor or an adjunct professor at any college or university, if so, please stand at this time.

(WHEREUPON, no jurors respond at this time.)

THE COURT: All right. No one is standing.

And I think, Mr. Reagle, I've gotten most of your questions out of the way, but you look over that while I go through the rest of the questions, and --.

All right. Mr. Ormond, I, I think that last question took care of your Number 2?

MR. ORMOND: Yes.

THE COURT: Yeah.

Okay. And is any member of the jury panel an engineer or have an advanced degree such as a PhD, Master's Degree, or any degree above a Bachelor's Degree, if so, please stand at this time.

(WHEREUPON, jurors respond at this time.)

THE COURT: You just wanted to make sure you knew who had these degrees, right?

(WHEREUPON, there was no audible response.)

THE COURT: Okay. All right. Your name please, ma'am?

THE JUROR: Shantell Pendarvis.

THE COURT: What's your juror number?

THE JUROR: 132.

THE COURT: Huh?

THE JUROR: 132 I think.

THE COURT: 132.

Oh, Ms. Pendarvis. And, Ms. Pendarvis, what is your -- what's your, your upper degree in?

What is that?

THE JUROR: I have a Master's Degree in Healthcare Administration.

THE COURT: Okay. Thank you, ma'am.

All right. Your, your name again please, sir?

THE JUROR: Nathaniel Wright.

THE COURT: Okay. And, Mr. Wright, you're Juror Number 198?

THE JUROR: Yes.

THE COURT: What is your degree please, sir?

THE JUROR: I have a technical degree in electronics.

THE COURT: Okay. Thank you, sir.

All right. Yes, ma'am, your name please?

THE JUROR: Anita Martin.
THE COURT: And, Ms. Martin, you are Juror Number 11 -- 111?
THE JUROR: Yes, sir.
THE COURT: And what's your advanced degree?
THE JUROR: I have a Master's in Secondary Ed Math.
THE COURT: Okay Thank you, ma'am.
Okay. And I'm sorry. I should know your name by now, Ms --?
THE JUROR: Margaret Johnson.
THE COURT: Okay. And, Ms. Johnson, you're Juror Number 93?
THE JUROR: Yes.
THE COURT: What's -- what was your degree?
THE JUROR: In guidance. Master's in Guidance and Counseling.
THE COURT: Master's in Guidance.
Okay. Thank you, ma'am.
And your name please, ma'am?
THE JUROR: Tiffany Cobb, 35.
THE COURT: Okay. And, Ms. Cobb, what's your advanced degree in?
THE JUROR: Criminal Justice Administration.
THE COURT: Criminal Justice.
Okay. Thank you, ma'am.

Your name again please?

THE JUROR: Robin Mack, Juror Number 109. Master's in Business Administration.

THE COURT: Master's in what?

THE JUROR: Business Administration.

THE COURT: Oh, okay. Thank you, ma'am.

Your, your name please, ma'am?

THE JUROR: Tina Sharpe, 157. MBA.

THE COURT: Hold on one second, Ms. Sharpe.

You're Juror Number 157?

THE JUROR: Yes, sir.

THE COURT: And what's your advanced degree in?

THE JUROR: Master's in Business.

THE COURT: Master's in Business.

THE JUROR: Yes, sir.

THE COURT: Okay.

All right. Yes, ma'am, your name?

THE JUROR: Jennifer Beatty, Number 56, and I have an education specialist degree and education administration in curriculum and instruction.

THE COURT: Okay. Thank you, ma'am.

Your name again please?

THE JUROR: 12, Tina Dellinger. I have a Master's in Special Education. Also an endorsement in addictions counseling education.

THE COURT: Okay. Thank you, ma'am.

And your name please, ma'am?

THE JUROR: Maxine Price, 142. A Doctorate in Education in Early Childhood.

THE COURT: Okay. Thank you, ma'am.

All right. And, Mr. Ormond, your Question Number 6, does that mean you're asking if they're the ones that are authorized to enter into contracts?

MR. ORMOND: Yes.

THE COURT: Okay. Has any member of the jury panel or -- has any member, member of the jury panel been employed and has one of your duties for your employer been, been to hand out or distribute or negotiate contracts with your employer with, with other employees?

Any, any of y'all had the job of handling contract negotiations, if so, please stand.

(WHEREUPON, no jurors respond at this time.)

THE COURT: All right. No one is standing.

That kind of takes care of seven as well, don't you think?

MR. ORMOND: Yes, Your Honor.

THE COURT: All right. And I talked to you in chambers about eight. I wasn't --.

MR. ORMOND: Okay, sir.

THE COURT: Okay. All right.

All right. Any other questions from the Plaintiff?

MR. REAGLE: No, Your Honor.

THE COURT: Any other questions from the Defendant?

MR. ORMOND: No, Your Honor.

THE COURT: Okay. All right. Ladies and gentlemen, y'all are all qualified, congratulations, to serve on this jury.

Okay. What's gonna happen now is your names are going to be randomized in the computer, and a new list is gonna come out with everything in a different order and like that. That -- the attorneys are then gonna review the list, and we will pick a jury. We will pick 12 jurors and we will pick one alternate, and those of you who are picked will have the -- have a really good experience of being a juror that I hope y'all will enjoy. It is something that you need to, to go through, and those of you who don't will, unfortunately, have to go home and go to work.

Okay. But now, it's gonna take about 15 minutes for -- it's not gonna take that long for them to hopefully randomize the, the numbers in the computer. But it is going to take a while. The attorneys need to have a little bit of time to look over the list.

So, we're gonna take another 15 minute break. If you need to stretch your legs, go to the restroom, if y'all will be back in here at 15 after 12:00 we will pick a jury.

Okay. Thank y'all.

(WHEREUPON, a short recess was taken at this time.)

THE COURT: So, we're -- y'all will go through, down through 22, okay, on the list.

Okay. And if y'all will use the numbers at the far left, the far left.

And, ladies and gentlemen, the numbers that they're referring to when they pick the jurors now are not the number y'all have cause y'all have been assigned new numbers.

Okay. So y'all don't know who is being struck or not by the Plaintiff. So, y'all just sit there. It's kind of like a -- an interesting little game.

All right. We got everybody?

Is everybody back?

THE CLERK: Yes, Your Honor.

THE COURT: All right. All right. Madam Clerk, you ready?

THE CLERK: Yes, sir.

(WHEREUPON, the jury panel was selected and seated at this time.)

THE COURT: Okay. Mr., Mr. Reagle, any issues regarding jury selection before we go forward with the trial?

MR. REAGLE: No, Your Honor. Not from the Plaintiff.

THE COURT: Okay. Mr. Ormond, any issues regarding jury selection from the Defendant?

MR. ORMOND: No, Your Honor.

THE COURT: Okay. All right.

(Pause.)

THE COURT: Can I see y'all up here for just one second?

(WHEREUPON, a bench conference was held out of the hearing of the jury at this time.)

THE COURT: All right. All right. Ladies and gentlemen, congratulations. Y'all got to serve. You know, I, I know this was not the highlight of what y'all wanted to do, but it really is a good thing to do. I think it'll be interesting. The case is a breach of contract case, which I know doesn't sound -- it's not like a murder trial or anything like that, but it's still a -- it's still -- it's gonna be interesting because you have a dispute where -- that the parties can't resolve, and the only people that can resolve it is gonna be y'all.

And so y'all are gonna have to listen to the case, pay attention to what's going on, and go back there and talk among yourselves, and come up with a verdict is this case, which is gonna be -- and that, that process, in and of itself, has proven interesting. I've had some friends of mine that have served on juries, and they've come back and

told me how it would -- it really has been entertaining.

I actually got to serve one time on the jury as a, a -- a coroner's jury one time. That -- and that was after I had started practicing law. So, that was interesting to me, just the dynamics of it.

Okay. But I digress. What we're gonna do right now is take a break for lunch. You cannot talk to anybody about this case. You cannot do any research. You cannot go online to try and find out anything about this. Everything you're gonna need to know about this case you're gonna find out here in the courtroom.

Additionally, you know, in the South, you know, when you walk by and you speak to people, you say hello, they speak to you, the attorneys and the people that are -- the parties in this lawsuit are not gonna speak to you. They're not being rude. They just cannot speak to you. You can't speak to anybody about this case. If someone comes up to you and tries to talk to you about this case, I need to know about it.

Okay. And the other thing that I -- that is -- that I always find interesting is, when you do a case like this, you cannot begin talking among yourselves about this case until I tell you you can begin your deliberation. So, once we start the trial after lunch, we'll take a break at some point in-between the witnesses and like that, the first

y'all want to do when we take a break is go back in the jury room and start talking about what you just heard. You cannot do that. You can't start talking about the case among yourselves until you've heard everything, you've heard everything in the case. You've heard all the witnesses. You've heard the attorneys tell you -- make, make their closing arguments, tell you what -- how they look at the case, and when I charge you and I, and I finish charging you on the law. That's the only time you can begin talking about this case.

Now, when you come back -- I'm gonna ask y'all to be back about two o'clock. When you come back, if you can get here about five minutes till 2:00, I need for you to pick a foreperson. The foreperson's gonna sit in this chair right here. The foreperson is the one that has the duty of completing the verdict form in the case, signing it. If you have any questions when you begin your deliberations, the foreperson is the one who writes out those questions. Another thing the foreperson does is essentially manage the discussion of the case when you're back there in the jury room when you begin your deliberations.

So, when you come back, the 12 of you -- now, you're really important, the alternate, but you don't get to vote on who's gonna be the foreman. So, when you come back, if you'd come back about five minutes to 12:00. Y'all can pick

a foreman for the case.

Okay. Otherwise go have a lunch.

Okay. Thank y'all.

(WHEREUPON, the following takes place outside the presence of the jury.)

THE COURT: All right. Any dis -- anything we need to take up on the record?

MR. REAGLE: No, not on the, on the record.

THE COURT: Okay. Now, if y'all -- y'all need to talk?

I'll be glad to talk with -- I'll be glad to do anything I can to help out, and I'll be back there for a while. Y'all tell me where we're going or anything, and I'll be glad to talk to y'all about what I think for what's that worth or what it's not worth.

Okay?

MR. REAGLE: Thank you, Your Honor.

MR. ORMOND: Thank you.

THE COURT: Thank y'all.

(WHEREUPON, Court was in recess for the lunch hour.)

THE COURT: Plaintiff ready to proceed?

MR. REAGLE: Yes, Your Honor.

THE COURT: Okay. Defense?

MR. ORMOND: Yes, Your Honor.

THE COURT: Okay. All right. Give me one second.

Okay. Bring them on in.

THE CLERK: Yes, Your Honor.

THE COURT: Ms. Blackburn, it looks like -- are you -- who's gonna do the openings?

MS. BLACKBURN: I'm doing the openings, Your Honor.

THE COURT: Okay. All right. All right.

(WHEREUPON, the following takes place within the presence of the jury.)

THE COURT: Ms. Pendarvis, they need to make you change seats.

THE FORELADY: Okay.

THE COURT: Okay. Well, congratulations.

THE FORELADY: Thank you.

THE COURT: Before we get started, the first thing I've got to do is have the clerk swear y'all in as the jury in this case. So, I need for y'all to again stand up one more time, raise your right-hand, and our clerk is gonna swear you in.

(WHEREUPON, the jury was placed under oath at this time.)

THE COURT: Thank you. Y'all may be seated. Appreciate it.

All right. Madam Forelady, ladies and gentlemen of the jury, I'm gonna give you a little idea about what you can hopefully expect during this trial.

The first thing that will occur is the attorney for the

Plaintiffs, the Plaintiff is the person who brought, brought the suit, that's South Carolina State University, their attorney will make an opening statement which will be followed by a similar statement by the attorney for the Defendant. These opening statements are not arguments. The arguments will come at the conclusion of the case.

The purpose of the opening statement is for each party to outline their claims and the evidence they intend to present to support these claims. Following the opening statements, each side will present its evidence with the Plaintiff once again going first.

Evidence takes many forms. It may be testimony, documents, models, photographs, or the like. Please pay close attention to all the evidence which is presented by each party because you, the jury, are the sole finders of facts in this case, and no one else is permitted to weigh the evidence, and render a verdict based upon that evidence except you. After all of the evidence has been presented, the attorneys will make their closing arguments.

Unlike the opening statements, these final remarks are truly arguments. That is, that is each side will emphasize certain portions of the evidence and try to persuade you to agree with their version of the facts. Keep in mind that the opening statements, as well as the closing arguments of attorneys, do not represent evidence in this case. Give the

attorneys your undivided attention, but keep in mind what they say is not evidence.

After the arguments are finished, I will explain the law which applies in this case. You will then retire to the jury room to consider the facts and the law. Once you have done so, you will return a verdict in favor of one side or the other.

During the course of the trial, the Plaintiff has the burden of proving their claims. The Plaintiff must meet this burden by proving their claims by the greater weight or preponderance of evidence. What we mean by the greater weight of evidence can be illustrated by imaging a traditional set of scales. When the case begins, the scales are even, are even, and you know every time you see an attorney's advertisements, you see those scales, and there -- they should be like this when we start, even, and what we're talking about is, if the scales tip even slightly, is -- you've met your burden in a civil case.

After all of the evidence has been presented, if the scales remain evenly balanced, or if they tip even slightly in favor of the Defendant, then the Plaintiff will have failed to meet their burden of proof, and your verdict would be for the Defendant. On the other hand, if the scale should tip even slightly in favor of the Plaintiff, then they will have met their burden of proof, and your verdict

should be for the Plaintiff.

As I mentioned earlier, although I am the only person who can tell you what the law is, you are the only ones who can determine the facts in this case. I do not have the right to indicate how I may feel about the evidence presented -- excuse me. I do not have the right to indicate how I may feel about the facts in this case, and, throughout the trial, my intention is to act impartially toward each party. It is also my duty to rule on the admissibility of evidence.

There are certain rules that both sides must obey in presenting evidence. These rules have a definite purpose. They ensure that the information you receive is the most trustworthy and reliable, reliable evidence available.

An objection is a procedure that is used for an attorney to call a possible violation of the rules to my attention. For this reason, you should not hold an attorney's objection against him or their client nor should you conclude, from my ruling on an objection, that I favor one side over the other.

Finally I would remind you to pay close attention to all of the evidence that is presented. It is you, the jury, who will determine the facts in this case, and, as a result, you will want to evaluate the credibility, which simply means the believability of each witness who testifies.

I am instructing you -- at -- I am reminding you that, during the trial, you may not take any notes. After listening to all of the evidence, I know you are -- you will be prepared to render a fair and just verdict in this case.

Is the Plaintiff ready to proceed?

MS. BLACKBURN: Yes, Your Honor.

THE COURT: Okay. Ms. Blackburn.

MS. BLACKBURN: May it please the Court, Your Honor?

THE COURT: Yes, ma'am.

MS. BLACKBURN: Mr. Ormond.

Ladies and gentlemen of the jury, good afternoon.

Again, I know we met a little earlier today, but I, I wanted to introduce myself again. I'm Kim Blackburn and I'm with the law firm Halligan Mahoney Williams, and my colleague, John Reagle, and I are very excited, and honored, and pleased to represent South Carolina State University.

I also just wanted to take a moment to thank you. I know we talked about this earlier today, but I wanted to thank you, the jury, for your service today. I know there are a lot of things you could be doing today other than being here, and you all will take your, your duty very seriously.

We know that you are sacrificing in terms of time and attention here today, and we appreciate that very much. So, thank you for using your good wisdom here to help us resolve

this dispute that's at issue.

I also wanted to introduce Mercedes Fabers. She is here representing South Carolina State University, and she's in the general counsel's office at South Carolina State University.

South Carolina State University is, is probably very well known to you, many of you. Of course, it's a public university here located in Orangeburg, South Carolina. It's an important institution, of course, and it's part of the community. It's part of the community here, and it's part of a bigger community of colleges and universities across the nation. And so, you know, we, we are very, as I said, very proud to, to represent them.

But, of course, South Carolina State University is a lot more than just an institution. It's not a faceless institution, and you'll hear that today when you, when you hear from our witnesses. It's people. It's students. It's teachers. It's deans. It's staff. It's, it's not a faceless institution, and I hope that you will see that today. These are people with a passion for what they do, and they have a passion for their work and for the students that they teach.

Now, what is this case about and why are we here today?

Well, I know the Honorable Judge Dixon who had mentioned earlier that this was a contract case. This is a

breach of contract case. But the testimony that you will hear will show that it's more than that. It's about promises. It's about opportunities, and it's about what makes sense.

Now, contracts can be very complicated and dry. You'll find out that contracts have a particular definition under the law, which Judge Dixon will share with you later in the case, and part of that definition, of course, includes the concept that contracts don't have to be on a piece of paper that says contract. They do have to be the result of a meeting of the minds between the people or the parties that are entering into the agreement, and, of course, the Honorable Judge Dixon will provide you with all the information you need to know on contract law later.

My role at this time is, of course, not to tell you about the law. That's what the judge will do. But really my role today is to tell you about what you can expect, what you can expect from the evidence today, what you will learn from us today. My job really, the way I see it, is to help you see that this case isn't complicated at all.

So, I said earlier that this was about opportunities and promises. Well, we intend to us our time here together to prove that the Defendant, Doctor Denise Simmons, who was an assistant professor at South Carolina State, had an opportunity to obtain her doctorate from Clemson University,

and she entered a contractual agreement with South Carolina State in 2008 to allow her to earn her doctorate at Clemson with the support of South Carolina State, who was her employer at the time.

And so what do we intend to prove?

Well, why would South Carolina State provide funds for Doctor Simmons to get a doctorate at another university?

Well, you'll hear from people with the University. You'll hear from people who work at the University, the faces of people that I told you about earlier. You'll hear from Gloria Pyles, who directs the Title III program at South Carolina State. She'll tell you all about the Title III programs. So, don't worry. You'll, you'll learn about that.

She'll tell you about how Doctor Simmons submitted an application for a faculty development leave under a federal grant called Title III, and this grant is meant to assist and support the development of HBCUs, and that's historically black colleges and universities.

Under the plan, Doctor Simmons would study at Clemson University to receive her PhD in engineering, and South Carolina State would then supply the funds through Title III and other funds to support her efforts. South Carolina State would also maintain her position while Ms. Simmons, at the time, was at Clemson to study.

Now, you'll hear testimony that Doctor Simmons agreed to remain in the service of the University for a period of time that was equivalent to the amount of time South Carolina State provided financial assistance, and, if she didn't, you'll hear evidence that, if she didn't, she agreed to make a lump sum repayment to South Carolina State of the entire amount that was expended on her behalf for her PhD program.

Now, you'll hear that Doctor Simmons application stated her purpose, the goals for obtaining a PhD, and some of those goals you'll hear are things such as exposing South Carolina State students to areas of her specialty, authoring scholarly works, recruiting students to attend South Carolina State, and enhancing the academic and research capabilities of South Carolina State. You'll hear from Ms. Pyles, and you'll also hear from Deborah Darby, who works as an administrator coordinator at South Carolina State, that Doctor Simmons proposal was approved, and Doctor Simmons did complete her degree successfully in May of 2012 at Clemson University, and South Carolina State did provide her financial assistance that they said they would provide. You'll hear testimony as, as to that. You'll also hear that she received tuition at Clemson, stipends, and funds for expenses to support that ultimate goal, which was to get her PhD, and to come back to South Carolina State University.

But you'll also hear from the witnesses from South Carolina State University, from professors, Doctor Ihekweazu, Doctor Okafor, and you'll hear from Gloria Pyles that Doctor Simmons did not return to South Carolina State University's campus to teach in the Fall of 2012. You'll hear that Doctor Simmons sought and secured a position with another university, Virginia Tech. She remains employed at Virginia Tech today.

The evidence will show that she received her South Carolina State teaching schedule in the Fall of 2012, in April -- I'm sorry. She -- the evidence will show that she received her South Carolina State teaching schedule for the Fall of 2012 in April, 2012, and even requested that South Carolina State change her schedule. You'll hear from Professor Stanley Ihekweazu and Kenneth Okafor that they actually ran into Doctor Simmons at a conference that Summer of 2012.

The evidence will show that South Carolina State notified Doctor Simmons, before the start of classes, that she was expected to attend a faculty meeting at South Carolina State on August 16th, and she was provided an agenda for that meeting. But you'll hear that she did not attend that faculty meeting on August 13th. You'll hear that, instead, she informed Doctor Okafor by email on that day that she had sought and secured employment elsewhere and

this was August 16th. You'll hear evidence of that.

There were several other communications in August that, that you'll hear about. Several on August 23rd, 2012. But, on that same day, Doctor Simmons signed an offer for a position with Virginia Tech to finalize arrangements with them for a position there, and you'll hear evidence about that as well.

So, what are you likely to hear from Doctor Simmons?

Well, Doctor Simmons likely will testify that she had grave concerns that she'd not received an employment agreement, an employment terms file, and that she had not received an assignment letter from South Carolina State. She'll likely say that she had heard things in the Spring, 2012 of -- on the news that made her worry about South Carolina State as an institution at that time, and she was concerned about whether there would be a job waiting for her. these are things you'll likely hear from her.

But you'll also hear testimony from South Carolina State professors and our witnesses today that South Carolina State was ready and willing with a position awaiting her so that South Carolina State students, and therefore the community, would receive a benefit of the bargain that was strived, and you'll see evidence that receiving an employment agreement or assignment as late as mid-August was not new to Doctor Simmons.

You will meet Doctor Luke Leary -- Doctor Larry Luke, South Carolina State's provost, and other professors in South Carolina State's administration who will tell you that Doctor Simmons did, in fact, have a position, that she was not fired, and that if they ever had to eliminate a job like that, it would of been done by simply -- it would not have been done by simply failing to send her an assignment letter by August.

So, you'll hear that Doctor Simmons never told any South Carolina officials that she had not yet received an employment agreement or assignment letter or that she was looking for employment until she had already taken steps to get a position elsewhere. Instead, she sent the email on, on August 16th, 2012, days before classes were supposed to start, classes that she'd been assigned to teach, saying that she had sought, secured other employment. You'll hear evidence that she never returned to campus.

Now, today you'll need to apply the law and your common sense but not sympathy. South Carolina State doesn't dispute that Doctor Simmons was a valuable faculty member and a good professor. South Carolina State is a public university, and you'll hear testimony today that tens of thousands of dollars was spent by South Carolina State, and Doctor Simmons professional development could of been used by South Carolina State for other professors, and even other

important areas such as technology or facilities.

Now, South Carolina State can't take back Doctor Simmons' PhD nor would they want to. But, at the conclusion of this case, we hope that you will fully compensate South Carolina State University for the funds that were spent on Doctor Simmons behalf as agreed under the contract.

Thank you for your most important work, and the wisdom, and the reason that you're being here today, and we appreciate your attention.

THE COURT: Thank you, Ms. Blackburn.

Mr. Ormond.

MR. ORMOND: Thank you, Your Honor.

THE COURT: All right.

MR. ORMOND: May it please the Court?

THE COURT: Yes, sir.

MR. ORMOND: Good afternoon. My name is Chuck Ormond. I practice law in Columbia, South Carolina, and I'm proud to represent the woman sitting next to me, Denise Simmons.

Two years ago, South Carolina State University brought a lawsuit against Denise Simmons and they retained lawyers to do so, and she had no choice but to retain me to assist her. She's never been through anything like this before, and she needed a lawyer or somebody to assist her through the procedures, how this works, and help her deliver the facts, the actual facts, what happened in this matter to you

or to a jury, and that's my job. That's what I'm here to do.

Denise Simmons had -- her goal, her desire was to return to the state of her birth where she had worked for four years prior as a faculty member, South Carolina State University, after getting her PhD at Clemson. She not only was ready and able and made herself available to be hired by South Carolina State University, she was working for the University already as environmental field services director.

Now, she wasn't on campus. She was in Aiken, which is where the South Carolina State Environmental Field Services camp or field camp is located. She lived in Columbia and she was also finishing up her PhD at Clemson University.

Now, Denise Simmons is a Charleston native. She was born and raised. She did -- she worked hard. She made good grades, and she was able to get into Clemson University, but she didn't get a scholarship or anything else like that. She worked her way through, took some loans. She also got a Master's Degree from Clemson University, again, in engineering. She worked hard. She worked through college. She took loans and then she worked for about 14 years in private industry. She worked for high tech companies, and she worked a lot for utilities, and she did gain some expertise in those areas.

She also was able to obtain her professional

engineering license, which takes four years of training and special eduction in addition to a grueling final exam in order to get your professional engineering license.

In 2005 she applied for and was able to get a faculty position at South Carolina State University. She had a Master's Degree. She began teaching and doing other things there. She also became a director of the field operations and I believe it's environmental field study operations in Aiken, South Carolina, and she did this during the summer.

During that year, the first year and the second year, she fell in love with teaching. She fell in love with doing what she wanted to do. Not only just teaching, but teaching folks like her, teaching people that maybe didn't have it so easy, maybe had -- maybe were minorities. She wanted to teach and did teach at a historically black college. In this case, South Carolina State University

In 2008, in order to further her career, in order to further what any faculty professor would want, and that's to get a PhD, she was accepted by Clemson. I think it's important to note she had many options as how to finance this. If you're a PhD or a PhD applicant, and you want to get your PhD, there are ways of financing that. One option is to become a resident -- a research assistant. One is to become a teaching assistant or both. In both cases you get a stipend. In both cases you can go through your PhD

program without taking loans.

You can -- there are scholarships available and other grants other than Title III grants. However, she did work with Clemson University and her mentor, at least at that time in 2008, and they agreed and discussed the opportunity for a Title III grant. Title III, they will tell you about it, but it's a federal program -- department -- Federal Department of Education, and they will send money in order for a professor to enhance their credentials, and, in this case, to return or to stay at the University for the same amount of time in which money was granted, and that is what she decided to do.

Why did she decide to do that?

Well, the evidence will be abundantly clear in my mind that she decided to do that because that's exactly what she wanted to do, and that is always what she wanted to do at all times. She went to Clemson. She worked hard. She continued, in the summers, to do the field camp, the field study program, this environmental study, and, again, it's in Aiken, South Carolina. That program also required some work done in the academic year, grant writing, recruitment of students, recruitment of other schools, that kind of thing, and that is what she did.

The grant and the situation required that each I believe third of a year submit what she had done to South

Carolina State University, and then she would get a stipend, tuition would be paid, and that is what happened. That is what happened through the four years.

She wanted to come back to South Carolina State University, and, and, in November of 2011, she informed South Carolina State University clearly she wanted to come back, and that she was going to graduate that next spring, the Spring of 2012. In April of 2012 she again informs South Carolina State that she's coming. She wants to come back. She's gonna come back, and she gave them initial transcripts. She also did, at that time, receive an email from the department chair, Doctor Okafor, saying here's what teaching -- here's what classes you're going to be teaching. She didn't say geez, I don't want to come back to South Carolina State University. She did have an issue with one of the classes it appeared to her wasn't really something that she had done, and maybe she wouldn't be the best fit, but that was it. It wasn't a big deal. She wanted and was planning on coming back to South Carolina State University.

Regardless of the contract, that's what she wanted to do. Regardless of whether it was a contract, regardless of what it says, that is what she wanted to do.

She graduated in May, defended her dissertation in May and June. She sent her transcripts in April, her initial transcripts, and then she sent her final transcripts. And

when I say she, the way that's done is you call the University or you go through a process of providing an application for what that University, in this case Clemson, sent the transcripts to the University -- to South Carolina State University. By this time all the other PhD graduates from Clemson were looking like crazy for a job in any university around. She didn't do that. She was going back to South Carolina State University, and made absolutely no effort to try and find a job anywhere else at any university as a faculty member. Simply did not happen.

In July of 2012 she made sure and checked that the transcripts had arrived. Now -- and, and they had. South Carolina State University had her transcripts.

She had worked at South Carolina State University as a faculty member from 2004 until 2008. Every year that she worked there she got an appointment letter in July saying we're appointing you. Here's how much we're going to be paying you and some other things, and then she would get a contract. It was a form contract, but it said what she would make, how much money she would make. It said whether she was tenured or not, and y'all understand maybe about tenure with some of the testimony to come, how long the term was, and other issues, benefits and so forth, the things that you need to know if you're going to be employed by somebody, and I'm talking about whether or not you're a

college professor or whether you're going to work at Belk's Department Store. They need to tell you, maybe not how long it's going to be, but how much you're going to make, and what you're going to be doing, and she'd always gotten that, and she'd always gotten that by the end of July, and you will hear that all professors get that, and have always gotten that.

But she didn't get it. She didn't get an appointment letter. She didn't get a contract. Again, she's working for South Carolina State in a temporary position and in a similar position of field director. She's there. She's working for South Carolina State at least in that. She's waiting for her faculty contract.

Now, yes, during 2012 and maybe some folks might remember, this was a tough time for South Carolina State. There were newspaper articles. There was news shows that it was in financial trouble. It was for several years.

So, she was seeing this and did become concerned with whether or not South Carolina State could hire a professor, another one. Student -- you will learn that student enrollment overall was down, and student enrollment in the engineering school was also down. She still was gonna come back. She maintained her house in Columbia. She, again, made no efforts to obtain a job anywhere, anywhere else during June or July, and academia, in college, when you are

teaching college, that is when you've got to do it because, if you wait until school starts, then there aren't any jobs for that whole academic year.

She didn't get any contract and she didn't get it even until the 16th of August. She had been concerned that she worked with her mentor at Clemson, and they arranged a joint Clemson Virginia Tech grant program post-op position. It was not a faculty position, and it certainly was not necessarily going to lead to future employment, and it was 15 -- well, about 10 to $15,000 less money than what she made the last two years that she had worked as a faculty member at South Carolina State with only a Master's Degree.

It was definitely a cut in pay, much less money than she would of gotten as a faculty member anywhere else teaching as a PhD engineering professor. She offered this job and she said I'll, I'll, I'll form -- I'll, I'll -- informally, I'm gonna accept it because I haven't gotten anything from South Carolina, and you will hear from a professor at Clemson, Doctor Julie Martin, who will corroborate this.

This is what happened. They worked to try to find something because it was too late for her to go out in the job market in case South Carolina State never did, did come up with a contract, and, on the 16th, she did write an email to Doctor Okafor who was supposed to be negotiating a

contract with her from her understanding and said I haven't gotten a contract. I'm very distressed about this. I have looked. I have obtained another position. If you want to call me do.

There was no calls. There was no uh oh. We need to send her a contract I guess. We must of forgotten something. We need to at least tell her how much we're gonna pay her. We're gonna tell her she has a position here. Nothing. He wrote back the next day saying don't worry. Lots of folks don't have contracts, which, of course, upset her worse, and you will find today that he had no knowledge of that. Whether that's true or not, we don't know, but he did know -- he did say it in an email, but he had absolutely no knowledge of whether that was true. In fact, says he couldn't know. It was confidential information.

You'll hear from Ms. Deborah Darby, who's their witness and works with South Carolina State, and has for 30 years, that she didn't even realize that Doctor Simmons had been overlooked for an appointment letter until the 23rd of August. I use that date because it's kind of a coincidence where I'm not sure what happened. But the 23rd of August, which was three days after school has started at South Carolina State University and almost all the school's around this part of the world, there's no way in the world Doctor

Simmons was gonna get another job teaching, not at that time, and she called and asked her what she was doing, and Doctor Simmons said I still can get out of this agreement. I haven't signed on the dotted line for this post-doc is what we'll probably use. It's a temporary position for research. The 23rd was the last day she could sign for it. Otherwise it was gone.

She talked to Doctor Okafor. Doctor Okafor never told her she had a contract coming. She -- he never mentioned anything about, when asked, never mentioned anything about how much she'd be making, what the tenure was, whether she'd be tenured tracked, what the term was, the benefits, nothing. No contract and you will see an example of these contracts when she used -- when she signed them back in 2008 and 2007. They all say, if you don't sign this contract, then you're not an employee. She was even told that during that time. You have to have a contract to be an employee.

She had a choice to make on August 23rd, do I accept this, do I sign on the dotted line, or do I take a chance, do I just assume that South Carolina State does have the money, that they do have a position, that it's reasonable, it's not $10,000 a year, or I need to work for free. She had a choice and she had still not been called, or told a term, given a contract when they knew seven days, a whole week, that she was concerned she didn't have a contract, and

yet no contract was sent. That's undisputed. No appointment letter, letter was ever sent.

Finally, she had to take that year's position, but she certainly would of been available the next years. Nobody ever called her. Nobody ever asked her to come. She would of in a minute.

There were some discussions in September. She was traveling because that's -- this post-doc job was a traveling kind of job. All she got was a lawsuit.

Now, the Plaintiffs in this case, South Carolina State University, get to go first cause they have the burden of proof, and I hope you will keep your mind open and wait until you've heard the full story from both sides. And then it's up to you to make your determination of what happened and what the law is.

Thank you.

THE COURT: Thank you, Mr. Ormond.

Plaintiff prepared to call its first, first witness?

MS. BLACKBURN: Yes, Your Honor.

Plaintiff calls Gloria Pyles.

THE COURT: Ms. Pyles.

Ms. Plyes?

THE WITNESS: Yes.

THE COURT: Put -- before you sit down --

THE WITNESS: Okay.

THE COURT: -- would you put your left-hand on the Bible. Raise your right-hand.

Are you gonna swear her?

THE CLERK: Yes, sir.

THE COURT: She's gonna swear you in.

(WHEREUPON, the following testimony of Ms. Gloria Pyles was transcribed previously and provided by another reporter.)

THE COURT: You may step down. Thank you, ma'am.

Plaintiff ready to call their next witness?

MS. BLACKBURN: Yes, Your Honor.

Plaintiff calls Deborah Darby.

THE COURT: Ms. Darby, before you sit down, you, you mind putting your left-hand on the Bible. Raise your right-hand, and the clerk's gonna swear you in.

(WHEREUPON, the following testimony of Ms. Deborah Darby was transcribed previously and provided by another reporter.)

THE COURT: All right.

All right. Ladies and gentlemen, we're gonna take a short break, and I'll let you go back into the jury room. Remember you cannot talk about any of the testimony you've heard so far. Remember that. And so I'll bring you back out here in just a few minutes.

Okay. Thank you.

(WHEREUPON, the following takes place outside the presence of the jury.)

THE COURT: Thank you, Ms. Darby. You may step down.

All right. Ladies and gentlemen, I, I need to take up just a quick motion. I'm told it will be quick.

(WHEREUPON, a short recess was taken at this time.)

THE COURT: Bring them in.

THE CLERK: Yes, Your Honor.

THE COURT: Thank you, ma'am.

(WHEREUPON, the following takes place within the presence of the jury panel.)

THE COURT: All right. Ladies and gentlemen, we're gonna continue with the Plaintiff's case now.

Are y'all ready to call your next witness?

MR. REAGLE: Yes, Your Honor.

THE COURT: All right. Who you calling?

MR. REAGLE: South Carolina State would call Doctor Okafor.

THE COURT: All right. Doctor Okafor.

THE WITNESS: Yes, Your Honor.

THE COURT: You've been watching how everybody else did this, right?

THE WITNESS: Yes.

THE COURT: Okay. Left-hand on the Bible.

THE WITNESS: Oh, okay.

THE COURT: Well, put your left-hand on the Bible.

THE WITNESS: Oh, I'm backward.

THE COURT: Raise your right-hand.

(WHEREUPON, the testimony of Doctor Kenneth Okafor was transcribed previously and provided by another reporter.)

THE COURT: All right. Thank you, sir. You may step down.

(WHEREUPON, a bench conference was held out of the hearing of the jury at this time, and Court was in recess for the evening.)

Tuesday, August 1st, 2017

(WHEREUPON, the following takes place within the presence of the jury.)

THE COURT: Good morning, ladies and gentlemen. Happy August to you. It's the first day of August. It will be Christmas before we know it.

We are -- I hope y'all did have a good evening.

Everybody have a good evening?

(WHEREUPON, the jurors respond in the affirmative.)

THE COURT: And looking forward to coming back. I know.

Okay. Good.

All right. We're now gonna continue with the Plaintiff's case, and I -- and as expected, we are still planning to finish up today. One of the delays for getting started was because I was trying to get some stuff straight. So, after we finish the testimony, we can move, move up, and, if you'll notice, I don't have somebody sitting here beside me today. Yesterday was my law clerk's last day. He left here very happy and excited about his new job. So, I don't have, I don't have a helper here.

So, there, there may be some delays, but we're gonna work through that.

Okay. All right. Ready to call your next witness,

next witness?

MR. REAGLE: Yes, Your Honor.

South Carolina State University would call Doctor Stanley Ihekweazu.

THE COURT: Doctor Ihekweazu, how are you, sir?

THE WITNESS: Good morning, sir.

THE COURT: Good morning.

You were here for a while yesterday. You saw what we do. You stop there, put your left-hand on the Bible.

THE WITNESS: Yes, sir.

THE COURT: Raise your right-hand. The Clerk's gonna swear you in.

(WHEREUPON, the testimony of Doctor Kenneth Okafor was transcribed previously and provided by another reporter.)

THE COURT: Plaintiff ready to call its next witness?

MR. REAGLE: Yes, Your Honor.

THE COURT: Okay.

MR. REAGLE: I would call Doctor Luke.

THE COURT: Doctor Luke, come up here. Before you sit down in that chair, there's a Bible.

THE WITNESS: All right.

THE COURT: I need you to put your left-hand on the Bible and raise your right-hand. You can put, you can put all your, your stuff down.

THE WITNESS: All right.

THE COURT: And I'm hoping you didn't bring water because you thought you would be here that long.

Okay. Put your left-hand on the Bible and raise your right-hand, and the Clerk's gonna swear you in.

THE WITNESS: I affirm though.

THE COURT: Oh, you affirm?

THE WITNESS: Yes.

THE COURT: Okay.

(WHEREUPON, the testimony of Doctor Larry Luke was transcribed previously and provided by another reporter.)

THE COURT: Plaintiff ready to call its next witness?

MR. REAGLE: We would close our case, Your Honor.

THE COURT: All right.

All right. Ladies and gentlemen. We've now heard the Plaintiff's case in this matter. We're gonna take a -- perhaps a short break while I take up some matters with the attorneys. Remember, when you go back in there, you cannot talk about any of the testimony you've heard, okay, and we'll get you back out here as soon as we can.

Okay. Thank y'all.

(WHEREUPON, the following takes place outside the presence of the jury.)

THE COURT: All right. Anything, anything from the Plaintiff?

(WHEREUPON, there was no audible response.)

THE COURT: Anything from the defense?

MR. REAGLE: Not from the Plaintiff, Your Honor.

THE COURT: Okay.

MR. ORMOND: Your Honor, the Plaintiff has alleged a pure fraud cause of action. I don't believe that there's been evidence of any -- certainly most of the nine elements of fraud that's required in this, in this case.

MS. BLACKBURN: And, Your Honor, the Plaintiff will withdraw that claim.

THE COURT: Okay. So fraud's withdrawn.

MR. ORMOND: They also alleged a breach of contract accompanied by a fraudulent act. In that cause of action you've got to at least provide some evidence that there was a fraudulent act accompanying the breach, and I suppose the breach they're saying was she didn't go back. I don't believe -- there's no evidence to support such a cause of action.

THE COURT: Well, who -- where did she go under the straight breach of contract?

MS. BLACKBURN: Your Honor, I, I do believe that there is at least an inference for the jury, or more than one inference, for the jury regarding the fraudulent act claim.

THE COURT: All right. Just, you know, I -- tell me how you're looking at it. I mean I, I can tell from --.

MR. REAGLE: I say, I say -- and I just -- this is from

Hardy v. Penn Mutual Life Insurance Company, you know, that a fraudulent act is a -- does not need to be a, a overt or a positive or affirmative act. It can be a fraudulent omission to speak or act when one has a duty to act or speak.

I think, after receiving over $300,000 in support and a four year leave where we had to pay $20,000 a year for adjunct faculty, for someone to get a degree, to come back and benefit the University, and then does not even tell us that she's sought and obtained other employment doesn't -- I just -- she has any concerns about not getting a contract at all, and leaves students sitting in their chairs on the first day of class, that that constitutes on omission with it rising to fraudulent intent, and I believe she never told us that she was intending to go to Virginia Tech perhaps.

I think the inference can be made because she was afraid we might call them and say do you know that we have a contract with this teacher, that we just put her through faculty developmentally, spent $300,000 on her, you know, we don't think you should properly be hiring someone who has a commitment to us. I think that constitutes at least enough for a jury to conclude that she breached the contract with fraudulent intent.

THE COURT: Okay. All right.

MR. ORMOND: They have to have some evidence of

fraudulent intent, Your Honor. There's been no provided evidence of that.

THE COURT: And I, I understand, Mr. Ormond, what you're doing. I think what bothers me about the whole thing -- well, there's a lot that bothers me on both sides about the whole thing, but, at this point, I'm, I'm not inclined to grant your request to dismiss the breach of contract with fraudulent intent. I'll note your objection to my ruling so that will be preserved on the record.

Okay?

MR. ORMOND: Okay.

THE COURT: Anything else?

MR. ORMOND: No, Your Honor.

THE COURT: Okay. All right. All right. We're gonna take a, a short break, and just out of curiosity, about how many witnesses are you gonna have?

Two?

MR. ORMOND: Two, Your Honor.

THE COURT: Okay. All right. You think we can finish by lunchtime?

MR. ORMOND: Well, are you gonna stop at 1:00?

THE COURT: Huh?

MR. ORMOND: 1:00.

THE COURT: All right. We'll go to a late lunch.

Okay.

(WHEREUPON, a short recess was taken at this time.)
THE COURT: Okay. I have the jury either finds for Plaintiff in a like amount of dollars or finds for the Defendant, and I'm working that form out so that they can review it later on.
Okay. That's correct?
MR. REAGLE: Correct.
MR. ORMOND: Yes, Your Honor.
THE COURT: Thanks.
(WHEREUPON, the following takes place within the presence of the jury.)
THE COURT: All right. Ladies and gentlemen, we have heard the Plaintiff's portion of this trial. Now we're gonna begin with the Defendant's portion.
Mr. Ormond, defense ready to call its first witness?
MR. ORMOND: Yes, Your Honor.
Defendant would call Denise Simmons.
THE COURT: Doctor Simmons, and, Doctor Simmons, you've been watching?
THE WITNESS: Uh-huh. (Affirmative).
THE COURT: You been -- okay.
(WHEREUPON, the direct and cross-examination of Doctor Denise Simmons was transcribed previously and provided by another reporter.)
THE COURT: Okay. All right. Anything briefly on

redirect or do we need to take a break?

MR. ORMOND: We'd be happy to take a break, but if -- it's gonna be fairly brief, five, ten minutes.

THE COURT: Okay. Well, I'm gonna take a break.

Okay. It's, it's past the dining hour for me. I don't know if it is for y'all, but it is past the dining hour for me. I'll ask y'all to come back at 2:15 cause I know it's not really easy to find a place to eat around here sometimes. Remember, you cannot talk about the testimony that you've heard.

All right. I'll see y'all at 2:15. Thank you, ma'am.

(WHEREUPON, the following takes place outside the presence of the jury.)

THE COURT: All right. Ms. Simmons?

THE WITNESS: Yes, sir.

THE COURT: Let me caution you. You are -- we're taking a break for lunch.

THE WITNESS: Yes.

THE COURT: You cannot have conversations with your attorney about your testimony?

You understand that?

Or anyone else about your testimony.

THE WITNESS: Okay.

THE COURT: Okay. We are taking a break because it is one o'clock, and the jury needs a break and needs to eat.

But you cannot have any conversations with anyone about your testimony.

THE WITNESS: Okay.

THE COURT: You understand me?

THE WITNESS: I understand.

THE COURT: Okay. All right. We'll see y'all a little after 2:00.

MR. REAGLE: Thank you, Your Honor.

THE COURT: Thank you.

(WHEREUPON, Court was in recess for the lunch hour.)

THE COURT: Also I want to make sure you have not talked to anyone about your testimony during the break.

THE WITNESS: I have not.

THE COURT: No one at all?

THE WITNESS: No one at all.

THE COURT: Okay.

All right. You can bring the jury in.

THE BAILIFF: Yes, Your Honor.

THE COURT: Thank you.

MR. REAGLE: Your Honor, before they come in, I think---

THE COURT: Hold on.

MR. REAGLE: ---the next witness is in the courtroom. I think we'd agreed to -- they're sequestered.

THE COURT: Okay. Ma'am, are you Julie?

THE WITNESS: I am.
THE COURT: Okay. You're Julie Martin?
THE WITNESS: I am.
THE COURT: Okay. Now, Ms. Martin, as I was coming in, I saw you and Ms. Simmons talking a little bit in the hall.
THE WITNESS: Uh-huh. (Affirmative.)
THE COURT: What were y'all talking about?
THE WITNESS: We were talking about her mentoring a student.
THE COURT: Okay. And that was it?
THE WITNESS: Yes.
THE COURT: Okay. If you'd go wait out in the hall please, ma'am.
THE WITNESS: Sure.
THE COURT: Thank you, ma'am.
We're ready. We're ready?
MR. ORMOND: Yes, Your Honor.
THE COURT: Okay. If you'd bring the jury in.
(WHEREUPON, the following takes place within the presence of the jury.)
THE COURT: All right. Ladies and gentlemen, I hope y'all had a good lunch. We're down to getting down to the wire here. So, I need for y'all to continue to pay attention. Y'all have been doing really good.
All right. We're gonna continue with the defense case,

and we're back with the questioning of Ms. Simmons, and we're back on redirect.

Mr. Ormond.

MR. ORMOND: Thank you, Your Honor.

THE COURT: You may continue.

(WHEREUPON, the redirect testimony of Doctor Denise Simmons was transcribed previously and provided by another reporter.)

THE COURT: All right.

MR. REAGLE: Thank you very much, Doctor Simmons.

THE COURT: Thank you.

All right. You may step down, Ms. Simmons.

Defense ready to call its next witness?

(Pause.)

THE COURT: All right. You haven't seen -- have you ever testified in Court before?

THE WITNESS: No, sir.

THE COURT: Okay. Well, see the, see the Bible right there in front of you?

THE WITNESS: Uh-huh. (Affirmative).

THE COURT: Okay. If you put your left-hand on the, on the Bible please, ma'am. If you'd raise your right-hand.

Okay. The Clerk's gonna swear you in please, ma'am.

THE WITNESS: Okay.

(WHEREUPON, the testimony of Ms. Julie Martin was

transcribed previously and provided by another reporter.)

THE COURT: Any other witnesses on behalf of the defense?

MR. ORMOND: No, Your Honor.

THE COURT: Okay. All right. Any, any -- anybody on recall?

No?

MR. REAGLE: No, Your Honor.

THE COURT: Okay. All right, ladies and gentlemen. We've heard all the testimony we're gonna hear in this case. We need to take a short break while we get organized for closing arguments and some other motions perhaps that I've got to take up outside of your presence.

You cannot, even though you've heard all the testimony, you cannot begin talking about the testimony that you've heard in this case. I'm gonna remind you. Y'all are doing real good. Let's us -- let's keep going -- let's keep doing good, and I'll get y'all back out here in just a few minutes.

Okay. Thank you.

(WHEREUPON, the following takes place outside the presence of the jury.)

THE COURT: All right. Anything from the Plaintiff?

MR. REAGLE: We'd move for directed verdict?

THE COURT: Good try. It was a nice try. No.

MR. REAGLE: Thank you, Your Honor.
THE COURT: All right. Mr., Mr. Ormond, I know you want to renew your motion for me to dismiss the --
MR. ORMOND: Breach of contract.
THE COURT: -- breach of contract with fraudulent intent?
MR. ORMOND: Yes, sir.
THE COURT: I'm, I'm not gonna do that. I'm probably less inclined to do that now then I was then.
Okay. So, but I'll, I'll note your objection to my rulings.
Any other motions that you want to -- anything else you need to put on the record?
MR. ORMOND: No, Your Honor.
THE COURT: Okay. Now, how, how much longer -- how long do y'all need before y'all can be ready to go?
Are y'all ready to go now --
MR. REAGLE: We're ready to go.
THE COURT: -- for closing?
Okay. Before you do that, look at the verdict form. I'll give you a moment.
MR. REAGLE: Can't we just get the---
THE COURT: And, Mr. Ormond, I didn't mean to get you to do that right as you were pouring water, but this is, this is -- if y'all want to make any changes on it, I can.

MR. REAGLE: Your Honor, I did not move 13 into evidence, and I really don't want it in evidence. I mean I don't -- Mr. Ormond, I don't think they need to be reading the evidence.

(Pause.)

THE COURT: All right. Did y'all say y'all needed a few minutes or --?

MR. REAGLE: I think we just need to get the exhibits organized.

THE COURT: Okay. All right. I'll give y'all an opportunity to do that. I'll be right back.

Okay?

MR. REAGLE: Thank you.

(WHEREUPON, a short recess was taken at this time.)

MR. REAGLE: I have one housekeeping matter, Your Honor. There's a question of whether we moved to admit Exhibit 11, a CV, into evidence, and we would---

THE COURT: Plaintiff's 11?

MR. REAGLE: Yes, I'd request to do that at this time.

THE COURT: So, I mean is it -- is there any, any objection?

MR. ORMOND: Oh, no.

THE COURT: Okay. Well, then 11 is in. I did not have it marked as going in. It's in without objection. I'm sure the jury is gonna remember that.

(WHEREUPON, Plaintiff's Exhibit No. 11 was received into evidence at this time.)

THE COURT: All right. I thank y'all for going through the charge, first of all. I had -- I made those copies.

MR. REAGLE: Can I get the---

THE COURT: And I got together -- and y'all gave me three others --

MR. REAGLE: Yeah.

THE COURT: -- which I agree.

Okay?

MR. REAGLE: Thank you, Your Honor.

THE COURT: Y'all ready?

MR. REAGLE: Yes, Your Honor.

THE COURT: You ready?

(WHEREUPON, there was no audible response.)

THE COURT: All right. Bring them in.

THE BAILIFF: Yes, Your Honor.

(WHEREUPON, the following takes place within the presence of the jury.)

THE COURT: All right. We're now getting ready to go to the final part of this. We had the closing arguments of the attorneys. I've got -- they have completed the closings. I'm gonna give you the charges, and then we'll go forward from there.

Okay. All right. Mr. Reagle.

MR. REAGLE: Thank you, Your Honor.

THE COURT: Yes, sir.

MR. REAGLE: I start out by thanking you, the jury. I appreciate you paying attention for the past couple of days, hanging in there with us.

Certainly want to thank the Court and the Court personnel who've all assisted us over the past couple of days. I want to recognize Mercedes Fabers who is at South Carolina State University, our client, and Mercedes Fabers, their general counsel, Kim Blackburn, Doctor Luke, of course. We're very honored and proud of the opportunity to represent South Carolina State in this important matter.

I also want to -- I feel like I should recognize Mrs. Swagard, whose also been with us for the past couple of days, and remained here. She also needs meritorious recognition.

Our work here now, final closing arguments, to review the evidence and submit our arguments to you, the jurors, jurors, and you are the finders of fact, and the ultimate deciders in this case. I -- you know, a really unique opportunity and responsibility that you have as jurors.

It's the only compulsory service that we still have in this country, and maybe it's cause they pay you so little to do it. Maybe cause it's such hard work to have to script you into doing it. But we appreciate it, and it's a very

important service that you do, and your job is -- there's been a lot of talk about engineering, and engineers over the past couple of days, and that's kind of fitting in this case.

It is -- your job is to use your common sense, apply the laws instructed by the Court, and to add up the facts, to weigh the facts, to ultimately decide what they add up to, what -- what's, you know, the right conclusion, what's the verdict in this matter.

So, we're gonna ask you to, to do that.

What do these facts add up to?

Well, South Carolina State submits to you that, when you add up the facts, that Denise Simmons, you'll find, that they clearly showed Denise Simmons intentionally and wrongfully breached her contractural obligations to South Carolina State. South Carolina State is here in Court today to ask nothing more than Denise Simmons be required to honor her word, that she live up to and honor her promises that she made to S.C. State in 2008. And although South Carolina State is very proud of Doctor Simmons' accomplishments, they're proud of, of their sponsorship of her to get her PhD and what she's achieved, at the same time they're not apologetic for coming into Court and asking you to ask or require Doctor Simmons to honor her word. That's ultimately what this case is all about is promises made and promises

kept.

Now, you'll be instructed on contract law. I'm, I'm just gonna give you the real skinny, and certainly the judge is -- gives you the authoritative version of it. But fundamental components are you have to have an offer and an acceptance, and then there has to be mutual consideration. Each side gives something in consideration of what the other is, is promising to do.

Now, we've cut through the red herrings and some of the smoke that's been released in this, in this courtroom by the defense I would assert. The facts are straightforward and clear. So, let's review the facts, and I want to start with the offer.

The offer that came from Doctor Simmons, and it -- you know, she states, you know, my entire objective for pursuing a PhD degree has always been to bring my experience back to South Carolina State with the goal of exposing South Carolina State University students to my areas of specialty, authoring scholarly works in my specialities, returning to school -- recruiting students to attend the University, and enhancing the academic and research capabilities of the University. I only need the time and financial support from South Carolina State University in order to accomplish this objective. My expected graduation date from the PhD program is December, 2011. I will stipulate to as many years of

employment as you deem appropriate in exchange for your support of this proposal and my degree completion at Clemson University.

So, she's offering to go to Clemson, get her degree, return to South Carolina State, and provide these services to South Carolina State. These were important. You've heard testimony from Doctor Luke, Doctor Ihekweazu about how valuable it was to have the PhD engineers, and that they could mentor and recruit students, and help the University with accreditation. That's what she was offering to do. In exchange, the University was giving her professional leave, and I just need the time and financial support. So, we were offering time and financial support. That's the contract in a nutshell.

Now, there's another part of that contract, that contract, and this is all in Exhibit 1, and you will get a chance, when you go back to the jury room, to have all those exhibits with you and review them. These quotes are all pulled out of Exhibit 1, which was identified as the professional leave and, and grant agreement. But this is from part of that document, been drafted by Ms. Simmons, faculty development project plan, major goals and objectives. Again, my entire objection -- objective for pursuing the PhD program has always been to bring my experience back to South Carolina State with the goal of

exposing South Carolina State students to my areas of specialty by authoring scholarly works on sustainable development in engineering education, recruiting students to attend the University, and enhancing the academic and research capabilities of the University.

Those are, in part, what Doctor Simmons is offering in exchange for the financial support and the leave. It's also, as you heard from Doctor Luke and Doctor Ihekweazu, and Doctor Okafor, this is part of the benefit of the bargain that South Carolina State expected to receive for its investment in Doctor Simmons. And, finally, at the conclusion of Exhibit 1 is this document, and I know you've all been hearing me over and over, this is the actual cutout from, from that document, and this is the faculty administration, administration compliance statement, and you see it's signed by Denise S. Grant, now Simmons, and it says I, Denise S. Grant, agree that I will remain in the active service of South Carolina State University upon completion of this agreement for a period equivalent to the amount of time for which financial assistance was received.

For the purposes of this agreement, a summer session as well as each conference, workshop, seminar, and center for which assistance was provided as outlined in the professional improvement plan, and part of which is the document we just looked at, is considered to be the

equivalent of a semester. Failure on my part to carry out the above agreement will result in a lump sum repayment of the entire amount expended by South Carolina State University on my behalf.

So, this is pretty clear, and it's also clear that South Carolina State lived up to its end of the bargain. It provided the financial support. It provided her with the professional leave in order to pursue her major goals and objectives, and her -- and the other -- in the letter deductory (phonetic), help pursue her entire goal of getting her PhD and returning to State. So, this is the signed document by Doctor, by Doctor Denise Simmons stating she will either remain in the service of South Carolina State University after she gets her PhD or she will make a lump sum repayment to the University.

Now, all of the testimony has been she did neither of those. The facts clearly show that the, the understanding and expectations of Denise Simmons and state what they were in 2008, and the whole next four years, while State was paying, and it went -- it was, in total, in excess of $300,000, and we'll add up the exact numbers in a little bit on Denise Simmons' behalf. So, there's also no question that State performed its obligations under the 2008 contract. Doctor Simmons, in fact, admitted she received the financial support that South Carolina State had agreed

to provide.

It provided the financial support. It provided the professional leave. And, as part of that, it also maintained her tenure track position, maintained her salary, and, ultimately, gave her the teaching load that is expected and offered to, to professors, and that's part of what Doctor Simmons wanted to do is come back and teach. So, she is, you heard her testimony, she says well, implied in here is that we will give her a specific form of contract, and it doesn't say that in there. No where in the agreement is there a requirement that -- for her to remain in the service of South Carolina State, that she have a specific form of contract.

She was continued as a tenure track employee. She knew that. That was what all the witnesses testified to. She knew her status was preserved on professional leave. Her salary was maintained, her base salary was maintained, and, in April of 2012, she was sent a course load notice indicating that she was a full-time employee so that what will probably be termed the material terms of the employment relationship that Doctor Simmons was required to maintain were clear, were offered by State. That's how much you're gonna make, you know, what's your position gonna be, and what are you gonna do.

She got the course load. No notification back in

April. But the P4 you saw indicated what her position was and what her pay was, and the testimony was, because this was leave, and that's what leave is, you go away and you come back where you left off, was the same as it had been in 2008, tenure track, $55,000 a year as, as her base salary.

The State was entitled to expect Denise Simmons to return to, to the University for at least four years to teach. She was also clear -- the State was also clearly ready, willing, and able to continue to employ Dennis Simmons for that period of time. She was, once again, assigned courses to teach full-time -- it's full-time faculty, and let me identify that document for you. I will show it to you that I'd like to make sure you're aware of the number. It's part of Exhibit 5. April 9 she was sent this form identifying her as full-time faculty, and listing the courses, and not just the courses. They listed the course numbers, times, the rules, and this is very specific. Nobody could reasonably look at this and think they did not have a teaching assignment employment to South Carolina State for the Fall 2008 semester.

With the P4, she was -- at least maintained her salary of $55,000, what it was before the temporary adjustment in 2018, and that document looks like this. It's Exhibit 10. This is the P4. And, interestingly, you've heard talk of a P13, and that's what was used for the employment of Denise

Simmons at the PO Station. She didn't have a formal signed contract like this to the field station either. That didn't bother her. She didn't need one to be employed at State. To continue in the service of South Carolina State, you didn't need one of these. She knew that. She'd been operating the field station the whole time under a form similar to this. This is a P4. Then it was called a P13.

So, State was clearly ready, willing, and able to continue to employ Denise Simmons for the period of four years. It was obviously, all the testimony, anxious to do so through professional leave. The State had maintained Denise Simmons' tenure track position and salary.

These were well understood continuing conditions of Denise Simmons employment with South Carolina State in August of 2008 when she went on professional leave, and how did she also know that she had her continuing employment at South Carolina State?

In addition to her course schedule, Doctor, Doctor Ihekweazu, who was the Dean of the University, wrote to her when it got to his attention that she had not returned, and that she had indicated that she had sought and obtained other employment. Doctor Ihekweazu wrote I have been informed that you have not reported to South Carolina State since the beginning of this semester. According to our teaching schedule, you were assigned three courses. I need

you to return to South Carolina State where the University addresses your concerns about your letter of employment.

So, he was going to address her concerns. This wasn't something where we said we're not giving you a contract. We're not employing you, stop that, and go away. She was clearly being told look, we're gonna address your concerns. You've got a job here. We need you here teaching our kids as you promised, and what did she do?

This is the same day, August 23rd, that same day. She signs the contract with Virginia Tech. She can't credibly assert that she did that and didn't understand that she would have employment, opportunity to continue to remain in the service of South Carolina State under terms that were, at a minimum, known to her of salary, tenure, and work assignments.

Accordingly, the terms of the 2008 agreement were understood, and this agreement, the other documents we looked at, State fulfilled its obligations under the agreement, and State is -- was lawfully entitled to expect Denise Simmons to honor her agreement and continue in the service of South Carolina State. This is what the facts add up to. However, in August, 2008, Denise Simmons -- in August, 2012, sorry, Denise Simmons sought and secured employment at Virginia Tech and did not honor her end of the bargain. Denise Simmons had two choices under the 2008

agreement. Continue to work for South Carolina State or repay to State the money State had paid on her behalf.

She didn't do either. She didn't even inquire of what, you know, what would be the amount that I would need to pay back if I wanted to go back elsewhere. In other words, she failed to perform her obligations under the contract, and, thereby, breaching the contract.

Now, what has been Denise Simmons response to this?

Essentially, it's State didn't send me an assignment letter over the Summer of 2012. So, I thought I was not employed there in the Fall semester. This excuse just doesn't add up in light of the facts.

What are those facts?

A lot, a lot of lawyers are gonna be analytical. So, we like to do number points and things.

So, one. The 2008 contract didn't require a specific professional agreement or assignment letter. There's no required form of document for continuing Denise Simmons' employment in this agreement.

Two. All the elements of her employment with South, South Carolina State stayed in place while she was on professional leave, tenure track, salary. She was provided her courses.

Four. Her four years while she was at State came with -- while she was at -- while, while State was paying

her tuition and financial support, Denise Simmons had no problem calling or writing to State to make sure State had everything it needed to process her payments, and that she had employment during that time. So, she had no problem if it came to, you know, turn to Ms. Darby and Ms. Pyles, talk about to the structure of those grant payments. They give you two-thirds up front, and one-third when you submitted things showing you completed what you're suppose to do, and that was -- Doctor Simmons testified would happen regularly throughout the year. She had no problem in, in calling Ms. Darby, writing to Ms. Darby, making sure that the documentation was in place that she needed to get paid.

But when it came to wondering would I have a contract with South Carolina State in the Fall of 2012, when she's looking at employment with Virginia Tech, she didn't write us at all. There's no letter whatsoever, no phone, no communication prior to August 16th when she said I've sought and secured other employment. Nothing saying I'm worried I don't have a contract. Nothing.

Now, think about this. This is repeatedly. I mean you've heard 10, 20 times this -- my entire goal is to return to South Carolina State, and, you know, bring my experience back to benefit the students. If that's your entire goal, that's been your goal for the past four years, the goal in getting a PhD, then you're not even gonna bother

to write a letter saying yes, I want to come back, I haven't got my contract, I'm concerned. It just doesn't add up that that was, in fact, a real concern that she had.

You know, I say how do we know this. And if you look at Exhibit -- well, I'll finally get it. You know, for example, this is Exhibit 4, and it's a letter Denise Simmons wrote July 7th, 2010. You know, she just wrote to Ms. Darby. Hello, Ms. Darby. Thanks for your call yesterday. I've attached my own I10 contract. Let me know if you need anything else, and then she -- funny thing. I do not have my contract for 2010/11 time. Can you send me a scanned copy via email. That's all it would of taken for, for the -- in the Summer of 2012. Yet she wouldn't even do that.

She knew how to write Ms. Darby. She was comfortable with writing Ms. Darby. She did it continually throughout the year, and she never raised a concern. It wasn't she who initiated the call to Ms. Darby on August 23rd. It was Ms. Darby on behalf of South Carolina State saying we need to get your contract worked out, and I need -- as I recall Ms. Darby's testimony, she said something to the effect of look, if you come here, we'll get it worked out. But Doctor Simmons wouldn't even step foot on South Carolina State campus in August of 2012. She couldn't even come in to talk to the provost, the vice-president, Doctor Ihekweazu, you

know, who wrote those letters of support for her grant application, and that he was a fan of hers. And he's not someone she could of been intimidated by or scared by or feel she couldn't talk to if she had concerns about her contract.

She didn't do any of that, and if you look at, we'll get to it in a second, sort of this stream of those emails, she never once initiated contact with South Carolina State from April through when she left and through the letter -- letters in August -- August 23rd. She never once initiated the contact regarding her teaching or her employment.

Simmons said, Number 4, Simmons had routinely not signed or received her annual professional agreements from State until mid August. She knew that time was not of the essence with regard to these pro forma documents.

Now, you look at them. They're Exhibit 3 and look through them. Their 2008 contract is August 14, '08, and then that's when both Denise Grant and the President signed it. So, these are documents that were sent out in June. The President isn't signing these until August 14. August 15, 2017, and that's the one where it says signed contract been received on August, 2007, and that was even though the contract said in bold, you know, it expires on August 10th, 2006, and, you know, this one isn't even

dated. The signature's not dated by the President, but this is August 16th, 2006, that she signed it, and these, these were not the make or break of whether she had the opportunity to continue her service at South Carolina State under known terms and conditions of employment.

Five. She had no contract for the field station employment like these, and that never seemed to bother her. She knew. She didn't get work. She'd get paid. There's a P13 in the system. Never -- that was never an issue of I need to get a formal contract document before I can even begin my work there.

Number 6, and let's look at the emails themselves now from 2008. Now, I'm gonna agree with a little timeline because it gets kind of confusing on these email streams. I hope this won't collapse.

So, the first email, Plaintiff's Exhibit 5, starts with on the stream at the bottom of Janice Guinard who's administrator in the department that Denise Simmons worked in it. It's to Denise Simmons, and it attaches the teaching schedule. So, April 9th, I hope this -- it's kind of a weird surface. This was the teaching schedule.

Now, because she had an actual concern about her teaching schedule, she responded within five hours I think after the time. It was sent to her at 2:43 on April 9th, and then at 5:58, it's a little over three hours later, she

responds to Doctor Okafor raising her concerns. This is just about a single course. If she actually had a concern about the contract, whether she actually had employment that was the fulfillment of her entire goal, she wouldn't of waited four months to respond and, and just let this time -- the clock tick out as, as she would have it, and she only waited three hours just on a course schedule change. But then -- so, April 9th we have the teaching schedule is sent, and then Doctor Simmons to Okafor about the teaching schedule.

Now, April 11th, Doctor Okafor responds and says that she needs to get up with Doctors Ihekweazu and Chen about changing her schedule if she wants to do that, and Okafor -- Doctor Okafor timely responded to her concern, but there's no mention here about boy, I'm worried about the arrest I've heard at South Carolina State or the financial problems I've heard there. It's simply a note about changing a course, and Doctor Okafor concludes this email with the statement if you have any further questions, please let me know, thanks, and Doctor Simmons never responds to this email on April 11th.

She doesn't respond in April. She has no questions to call them about. She doesn't respond in May. There's no questions for her to be talking about. She doesn't respond in June. No questions for her to talk to him about.

Doesn't respond in July. Still no questions and doesn't respond in August, in fact.

The next email is actually again from Janice Guinard, administrative assistant, and this is Exhibit 6, of August 13th. So, there's no indication and State has no notice that there's concerns about Ms. -- Doctor Simmons not getting a contract. There's no, no red flags raised. No yellow flags raised. As far as -- you know, they're concerned. Look, we sent her the class schedule. She'll show up and teach. That's what the expectation was.

The -- August 13th, Janice Guinard sends out the memorandum. Faculty and staff departmental meeting, Fall 2012. Please do everything possible to attend this meeting and that's for August, August 16th. It's important enough -- Doctor Okafor just redistributes it again to make sure that it gets sent out. Denise Simmons is listed on this day, the one, the one sent out by Janice Guinard, and the one sent out by Doctor Okafor.

So, nothing -- there's no communication or concerns raised this entire time from April until August 13th, and, again, it's not Denise Simmons raising the concern. It's Doctor Okafor and the school.

So, then, in response, we get Exhibit 6. They have the faculty meeting on the 16th, and then the evening of the 16th, Doctor Simmons writes I left you a phone message.

My cell phone number is not changed. Same as, as is on -- oh, I'm sorry. I hope you had a productive summer. I have not received an employment contract today. So then is the first Doctor Okafor or anybody at State is aware of that. I have not received an employment contract to date. I have not otherwise heard from you or your office. But that's not true. She had gotten her class schedule, and she had been sent twice the notice of the faculty meeting. I'm a bit distressed, but have sought and secured employment.

So, instead of just writing Ms. Darby, funny thing, I haven't got my contract, she goes and applies and gets a whole other job?

I mean that -- is that -- that doesn't add up, but that's what she did. So, she doesn't contact State at all about her concerns about employment, but instead has sought and secured employment elsewhere, and that comes in an email dated August 16th at 4:53PM after the faculty meeting.

So, I have sought and secured employment, and all this summer she's at the field station in Aiken not too far away, and never bothers to even come up on to campus to, to, again, talk to any of the nice people that you've heard that have supported her application for professional leave.

So, August 16th was the first the State hears that she has sought and received other employment. So then, again, there's no -- Doctor Okafor responds to that on

August 17th. So now all he's been told is she has sought and secured other employment, and that I have not received an employment contract to date, and have not otherwise heard from your office. But he writes back thanks for your email. I hope your summer went well. Based on your email, there's no viable number to call you, and her email lists a phone number that's in, in Orangeburg where Doctor Simmons is not, and that's -- you know, she still -- even though she's saying she doesn't know she has a job, she's still got a South Carolina State email account that she's back using. South Carolina State phone number that she's using.

So, hope your summer went well. Based on your email, there's no viable number to call you at. Since the summer, there's a, since -- the number there is a school number and you have not been here for a while. I had also contacted you for our semester departmental meeting or didn't you get the email. If possible, call me so we can discuss. By the way, a lot of people have not yet received their contracts. So that should not discourage you.

So, he's telling her the fact you haven't got a contract doesn't mean you're not employed, but wants her to call and wants to, you know, engage her. I mean it's -- but he's -- says no contract should not discourage, and, again, that's part of the record. Doctor Okafor is the chair of the department, but he doesn't have the authority to issue

contracts. Salary discussions would start with him, but he said I don't need -- I asked him well, are you sure she's got a contract. He said no, that's not my job. I just -- I don't issue contracts, but no contract should not discourage you.

Now, the next contact with Denise, and, again, it's not Denise Simmons following up on this. Ms. Pyles, not Ms. Pyles, Ms. Darby called or sent her an email or called her the day before I believe her testimony was, and then sent her an email. Exhibit 3. That was sent out on the morning of August 23rd, 2012, saying good morning, Doctor Simmons. Please give me a call today. Thanks so much and have a good one.

Okay. This is when the next contact that we had, and then there's the call to Darby. Darby says come on in, we'll get your contract worked out. But after -- I think this is an important bit of time. After October -- August 17th, while Doctor Simmons says she was considering the offer from Virginia Tech, she doesn't respond at all to Doctor Okafor saying don't be discouraged about the cont -- not having a contract, and she doesn't reach out to anybody. She doesn't -- again, doesn't call Ms. Pyles or Darby and ask where is my contract.

So, August 23rd, this starts off with a call from Pyles or an email from Pyles. I'm sorry. I'm sorry.

Darby. And then, after the email to Darby, she does call Darby, and that's when we get a -- follow-up email exchanges on the 23rd, and chronology -- I guess the chronology there.

Okay. So, 11/12 then -- dated August 23rd, the next line is, and Ms. Simmons -- Doctor Simmons writes, getting back to, to Doctor Okafor who doesn't have the authority to issue contracts, and says hi Doctor Okafor. I left you a phone message. My cell phone number has not changed. Ms. Darby and I spoke this morning. She has a time related issue and needs to be -- needs to be resolved today, and she needs to hear from you. We need to speak regarding this employment.

But she doesn't say since Ms. Darby has a time related issue. She doesn't say I've got an offer from Virginia Tech I got to decide on today, and, you know, I'll be in. If we can really sort this out, that would be great. It's just very cryptic. It doesn't say who she's got an offer from. It doesn't even say that she's still contemplating employment at another institution. It just say Darby has a time related issue and we need to talk or we need to speak regarding employment.

The next email is from Simmons to Okafor, and this is soft of when she says oh, I was surprised with the phone call with him about his tone that he said and questioned

whether I'd be coming, coming back at all. Well, of course he would because she told him, on August 16th, that she already sought and secured other employment, and hadn't shown up on campus that whole time. And Okafor testified he had this time, when she said she sought and secured other employment, effectively then it referred it over to Doctor Ihekweazu.

So, then, on the 23rd, Doctor Ihekweazu writes, at 1:15, and that's where he says I need you to return to South Carolina State while the University addresses your concerns about your letter of employment. So far from, you know, repudiating her employment or saying she didn't have a job, he says come and we will work it out. You do have a job here. I think that's the substance of his testimony, and certainly the substance of his letter here, and Simmons replies at 9:05PM that by saying I think you've been misinformed. But at that time she'd already signed the, the contract with Virginia Tech, according to her testimony, and the ship had sailed at that point.

She also doesn't identify -- she, she doesn't write back the evening of August 23rd saying look, I'm going to Virginia Tech. I've got an offer there. It's a one year interim position. You know, I'd like you to consider extending my professional leave for another year without pay so I can take care of that. You know, there's nothing --

there's -- you know, it's a -- it's sort of like a, you know, a person who's trying to avoid a date and set up two weeks early, and sort of saying oh, I didn't hear from you, so I, you know, I made other plans. Not -- just no information about what she's doing, what her plans are, what the options are moving forward. Simply 9:05, I believe you've not been accurately informed. I have received, so far, one email last week from Doctor Okafor and phone calls today from Doctor Okafor.

She'd also spoken to Darby, and she says Darby -- Deborah Darby has also called leaving a message yesterday. We spoke early AM today. Please let me know if I've missed something. It's no content to what her concerns are, even her intent to go and take other employment, or where it is or what the options might be. This is not a substantive response to an email where you've got kids sitting in classrooms at the beginning of a school year, and when she is suppose to be returning to fulfill her end of the bargain of what is essentially an eight year agreement after State has provided its financial support and professional leave for four years.

So, it's -- the other things we know is, in this timeline, she -- there's another timeline I think. Let me get back to these.

Okay. So these emails themselves are from 2008 show

her evasiveness add up to one thing. She did not want to return to teaching at State. I don't think anywhere in here does she say I really want to return to State. I've got a concern. How can we work it out. Instead it's August 16th, first time we really hear from her on this. I sought and secured other employment.

What further corroborates this or supports this view of the evidence, if this is what the facts add up to, is Denise Simmons' own several year history with Virginia Tech.

Now, in 2010, on her own CV, she writes -- and this is her CV. This is her words. Page 4 of 7, Exhibit 11, and she attended, in 2010, Virginia Tech future faculty development program participant, and this was a program that was paid for by Virginia Tech. Doctor Simmons didn't have to pay to go. This was paid for by Virginia Tech. Virginia Tech all expense paid workshop, and the workshop program is part of a comprehensive strategic faculty recruitment at Virginia Tech. That's 2010.

What else do we know?

She was at -- working on collaborative grant, and her words, not mine. That's what was in her deposition, a collaborative grant between Clemson and Virginia Tech. She worked on that, and Julie Martin's testimony was that went over several years from -- before 2012 dating back to 2009 or '08 when she was working on this collaborative grant

process -- grant with Virginia Tech.

Third. March or Spring of 2012, right?

She's suppose to be getting -- finishing up her PhD getting ready to come back to State. She'd gotten this class schedule notice. She applies for a visiting professorship job at Virginia Tech. When you add up the facts, it just is not consistent with an entire goal of returning to South Carolina State, going to a strategic faculty recruitment program at Virginia Tech one year, working on this collaborative grant, and then applying for a assistant professor, a visiting professorship just months before you're suppose to return to South Carolina State at Virginia Tech, and then, coincidentally, that's where she ends up working.

So then in the Fall, August, she gets a job at Virginia Tech. That's where she goes to work without even telling us that's where she was going. None of this correspondence -- there's not any correspondents. You don't see any of it in the record from this -- Doctor Simmons indicating where she's telling state I'm going to Virginia Tech. Here's my, here's my phone number there, my address, my email if you need to reach me. And so she's trying to skip out of town without even telling anybody where she was going so we couldn't try and find, find her and question her -- so -- and learn what the details were about why she left and what,

what her expectations were.

And then, after accepting the assistant, the interim -- the research assistant job in August, you know, I think they tried to make a point of oh, well, you know there was a pay cut there, but it wasn't much of a pay cut. I mean it was mid-forties versus mid-fifties, which is just, you know, obviously a significant amount of money, but it's not the -- I think what Julie Martin testified to of half or a third of what professors make. That wasn't at all -- you know, she, she would of made 55,000, at least $55,719 at State. The Virgina Tech agreement -- I'll find it shortly. Oh, I think that's a defense exhibit. Thank you. I apologize for the delay. Virginia Tech agreement, which, by the way, was issued August 15th of 2012, provided for a salary of 48,000.

But then Plaintiff's 12 is the Virginia Tech contract where she became a tenured track professor, and was making in excess of her base salary of $82,500 with at least an over $40,000 in additional add-ons. So, you know, again, you, you wouldn't -- you-all need to add it up. That's your job to weigh the evidence, but I submit, when you go to a faculty recruitment conference as part of Virginia Tech, you work on grants for Virginia Tech, you apply as assistant professor, you then apply again for a research assistant job, which you get, and then, six months later, you get a

job that's worth twice what you would of been paid at South Carolina State, there is some strong motivation there, and add to that notion of she -- Denise says that it's her entire goal or major objective to return to State, but couldn't even be bothered to write a little email, like she'd done in the past, which says funny things about that.

Another point that I think has -- further corroborates State's position is she took Virginia Tech's word over Doctor Ihekweazu's word that employment would be honored. The contract she signed with Virginia Tech was signed, you know, on August 23rd, 2012.

Okay. Says on there that it expires August 22nd, 2012. I think we heard testimony about that. So, she wasn't signing this in a timely manner according to the express terms of this document. It had expired. Somebody at South Carolina -- at, at Virginia Tech had said it's okay. We'll accept it as long as it's signed by August 23rd. That seems to be the, the gist of it.

Same day, Doctor Ihekweazu said come to State. We'll work out your concerns in your employment agreement, but, for whatever reason, she didn't believe Doctor Ihekweazu, but rather Virginia Tech because that's where she wanted to go. That's where her relationships were. She had no reason not to think Doctor Ihekweazu couldn't make the -- ensure that she ended up getting the contract document that she

felt so urgently she needed, but she took Virginia Tech's word, Stephanie Adams, over Doctor Ihekweazu, and I think that shows it wasn't -- really what her intent was that she wasn't gonna honor her agreements to South Carolina State. Really didn't have any intentions of doing that.

There's no question, on October 23rd, that Denise Simmons had employment at State. I think Doctor Ihekweazu clearly told her so, that Doctor Luke had said look, unless you're affirmatively fired, you've got employment at State if you're a tenured track faculty. It's not, you know, common place, but it's not -- it happens from time to time that people don't get their, their assignment letters until after they've started working, but they're in the payroll system. They got the P4. They get paid.

So, there's no question, on October 23rd, 2012, that Denise Simmons had employment at State. The facts add up to only one thing. Denise Simmons did not want to return to State, and, instead, wanted to work at Virginia Tech. She also wanted to avoid her, her contractural obligations to State, and she didn't tell anyone at State where she was going.

Three things are -- really give the lie I think to Denise Simmons' story here are, and ask yourselves, if working at State was really still, as she said in 2008 and as she testified here today, that it still was in 2012, her

entire goal, her passion, and she really had concerns about her employment, wouldn't she just have called or sent Darby an email?

It just doesn't add up that she didn't do that if that was really her concern.

Two. She had -- and, and this, this is a long point. So, bear with me on it. But she had no way of knowing, because she hadn't contacted Darby, whether an assignment letter had been issued to her. Denise Simmons conveniently now assumes that, because she didn't receive an assignment letter, she must have been terminated by State or wasn't being offered employment. But on August 16th of 2012, when she wrote to Doctor Okafor that she had, you know, no contract, no -- and that she had sought and obtained other employment, she had no way of knowing, and, in fact, we still don't actually know why an assignment letter wasn't received by Denise Simmons.

It -- for all she knows, it could of been placed in the mail. She testified she didn't even know how it was submitted or customarily sent to her. Could of been in an email. You know, it could of been lost in spam. She could of had a crisis where, just like she missed -- said he missed the emails on August 13th, she could of missed the email with her contract. It could of gotten eaten in Ms. Darby's printer. It could of fallen off Ms. Darby's desk,

between her desk and the wall. But, again, it could of got lost in the mail. Could of got stapled to somebody else's contract and sent to them. The bottom line is she didn't know. She was just assuming, because it was convenient for her, that she was not being offered an assignment letter.

The point is that there is -- the point is there is a host of more reasonable assumptions to make under all the circumstances of Denise Simmons' professional leave then to jump to the assumption that State had not offered her a, you know, continued employment. In fact, that's the least logical assumption under the circumstances, and particularly in light of Denise Simmons 2008 professional leave agreement, and the amount of money State had paid to ensure that they would have a PhD level female, African-American teacher coming back to mentor their students, to help recruit students, to provide all those services she indicated would be provided.

But it is, it is the most convenient assumption for Denise Simmons to make in order to avoid her promise to State. It's easy to assume oh, man, I'll just say they -- I didn't get my contract. I assume they didn't give me one. And Denise Simmons never wrote to State saying, you know, I have a one year position. Could you just extend professional leave a year. When -- all we've really heard from Denise Simmons is State never communicated with me.

State never communicated with me.

Well, she wasn't communicating with State, and, in fact, we look at we were initiating all of these correspondents. We were trying to communicate with her. She was sort of giving us the stiff arm back.

And, finally, I think it's the -- you know, what gives the lie to Mr. Simmons' -- Doctor Simmons' story is Doctor Okafor testified that when he spoke to her on the -- I think date was -- seemed to be some consensus eventually around August 23rd on the phone, and Doctor Okafor testified she never mentioned a contract. She just mentioned, you know, she wanted to change her courses, and he was saying well, you need -- like you said, back on August 11, you need to talk to these two other professors that maybe they could switch a course with you.

She, she never -- I think the fact that that evidence shows, from April 9th or April 11, when she heard that from Doctor Okafor, until August 23rd, she had not contacted and there's no evidence that she contacted either of those professors to try and reschedule her course.

If she'd really been planning to come back to State anywhere in that period of time, wouldn't you think that she would have followed through with that some time in April?

I mean she, she wrote back within three hours to Doctor Okafor trying to reschedule that course. I would of

thought, you know, she would of called those professors the next day, but April goes by. She doesn't call. May goes by, June, July, August. No evidence she ever called those two professors to try to reschedule those courses, and that's -- you know, Doctor Okafor was still trying to suggest to her you got to contact those guys. I can't just change those courses for you.

I think that shows she never had the intent by coming back or there would of been testimony that yeah, I called those guys and they changed those courses or there wasn't a repeating concern that Doctor Okafor had to keep addressing with Ms. -- with Doctor Simmons.

The fact just don't add up to support Denise Simmons' story. What the facts do add up to is showing Denise Simmons intentionally, wrongfully breached her contract with State.

Now, y'all have the opportunity to consider damages that South Carolina State should be awarded, and the principal amount of the damages that we've really talked about most today is that lump sum payment. Darby testified that that lump sum payment is -- her, her part of that lump sum from the Title III funds was $134,000 -- one hundred and -- $134,157.

Now, Doctor Luke testified there were also State funds that were committed really at the recommendation of Doctor

Ihekweazu, and that was 44,000 per year, and Doctor Luke testified they paid it for four years, and double check my math, but, but I did it -- it was $178,300. But you get a clear visual of the level of investment and commitment that South Carolina State had invested in Denise Simmons' education. And, again, I think I would reiterate they are proud of that. They are, in fact, proud of Denise Simmons and her accomplishments, but they believe she should be held to her word, and they are entitled to that. That is the, the bargain they struck of promises made. Should be promises kept when both sides have made, you know, stated that they will perform certain actions and reliances on, on those promises.

State gave her professional leave for four years and paid over $300,000. I mean this is seven -- $312,000.

Now, you'll also have an opportunity to consider, under contract law, special damages, which are unique damages that are unique to the breach of the contract. You know, someone breaches a contract should know the other side will suffer.

Now, we don't need to look very far to see what Doctor Simmons should have known the district would suffer if she didn't come back. They bargained for, you know, her to come back and expose the students to specialty areas, to teach students. Doctor Ihekweazu, Doctor Okafor, and Doctor Okafor I believe testified they couldn't replace her with a

PhD faculty person that year. I suggest a reasonable measure of those special damages, what was suffered by State and its employees in having to cover her classes with students, it was institutional harm to State. A figure to put on not getting the benefit of the bargain that they have paid so dearly for would be one year of Doctor Simmons salary. That's what we were, of course, willing to pay Doctor Simmons to perform those functions, and that, that amount was $55,719, and that's from her P4 and her 2008 contract. The five -- so, lump sum damages, special damages.

South Carolina State would respectfully submit that it's entitled to holding Doctor Simmons to her word to payments in this amount, to damages in this amount, which -- I haven't said what it is. Please, you know, double check my -- it's $368,176. I told you this was bad math, all this.

But, again, ask yourselves what do the facts add up to. That's what you're here for. Apply common sense to the evidence that you've heard. Ask yourself what do, what do the facts add up to. They add up to Ms. Simmons knew she should of come back to South Carolina State and teach, knew she had a job, knew that she would at least not make less than what she made in 2008, knew what her course schedule was, what she would be doing when she came back, and knew

that she'd still be tenured track.

I submit those are the, you know, material terms of the agreement, that South Carolina State fulfilled them honorably, four years, paid what it was required to pay, did what it said it would do under the contract.

Now, when it came time for Doctor Simmons to return the promise, live up to her words, she didn't, and I respectfully ask for a verdict in favor of South Carolina State for $368,176.

Thank you very much.

THE COURT: Thank you, Mr. Reagle.

Mr. Ormond, you want to take break?

MR. ORMOND: Do we have any time limits?

THE COURT: Huh?

MR. REAGLE: I'm sorry I---

MR. ORMOND: I understand.

THE COURT: You want to take a break before you start?

MR. ORMOND: No, Your Honor.

THE COURT: You ready?

Okay. Thank you, sir.

MR. ORMOND: Thank you, ladies and gentlemen of the jury. Appreciate your time and I know this has been a long ordeal for all of us. I'm not gonna take the kind of time that Mr. Reagle took. I promise. First of all, cause you wouldn't like me if I did, and I'm not gonna take a break

first cause I know that you want to get this done.

It appears that South Carolina State University wants Doctor Simmons to pay her salary that she would of been paid, and everything back that they paid and the Federal Government paid through grants because of her not returning to South Carolina State University.

Now, you-all have listened to the testimony. You know what it -- what people said. You know what witnesses said every bit as well and possibly better than I do. So, that's what counts. What counts is what you heard. Not what we say happened.

For example, Doctor Simmons, this is just an email. Doctor Simmons -- oh, 2010. Look at that.

In 2010, Doctor Simmons wrote an email to Deborah Darby, who handles human affairs and who handles contracts, and said she hadn't gotten a copy of her contract. She had a contract. She hadn't gotten a copy of it. That shows that Denise Simmons really did care and worry about contracts.

If you remember the testimony, Deborah Darby said well, during the time you're on this leave, during your time you're up at Clemson, you don't need that contract. You don't need to have that every year. But Denise Simmons, who had been worried that she did need that, and she had not gotten a copy. You'll be able to take a look at that and

say I didn't get a contract or I didn't get a copy of my contract.

It appears that South Carolina State University, at least at this point in this trial, believes that Doctor Simmons was never really motivated to return to South Carolina State University was cause look at -- think about the common sense of that.

First of all, when trying to go to a PhD program, everyone who has been asked this question has testified to this, and that's been four people, Doctor Simmons, Doctor Martin, or three people, and Doctor Okafor. There were many ways to fund this. She could of funded it in a way that didn't require her to return to South Carolina, and still get a stipend, and still be able to live while she's going to get her degree, have tuition reimbursement, and all of the things she got under Title III. She got Title III because her Dean at the time, Dean Lewis, mentioned that to her, and this is in 2008.

Why don't we do Title III?

That's a good idea. She wouldn't have done that if she had no intention of returning to South Carolina State. It wasn't that this, this is the only way she could go and the only way she could find a PhD program. Doctor Martin said that. There's many different ways. Doctor Okafor said it. If you're a PhD candidate, especially in engineering, you

can fund that with loans -- I mean without loans, with stipends, with tuition, all that, many different ways, fellowships, and all of the things that were discussed. It would make no sense that, if she wasn't motivated to return, that she would do that in the first place.

She worked hard during her PhD program. Yes, she did contact, because that was required of her, the University, South Carolina State University, with the information and the paperwork, and, yes, that was required to do if she was going to get her stipend, and the tuition reimbursement, and that's what she did. In October of 2012 -- April of 2012, and that's early in the Spring, there's no issues of whether or not she's going to be given a contract. It's months prior to that. She is given a class schedule that she testified well, good, that's, that's good. Yes, I've heard some things about South Carolina State during this time, but they're giving me a class schedule, and, yes, she had an issue with one of the classes that she hadn't taught before.

Doctor Okafor replied I think the next day or maybe a couple days later saying, you know, you're gonna have to do this or you're gonna have to switch with somebody else. Doctor Simmons testified okay, that's fine. I can do it. I'll just learn it. I'm not sure even why that's brought up, but what that shows is why would she even respond to that email if she wasn't motivated to come back to South

Carolina State University?

Now, the issue here is whether she got a contract. I understand that now South Carolina State University is saying that these contracts that are given to almost all professors, really teachers of all types before the academic year starts, are really just pro forma. In other words, they really don't matter a whole lot. But the contract themselves, and this is -- say if you don't sign this, this must be signed on employee return, or this is deemed a rejection or -- of offer of employment. You're not employed. You're not hired.

Now, the Judge is gonna tell you, when he gives you the charges, that a service agreement of somebody going to work for somebody, for example, has to have terms. It has to have terms of compensation, what you're gonna be paid. Nobody's gonna go work and not know what you're going to do. Nobody's gonna work without knowing about what you're gonna be paid and what you're gonna do.

Now, the defense says well, she should of known that. It was a P4. Well, a P4 was an internal document. Denise Simmons never saw a P4, and what she was being paid was the $35,000 plus the additional for the federal. That's not what -- a PhD engineer, which, which we have, but a PhD engineer at a, at a University, South Carolina State or Virginia Tech or wherever, is gonna make a lot more than

that. They've put a lot -- they've taken a lot of life experience. They've taken a lot of time. That's what they're gonna make. So, if that was what was on the books, then she needed that to be negotiated. She didn't quit this field directly.

Motivation. She didn't quit as field director. She stayed on and worked, not only full-time in the summers, but part-time a fair amount during the academic year, and she told you what she did. I'm gonna be honest. I'm not sure I understand all of that. I'm not an academic. But she did grant writing. She traveled to the 29 other universities, mostly HBCs, that were a part of that field camp. This was a South Carolina State organization. She stayed there and she continued working there during that summer full-time.

Now, I understand that South Carolina State says well, you know, geez, she didn't get a contract for that. Well, yes, she did and she testified to that, and even though it's called a different thing, it's a P13. It's an appointment letter. Here's how much we're gonna pay you. Yes, we're going to hire you, and here it is, and they never didn't do that. She worked as a field station director in the summers I believe for seven years. The four years while she was at Clemson, in addition to doing it during the academic year itself, and the three years while she was at South Carolina State teaching.

She always got an appointment letter, a P13, before each one.

Why does she think she needed a contract for faculty?

Well, the first thing is that the Dean at the time that was there when she first started and within the four years said if you don't sign one of these, if you don't get one of these, you don't get paid. You are not an employee. That's why she was upset about it. That's why she was worried that she hadn't gotten a contract.

In 2012, in the Summer, and, and prior, in the Fall, she goes through the rigmarole of going to Clemson, making sure that her transcripts are sent to South Carolina State University. That's the only way you're gonna become a faculty anywhere. She didn't send the transcripts to Virginia Tech. She didn't send the transcripts to South Carolina -- University of South Carolina. She didn't send any transcripts anywhere other than one place, South Carolina State University. Her motivation, her desire, obligation was to return, and that is what she did.

She did not look for other faculty positions that summer, private -- that was when you look. You get your PhD. You have it in your pocket, and if she had no desire to go to South Carolina State, she had a desire specifically to go to, as a single black woman, to Blacksburg, Virginia, if that was her desire, then she would of just gone ahead

and sent the transcripts there or she would of applied to become a faculty member. She didn't do that.

What she did was, in August or thereabouts, some people can't remember exactly when it was, Julie Martin, somebody who has absolutely no dog in this fight, decided to assist her because she hadn't gotten a contract, and they were worried about that because at least, in Julie Martin's prospective, you don't work unless you have a contract. You're not employed unless you have one of these contracts that actually say you're not employed unless you sign this, and they got her a temporary position through a grant. I don't understand all the grant stuff, but -- and had they not -- she was fit for that position in August, and it was offered to her on the 15th of August, and she didn't accept it yet, formally, until the 23rd. The drop dead date, at least in Doctor Simmons mind, and the drop dead date probably in reality since the next day was classes, October -- August 17th of 2012, the drop dead date for her to have a contract was August 16th, and she sent that email.

Now, maybe -- she wasn't all that happy about things. Maybe she could of sent an email that was a little bit better than that, and, yes, the employment she had secured was that offer from -- for this joint grant program between Clemson and Virginia Tech for an academic year with no

guarantees of anything else for less money than she was aimed at making four years prior with a Master's Degree at South Carolina State University. It makes no sense to suggest that her motivation wasn't to return, and she had absolutely nothing done to get a job on August 16th, 2017.

Could she have emailed or could she have done something more?

Maybe. Her mother or grandmother, I'm sorry, had just died. That's true. But she did notify them that should be pretty clear that she was worried that she didn't have a contract on August 16th, and instead Doctor Okafor writes her back and says well, you know, there's others that don't have a contract.

Well, in her experience, and what Deborah Darby said on the stand, was that professors always had contracts. She didn't know of any professor ever that worked without a contract, and she had been in academic affairs, the organization that does contracts, for 29 years of 30. I can't recall which one. A long time. So, that's what Ms. Darby said at least as to that.

She had always gotten a contract prior. She had always gotten a contract prior to classes starting. It was sent either by email or otherwise. She always have gotten one and she didn't get one this time, and now, at least Doctor Okafor knows, that's her problem. She doesn't have a

contract, and yet they still don't send one or they don't write anything and say oh, you know, sure enough we've forgotten that, let's get you one, or at least a letter of appointment saying how much you're gonna make and so forth. But she got one of those every time before. Every time.

What did Deborah Darby say?

Deborah Darby said that well, they have drafted an appointment letter, that's true, and she couldn't remember when it was, and it had July 23rd on it. But she thought it was done maybe earlier, and then her deposition, and she was -- it was later, maybe in August some time, but there was one thing that said that was not unclear in any way, and that was the appointment letter was never sent out. I understand the Plaintiffs here, South Carolina State University, would say well, you know, how does she know she didn't get it.

Well, she's not gonna get it if it wasn't sent out, and Deborah Darby said that it wasn't sent out. She said it in her deposition. She said it here. She also said that she had been trying to get a hold of Doctor Okafor to -- because he is the one that would negotiate the salary. She's coming back. She now has a PhD. Doctor Simmons didn't know who that would be necessarily, but it turns out it would be Doctor Okafor. That is who was suppose to do that, and that is who never did that, and Deborah Darby stated yes, I did

tell Doctor Simmons on the phone that Doctor Okafor was suppose to do that, one, and, number two, Doctor Okafor, I've, I've tried to call him or leave him some -- left some messages and have been unable to get a hold of him. And this is all around August 23rd.

Deborah -- Denise Simmons emails Doctor Okafor. There's, there's -- we need to talk about employment. We have all these emails here. I'm not gonna go over that again because that would take too much time. But she does say we -- Deborah Darby has a time sensitive issue, i.e., her employment. We need to discuss this.

All right. We've come to the big dispute in the case.

What in the world did that phone call consist of?

Well, at first, in deposition, Doctor Okafor didn't remember, remember the phone call. I couldn't ask him in deposition what it was about because he didn't even remember it happening.

Two. He states now that well, all they talked about, when the whole issue was employment, when the whole issue was a contract, was this April class schedule thing. Doctor Simmons states that's not true. We did talk about employment. I asked about an employment contract. I said I needed an employment contract. Yes, he said well, come on it. She said well, I need an employment contract, and I will come on in.

How hard would it be to get an employment contract together?

It's a form. It doesn't mean somebody has to type it up. Put in a number, maybe talk about it a little bit, show that it's a standard salary for a PhD level engineer, that it is in the forties, has a lot of experience, and give it to her, and say here it is. We wouldn't be here today. Either if she declined it, she said no, you know, forget it. I'm not gonna, I'm not gonna take a contract.

Well, then, our side, it's over. But they didn't. They didn't send it. I don't know why. Yeah, maybe it was inadvertently misplaced. Maybe there was a snafu somewhere in the administrative process. But it shouldn't have been a snafu that wasn't corrected at least after the 16th. Her issue was I haven't gotten an employment contract.

On the 23rd, we need to discuss employment. I understand that Doctor Okafor says no, we didn't discuss employment even though that was what the call was suppose to be about at least per the email. So, yes, they're diametrically opposed determinations on what in the world that conversation was about.

Doctor Okafor -- yes, Doctor Okafor said to Denise Simmons I'm surprised. I didn't even know you were returning. Well, that was in the context of whether or not she was returning period. Not whether or not she had this

16th employment date. You can tell from the contract. Plus he was not -- he was terse. It sounded to Denise Simmons like he really had no desire, for whatever reason, for her to return, for her to get a contract. And since no contract -- again, you can attach it -- it's in the -- now we're in this century. I wish we weren't sometimes, but we are. You can take one of these things, you can fill it out. You can -- it's a form and you can send it by email. A click of the button. That is all they had to do. And if she would of gotten that, and said yeah, you know, come to think of it, maybe I won't. She testifies that that's not all what she would of done. She would of come.

She was there. She was in the Aiken, Aiken campus. Maybe at some point she was at the funeral of her grandmother, but she was there. Doctor Martin states, and, again, an independent witness, states that she had no desire to do anything but come back to South Carolina, and the only reason why they even discussed, and she helped her get this interim position, again at less money that she made even four years prior, was because she hadn't gotten a contract, and, in her mind, if you don't sign and get a contract of employment by the start of classes, then you don't have a job, then you haven't been hired.

I understand there's some conspiracy theories about oh, it was Virginia Tech the whole time, and she had made a

decision to do that. If you really think about it, that doesn't make any sense.

Yes, she went to Virginia Tech professional development seminar in 2010. That's true. So did probably hundreds of other people.

Doctor Martin had worked for a year at Virginia Tech. They corroborated with her colleague at Virginia Tech. Clemson, Virginia Tech, (indiscernible) or land grant colleges, on a couple of grants. So, yes, Doctor Simmons would know about Virginia Tech, and that would be the way that Doctor Martin, at the last minute, could help her get an interim position. Not a faculty position. Not what she wanted. She lost that whole year of tenure, in addition to whatever income she lost. And suddenly contracts, or at least these aren't so important anymore, but the memorandum while understanding, is.

The Judge will tell you that, in any contract, that the terms aren't specifically there. No, it didn't say that she gets a contract. It didn't say she didn't get a contract either. It didn't say you will return whether or not we hire you or not. It didn't say that either. It was silent on that issue. And if the -- if it's silent, you can go outside, and there are, of the contract, to try to determine what the facts and circumstances are.

This was an agreement to agree. They would agree to

hire her for as much as four years. They didn't have to hire her for four years, but, if they did, she'd have to stay for four years or return some money.

She could of done this PhD without all of this. She could of done it without Title III funds and been just as fine, and she didn't because her motivation was, and that's really what it comes down to, ladies and gentlemen, her motivation was to return to South Carolina State. By 2012, maybe there was some problems, and they were making the news. That's true. But that also makes it make sense on why she thought maybe she wasn't gonna get a contract. Had there been no problems, maybe she would of called and said look, you know, you guys seem to be okay. Are you able to fund my, my employment. And if the answer was yes, then here is a contract, please sign it, cause we're already starting classes the next day on August 16th.

She had a choice.

Do I take a chance?

Do I have any -- do I go there with no kind -- no contract?

No idea. Nobody even mentioned what she might be making. Nobody even mentioned whether there'd be a salary commencement. Nobody -- she didn't -- Okafor never -- this is not disputed. Doctor Okafor never did negotiate this salary. Maybe he didn't know he should. But Deborah Darby

told her that's who was suppose to do it. Nobody else did it.

So, she had a choice, and she took this interim position. But both Doctor Simmons and Doctor Martin have testified she needed to. If she had to, it would be tough, but she could get out of that contract. All they needed to do was send her a contract. Here. Attach it to an email. Here's your contract. Here's how much you're gonna be making. Here's the terms. You're tenure track or not.

Doctor Simmons had no idea whether she was still on as tenure track. She had been gone for four years from the faculty position.

One party to a contract can't hinder the performance of another party. In other words, you can't hire somebody to build your house, and then make it difficult for them to get in to do it, and say oh, they didn't build my house. That's what we have here. They did not -- they hindered. They did not allow her to perform her side of this contract because they did not give her an employment agreement that hiring occurred.

Now, who knows where the truth is as far as whether or not they would have said well, that's fine. They don't need one of these things this time. But that is certainly what Doctor Simmons thought, and all of the evidence suggests that's what she taught. And if anybody -- and teachers get

contracts before their academic year, and, if they don't, that was one of the things that Okafor said, and, if you don't, you're not working there.

He assumed that the people that showed up to the faculty agreement had their contracts. That's what he said.

Why?

Because they had shown up. If they hadn't, there'd be no reason to show up because they didn't have a contract.

Damages, again, much of this is federal money that I guess South Carolina State wants to use. Fair enough. Some of this is in addition to what they paid her. They're saying, in addition to that, we, we lost the ability to have your services. So, we want your salary, what that would of been. They say it would of been $5,000. That's still less than what she made the last year that she worked there, 2008, as a faculty with a Master's Degree, four years later, with a PhD.

So, maybe they weren't gonna pay her that much. They had an obligation to be reasonable to her too. She didn't sign up for this -- for her to work for nothing when she came back. She did work too, and, again, she could of gotten this PhD without Title III. Obviously I'm sure she wishes that now.

Most of this is federal funds. Some of it is essentially trying to have two cracks at the apple. Not

only do you pass back everything we've paid, but we want your salary that we did not have to pay you because we, we didn't give you a contract, and you didn't come to work. They didn't hire somebody then. As a matter of fact, they didn't hire somebody until the next year. '14, two years without someone. Maybe they didn't have the money to hire somebody else.

Testimony was clear. South Carolina State then -- the enrollment was down. When enrollment's down, you don't have as much money. It's not a fortunate thing. It's too bad, but it's true. Same with the engineering school.

Common sense should dictate that all they had to do was send her a contract. That's it. And it's simple. And they didn't do it. And that's not disputed in this case.

They didn't send her an appointment letter. They didn't send her a contract. Either would of done. It's undisputed that they didn't do it and they never did it.

Thank you for your time.

THE COURT: All right. Thank you.

All right, ladies and gentlemen. Final little bit.

Y'all comfortable enough for just a few more minutes?

Okay. All right. Just want to make sure, okay, because I got to go through this. It's not, it's not as bad -- quite as bad as it looks.

Okay. Madam Forelady, and ladies and gentlemen of the

jury, you've heard the evidence and arguments in this case, and now I'm gonna explain the law.

South Carolina State University, the Plaintiff, claims that they've been injured by the actions of Denise Simmons, the Defendant. In bringing the lawsuit, the Plaintiff claims that the Defendant should compensate them for their damages. The Defendant has denied those claims.

You and I have different duties to perform. As the trial judge, it is my responsibility to preside over the trial of the case, and to rule on the admissibility of evidence offered during the trial. You're to consider only the evidence before you, including testimony presented from the witness stand, and any exhibits that have been made a part of the record in this case.

It is my duty to charge you the law applicable in this case. It is your duty, as jurors, to accept and apply the law as I now state it to you. If you think you have an idea as to what the law is or what the law ought to be, and it does not agree with what I tell you the law is, you must forget that idea because you are sworn to accept the law and apply the law exactly as I now state it to you.

In every case, you, the jury, are the sole judge -- sole and exclusive judge of the facts. A trial judge cannot comment on or make any statement about the facts. Since you are the sole judges of the facts, do not think, by anything

I have said during the trial or that I now say in these instructions, that I have an opinion about the facts in this case. The law does not allow me to have an opinion.

The burden of proof in this case is by a preponderance of the evidence. A preponderance of the evidence simply means the greater weight of the evidence. It is evidence which, as a whole, shows that the facts sought to be proved is more likely true than not true. This can be illustrated by imagining a set of scales. We talked about that at the very first.

When the case begins, the scales are even. After all of the evidence has been presented, if the scales remain even or if they tip even slightly in favor of the Defendant, then the Plaintiff has failed to meet their burden of proof, and would not be entitled to recovery in this case. On the other hand, if the scales tip even slightly in favor of the Plaintiff, the Plaintiff will admit their burden of proof, and you should return a verdict for the Plaintiff. The preponderance of the evidence is not determined by the number of witnesses. Instead, it must be determined by the greater weight of all the evidence.

They're two types of evidence generally presented during a trial, direct evidence and circumstantial evidence.

Direct evidence is the testimony of a person who claims to have actual knowledge of a fact such as an eye witness.

It is evidence which immediately establish the main fact to be proved.

Circumstantial evidence is proof of a chain of facts and circumstances indicating the existence of a fact. It is evidence which immediately establishes collateral facts from which the main fact may be inferred. Circumstantial evidence is based on inference and not on personal knowledge or observation. It is proof that does not actually establish the fact in question, but that asserts or describes something else for which you may either reasonably infer the truth of the fact or at least reasonably infer an increase in the probability that the fact is true.

For circumstantial evidence to be sufficient to warrant the finding of fact, the circumstances must lead to that fact with reasonable certainty. The facts and circumstances should be considered in light of ordinary experience.

To determine the facts in this case, you will necessarily have to evaluate the credibility, which simply means the believability of each witness. Some of the things you may consider as you decide whether or not to believe a witnesses testimony about a particular matter include what was the manner and appearance of the witness who testified. Was he or she straightforward or hesitant in answering. Was the testimony of a witness consistent or inconsistent. How did the witness come to know the facts that he or she

testified to. What was his ability to know these facts. Is there some reason a witness would want to give testimony which would help or hurt one side or the other. In other words, was the witness biased or prejudiced and was the testimony of a witness strengthened or weakened by other testimony of an -- by other testimony or evidence.

Throughout this process you have one objective. That is to seek the truth regardless of its source.

In this case, the Plaintiff claims the Defendant breached the contract that existed between the parties. In order to recover for a breach of contract, a plaintiff must prove the claim by preponderance or greater weight of the evidence.

The first thing that the Plaintiff must prove by preponderance or greater weight of the evidence is that the parties entered into a binding contract. A contract is an agreement entered into by two or more parties in which each party agrees to perform or not perform certain acts. It may be shown by words, written or oral, or by conduct. However, a, a contract is more than the mere exchange of promises. For the agreement to be considered a contract, the parties must have intended to enter into a contract, and must have reached a mutual understanding of the terms of that contract. This is sometimes called a meeting of the minds.

The parties must intend to be mutually bound by the

agreement. To make a contract, there must be an offer and acceptance. An offer is a proposal which is definite and certain in its terms. The offer must be communicated to the other party. The mere intention to do an act is not an offer. In addition, preliminary negotiations are not offers. An offer may be withdrawn at anytime before it is accepted.

If you find that an offer was made, you must next decide whether the offer was accepted. An offer can be only -- can only be accepted by the person to whom it was made. The acceptance must be communicated to the person who made the offer. Unless the offer specifically states that the acceptance must be made at a certain time or place, or in a certain way, an offer may be accepted in any way which lets the person making the offer know that the offer was accepted.

An acceptance does, does not have to be expressed. It may be inferred from the acts or conduct of the parties accepting the offer. However, there must be some expression of the intent to accept the offer either by words, signing, or some act communicated to the person making the offer or that person's agent. If you find that -- if you find that the offer was rejected or was not accepted, then there was no contract, and you must return a verdict for the Defendant.

In addition, each party to the contract must give some valuable consideration to the other. This means that there must be something that benefits each party.

Consideration may be some right, interest, or benefit given to a party. It may also be the failure to do an act, a loss, or responsibility which is undertaken by a party. Consideration may be money, an act, a service, or a promise to do something or not to do something in the future. Mutual promises may constitute consideration.

For example, if I buy a loaf of bread from a grocery store, the consideration the grocery store gives to me is the bread. The consideration I give to the grocery store is the money I give for the bread.

In making your decision as to whether a valid contract exists, you should only be concerned with whether there was any consideration. Not the value of the consideration. You should not weigh the value of the consideration given by one party against the other party's consideration -- the value of the other party's consideration. You are to de -- to decide only whether there was consideration to support the agreement. Not whether the agreement was a good one.

Next the Plaintiff must show, by a preponderance or greater weight of the evidence, that the Defendant unjustifiably breached the contract. The word breach means the failure without legal excuse to perform any promise that

forms the whole or part of the contract. This includes the refusal of a party to recognize the existence of a contract, or the doing of something inconsistent with the existence of the contract. A party breaches a contract when that party does not perform as agreed under the contract by failing to carry out a term, a promise, or a condition of the contract.

The Defendant contends that the Plaintiff prevented her from performing the requirements of the contract. When two parties make a contract, each one is required to allow the other to perform their part of the contract without interference. Each party must reasonably avoid any action which would affectively prevent the other party from doing what was agreed on in the contract. If you find the Plaintiff prevented the Defendant from performing the requirements of the contract, you should return a verdict for the Defendant.

The Defendant claims the Plaintiff failed to perform their duties under the contract, and that, therefore, the Defendant was justified in refusing to perform her duties under the contract. In order to recover damages from the Defendant for a breach of contract, the Plaintiff must show that they did the acts they promised to do under the contract. If you find that the Plaintiff failed to perform their duties under the contract, you should return a verdict for the Defendant.

The Defendant claims that even if there was a breach of contract, the Plaintiff waived the right to enforce a contract by actions taken after the alleged breach of contract. When a person waives their right, it means that the person intentionally and voluntarily gives up that right with knowledge of all the relevant facts.

Once a breach of contract occurs, the Plaintiff must enforce their rights under the contract or lose them. If you find that the Plaintiff acted in a manner which made the Defendant believe that the Plaintiff gave up the right to prosecute the breach of contract, you should return a verdict for the Defendant.

The Defendant claims the parties waived performance of the contract. Parties to a contract may agree to waive performance requirements and to suspend the contract. In that case, neither party is required to perform what is required under the contract. When a person waives their right, it means that the person intentionally and voluntarily gives up that right with knowledge of all the relevant facts. If you find that the Defendant has shown -- that the Defendant has shown, by a preponderance or greater weight of the evidence, that the parties intended to give up their rights under the contract, after they knew all of the relevant facts, then you should return a verdict for the defendant.

In interpreting contracts, you must determine the intention of the parties and put those intentions into effect. In doing this, you must consider only the outward expressions of the parties. You cannot consider any undisclosed or secret intentions of the parties. Contracts should be literally construed to carry out the intentions of the parties. It is the substance of the agreement, not the form, which must control the construction of the contract. When you are interpreting a contract, you are not limited to the literal meaning of any term of the contract if you decide that the literal meaning with the -- would defeat the party's true intentions.

The contract is to be considered by looking at its subject matter, nature, and purpose. When you have determined a general purpose of the contract, you should look at the language of the contract in light of its purpose. When the contract is in writing, you must determine the intention of the parties primarily from the content of the written document itself. The intention of the parties must be determined from the entire agreement, and not from any particular clause or provision. When the written contract is clear, its meaning must be determined by the contents of the document alone.

If the circumstances warrant, terms, terms which may -- terms which do not contradict the written language of the

contract may be implied in order to carry out the intentions of the parties. If a term of the contract could be given two meanings, and one of these meanings would make the contract unusual and extraordinary, while the other would make the contract reasonable and fair, you must construe the term to make the contract reasonable and fair.

A party to a contract has a duty to read it and learn its contents before signing it. A party can not complain of misrepresentation in the contents of a contract if the truth could have been discovered by reading the contract unless the party is ignorant and unweary. Education, business experience, and intelligent -- intelligence are all considered in determining whether a party may be considered ignorant and unweary so as to excuse a failure to read the contract.

Where a term of a contract can be given more than one meaning, you should use the meaning least favorable to the party who prepared the contract. Where the language of the contract has more than one meaning, you may consider the circumstances surrounding the making of the contract to help you determine the real intention of the parties. However, you may not use these circumstances to give the contract a meaning which is not apparent on its face.

Where two clauses of a contract are in conflict, you should accept the one which is stated first and reject the

one stated second if you find that the first clause is in conformity with the rest of the contract. Every contract is subject to all of the State law which can be applied to the contract. In other words, the law becomes a part of the contract whether the contract states so or not. This is because everyone is presumed to know the law.

Where a contract affixes no time for performance, it is understood that the contract will be performed in a reasonable time. If there is a time specified for performance of the contract, it must be performed within the time specified. However, the fact that a contract contains a provision for performance by a certain time does not mean that it must be performed within that time period unless the parties intended for time to be of the essence. An intention to make time of the essence, essence must be clear.

In deciding whether time is of the evidence -- essence in a contract, you should consider the contract itself along with the action of the parties, and the circumstances, conditions, and purposes of the parties with regard to the contract. Where time is not originally of the essence in a contract, it may be made so by one party giving notice to the other party that the party will insist on performance by a certain date. However, the time allowed by the notice must be recent. Whether the time for performance is

reasonable is a question for you to decide based on the circumstances of this particular case. The Plaintiff can not recover for breach of contract for the Defendant's failure to timely perform the contract if the reason for the delay was a failure of the Plaintiff to fully perform their duties under contract.

There exists in every contract an unspoken but legally enforceable promise of good faith and fair dealings. Noncontradictory terms and conditions may be, may be implied in a contract when the circumstances warrant it to effectuate and manifest intention of the parties. A contract includes not only what is expressly stated, but also what is necessary -- necessarily to be implied from the language used and external facts such as the surrounding circumstances. Terms which may clearly be implied from a consideration of the entire contract are as much a part as though plainly written on its face.

In the absence of an expressed provision therefore, the law will imply an agreement by the parties to a contract to do and perform those things that, according to reason and justice, they should do in order to carry out the purpose for which the contract was made. A valid and enforceable contract requires a meeting of the minds between the parties with regard to all essential and material terms of the agreement. Thus, for a contract to be binding, material

terms cannot be left for future agreement.

In a contract for services, two essential terms are the scope of the work to be performed, and the amount of compensation. Regardless of intent, an agreement which leaves open material terms is unenforceable. Even if an intention to be bound is manifested by both parties, too much indefiniteness may invalidate the agreement because of the difficulty of administering the agreement.

The Court cannot enforce a contract unless it can determine what it is. It is not enough that the parties think they have made a contract. They must have expressed their intention in a manner that is capable of being understood.

The Plaintiff claims that a breach of contract in this case was accompanied by a fraudulent act by the Defendant. To establish a breach of contract accompanied by a fraudulent act, the Plaintiff must first show that the Defendant breached the contract. Next the Plaintiff must show that the Defendant had fraudulent intent as to the breach of contract. Fraudulent intent relating to the making of the contract is not sufficient. A fraudulent intent is usually proven by examining the circumstances surrounding the breach of contract.

Finally, the Plaintiff must prove that there was a fraudulent act accompanying the breach of contract. A

fraudulent act is any act characterized by dishonesty in fact, unfair dealings, or the unlawful taking of another person's property intentionally. The fraudulent act may be prior to, at the same time as, or after the breach of contract. However, it must be connected for the breach of contract itself. The fraudulent act cannot be too remote in time or character from the breach of contract.

Finally, the Plaintiff must prove, by preponderance or greater weight of the evidence, that the Plaintiff suffered damages which were proximately caused by the Defendant's breach of contract. The Plaintiff must prove damages by the preponderance or greater weight of the evidence. This does not mean that the Plaintiff must prove damages to a material certainty or produce evidence of the exact amount of damages suffered. However, the amount of damages cannot be left to guesswork or speculation. Instead, the evidence presented by the Plaintiff must be enough to allow you to determine the amount of damages with reasonable certainty and accuracy.

Damages for breach of contract are those that may fairly and reasonably be considered to arise naturally from the breach of contract itself or those that may be reasonably suppose to have been in the minds of the parties at the time the contract was made. The Plaintiff may not recover damages for breach of contract unless the Plaintiff

shows that they have performed their part of the contract or at least was able, ready, and willing to perform at the appropriate time.

Actual damages are damages to compensate the Plaintiff and put them as closely as possible in the same position they were in before the breach of contract. In other words, actual damages are the actual losses and expenses which the Plaintiff has suffered because the Defendant breached the contract. Generally actual damages are the out-of-pocket costs actually paid by the Plaintiff as a result of the breach of the contract, and a gain above the costs that would of been realized if the contract had been performed.

The Plaintiff has the duty to minimize the damages caused by the Defendant's breach of contract. The test is whether the Plaintiff has done what an ordinarily prudent person would have done under the like circumstances. If the Plaintiff has used reasonable care to reduce the losses, the Plaintiff may recover the full amount. If the Plaintiff has not done so, then you would reduce the damages accordingly.

If you find there is a basis for unjust enrichment, the measure of recovery is that amount the Defendant has been unjustly enriched at the expense of the Plaintiff. Unjust enrichment is usually a requisite for the enforcement of a quasi contract. If there is no basis for finding an unjust enrichment, there is no basis for restitution. Unjust

enrichment is a term used in the law to characterize the result or effect of failure to make restitution where the circumstances indicate an equitable obligation to account therefore. The general principle of the law is that a person should not be permitted to enrich himself unjustly at the expense of another, but should be required to make restitution of and for property of benefits received or retained where it is equitable and just that such restitution be made. Unjust enrichment is the unjust retention of a benefit to be loss of another or the retention of money or property or -- of another against the fundamental principles of justice or equity and good conscious.

Where a person has received a benefit from another, that fact alone does not make unjust enrichment. The receipt of the benefit is unjust enrichment only if the circumstances of its receipt or, or retention are such that, as between the parties, it is unjust for the recipient to retain the benefits without paying for them. The right of restitution does not depend on the fault or wrong on the part of the recipient, but it depends on the principles of justice -- of the principles of justice, and equity, and good conscious.

I have declared the law to you through these instructions to help guide you to a law -- a just and lawful

verdict. Whether some of these instructions apply will depend upon what you find to be the facts. The fact that I have instructed you on various subjects in this case, including damages, must not be taken as indicating an opinion of this Court as to what you should find to be the facts or as to which party is entitled to your verdict.

Your verdict must represent the considered judgment of each juror. In order to return a verdict in this case, it is necessary that each one of you agree. Your verdict must be unanimous. All 12 of you must agree on this verdict. Your verdict cannot be based on sympathy, passion, prejudice, emotion, or any other consideration not in evidence in this case.

Remember, at all times, you are not partisans favoring one party over another. You are the judges of the facts. Your sole interest is to seek the truth from the evidence that has been presented to you in this case.

Now, Madam Forelady, I finally get to stand up and I'm really happy about that. The second thing I get to do is I get to show you the verdict form.

Okay. The verdict form is pretty simple.

Okay. You're the one that's responsible for filling it out.

Okay. All right. This just tells you where we are. This tells you what circuit we're in. We're in the First

Circuit. This is the name of the case, South Carolina State, Plaintiff. Denise Simmons is the Defendant. I think I told y'all earlier this was the case number. This case was filed in 2015.

This is a verdict. The verdict form reads -- is to speak the truth. Y'all have heard the facts. Now y'all are gonna tell us what's the truth.

This says we, the jury, by unanimous, by unanimous consent, you either find for the Plaintiff or for the Defendant. If you find for the Plaintiff, it's a blank here for an amount of damages.

Understand?

THE FORELADY: Yes, sir.

THE COURT: Okay. Now, once you have made your decision, unanimous decision, you will sign it and you will date it. You'll notice I left the date blank. I'm hoping it's gonna be today, but it can be tomorrow if it takes so long.

Okay. Okay. All right.

THE FORELADY: All right.

THE COURT: Okay. Now, I'm not giving you this now. The reason I'm not giving you this now is y'all had to endure me reading all these charges, right?

I know that was exciting.

It's like a good book, wasn't it?

Okay. Well, sometimes when I read those charges I make mistakes, I leave things out, and these attorneys who have been paying attention, holding their breath, making sure I do the right thing, they are gonna tell me, after you leave, whether I left something out. If I left something out or I misspoke, they're gonna correct me. Then I'll bring you back out here -- and I see that happy smile.

Okay. Then I'll bring you back out here, and I'll correct my charge on the law.

Okay. Now, if, after you leave, they tell me I did okay or it's good enough for government work, and tell me we can go ahead and give the -- give you the verdict form, I'll send the verdict form back with Misty, along with all the evidence that's been in this case, and you can begin your deliberations at that time. Until you are told to begin your deliberations, you cannot go back there and start talking about this case. I know you're anxious. I know you're ready. I know you've listened. I know you've heard everything. But until you get the word to begin your deliberations, you may not do so, and you're in charge of that.

Okay. All right. I'll let y'all go back into the jury room, and, and we'll see whether we're ready to get started or not.

(WHEREUPON, the following takes place outside the

presence of the jury.)

THE COURT: All right. All right. Anything from the Plaintiff regarding the charges?

MR. REAGLE: Good enough for government work, Your Honor.

THE COURT: Okay. Thank you.

Mr. Ormond.

MR. ORMOND: Nothing, Your Honor.

THE COURT: Okay. If y'all wouldn't mind, please make sure we've got all the exhibits straight.

THE BAILIFF: The alternate.

THE COURT: Okay. Well, you can actually tell her she can leave.

THE BAILIFF: Okay.

THE COURT: Cause they, they don't have any problems with that.

THE BAILIFF: I will tell her, Your Honor. Thank you, sir.

(Pause.)

THE COURT: All right. Anything from the Plaintiffs while we --?

MR. REAGLE: No, thank you, Your Honor. We appreciate it.

THE COURT: Anything from the defense?

MR. ORMOND: No, Your Honor.

THE COURT: Okay.

(WHEREUPON, the jury began deliberations at 5:15, and returned later with a question.)

THE COURT: All right. Now, Madam Forelady, I got, I got the note, and, you know, total damages requested, the exact dollar amount that SCSU incurred.

Now, if -- are you, are you -- you're not asking me to read -- are you asking me to read the damages charge again?

THE FORELADY: No, sir.

THE COURT: Are you just -- are you asking me about the, the actual number?

THE FORELADY: Yes, sir, the actual number.

THE COURT: Okay. All right. Well that -- I thought you were asking me about the actual number.

Do you remember early on when I said I'm not allowed to have an opinion about the facts in a case?

THE FORELADY: Okay.

THE COURT: Okay. Okay. I, I can't even tell you the number that they requested.

THE FORELADY: Okay.

THE COURT: Okay. Now, you have been -- you -- you've been provided with a number of documents. The attorneys have argued to you about the different amounts and whatnot. But because y'all are the judges of the facts in this case, y'all get to, based on the evidence that you've heard, y'all

get to determine what the total amount of the damages is, if, if any, should be -- what that number -- what that number should be.

Do you understand?

THE FORELADY: Yes, sir.

THE COURT: Did that help at all?

THE FORELADY: Yes, sir.

THE COURT: Okay. All right. I'll let y'all go back in there then. Thank y'all.

(WHEREUPON, the jury began their deliberations again and returned with a verdict.)

THE COURT: Plaintiff ready?

MR. REAGLE: Yes, Your Honor.

THE COURT: Defense ready?

MR. ORMOND: Yes, Your Honor.

THE COURT: Okay. I, I, I don't know that there's gonna be any outburst or anything like that. But I need to always remind people, when I read a verdict and like that, there's no comments. There's no noise. There's no -- it's just -- you just listen and find out what they're gonna do.

Okay. All right. So -- but if you can't do that, you can wait outside.

Okay. Thanks.

Bring them on in.

THE BAILIFF: Yes, Your Honor.

(WHEREUPON, the following takes place within the presence of the jury.)

THE COURT: All right. Madam Forelady, has the jury reached a verdict?

THE FORELADY: Yes, sir, we have.

THE COURT: Is that verdict unanimous?

THE FORELADY: Yes, sir, it is.

THE COURT: Would you mind giving the verdict form to the bailiff?

THE FORELADY: Okay.

THE BAILIFF: Your Honor, may I approach?

THE COURT: Yes, ma'am. Thank you, ma'am.

THE BAILIFF: You welcome.

THE COURT: All right. The case of South Carolina State University, Plaintiff, versus, versus Denise Simmons, the Defendant, we, the jury, by unanimous consent, find for the Plaintiff in the amount of $414,260. Signed by the forelady and dated today.

All right. Anything from the jury before I dismiss them, from the Plaintiff?

MR. REAGLE: No, Your Honor. Thank you.

THE COURT: Anything from the Defendant?

MR. ORMOND: No, Your Honor.

THE COURT: Okay.

(WHEREUPON, the jury was dismissed at this time.)

THE COURT: All right. Anything from the plaintiff before I dismiss y'all?

MR. REAGLE: No, Your Honor.

THE COURT: Anything from the defense?

MR. ORMOND: Your Honor, if I could have five days to make a motion --

THE COURT: You, you may.

MR. ORMOND: -- if any?

THE COURT: Is it, is it five or ten?

You can, you can be allowed up to 10 days, can't you?

MR. REAGLE: I think it's 10 days. Yeah, 10 days.

MR. ORMOND: You can.

THE COURT: Okay. All right. I'll allow you 10 days to file any appropriate motions that you wish to file, Mr. Ormond.

I will thank all of y'all for the way you handled yourselves during the trial right now, and I'll make a copy -- you, you want a copy?

Y'all want copies of these?

MR. REAGLE: Yes, please.

* * *END OF REQUESTED TRANSCRIPT OF RECORD* * *

C E R T I F I C A T E

I, Pamela E. Green, Official Court Reporter for 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 General Sessions for Orangeburg County, South Carolina, on the 31st day of July and the 1st day of August, 2017.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

July 15th, 2020

PAMELA E. GREEN, Court Reporter

Motion to Settle Exhibit 6

From:	Casey Hill
To:	Martin S. High
Subject:	-RE: South Carolina State University v. Denise Simmons (2015-CP-38-553) - Exhibits
Date:	Thursday, August 6, 2020 11:31:30 AM
Attachments:	2015CP3800553-A.pdf 2015CP3800553-B.pdf

From: Martin S. High [mailto:marty@martyhigh.com]
Sent: Thursday, August 06, 2020 9:58 AM
To: Casey Hill <chill@orangeburgcounty.org>
Subject: South Carolina State University v. Denise Simmons (2015-CP-38-553) - Exhibits

Dear Clerk,

I would be appreciative if you would forward to me via email a copy of the exhibits entered in the subject case, South Carolina State University v. Denise Simmons (2015-CP-38-553). I am in need of these exhibits to complete the record for the appeal of this case to the South Carolina Court of Appeals (Appellate Case No. 2020-000671).

Thank you for your attention to this matter.

Martin S. High

Martin S. High, Ph.D., P.E., J.D., Reg. Patent Attorney
Martin S. High, P.C. | Member of OK, TX & SC Bar
864.300.2444 (o) | 405.747.7113 (m) | 866.232.1096 (f) | highms (Skype)
www.martyhigh.com | PO Box 33190 Clemson SC 29633-3190

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Motion to Settle Exhibit 7

Exhibit 1

MEMORANDUM OF AGREEMENT
BETWEEN
SOUTH CROLINA STATE UNIVERSITY

AND

DENISE S. GRANT

A. **Reporting Requirements**

1. **Official grade reports must be submitted for all courses taken prior to reimbursement.**

2. **A written report detailing progress toward the accomplishments of the objectives outlined in the Professional Improvement Plan must be submitted after each period of enrollment.**

3. **If activities other than courses are pursued, a written summary detailing benefits derived and the specific skills acquired from participation must be submitted prior to reimbursement. In addition, a comprehensive report providing similar information must be submitted upon the conclusion of the Professional Improvement Plan.**

B. **Receipt of Assistance Requirements**

1. **For all courses pursued, a satisfactory grade must be obtained in order to receive reimbursement.**

2015 MAY 11 PM 2:52
RECEIVED

ATTEST: TRUE COPY
Wimpie B. Clark
CLERK OF COURT
ORANGEBURG COUNTY SC

2. Any changes or modifications in the Professional Improvement Plan must have the approval of all individuals who originally signed the Plan.

3. Failure to complete the Plan as agreed to without justifiable cause may result in mandatory repayment of all funds received.

4. Failure to comply with the reporting requirement outlines in "A" above or other requirement as may be instituted in the future, as deemed necessary, may result in termination of this agreement and/or mandatory repayment of all funds received.

C. Faculty/Administrator Compliance Statement

I, DENISE S. GRANT, agree that I will remain in the active service with South Carolina State University upon completing this agreement for a period equivalent to the amount of time for which financial assistance was received. For the purpose of this agreement, a summer session as well as each conference, workshop, seminar, etc. for which assistance was provided (as outlined in the Professional Improvement Plan) is considered to be the equivalent of a semester. Failure on my part to carry out the above agreement will result in the lump sum repayment of the entire amount expended by South Carolina State University in my behalf.

Denise S Grant
Signature

Witness

Notary Public

Rita J Teal
Signature, SCSU Authorized Official

SIGNATURE/APPROVALS*

Faculty/Administrator _____ Date 6/10/2008

I, DENISE S. GRANT, certify that if this proposal is approved, funds will only be used to pursue the specific activities outlined above in keeping with Title III and South Carolina State University policies and procedures. Further, as well as the memorandum of agreement.

Chairperson _____ Date 8/12/2008

I, Stanley N. Ihekweazu, certify that I have reviewed the proposed Professional Improvement Plan for the faculty/administrator named above and upon successfully completion of this Plan, this individual will be able to perform duties in the proposed area of concentration. An additional letter of support may be attached.

Dean _____ Date 8/12/2008

I, Kenneth D. Lewis/, concur with the Plan as proposed and recommended by the chairperson for the faculty/administrator indicated above.

Additional Approval (if necessary) _____ Date 8-13-08

Provost & Vice President for Academic Affairs _____ Date 08-14-08

President _____ Date 8-14-08

Title III Coordinator _____ Date _____

*NOTE: Approval by chair and dean indicates interest in the unit in the project, availability of requisite internal resources, prior negotiation of cost sharing or released time, and appropriateness of the budget. A proposal involving services, consultation, media services, computer support or physical space beyond the confines of the department or school requires approval of the relevant director.

SOUTH CAROLINA STATE UNIVERSITY
Orangeburg, South Carolina 29117

MEMORANDUM OF UNDERSTANDING

I understand that the advance payment of a stipend in the amount of $5000 plus tuition and fees for each summer session and $9000 plus tuition and fees for each fall and spring semester is issued to enable me to defray the expenses of pursuing a PhD in Civil Engineering. I further understand that I may be required to reimburse the Program for all or a portion of this amount if the course is not successfully completed.

Denise S Grant
Name

6/10/2008
Date

Exhibit 2

FACULTY DEVELOPMENT PROGRAM COVER SHEET

TO: Vice President for Academic Affairs Office
Administration Building – Room 202
South Carolina State University
Orangeburg, South Carolina 29117

FROM: Denise S. Grant
Faculty, Civil & Mechanical Engineering Techology Department

DATE: June 12, 2008

RE: Faculty Development Program Submission

SOUTH CAROLINA STATE UNIVERSITY
Orangeburg, South Carolina

TITLE III SUPPORTED PIP PROGRAMS
STRENGTHENING HISTORICALLY BLACK COLLEGE AND UNIVERSITY PROGRAMS

---REQUEST FOR SUPPORT---

Name Denise S. Grant **SS#** [redacted]

Area of Employment at SCSU Tenured Track Faculty, Civil & Mech Engring. Tech Department
Campus Address PO Box 8143
Mailing Address 3409 Northshore Road, Columbia, SC 29206
Expenses for pursuing course work at Clemson University
Leading to the PhD in Civil Engineering **for the period** July 1 - Aug 6, 2008
TUITION AND FEES

COURSE(S)	CREDITS	COST
ED F 778: Educational Research I .	3	
CES 850 Special Topics in Engring & Science Educ	3	$600.00

COST OF BOOKS (Estimate) $900.00

LIVING EXPENSES
ROOM $0.00
Board $0.00

TRANSPORTATION
Round trip site (estimate miles, if Vehicle ____ _____ **x 30.5 plane fare)** $0.00

STIPEND $5000.00

TOTAL EXPENSES $ $6,500

I request $ 6,500 **to pursue the course(s) listed above for the period indicated. I realize that official from the institution indicating a grade of "C" or better must be received by the Provost and Vice President for Academic Affairs before the final disbursement is authorized. The amounts will be used to pursue the course(s) indicated. Any changes must be approved in advance.**

Denise S Grant
Signature of Requester

6/10/2008
Date

SOUTH CAROLINA STATE UNIVERSITY
Orangeburg, South Carolina

TITLE III SUPPORTED PIP PROGRAMS
STRENGTHENING HISTORICALLY BLACK COLLEGE AND UNIVERSITY PROGRAMS

---REQUEST FOR SUPPORT---

Name Denise S. Grant **SS#** [redacted]

Area of Employment at SCSU Tenured Track Faculty, Civil & Mech Engring. Tech Department
Campus Address PO Box 8143
Mailing Address 3409 Northshore Road, Columbia, SC 29206
Expenses for pursuing course work at Clemson University
Leading to the PhD in Civil Engineering **for the period** Aug 6-Dec 31, 2008

TUITION AND FEES

COURSE(S)	CREDITS	COST
CES 861 001 PRACTICUM E & S ED	3	
ED F 878 001 EDUC RESEARCH II	3	
EX ST 801 001 STATISTICAL METHODS	4	$4480.00 Total Tuition

COST OF BOOKS (Estimate) $0

LIVING EXPENSES
ROOM $0
Board $0

TRANSPORTATION
Round trip site (estimate miles, if Vehicle ____ _____ x 30.5 plane fare) $0

STIPEND $ 9000

TOTAL EXPENSES $ 13,480

I request $ 13,480 to pursue the course(s) listed above for the period indicated. I realize that official from the institution indicating a grade of "C" or better must be received by the Provost and Vice President for Academic Affairs before the final disbursement is authorized. The amounts will be used to pursue the course(s) indicated. Any changes must be approved in advance.

Denise S Grant — **Signature of Requester**

6/10/2008 — **Date**

SOUTH CAROLINA STATE UNIVERSITY
Orangeburg, South Carolina

TITLE III SUPPORTED PIP PROGRAMS
STRENGTHENING HISTORICALLY BLACK COLLEGE AND UNIVERSITY PROGRAMS

---REQUEST FOR SUPPORT---

Name Denise S. Grant **SS#** [redacted]

Area of Employment at SCSU Tenured Track Faculty, Civil & Mech Engring. Tech Department
Campus Address PO Box 8143
Mailing Address 3409 Northshore Road, Columbia, SC 29206
Expenses for pursuing course work at Clemson University
Leading to the PhD in Civil Engineering **for the period** Jan 1 - May 10, 2009

TUITION AND FEES

COURSE(S)	CREDITS	COST
ED F 879 Qualitative Research in Education	3	
ED F 901 Mixed Methods Research in Education	3	
		$4480.00 Total Tuition

COST OF BOOKS (Estimate) $800.00

LIVING EXPENSES
- **ROOM** $0
- **Board** $0

TRANSPORTATION
- Round trip site (estimate miles, if Vehicle ____ _____ x 30.5 plane fare) $0

STIPEND $9000

TOTAL EXPENSES $ 14,280.00

I request $ 14,280.00 to pursue the course(s) listed above for the period indicated. I realize that official from the institution indicating a grade of "C" or better must be received by the Provost and Vice President for Academic Affairs before the final disbursement is authorized. The amounts will be used to pursue the course(s) indicated. Any changes must be approved in advance.

Denise S Grant
Signature of Requester

8/12/2008
Date

SOUTH CAROLINA STATE UNIVERSITY
Orangeburg, South Carolina

TITLE III SUPPORTED PIP PROGRAMS
STRENGTHENING HISTORICALLY BLACK COLLEGE AND UNIVERSITY PROGRAMS

---REQUEST FOR SUPPORT---

Name Denise S. Grant **SS#** [redacted]

Area of Employment at SCSU Tenured Track Faculty, Civil & Mech Engring. Tech Department
Campus Address PO Box 8143
Mailing Address 3409 Northshore Road, Columbia, SC 29206
Expenses for pursuing course work at Clemson University
Leading to the PhD in Civil Engineering **for the period** May 11 - June 30, 2009
TUITION AND FEES

COURSE(S)	CREDITS	COST
CE 899/CES 899 Research	3	$600.00

COST OF BOOKS (Estimate) $300.00

LIVING EXPENSES
ROOM $0.00
Board $0.00

TRANSPORTATION
Round trip site (estimate miles, if Vehicle ____ _____ x 30.5 plane fare) $0.00

STIPEND $5000.00

TOTAL EXPENSES $ 5,900.00

I request $ 5,900.00 **to pursue the course(s) listed above for the period indicated. I realize that official from the institution indicating a grade of "C" or better must be received by the Provost and Vice President for Academic Affairs before the final disbursement is authorized. The amounts will be used to pursue the course(s) indicated. Any changes must be approved in advance.**

Denise S Grant
Signature of Requester

8/12/2008
Date

SOUTH CAROLINA STATE UNIVERSITY
Orangeburg, South Carolina

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Campus Address PO Box 8143
Mailing Address 3409 Northshore Road, Columbia, SC 29206
Expenses for pursuing course work at Clemson University
Leading to the PhD in Civil Engineering **for the period** July 1 - Aug 6, 2009

TUITION AND FEES

COURSE(S)	CREDITS	COST
CE 899/CES 899 Research	3	$600.00

COST OF BOOKS (Estimate) $300.00

LIVING EXPENSES
ROOM $0.00
Board $0.00

TRANSPORTATION
Round trip site (estimate miles, if Vehicle ____ _____ **x 30.5 plane fare)** $0.00

STIPEND $5000.00

TOTAL EXPENSES $ 5,900.00

I request $ 5,900.00 **to pursue the course(s) listed above for the period indicated. I realize that official from the institution indicating a grade of "C" or better must be received by the Provost and Vice President for Academic Affairs before the final disbursement is authorized. The amounts will be used to pursue the course(s) indicated. Any changes must be approved in advance.**

Denise S Grant
Signature of Requester

8/12/2008
Date

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Orangeburg, South Carolina

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Expenses for pursuing course work at Clemson University
Leading to the PhD in Civil Engineering **for the period** Aug 6-Dec 31, 2009

TUITION AND FEES

COURSE(S)	CREDITS	COST
ED F 808 001 ED TESTS AND MEASURE	3	
CES 871 Engineering and Science Education Research Methods	3	
		$4480.00 Total Tuition

COST OF BOOKS (Estimate)	$400
LIVING EXPENSES	
ROOM	$0
Board	$0
TRANSPORTATION	
Round trip site (estimate miles, if Vehicle ____ _____ x 30.5 plane fare)	$0
STIPEND	$ 9000
TOTAL EXPENSES	$ 13,880

I request $ 13,880 to pursue the course(s) listed above for the period indicated. I realize that official from the institution indicating a grade of "C" or better must be received by the Provost and Vice President for Academic Affairs before the final disbursement is authorized. The amounts will be used to pursue the course(s) indicated. Any changes must be approved in advance.

Denise S Grant
Signature of Requester

8/12/2008
Date

SOUTH CAROLINA STATE UNIVERSITY
Orangeburg, South Carolina

TITLE III SUPPORTED PIP PROGRAMS
STRENGTHENING HISTORICALLY BLACK COLLEGE AND UNIVERSITY PROGRAMS

---REQUEST FOR SUPPORT---

Name Denise S. Grant SS# [redacted]

Area of Employment at SCSU Tenured Track Faculty, Civil & Mech Engring. Tech Department
Campus Address PO Box 8143
Mailing Address 3409 Northshore Road, Columbia, SC 29206
Expenses for pursuing course work at Clemson University
Leading to the PhD in Civil Engineering for the period Jan 1 - May 10, 2010

TUITION AND FEES

COURSE(S)	CREDITS	COST
CE 899/CES 899 Research	6	
		$4480.00 Total Tuition

COST OF BOOKS (Estimate)	$300.00
LIVING EXPENSES	
ROOM	$0
Board	$0
TRANSPORTATION	
Round trip site (estimate miles, if Vehicle ____ _____ x 30.5 plane fare)	$0
STIPEND	$ 9000
TOTAL EXPENSES	$ 13,780.00

I request $ 13,780.00 to pursue the course(s) listed above for the period indicated. I realize that official from the institution indicating a grade of "C" or better must be received by the Provost and Vice President for Academic Affairs before the final disbursement is authorized. The amounts will be used to pursue the course(s) indicated. Any changes must be approved in advance.

Denise S Grant
Signature of Requester

8/12/2008
Date

SOUTH CAROLINA STATE UNIVERSITY
Orangeburg, South Carolina

TITLE III SUPPORTED PIP PROGRAMS
STRENGTHENING HISTORICALLY BLACK COLLEGE AND UNIVERSITY PROGRAMS

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Area of Employment at SCSU Tenured Track Faculty, Civil & Mech Engring. Tech Department
Campus Address PO Box 8143
Mailing Address 3409 Northshore Road, Columbia, SC 29206
Expenses for pursuing course work at Clemson University
Leading to the PhD in Civil Engineering **for the period** May 11 - June 30, 2010
TUITION AND FEES

COURSE(S)	CREDITS	COST
CE 899/CES 899 Research	3	$600.00

COST OF BOOKS (Estimate) $300.00

LIVING EXPENSES
ROOM $0.00
Board $0.00

TRANSPORTATION
Round trip site (estimate miles, if Vehicle ____ _____ **x 30.5 plane fare)** $0.00

STIPEND $5000.00

TOTAL EXPENSES $ 5,900.00

I request $ 5,900.00 **to pursue the course(s) listed above for the period indicated. I realize that official from the institution indicating a grade of "C" or better must be received by the Provost and Vice President for Academic Affairs before the final disbursement is authorized. The amounts will be used to pursue the course(s) indicated. Any changes must be approved in advance.**

Denise S Grant
Signature of Requester

8/12/2008
Date

SOUTH CAROLINA STATE UNIVERSITY
Orangeburg, South Carolina

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---REQUEST FOR SUPPORT---

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Area of Employment at SCSU Tenured Track Faculty, Civil & Mech Engring. Tech Department
Campus Address PO Box 8143
Mailing Address 3409 Northshore Road, Columbia, SC 29206
Expenses for pursuing course work at Clemson University
Leading to the PhD in Civil Engineering **for the period** July 1 - Aug 6, 2010
TUITION AND FEES

COURSE(S)	CREDITS	COST
CE 899/CES 899 Research	3	$600.00

COST OF BOOKS (Estimate) $300.00

LIVING EXPENSES
ROOM $0.00
Board $0.00

TRANSPORTATION
Round trip site (estimate miles, if Vehicle ____ _____ **x 30.5 plane fare)** $0.00

STIPEND $5000.00

TOTAL EXPENSES $ 5,900.00

I request $ 5,900.00 **to pursue the course(s) listed above for the period indicated. I realize that official from the institution indicating a grade of "C" or better must be received by the Provost and Vice President for Academic Affairs before the final disbursement is authorized. The amounts will be used to pursue the course(s) indicated. Any changes must be approved in advance.**

Denise S Grant
Signature of Requester

8/12/2008
Date

SOUTH CAROLINA STATE UNIVERSITY
Orangeburg, South Carolina

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Area of Employment at SCSU Tenured Track Faculty, Civil & Mech Engring. Tech Department
Campus Address PO Box 8143
Mailing Address 3409 Northshore Road, Columbia, SC 29206
Expenses for pursuing course work at Clemson University
Leading to the PhD in Civil Engineering **for the period** Aug 10 - Dec 31, 2010

TUITION AND FEES

COURSE(S)	CREDITS	COST
CE 899/CES 899 Research	6	
		$4480.00 Total Tuition

COST OF BOOKS (Estimate)	$300.00
LIVING EXPENSES	
ROOM	$0
Board	$0
TRANSPORTATION	
Round trip site (estimate miles, if Vehicle ____ _____ x 30.5 plane fare)	$0
STIPEND	$9000
TOTAL EXPENSES	$ 13,780.00

I request $ 13,780.00 to pursue the course(s) listed above for the period indicated. I realize that official from the institution indicating a grade of "C" or better must be received by the Provost and Vice President for Academic Affairs before the final disbursement is authorized. The amounts will be used to pursue the course(s) indicated. Any changes must be approved in advance.

Denise S Grant
Signature of Requester

8/12/2008
Date

SOUTH CAROLINA STATE UNIVERSITY
Orangeburg, South Carolina

TITLE III SUPPORTED PIP PROGRAMS
STRENGTHENING HISTORICALLY BLACK COLLEGE AND UNIVERSITY PROGRAMS

---REQUEST FOR SUPPORT---

Name Denise S. Grant **SS#** [redacted]

Area of Employment at SCSU Tenured Track Faculty, Civil & Mech Engring. Tech Department
Campus Address PO Box 8143
Mailing Address 3409 Northshore Road, Columbia, SC 29206
Expenses for pursuing course work at Clemson University
Leading to the PhD in Civil Engineering **for the period** Jan 1 - May 10, 2011

TUITION AND FEES

COURSE(S)	CREDITS	COST
CE 899/CES 899 Research	6	
		$4480.00 Total Tuition

COST OF BOOKS (Estimate)	$300.00
LIVING EXPENSES	
ROOM	$0
Board	$0
TRANSPORTATION	
Round trip site (estimate miles, if Vehicle ____ _____ x 30.5 plane fare)	$0
STIPEND	$ 9000
TOTAL EXPENSES	$ 13,780.00

I request $ 13,780.00 to pursue the course(s) listed above for the period indicated. I realize that official from the institution indicating a grade of "C" or better must be received by the Provost and Vice President for Academic Affairs before the final disbursement is authorized. The amounts will be used to pursue the course(s) indicated. Any changes must be approved in advance.

Denise S Grant
Signature of Requester

8/12/2008
Date

SOUTH CAROLINA STATE UNIVERSITY
Orangeburg, South Carolina

TITLE III SUPPORTED PIP PROGRAMS
STRENGTHENING HISTORICALLY BLACK COLLEGE AND UNIVERSITY PROGRAMS

---REQUEST FOR SUPPORT---

Name Denise S. Grant **SS#** [redacted]

Area of Employment at SCSU Tenured Track Faculty, Civil & Mech Engring. Tech Department
Campus Address PO Box 8143
Mailing Address 3409 Northshore Road, Columbia, SC 29206
Expenses for pursuing course work at Clemson University
Leading to the PhD in Civil Engineering **for the period** May 11 - June 30, 2011
TUITION AND FEES

COURSE(S)	CREDITS	COST
CE 899/CES 899 Research	3	$600.00

COST OF BOOKS (Estimate) $300.00

LIVING EXPENSES
ROOM $0.00
Board $0.00

TRANSPORTATION
Round trip site (estimate miles, if Vehicle ____ _____ x 30.5 plane fare) $0.00

STIPEND $5000.00

TOTAL EXPENSES $ 5,900.00

I request $ 5,900.00 **to pursue the course(s) listed above for the period indicated. I realize that official from the institution indicating a grade of "C" or better must be received by the Provost and Vice President for Academic Affairs before the final disbursement is authorized. The amounts will be used to pursue the course(s) indicated. Any changes must be approved in advance.**

Denise S Grant
Signature of Requester

8/12/2008
Date

SOUTH CAROLINA STATE UNIVERSITY
Orangeburg, South Carolina

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Area of Employment at SCSU Tenured Track Faculty, Civil & Mech Engring. Tech Department
Campus Address PO Box 8143
Mailing Address 3409 Northshore Road, Columbia, SC 29206
Expenses for pursuing course work at Clemson University
Leading to the PhD in Civil Engineering **for the period** July 1 - Aug 8, 2011
TUITION AND FEES

COURSE(S)	CREDITS	COST
CE 899/CES 899 Research	3	$600.00

COST OF BOOKS (Estimate) $300.00

LIVING EXPENSES
ROOM $0.00
Board $0.00

TRANSPORTATION
Round trip site (estimate miles, if Vehicle ____ _____ **x 30.5 plane fare)** $0.00

STIPEND $5000.00

TOTAL EXPENSES $ 5900.00

I request $ 5900.00 **to pursue the course(s) listed above for the period indicated. I realize that official from the institution indicating a grade of "C" or better must be received by the Provost and Vice President for Academic Affairs before the final disbursement is authorized. The amounts will be used to pursue the course(s) indicated. Any changes must be approved in advance.**

Denise S Grant
Signature of Requester

8/12/2008
Date

SOUTH CAROLINA STATE UNIVERSITY
Orangeburg, South Carolina

TITLE III SUPPORTED PIP PROGRAMS
STRENGTHENING HISTORICALLY BLACK COLLEGE AND UNIVERSITY PROGRAMS

---REQUEST FOR SUPPORT---

Name Denise S. Grant SS# [redacted]

Area of Employment at SCSU Tenured Track Faculty, Civil & Mech Engring. Tech Department
Campus Address PO Box 8143
Mailing Address 3409 Northshore Road, Columbia, SC 29206
Expenses for pursuing course work at Clemson University
Leading to the PhD in Civil Engineering for the period Aug 10 - Dec 31, 2011

TUITION AND FEES

COURSE(S)	CREDITS	COST
CE 899/CES 899 Research	6	
		$4480.00 Total Tuition

COST OF BOOKS (Estimate)	$300.00
LIVING EXPENSES	
ROOM	$0
Board	$0
TRANSPORTATION	
Round trip site (estimate miles, if Vehicle ____ _____ x 30.5 plane fare)	$0
STIPEND	$ 9000
TOTAL EXPENSES	$ 13,780.00

I request $ 13,780.00 to pursue the course(s) listed above for the period indicated. I realize that official from the institution indicating a grade of "C" or better must be received by the Provost and Vice President for Academic Affairs before the final disbursement is authorized. The amounts will be used to pursue the course(s) indicated. Any changes must be approved in advance.

Denise S Grant
Signature of Requester

8/12/2008
Date

Name Denise S. Grant	**SS# 248-47-3833**
School/Area College of Science, Math and Engineering Technology	**DEPT. Civil & Mech Engring**
Office Address PO Box 8143	
Mailing Address 3409 Northshore Road, Columbia, SC 29206	
Present area of concentration/assignment	
Civil Engineering - Project Management	
Proposed area of concentration/assignment upon completion of PIP Civil Engineering - Sustainable Construction and Engineering & Science Education	

Summary

I have gained over fourteen years of engineering experience working with public utility companies, a project management consulting company, and a software company. A registered Professional Engineer in TN and a Project Management Professional, I rank teaching as my most rewarding experience. In fall 2004, I joined the civil engineering technology (CET) department at South Carolina State University (SCSU) as a full time, untenured, assistant professor in a tenured track position. I believe excellence in teaching is an attitude, a partnership with students and the University, and is composed of those techniques necessary to instruct each student which includes remaining current in one's field and engaging oneself and students in research.

I am writing to present a proposal for professional leave and to request support while I am away. I have been accepted into Clemson University (CU) to pursue a PhD in Civil Engineering. Please find my letter of acceptance attached. Starting July 1, 2008, I will enroll in two courses and in fall 2008, I will enroll as a fulltime, in-resident student. It is expected that I will complete the program by December 2011. This proposal will describe my rationale, major goals or objectives, methodology, previous support including results, impact on development of application, and relevance and impact on departmental, school or university goals. The professional development plan I outline will allow me to strengthen and broaden scholarships, expand my expertise, pursue new and innovative ideas to improve the quality of instruction, and stimulate exploration of new areas to increase my visibility in the scholarly community.

FACULTY DEVELOPMENT PROJECT/PLAN

Description

Rationale

I have gained admission to the civil engineering department at Clemson University (CU) to pursue a PhD with a research focus in sustainable construction and engineering and science education. My planned program of study will combine my teaching experience with my work experience in engineering and in project and construction management.

I believe that only an intensive study and comprehensive research work in my field of interest would put me on the right track to achieve my ultimate professional ambitions: to be an effective teacher and to continue to contribute to the body of knowledge in engineering and science education and construction engineering and management. One of my professional goals is to be an effective instructor on the university level. I have been a "teacher" for over twenty years, serving mostly voluntary and part-time roles. My professional development plan (PDP) will provide me formal training and equip me to achieve my ultimate professional objectives.

Major goals or objectives

My entire objective for pursuing the PhD degree has always been to bring my experience back to South Carolina State University (SCSU) with the goal of exposing SCSU students to my areas of specialty, authoring scholarly works on sustainable development and engineering education, recruiting students to attend the University and enhancing the academic and research capabilities of the University.

I am extremely interested in increasing the involvement of minorities in science and engineering related careers and have worked toward this end. In the summer of 2005, I served as

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the project director of the Summer Transportation Institute (STI) at SCSU. This program exposes secondary school students with an expressed interest in transportation careers to further information about this field through career speakers, engineering experiments, field trips, and interactive lectures. The program also endeavors to provide the students with mathematics, science, and technological enrichment, which will enable them to pursue a career in transportation. I currently serve as the interim director of the Environmental Sciences Field Station which is aimed at recruiting and retaining women and minorities in environmental science and engineering and natural resources-related fields of study.

I plan to continue my involvement in all of these activities and programs in an effort to encourage minorities to pursue science- and engineering-related degrees and become involved in research. In the past, I have engaged a group of Eisenhower Fellows to assist in the planning of these programs. My PDP includes coursework and research in engineering education and it will allow me to pursue new and innovative ideas to improve the quality of instruction and introduce me to effective ways to engage and retain women and minorities in science, technology, engineering and math (STEM) related disciplines.

Methodology

The focus of my research has been the study of environmental metrics used to evaluate guidelines for green building practices and the development of hands-on tools that can assist civil engineers, construction professionals and those who manage LEED™ projects. Information and tools that will help guide their decisions and implementation of LEED-NC™ have been developed. I have already presented my research at two workshops and one conference. At CU, I will pursue a cross disciplinary degree in civil engineering (sustainable construction) and in engineering and science education. The benefit of such a program is that I will increase my

competency in civil engineering, in how to teach engineering, and in how engineering students learn. Coursework in assessment methods will also complement my role as the Technology Accreditation Commission (TAC) of ABET Continuous Improvement Committee (CIC) coordinator and allow me to better understand how to support the University in future SACS accreditation visits.

Sustainable construction is a new topic that is currently being debated among public and private entities. I have begun research in sustainable/green construction with the thought of advancing knowledge in construction process improvement for campus building projects. My interest within the research focus of engineering and science education is broad. I am interested in studying how to improve student learning and application of knowledge; how to introduce current topics, such as sustainability, into curriculums; and how to attract and retain women and minorities in STEM fields of study. Besides being of great interest to me, these are topics in need of further research. Further study and discussion with my committee, which has begun, will help me define my interests and lead me to a well-defined research project.

I have chosen CU due primarily to the reputation of the program, the regard I hold for the department and its faculty, and the opportunity to conduct research in engineering and science education as well as sustainable construction. I have maintained relationships with several members of the CU faculty and staff for nearly twenty years. Under the guidance of my committee, I know that I can receive a quality education that will prepare me for my stated professional endeavors. My PDP will allow me to increase my visibility in the scholarly community.

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Previous support and support from other sources

I have not received any previous support; therefore, I have no results to share. I am currently seeking salary support for the duration of my professional development leave.

Impact on development of application

My PDP will equip me to expose SCSU students to my area of research; to author scholarly works; and to enhance the academic and research capabilities of the University. Once I complete the PhD program and return to SCSU, I plan to conduct research with SCSU faculty as well as faculty from other educational institutions. Through collaborating with other faculty, I hope to gain support for research, learn new teaching strategies, and develop mentoring relationships.

In terms of mentoring students, I want students to see me as a source of information and guidance on how to discern truth and understanding and how to think critically. I want to be able to engage both undergraduate and graduate students as active collaborators with me in research and scholarship. Finally, I would like every student to be able to find a professor who is a true mentor and role model who can also offer meaningful guidance about general questions and life skills unrelated to a particular course or research project, but necessary for them to be successful in any undertaking. I endeavor to be such a professor.

Relevance and impact on departmental, school or university goals

Currently, the CET program at SCSU is seeking to form a partnership with in-state institutions offering EAC of ABET degree programs. CU is one such institution. It is thought that my presence on CU's campus may be timely as we seek to formalize an agreement that, if approved, would allow SCSU students to matriculate to CU and earn an ~~earn a~~ ABET

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Engineering Accreditation Commission (EAC) degree. The impact of such an opportunity on SCSU's engineering technology departments is huge as it will enhance the marketability of our degree programs to current and future students and it will improve the earning potential of the graduates from such a program. In addition, there is no one on faculty in CET with a niche in project management or sustainable construction. My PDP will allow me to strengthen and broaden scholarships and expand my expertise. I am also interested in being involved with recruitment and retention initiatives that would increase the number of students in CET and other STEM-related disciplines.

I predict my chances of success for completing the PhD program are high due to my experience conducting research and my own ambition. I have an idea of the discipline and fortitude required to write a dissertation. I have also the benefit of wisdom received through life's experiences. By selecting a topic that intrigues me, I will improve my chances for success. I will succeed because I am prepared and determined to succeed. I am apprehensive about my ability to pay for the educational fees associated with earning the PhD as a fulltime student living in Clemson while still sustaining myself and assisting my spouse in the support of our household in Columbia. I need to be able to attend Clemson as a full time student in order to make the most of my PhD experience and to expand my breath and depth of experience and knowledge. Financial support will allow me to make the most of this full experience and enable me to achieve my goals while easing my monetary concerns. I appreciate your time to review my PDP and ask for your consideration the requested support.

SPECIFIC ACTIVITIES TO BE PURSUED (i.e., COURSES TO BE TAKEN, SEMINARS CONFERENCES, etc.) WITH TITLE III FINANCIAL SUPPORT

PROFESSIONAL IMPROVED ACTIVITY	DATE	LOCATION
Enroll in courses required by PhD program. Summer session II.	7/1/2008	Clemson University
Enroll in courses required by PhD program. Fall semester.	8/15/2008	Clemson University
Enroll in courses required by PhD program. Spring semester.	1/4/2009	Clemson University
Enroll in courses required by PhD program. Summer session I.	5/28/2009	Clemson University
Enroll in courses required by PhD program. Summer session II.	7/1/2009	Clemson University
Enroll in courses required by PhD program. Fall semester.	8/15/2009	Clemson University
Enroll in courses required by PhD program. Spring semester.	1/4/2010	Clemson University
Enroll in courses required by PhD program. Summer session I.	5/28/2010	Clemson University
Enroll in courses required by PhD program. Summer session II.	7/1/2010	Clemson University
Enroll in courses required by PhD program. Fall semester.	8/15/2010	Clemson University
Enroll in courses required by PhD program. Spring semester.	1/4/2011	Clemson University
Enroll in courses required by PhD program. Summer session I.	5/28/2011	Clemson University
Enroll in courses required by PhD program. Summer session II.	7/1/2011	Clemson University
Enroll in courses required by PhD program. Fall semester.	8/15/2011	Clemson University

DENISE S. GRANT, PE, PMP, LEED-AP

3409 NORTHSHORE ROAD • COLUMBIA, SOUTH CAROLINA 2920 • HOME PHONE 803 - 606 - 8900
E-MAIL DGRANT@SCSU.EDU

EDUCATION

CLEMSON UNIVERSITY — Clemson, SC

Bachelor of Science Degree in Civil Engineering, December 1990

Master of Science Degree in Civil Engineering, December 1995

Thesis: Engineering and Construction Project Management Guidelines; GPA: 3.5

CURRENT JOB AND JOB RELATED RESPONSIBILITIES

SOUTH CAROLINA STATE UNIVERSITY — Orangeburg, SC

Assistant Professor

Interim Director, Environmental Sciences Field Station at Savannah River Site

August 2004 – Present

- Instruct undergraduate and graduate level engineering courses.
- Serve as civil engineering technology academic program coordinator
- Nominated to serve as College of Science, Mathematics and Engineering Technology's Continuous Improvement Coordinator responsible for:
  1. Develop/implement assessment for ABET activities
  2. Assist with the development of the colleges' assessment results and plans
  3. Ensure assessment results and plans are aligned with ABET criteria and university's planning and assessment process
  4. Provide input and a rating of the results to each department at the appropriate meetings
  5. Represent the College on the College wide assessment committee
  6. Submit assessment report to ABET and university offices as needed
  7. Ensure the College is incompliance with all accreditation follow-up reports
  8. Assist with the planning of accreditation visits
  9. Serve as the official contact for ABET accreditation

BRIEF CAREER SUMMARY

UNIVERSITY OF PHOENIX — Virtual & Columbia Campus

Faculty Practitioner & Management Area Chair

January 2003 – Present

- Instruct junior and senior level project management and operations courses.

INDUS INTERNATIONAL (formerly SCT, EUC division) — Columbia, SC

Senior Functional Consultant

January 2003 – March 2004

- Use of client interfacing, analytical and communication skills to support implementation of billing software.
- Developed and delivered end user training for a client's customer accounting department. Developed test scripts for client.

MIDLANDS TECHNICAL COLLEGE — Columbia, SC
Adjunct Professor
January 2002 – May 2002

- Instruct senior level environmental engineering course. Course covers a study of the sources, treatment, regulations, collection and distribution of water and wastewater; water and sewer pipe hydraulics; water and groundwater quality; estimation of runoff; and load design of buried pipes.

PROJECT MANAGEMENT CONSULTANTS, LLC — Columbia, SC
Consultant and Trainer
October 2001 – December 2002

- Provide project management and performance appraisal consulting and training. Most recent client: Georgia Transmission Company.

MEMPHIS LIGHT, GAS, AND WATER DIVISION — Memphis, TN
Energy Engineer, *October 2000 – August 2001*

SCANA CORPORATION — Florence, SC and Columbia, SC

SOUTH CAROLINA PIPELINE
Project Engineer, April 2000 – August 2000

SOUTH CAROLINA ELECTRIC AND GAS
System Engineer, January 1996 – March 2000

VOORHEES COLLEGE MANAGEMENT INSTITUTE — Denmark, SC
Adjunct Professor
Fall 1997 – Spring 1999

- Facilitate courses in degree program for adult students pursuing a bachelor of arts degree in Organizational Behavior
- Courses include: Group & Organizational Behavior, Career and Life Assessment, and Business Ethics

DUKE ENERGY — Charlotte, NC
Associate Design Engineer, Power Generation Group
January 1991 – August 1994

CLASSES TAUGHT AT SOUTH CAROLINA STATE UNIVERSITY

- ET 250: Technical Communications
- ET 255: Engineering Economics
- CET 412: Construction Codes & Contracts
- CET 415: Fluid Mechanics
- CET 459: Senior Project Proposal
- CET 460: Senior Project
- TRP 530: Urban Transportation Planning
- TRP 640: Transportation and Land Use Planning

INSTRUCTIONAL INNOVATIONS AT SOUTH CAROLINA STATE UNIVERSITY

- Incorporated formal project management concepts into ET 250, CET 459 & 460 and TRP 640 courses.
- Incorporated additional measures into ET 250 course.
- Used industry professionals in senior project course.
- Introduced diagnostic tests in ET 255 and CET 415.
- Proposed new professional land surveyor's program with colleagues.
- Incorporated rubrics into ET 250 course.

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PROFESSIONAL REGISTRATION, WRITING AND SPECIAL ACHIEVEMENTS

- Registered Professional Engineer (TN #106991)
- Registered Project Management Professional (#383095)
- Engineer In Training (SC #12605)
- LEED Accredited Professional

MEMBERSHIP IN PROFESSIONAL ORGANIZATIONS

- American Association of Blacks in Energy
- Project Management Institute
- US Green Building Council
- American Society of Civil Engineers

SERVICE TO SOUTH CAROLINA STATE UNIVERSITY

- SCSU and UTC Scholarship Selection Committee
- SACS 2010 Physical Resources Committee, Co-Chair
- Convocation Committee
- Continuous Improvement Committee, CET Coordinator

COMMUNITY SERVICE

- Volunteer tutor
- Hosted several shadowing experiences for local high school students

Motion to Settle Exhibit 8

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF ORANGEBURG	)	FIRST CIRCUIT
		CA# 2015-CP-38 - 0553
South Carolina State University,	)	
	)	
Plaintiff	)	
vs.	)	
	)	
Denise Simmons,	)	
Defendant,	)	
	)	

DEFENDANT'S MEMORANDUM AND RECORD APPENDICES IN OPPOSITION TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

This matter is a common law contract claim by Plaintiff, South Carolina State University, against Denise Simmons, a former professor of engineering at the University. Plaintiff has moved this Court for summary judgment on all its claims. Defendant has formally opposed this motion and submits the following record appendices;

1) Answer
2) Affidavit of Denise Simmons with cited documents:
    a. Clemson Nomination Form
    b. Simmons presentation
    c. Memorandum of Understanding
    d. Memorandum of Agreement
    e. Temp. Employment Data Request
    f. April 11 2012 e-mail
    g. July 17 Memorandum 2012 / e-mail
    h. Prior faculty contracts 2005-2008
    I. June - July 2012 e-mails / Employment data request
    j. Aug. 16 e-mails
    k. Aug. 23 e-mails
    l. Aug 23 e-mails Okafor chain.
    m. Tech faculty offer

3) Deposition excerpts Okafor
4) Deposition excerpts Darby
5) Affidavit Dr. Julie Martin.
6) Responses to Request to Admit

SUMMARY:

Defendant, Denise Simmons, was a faculty member in the engineering department with South Carolina State University (SCSU) beginning in 2005. In 2008 she was provided a grant through Title III (Funds through Department of Education) to attend and obtain her terminal degree; doctor of philosophy. Defendant (Simmons) requested professional leave from her teaching duties and she undertook several steps, including preparing a presentation and signing a memorandum of agreement and a memorandum of understanding with the University which required many items, including her remaining with SCSU for the minimum of the time spent in pursuit of her degree. It is these documents and this specific provision that Plaintiff appears to base its contractual claims.

After obtaining the Title III grant, Defendant and Plaintiff agreed that she would stay on in her position with SCSU as the Director of the Environmental Field Station which is full time in the summers and requires part time work during the academic year. It is not disputed that Defendant completed her academic work and continued working for Plaintiff during the Fall 2008 through Spring 2012 time period and satisfied all elements of the Memorandum of Agreement and Memorandum of Understanding during this period. During the last semester at Clemson (April 2012)[1] there is undisputed record evidence that Dr. Simmons informed SCSU that she was graduating and ready to return to SCSU. The practice for SCSU and other Universities, prior to hiring or re-hiring a professor, includes an appointment letter to be sent well prior to the academic year and, more importantly, the offer and negotiation of a contract of

[1]During this time, the news of SCSU's financial and governance issues were making statewide news and Defendant did become concerned that the University may not be able to affect her return. (Aff. Defendant ¶ 9)

employment with the faculty member. It is not disputed in the record that SCSU never sent an appointment letter, never offered Defendant Simmons a contract (written or otherwise) and never negotiated contract terms or indicated to her the offered terms of her employment.

By mid August of 2012, Dr. Simmons (Defendant) was very concerned that SCSU was unable to contract with her. Therefore, she worked to try and find some interim position for the 2012/2013 academic year at that late date. She was able to get a tentative offer for a "post doc" position with help from another faculty member. On August 23rd[2], an Academic Affairs employee with SCSU, who was responsible for contracts (Darby), informed that her Department head should have already negotiated a contract with her. Simmons called and also e-mailed the Department head (Okafor) and he (Okafor) returned the call. However, Simmons asked for a contract or terms and Okafor was unwilling to discuss a contract, including offering any material terms such as salary, tenure and term. That day, Simmons was required to take the only position offered her, which was an interim position with another institution, or remain unemployed.

RECORD FACTS:

Defendant, Denise Rutledge Simmons, had gained a masters degree in engineering and worked in private industry for many years prior to taking a position as an instructor at South Carolina State University (SCSU), the Plaintiff, in 2005. (App. 2 Simmons Aff. ¶ 1-4) In 2008, through discussions with mentors and advisors at SCSU, she decided to seek a terminal degree and was offered a Federal Title III grant to fund a PhD in engineering from Clemson. (App. 2 Simmons Aff. ¶ 2-5) Part of the grant required her to sign two documents, a memorandum of

[2] After SCSU classes had started and on the final date to accept the post doc offer.

understanding and memorandum of agreement. (App 2. Att. b and c.) These documents are the basis for the contract action brought by Plaintiff and state the following:

> I, Denise S. Grant, agree that I will remain in the active service with South Carolina State University upon completing this agreement for a period equivalent to the amount of time for which financial assistance was received. For the purpose of this agreement, a summer session as well as each conference, workshop, seminar, etc. for which assistance was provided (as outlined in the Professional Improvement Plan) is considered to be the equivalent of a semester. Failure on my part to carry out the above agreement will result in the lump sum repayment of the entire amount expended by South Carolina State University in my behalf. (Id)

Dr. Simmons and SCSU then agreed that she would remain employed with SCSU as the Director of the Environmental Field Station located in Aiken. (App. 2 Simmons Aff. ¶ 5-6) This part of her employment was full time summers and part time during the academic year. She continued in this position throughout her academic studies at Clemson. (App. 2 Simmons Aff. ¶ 7)

It is not disputed in the record that Dr. Simmons fulfilled all the conditions of the Grant during her time at Clemson and performed her job for Plaintiff as Field Director as well. (App. 2 Simmons Aff. ¶ 6-7) Simmons (Defendant) advised Plaintiff that she would graduate with a PhD in the Spring of 2012 and initiated the process of having her transcripts sent to SCSU (Plaintiff). (App. 2 Simmons Aff. ¶ 8) In early 2012, she saw some of the statewide news coverage of the issues occurring at SCSU at that time and spoke to an employee of SCSU she knew about this situation.(App. 2 Simmons Aff. ¶ 9-10) This caused her to become concerned about the financial ability of Plaintiff to offer her a position for the Fall but did not dissuade her from her hopes to return and teach minority engineering students. (Id)

In April of 2012 Simmons did receive an e-mail from the Department discussing the course schedule for the following semester and she was on the list making her feel better about SCSU's ability to contract with her.(App. 2 doc. f.) She continued that summer (2012) to work for SCSU as Field Director. During her four year prior employment with SCSU as faculty, she

had always received a written employment contract well prior to the beginning of the academic year and then always signed it before the start of classes. (App. 2 Simmons Aff. ¶ 12: att. h contacts) She had been told by academic affairs (Darby) that in order to be recognized as faculty, all needed a written contract. (Id. 12-13) Simmons sent the finalized and formal Clemson transcripts to SCSU in July of 2012 . (Id. Atts. h-k) No contract from SCSU was ever sent or in any way communicated to her. Defendant was never called by her Department head or academic affairs regarding her employment in June, July or the first half of August 2012 and she became concerned SCSU could not contract with her. (App. 2 Simmons Aff. ¶ 14) She spoke of this with her faculty advisor at Clemson (Dr. Martin) in early August and Dr. Martin was able to find an interim grant position for a year with Virginia Tech. Defendant e-mailed her Dept. Head (Okafor)(App. 2 Simmons Aff. ¶ 14-16 att: k.) that she had not been given a contract, she was distressed and had to take another position.(Id) The interim position with Tech required a formal acceptance on the 23rd of August and Dr. Simmons waited to formally accept to see what SCSU could do - relaying this fact to Martin. (App. 2 Simmons Aff. ¶ 15-18)(App. 5 Martin Aff.)

On August 23, 2012, after classes had actually started and on the final day in which to formally accept the interim position, Dr. Simmons got a call from Ms. Darby with SCSU. The first call went to voice mail and then Darby e-mailed asking Simmons to call. Simmons did call and Darby asked if she (Simmons) had gotten or discussed a contract with Dr. Okafor. Simmons replied she had not and she had not been contacted other than one or two e-mails which were unrelated to contract. (App. 2 Simmons Aff. ¶ 16-18: att k.) Ms. Darby stated the contract should have been offered early summer and she (Darby) had been trying to get in touch with Dr. Okafor (Department Head). Dr. Simmons then called (left a message) and e-mailed Okafor that

day, the 23rd of August. (App. 2 Simmons Aff. ¶ 19). Okafor did call back that day.[3] Simmons stated that if he (Okafor - Department head) would send a contract to her she would try to break her other initial acceptance with the grant position. However Okafor would not make an offer, discuss or send a contract. He would not discuss salary or any other terms. (App. 2 Simmons Aff. ¶ 20 att. k. - l) As the 23rd was not only after classes had started at SCSU but was also the final day to sign for the year long post doc interim position, Dr. Simmons had to accept that position. (App. 2 Simmons Aff. ¶ 21-24. Att. m. - o) Dr. Simmons (Defendant) states as follows:

> From the beginning, I had every intention of returning to SCSU. I initiated the process of returning in late 2011. I had transcripts forwarded. I did not seek other employment that summer as all other recent PhD graduates were doing. I continued working as the SCSU Field Station Director during the summer of 2012. I was simply never given any formal document or indication of reappointment as faculty by letter, oral agreement or written contract. I had no choice but to take an interim and non permanent post doc position at the last minute. (App. 2 Simmons Aff. ¶ 24)

Dr. Simmons also contests she was not funded in the amount alleged in the Complaint for her studies; it is much less than alleged. (App. 2 Para. 25)

It is not disputed by SCSU (App. 3, 4) that no appointment letter (App. 4 P. 33, 34, Exh. 1) or contract was ever sent, offered, negotiated nor were material employment terms offered or verbally communicated to Dr. Simmons at any time. (App. 3 Dep. Okafor) (App. 4 Dep. Darby P. 32-36) The Department Head, Okafor, had written in an e-mail to Simmons on the 17th of August that, "by the way, a lot (sic) of people have not yet received their "contracts" so that should not discourage you." However, it is not disputed that Okafor had no knowledge this assertion and testified later in deposition that he had no knowledge of the truth of this assertion. (App. 3 Oakfor Dep. P. 34. L. 7-17) Ms. Darby, however, indicated that all faculty to her

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[3]Dr. Okafor does not recall this conversation. (App. 3)

knowledge had contracts prior to classes in 2012 and no faculty were hired without contracts. (App. 4 Darby Dep. P. 15)

LEGAL ANALYSIS:

Plaintiff, South Carolina State University (SCSU) essentially argues that Defendant should be found in breach of the memorandum of understanding and a judgment entered against her for the amount pled. The facts, as established in discovery and in part provided in the record appendices attached, establish questions of material fact including several defenses to the alleged breach or non-performance of Dr. Simmons. In large part, the Plaintiff is stating that the fact that it never offered Dr. Simmons a contract to return is not a material fact or a defense and that she should have returned: 1) without a contract she had been told was required before becoming a member of the faculty, and 2) without having any knowledge of the terms of her employment such as salary, term and tenure among others. The facts are undisputed that Dr. Simmons did return, in fact was still working at SCSU, but was simply never offered a faculty employment contract. Dr. Okafor has no knowledge of a contract for Dr. Simmons (App. 3 Oakfor Dep. P. 30 -35) and Academic Affairs prepared an appointment letter dated July 23rd (actually prepared on August 1 st) but never sent it to Dr. Simmons. (App. 4 Dep. Darby P. 25, 26) Darby further stated in her deposition that there is never a faculty person hired without a contract (App. 4 Dep. Darby P. 15, L. 5-7) and she admitted that Dr. Simmons had not received a contract for the 2012 Academic year. (Id at P. 34-36, 37)

Further, the contract provides that Defendant remain employed by SCSU for the period of time she took Title III funds. In fact, she continued to be employed full time in the summers and part time during the academic year during this entire period. Finally, it is not disputed that the funds used for Dr. Simmons' education were federal funds provided by grant. The Plaintiff has

alleged that the agreement required she repay the funds if she does not return. The Plaintiff University did not expend funds, the Federal Government expended funds. The Plaintiff has not pled actual damages and has no actual damages recognized under contract law as it lost nothing. There are material facts, either in dispute or undisputed in this record, that Plaintiff failed to allow the return of this professor.

A. Defendant Raises a Question of Material Fact that Plaintiff Prevented a Condition of the Contract.

One who prevents a condition of a contract cannot rely on the other party's resulting nonperformance in an action on the contract. *Willms Trucking Co. v. JW Constr. Co.*, 314 S.C. 170, 442 S.E.2d 197 (Ct. App. 1994); *Champion v. Whaley*, 280 S.C. 116, 311 S.E.2d 404 (Ct. App. 1984). In this matter the contract language is interpreted by Plaintiff to require her return to SCSU upon completion of her degree. The facts, as set forth in the record appendices, provide evidence which demonstrate that Dr. Simmons did in fact return (in fact was still an employee) and was ready to begin again as a member of the faculty.

The facts in the record further provide evidence from which a jury could determine that the Plaintiff did not provide Defendant with a contract of employment, or even provide verbally the material terms of the agreement, allowing her to complete the last obligation of Dr. Simmons that Plaintiff alleges breached the contract. A University professor, as well as most teachers, must find a position before the beginning of the academic year or confront likely unemployment for that period. (App. 5 Martin Affidavit) The facts in this record provide substantial evidence that Plaintiff prevented a condition of the contract; the contractual appointment and employment of Defendant.

B. The Asserted Contract between the Plaintiff and Defendant Contained an Implied Condition that the Plaintiff would Contract with Simmons allowing her Return to Teach and Such Condition was Breached or made Impossible by Plaintiff.

A party cannot take advantage of his own default in the performance of a contract. Where a

contract is not performed, the party who is guilty of the first breach is generally the one upon whom rests all liability for the nonperformance. *Williams Trucking Co. v. JW Constr. Co.*, 314 S.C. 170, 442 S.E.2d 197 (Ct. App. 1994); 17A Am. Jur. 2d *Contracts* § 621 (1991). There is substantial evidence in the record that the agreement in question contained an implied condition that the Plaintiff would take action allowing the Defendant's return, including the negotiation of a standard and fair employment contract. There is further direct and circumstantial evidence that Plaintiff (University) breached this agreement by failing to negotiate, provide, offer, or even discuss the material terms of an employment contract with Dr. Simmons. A jury could determine that Defendant was not liable for any alleged non-performance.

Nonperformance of a promise in accordance with its terms is excused if performance is prevented by the conduct of the adverse party. *Parks v. Lyons*, 219 S.C. 40, 64 S.E.2d 123 (1951); 17A Am. Jur. 2d *Contracts* §§ 606, 701-02, 717 (1991). It is an implied condition of every contract that one party will not prevent performance by the other party. A contracting party who prevents the other party from performing under the contract cannot urge or avail himself of the nonperformance which it, in this case the University, has brought about. Stated differently, nonperformance of a promise in accordance with its terms is excused if performance is prevented by the adverse party. *Parks v. Lyons*, 219 S.C. 40, 64 S.E.2d 123 (1951); 17A Am. Jur. 2d *Contracts* §§ 606, 701-02, 717 (1991).

C. The Record Contains Substantial Evidence that Plaintiff Abandoned the Contract when Failing to Contract with Defendant.

There is substantial evidence presented through testimony and documentation provided in this record that the Plaintiff, in failing to enter into a contract with Dr. Simmons, which was required of all faculty, abandoned the asserted contract and any failure to perform by the Defendant was waived or forgiven. *General Sprinkler Corp. v. Loris Indus. Dev., Inc.*, 271 F.

Supp. 551 (D.S.C. 1967); *U.S. for Use and Benefit of Williams Elec. Co. v. Metric Constructors, Inc.*, 325 S.C. 129, 480 S.E.2d 447 (1997) Whether a party abandons a contract so as to forgive the other party's performance under the contract's terms is a question for the fact finder. (Id.)

The abandonment of a contract is a matter of intention to be ascertained from the facts and circumstances surrounding the transaction from which the abandonment is claimed to have resulted. (Id) Abandonment of the contract by one party is the giving up of the right to a benefit due from the other party. An abandonment of the contract involves a breach of the implied obligation of good faith and fair dealing and a party to a contract abandons it by undertaking an unequivocal act which is inconsistent with the existence of the contract. A contract will be treated as abandoned when the acts of one party is inconsistent with the contract's provisions or are acquiesced in by the other party. *General Sprinkler Corp. v. Loris Indus. Dev., Inc.*, 271 F. Supp. 551 (D.S.C. 1967); *U.S. for Use and Benefit of Williams Elec. Co. v. Metric Constructors, Inc.*, 325 S.C. 129, 480 S.E.2d 447 (1997)

In this matter, Dr. Simmons provided transcripts to SCSU and remained available to contract with Plaintiff and return as a faculty member. She continued to be an employee of SCSU as its Environmental Field Director, a position from which she was terminated in late August or September, 2012. (App. 2 Simmons Aff. ¶ 23-25) As it is undisputed that she was never offered a contract or even a letter of appointment, the Plaintiff abandoned the contract and made that known to Defendant. The jury has substantial evidence that the Defendant's obligation to perform as alleged by Plaintiff, was made impossible by Plaintiff, was waived or abandoned by Plaintiff.

D. It is a fact question for the jury as to whether Defendant Denise Simmons performed the contract as written.

The contract provision asserted by Plaintiff in this matter is the provision/s Plaintiff had Denise Simmons sign upon her request for Title III grants or funding from the Federal Department of Education. The language is as follows:

> I, Denise S. Grant, agree that I will remain in the active service with South Carolina State University upon *completing* this agreement for a period equivalent to the amount of time for which financial assistance was received. For the purpose of this agreement, a summer session as well as each conference, workshop, seminar, etc. for which assistance was provided (as outlined in the Professional Improvement Plan) is considered to be the equivalent of a semester. Failure on my part to carry out the above agreement will result in the lump sum repayment of the entire amount expended by South Carolina State University in my behalf. (App. 2 Simmons Aff. ¶ 3-5 Doc. b. c.) emphasis added.

The language of this agreement or memorandum of understanding was written by Plaintiff and a jury could determine, in the interpretation of the term "completing," that the obligation could be and was fully performed by the agreed continuation of Defendant's (Dr. Simmons) employment during the time she also pursued her doctorate using Title III funds. A contractual provision is or can be considered ambiguous when the terms of the contract are reasonably susceptible to more than one interpretation. *Carolina Ceramics, Inc. v. Carolina Pipeline Co.*, 251 S.C. 151, 161 S.E.2d 179 (1968)(ambiguous contract is one capable of being understood in more senses than one) *Holden v. Alice Mfg., Inc.*, 317 S.C. 215, 452 S.E.2d 628 (Ct. App. 1994); *Skull Creek Club Limited Partnership v. Cook and Book, Inc.*, 313 S.C. 283, 437 S.E.2d 163 (Ct. App. 1993)(construction of contract which is ambiguous, or capable of more than one construction, is question of fact); *Kumpf v. United Tel. Co.*, 311 S.C. 533, 429 S.E.2d 869 (Ct. App. 1993); *Twenty Ninth Ave. Corp. v. Great Atlantic & Pacific Tea Co.*, 311 S.C. 275, 428 S.E.2d 734 (Ct. App. 1993); *Chan v. Thompson*, 302 S.C. 285, 395 S.E.2d 731 (Ct. App. 1990); *Popocar Enter. v. McGowan*, 300 S.C. 178, 386 S.E.2d 795 (Ct. App. 1989); *Alala v. Peachtree Plantations,*

Inc., 292 S.C. 160, 355 S.E.2d 286 (Ct. App. 1987); *Holcombe v. Orkin Exterminating Co.*, 282 S.C. 104, 317 S.E.2d 458 (Ct. App. 1984). If a contract or provision of a contract is ambiguous, the intent of the parties controls and such interpretation goes to intent of the parties and becomes a jury question.

Ambiguities must be construed against the party who prepared the contract. A provision of a contract which does not clearly express the intention of the parties should be construed against the one for whose benefit it was inserted. The term "completing" the agreement, could be interpreted as executing the agreement versus performing the agreement and Dr. Simmons worked for SCSU throughout her time while also pursing her PhD. Ambiguous language in a contract should be construed liberally and most strongly in favor of the party who did not write or prepare the contract and is not responsible for the ambiguity. *Holden v. Alice Mfg., Inc.*, 317 S.C. 215, 452 S.E.2d 628 (Ct. App. 1994); *Skull Creek Club Limited Partnership v. Cook and Book, Inc.*, 313 S.C. 283, 437 S.E.2d 163 (Ct. App. 1993)

In this matter, the provision that Defendant must remain in active service of the Plaintiff for the length of time she receives Title III funds could be interpreted to include her continued service for four years during the time she was pursuing her degree. The question would turn on the interpretation of the phrase "upon completion" within the Memorandum of Understanding. That question, if the provision is ambiguous, would be a question for the fact finder.

E. SCSU is not the Proper Party to this Action as it Incurred Little to no Actual Damages:

It is not disputed that South Carolina State University did not expend its own funds on behalf of Dr. Simmons. Title III funds are federal funds. Plaintiff (SCSU) did not provide a contract or an offer of contract to Dr. Simmons and, in fact, did not hire or attempt to hire a professor to replace Dr. Simmons until two years later, 2014. (App. 3 Okafor Dep. P. 35, 37)

Plaintiff has not provided information requested indicating it even had the financial ability to pay a salary to Dr. Simmons. (App. 6. Plaintiffs Responses to Requests to Admit) Plaintiff never offered Dr. Simmons a contract for the second semester of the 2012-2013 academic year or forwarded an offer of contract for the following year even knowing her fellowship was a year long agreement only.

The damages recoverable for a breach of contract are those which follow as a natural consequence of the breach.[4] The damages to which one is entitled for breach of contract are those which arise naturally from the breach or those which reasonably may be supposed to have been within the contemplation of the parties at the time the contract was entered into. Dr. Simmons made the grades, continued to work for SCSU and obtain grant funding for the University while finishing her Ph.D. She was not hired back as faculty and the University did not pay another professor until 2014. *Stern & Stern Assocs. v. Timmons*, 310 S.C. 250, 423 S.E.2d 124 (1992); *Manning v. City of Columbia*, 297 S.C. 451, 377 S.E.2d 335 (1989); *Drews Co. v. Ledwith-Wolfe Assoc.*, 296 S.C. 207, 371 S.E.2d 532 (1988); *Goodwin v. Hilton Head Co.*, 273

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[4] Plaintiff may be asserting that the plead sum is, in essence, liquidated damages. Even if such were the case, a contractual provision requiring payment of a stipulated sum by one of the parties upon termination or cancellation of the contract will be treated as an enforceable liquidated damages provision rather than an unenforceable penalty only if all three of the following factors are present:

(1) the injury caused by the breach must be difficult or impossible of accurate estimation;
(2) the parties must intend to provide for damages rather than a penalty; and,
(3) the stipulated sum must be a reasonable pre-estimate of the probable loss resulting from such a breach.

Benya v. Gamble, 282 S.C. 624, 321 S.E.2d 57 (Ct. App. 1984)(whether sum mentioned in contract is liquidated damages or a penalty can be either a question of law to be determined by trial judge or a question of fact to be determined by the jury); 22 Am. Jur. 2d *Damages* §§ 683-84, 686, 690 (1988); 25 C.J.S. *Damages* §§ 101(c), 102 (1966).

S.C. 758, 259 S.E.2d 611 (1979); *Holmes v. Nationwide Life Ins. Co.*, 273 S.C. 711, 258 S.E.2d 924 (1979) A party who has been injured by a breach of a contract is entitled to recover the amount of the loss; to be placed in the same position he would have occupied if the contract had been performed.

One who seeks to recover damages for a breach of contract to which he was a party must show that the contract has been performed on its part, or at least that it was, at the appropriate time, able, ready, and willing to perform it. Denise Simmons was never sent a contract or offer of contract and asked for a contract as late as the 23rd of August, after the start of SCSU classes. None was offered. The 23rd of August was the last day she had to formally enter into an alternative employment agreement or lose the employment. SCSU was not able or willing to perform and enter into a contract with her at that time. There is substantial evidence that a jury could determine that not only did Defendant not breach the agreement but SCSU incurred no damages and, in fact, saved funds by not employing Simmons.

F. Dr. Simmons Disputes the amount Plead as Damages.

Plaintiff appears to request this Court, based on the language of the Memorandum of Understanding, to simply accept the damages number pled in the Complaint. The damage figure presented is purported to be the amount of Title III funding paid, however, Dr. Simmons contests this amount.

The Plaintiff is, in essence, asking this Court to assign liability and take the Plaintiff's word, which would disallow a contest of the figure presented by Defendant in its Complaint. Defendant denies liability in any way to the Plaintiff and disputes that the number pled in the Complaint is the correct amount of funds expended solely for Defendant to complete her PhD.

(App. 2 Simmons Aff. Para. 24, 25)

SUMMARY JUDGMENT STANDARD:

In deciding a Rule 56 motion, the Court must view the facts and inferences therefrom in the light most favorable to the non-moving party. *Bravis v. Dunbar*, 449 S.E.2d 495, 496 (SC Ct. App. 1994) The Plaintiff, and movant, in this matter has not only the initial burden of proof but must present un-controverted evidence that no material facts exist.

Summary Judgment is a drastic remedy and is only proper if there is no evidence presented creating a genuine issue of material fact. In making a determination, a Court must consider everything in the record. *Gilmore v. Ivey*, 348 S.E.2d 180, 183 (SC Ct. App. 1986)

CONCLUSION:

There is substantial evidence that Defendant (Denise Simmons) was ready and able to return as a member of the full time faculty with the Plaintiff. In order to do so, Plaintiff was required to contract with her, "hire her," and allow her to know, understand and consider what terms were being offered such as salary, length of term, tenure track and other material terms. It is not disputed that Plaintiff never made such an offer. In short, Plaintiff assumed Defendant should simply return without a contract, begin teaching and hope she would obtain a contract which was reasonable and fair at a later date after losing the ability to gain employment for that academic year. A jury could determine, therefore, that Plaintiff breached the agreement first, failed to satisfy a condition, denied her the ability to perform, and/or waived or abandoned the contractual provision it seeks to enforce.

Further, the funds sought to be recouped by Plaintiff are federal funds, not University funds. Plaintiff has provided no evidence of actual damages in discovery. The damages figure plead in

the Complaint is not within the asserted contract language and is disputed by Defendant.

RESPECTFULLY SUBMITTED:

Date: June 1, 2017

J. Charles Ormond, Jr.

Attorney for Defendant

ORMOND / DUNN
301 Stoneridge Drive
Columbia, SC 29210
803 933 9000
Chuck@ormonddunn.com

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF ORANGEBURG	)	FIRST CIRCUIT
		CA# 2015-CP-38 - 0553
South Carolina State University,	)	
	)	
Plaintiff	)	
vs.	)	
	)	
Denise Simmons,	)	
Defendant,	)	
	)	

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 1st of June 2017, a copy of **Defendant's Memorandum in Opposition to Plaintiff's Motion for Summary Judgment** was/were filed and served upon Defendants; (as captioned above) by depositing the same in the United States mail, first class, postage prepaid, and addressed to:

Via U. S. Mail
Vernie Williams, Esq.
Childs and Halligan
P.O. Box 11367
Columbia, SC 29211

cc. Dwayne Mazyic, Esq.
Kimberly Kelley Blackburn, Esq.
Childs and Halligan
P.O. Box 11367
Columbia, SC 29211

J. Charles Ormond, Jr.

Dated:06/01/2017

1) Answer:

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF ORANGEBURG	)	FIRST CIRCUIT
		CA# 2015-CP-38 - 0553
South Carolina State University,	)	
	)	
Plaintiff	)	
vs.	)	**ANSWER / COUNTERCLAIM**
	)	
Denise Simmons,	)	
Defendant,	)	
	)	

Defendant, Denise Simmons, Individually, hereinafter referred to as ("Simmons" or "Defendant") by and through her undersigned attorney/s, answers the Complaint, provides affirmative defenses and/or counterclaim as follows:

FOR A FIRST DEFENSE

1. Defendant denies each and every allegation contained in Plaintiff's Complaint unless hereinafter expressly admitted.

2. Regarding Paragraph 1 of Plaintiff's Complaint, Defendant admits the allegations of this paragraph.

3. Regarding Paragraph 2 of Plaintiff's Complaint, Defendant admits the allegations of paragraph 2, as to her residence (Virginia), but denies the remainder of the paragraph as written.

4. Regarding Paragraph 3 of Plaintiff's Complaint, Defendant denies the allegations of this paragraph as written.

5. Paragraph 4 of Plaintiff's Complaint is admitted to the extent that the dispute is governed by the laws of South Carolina and South Carolina State University is physically located in the County of Orangeburg. Any and all other remaining allegations are denied.

6. Regarding Paragraph 5 of Plaintiff's Complaint, such allegations are admitted.

Facts Alleged:

7. Regarding Paragraph 6 of Plaintiff's Complaint, Defendant admits she was hired by South Carolina State University in or about 2004.

Mot. to Settle Ex. 8 - 019

8. Regarding Paragraph 7 of Plaintiff's Complaint, Defendant admits that the signatures on the documents attached to the Complaint are her signature. Any and all remaining allegations within this paragraph are denied.

9. Regarding Paragraph 8 of Plaintiff's Complaint. Defendant is without sufficient knowledge to form a believe as to the truth of such allegations and, therefore, such allegations are denied and proof of same demanded.

10. Regarding Paragraph 9 of Plaintiff's Complaint. Defendant is without sufficient knowledge to form a belief as to the truth of such allegations and, therefore, such allegations are denied and proof of same demanded.

11. Regarding Paragraph 10 of Plaintiff's Complaint, Defendant admits that she submitted a plan (Professional Improvement Plan and Faculty Development Projection/Plan) to the Plaintiff. Any and all remaining allegations express or implicit within this Paragraph of the Plaintiff's Complaint are denied.

12. Regarding Paragraph 11 of the Plaintiff's Complaint. Such allegations are admitted in so much as Defendant was admitted to Clemson in 2008.

13. Regarding Paragraph 12 of the Plaintiff's Complaint. Such allegations are admitted in so much as Defendant, at some point, provided such documents to Plaintiff. Any and all remaining allegations express or implicit within this Paragraph of the Plaintiff's Complaint are denied.

14. Regarding Paragraph 13 of the Plaintiff's Complaint. Plaintiff and Defendant entered into an agreement/s in which grant funds would inure to Defendant's and Plaintiff's benefit for post graduate studies. Any and all remaining allegations express or implicit within this Paragraph of the Plaintiff's Complaint are denied.

15. Regarding Paragraph 14 of the Plaintiff's Complaint. Plaintiff assisted Defendant with funds in order to further her education while continuing to work with Plaintiff which inured to the benefit of both Defendant and Plaintiff. Any and all remaining allegations express or implicit within this Paragraph of the Plaintiff's Complaint are denied.

16. Regarding Paragraph 15 of the Plaintiff's Complaint. Such allegation is a conclusion of law and requires no response. Any and all remaining factual allegations express or implicit within this Paragraph of the Plaintiff's Complaint are denied.

17. Regarding Paragraph 16 of the Plaintiff's Complaint. Defendant is without sufficient information to form a belief in the truth or falsity of this allegation/s and therefore denies same.

18. Regarding Paragraph 17 of the Plaintiff's Complaint. Defendant admits she was awarded a PhD degree from Clemson University in 2012. Any and all remaining allegations express or implicit within this Paragraph of the Plaintiff's Complaint are denied.

19. Regarding Paragraph 18 of the Plaintiff's Complaint. Defendant denies the allegations of this Paragraph as written.

20. Regarding Paragraph 19 of the Plaintiff's Complaint. Defendant denies the allegations of this Paragraph.

21. Regarding Paragraph 20 of the Plaintiff's Complaint. Defendant denies the allegations of this Paragraph as written.

22. Regarding Paragraph 21 of the Plaintiff's Complaint. Defendant denies the allegations of this Paragraph as written.

Alleged breach of contract

23. Regarding Paragraph 22 of Plaintiff's Complaint. Such reiteration of allegations are denied or admitted as set forth above.

24. Regarding Paragraph 23 of Plaintiff's Complaint. Such allegation is a conclusion of law and no response is required from Defendant. Any and all remaining factual allegations express or implicit within this Paragraph of the Plaintiff's Complaint are denied.

25. Regarding Paragraph 24 of Plaintiff's Complaint. Such allegation is denied.

26. Regarding Paragraph 25 of Plaintiff's Complaint. Such allegations are denied.

27. Regarding Paragraph 26 of Plaintiff's Complaint. Such allegations are denied.

28. Regarding Paragraph 27 of Plaintiff's Complaint. Such allegations are denied.

29. Regarding Paragraph 28 of Plaintiff's Complaint. Such allegations are denied.

30. Regarding Paragraph 29 of Plaintiff's Complaint. Such allegations are denied.

31. Regarding Paragraph 30 of Plaintiff's Complaint. Such allegations are denied.

Alleged Fraud:

32. Regarding Paragraph 31 of Plaintiff's Complaint. Such reiteration of allegations are denied as set forth above.

33. Regarding Paragraph 32 of Plaintiff's Complaint. Such allegations are denied.

34. Regarding Paragraph 33 of Plaintiff's Complaint. Such allegations are denied.

35. Regarding Paragraph 34 of Plaintiff's Complaint. Such allegations are denied.

36. Regarding Paragraph 35 of Plaintiff's Complaint. Such allegations are denied.

Alleged breach of contract accompanied by fraudulent act:

37. Regarding Paragraph 36 of Plaintiff's Complaint. Such reiteration of allegations are denied as set forth above.

38. Regarding Paragraph 37 of Plaintiff's Complaint. Such allegations are denied.

39. Regarding Paragraph 38 of Plaintiff's Complaint. Such allegations are denied.

40. Regarding Paragraph 39 of Plaintiff's Complaint. Such allegations are denied.

41. Regarding Paragraph 40 of Plaintiff's Complaint. Such allegations are denied.

PLAINTIFF'S SECOND DEFENSE:

42. Plaintiff's causes of action and claims, each cause or all causes, fail/s to state a cause of action.

PLAINTIFF'S THIRD DEFENSE:

43. Plaintiff and Defendant did not enter into a mutual valid and enforceable contract with the substance as set forth in Plaintiff's allegations and therefore no legally recognizable damages exist.

44. Plaintiff did not provide legal consideration.

45. Plaintiff has failed to mitigate its damages, if any, relating to its claims.

PLAINTIFF'S FOURTH DEFENSE:

46. Plaintiff's alleged claims are for breach of contract and the implicit covenant of good

faith and fair dealing within contracts in addition to equitable claims. Punitive damages are not available or proper in such claims.

PLAINTIFF'S FIFTH DEFENSE:

47. If a contract existed requiring Defendant to seek and offer herself for a position with Plaintiff beyond what consideration already existed, which Defendant denies, Defendant made such offer and was rejected or constructively rejected by Plaintiff.

48. If a contract existed requiring Defendant to seek and offer herself for a position with Plaintiff beyond what consideration already existed, which Defendant denies, intervening and/or supervening event/s existed at the time of alleged performance disallowing either party to perform.

49. If a contract existed requiring Defendant to seek and offer herself for a position with Plaintiff beyond what consideration already existed, which Defendant denies, Plaintiff created conditions or conditions existed at the time of performance making performance by Defendant impossible.

PLAINTIFF'S SIXTH DEFENSE:

50. The action is barred by the applicable limitation of actions and/or statute of limitations / equitable waiver or latches period.

51. If a contract existed as set forth in Plaintiff's allegations, which is denied by Defendant, such terms and conditions of the contract were so broad and indeterminate as to disallow Defendant the ability to understand or comply with such terms.

PLAINTIFF'S SEVENTH DEFENSE:

52. Defendant denies any breach of contract, however, if any breach occurred such was subsequent to Plaintiff's breach requiring no further performance by Defendant.

PLAINTIFF'S TENTH DEFENSE/Counterclaim

53. Defendant incorporates by reference the allegations contained in Paragraphs One (1) through fifty two (52) as if set forth herein *verbatim*.

54. Plaintiff's Claims, upon information and belief, all or some, against Defendant are, in whole or part, frivolous complaints/claims under the provisions of S.C. Code Sec. 15-36-10 et seq., in that, among other things, (1) Plaintiff seeks to allege and litigate matters

against Plaintiff primarily for a purpose other than that of securing the proper discovery, joinder or parties or adjudication of claims upon which the proceeding is based and/or (2) the allegations of the Counterclaims are designed not to create a cause or causes of action for damages.

WHEREFORE, Defendant requests that this Court:

A. Dismiss Plaintiff's Claims against Defendant in this action and award Defendant the costs incurred in defending this action and award attorneys fees pursuant to all applicable statutes and common law.

B. Dismiss Plaintiffs Frivolous Claims against Defendant and award, if appropriate, attorneys fees for the legal costs to defend any claims found to be frivolous under the appropriate statute.

C. Award Plaintiff the costs and disbursements of this action;

D. Award Plaintiff such other and further relief as this Court may deem just and proper.

Date: September 21, 2015

Attorney for Plaintiff
Holler Garner Corbett Ormond Plante & Dunn
1777 Bull Street
Columbia, SC 29201
(803) 765-2968 (933-9000)
Facsimile 803-252-8290

J. Charles Ormond, Jr.

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF ORANGEBURG	)	FIRST CIRCUIT
		CA# 2015-CP-38 - 0553
South Carolina State University,	)	
	)	
Plaintiff	)	
vs.	)	
	)	
Denise Simmons,	)	
Defendant,	)	
	)	

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 21st of September 2015, a copy of **Defendant's Answer** was/were filed and served upon Defendants; (as captioned above) by depositing the same in the United States mail, first class, postage prepaid, and addressed to:

Christopher Gibbs, Esq.
Dickie, McCamey & Chilcote
P.O. Box 100366
Lanchaster, SC 29721

Craig E. Burgess
300 College Ave.
P.O. Box 7395
Orangeburg, SC 29117

J. Charles Ormond, Jr.

Dated: 9/21/15

2) Affidavit of Denise Simmons with cited documents:

a. Clemson Nomination Form
b. Simmons presentation
c. Memorandum of Understanding
d. Memorandum of Agreement
e. Temp. Employment Data Request
f. April 11 2012 e-mail
g. July 17 Memorandum 2012 / e-mail
h. Prior faculty contracts 2005-2008
i. June - July 2012 e-mails / Employment data request
j. Aug. 16 e-mails
k. Aug. 23 e-mails
l. Aug 23 e-mails Okafor chain.
m. Tech faculty offer

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF ORANGEBURG	)	FIRST CIRCUIT
		CA# 2015-CP-38 - 0553
South Carolina State University,	)	
	)	
Plaintiff	)	
vs.	)	**AFFIDAVIT**
	)	
Denise Simmons,	)	
	)	
Defendant,	)	
	)	

I do hereby state the following, under oath, and to the best of my independent knowledge and recollection:

1. My name is Denise Rutledge Simmons. I reside in the State of Virginia. I am the Defendant in the action above.

2. I obtained a bachelors and masters degrees in engineering and worked in private industry for many years prior to taking a position as an instructor at South Carolina State University (SCSU) in or around 2005.

3. In 2008, I decided to take steps to earn my terminal degree, a PhD in engineering. I spoke with my then Dean and others at SCSU and I was offered a Title III grant to pursue this degree at Clemson University.

4. I submitted and signed several documents for this purpose including: a. A Clemson nomination form b. summary of my goals, c. Memorandum of Understanding and d. Memorandum of Agreement. (Attached) There were other documents associated with this process.

5. Prior to leaving for Clemson, it was understood by SCSU that I would continue in the employ of South Carolina State University as the Director of the Environmental Sciences Field Station in Aiken. Some of my support package – from my understanding, came from Field Station Grants. I also served on an accreditation committee during this period (late 2008 through early 2012) I was nominated for an award (University level) while away.

6. I took the courses designated in the package and worked hard both on the course work for my doctorate and my continued Field Station position with SCSU. The Field Station was pretty much full time in the summers and I retained an apartment in Aiken during that time. There were also duties during the academic year including Grant work and

recruiting and other items which did take some time.

7. I continued with my duties for SCSU and my doctorate program through the years 2008 (Fall) through Spring of 2012) I earned my PhD in late Spring of 2012. I continued by position as SCSU Field Study Director that summer. (e. Employment data request form)

8. In or about late November of 2011, I informed SCSU (academic affairs was the Department in which this process was conducted) that I would be graduating the following Spring. That Spring (2012) I initiated the process of having my transcripts sent to SCSU from Clemson.

9. I recall in or about February of 2012, I did see news stories about SCSU which were concerning to me as an employee and a citizen. Also, during this time I did speak with a friend who worked with SCSU in administration and she relayed some information to me that was also quite concerning. However, I felt that the University and the State would likely work it out and continued with my goal to return as a professor of engineering at SCSU. I had maintained my long time home in the Columbia area and would live there again when I returned to SCSU.

10. I did receive an e-mail in April of 2012 (f. e-mail) indicating that I was on the initial teaching schedule for Fall 2012. I felt better at that time that SCSU would be able and in a financial position to contract with me as a professor.

11. I completed my PhD in May of 2012. Subsequent to that, I continued working as the Field Study Director and was in Aiken most of the time. My position was known to my assistant (who worked in the Department) and most every other professor in the SCSU Department. (g. memorandum of July 17) I waited in June and in July for a contract.

12. During the time I was an instructor with SCSU I had always received an employment contract or at least a draft or letter by June or July prior to the upcoming academic year and it was sent to me by, at the latest early August, and I would then sign it. I was told by more than one person in the Academic Affairs Department, including Ms. Darby to my recollection, when I started in or about 2005 that if I did not get a written and signed employment contract the University was under no obligation to hire or pay me. (h. prior faculty agreements)

13. During the early Summer of 2012 I worked for SCSU in Aiken. I continued with the process of having my transcripts sent to SCSU from Clemson demonstrating the PhD was obtained. (i. E-mails related to transcripts) There was a new Department head, Dr. Okafor, who was responsible, from my understanding, to contact me and negotiate my contract. I did not hear from him in June or July. Also, my grandmother was very ill during this time and I was required to go to Charleston to be with her and take care of things related to her condition with the Family. However, I always had my cell phone and all faculty and academic affairs had this number. I was not at the SCSU campus as the Summer Field operation was in Aiken and required travel. A call to my university

office would go un-answered.

14. By late July - early August, I was concerned that Dr. Okafor had not contacted me and discussed and negotiated a contract. I had been sent no letter of re-appointment. The contract would have my salary, benefits, tenure track status and term of employment. I did assume, based on the earlier news releases which were continuing from my recollection during this time, that the University may be cutting faculty, or did not have funds in place. To my recollection, in late July or early August (2012), because I needed a job I told my faculty adviser and mentor at Clemson, Julie Martin, that I was worried about a job, and SCSU may not be able or going to employ me. She looked for me and was able to find a non permanent job ("post Doc") with a program shared by Clemson and Virginia Tech. We (Dr. Martin and I) discussed that I still hoped a contract from SCSU would come but in early August I tentatively accepted this position in case a contract did not come from SCSU. It is well known in academia that if you don't get a contract by early August, you are not going to likely get one that academic year.

15. By mid August, although I was very busy with the family issues with my grandmother who passed shortly after that, I was becoming sure I would not get a contract. During discovery I saw a document which was a multiperson e-mail on the 13th (August) about a faculty meeting. It appears that I was on that e-mail but I can not recall getting it and I certainly had no letter of appointment or contract. I had indicated to Julie Martin on the 13th or 14th of August that I may be available to be hired for the post doc position with the Virginia Tech - Clemson project. It was less money than I would make by far as a professor and taking it would, in essence, disallow a year of teaching toward potential tenure at any College or University. However, it included medical benefits which was critically important to me since I underwent major surgery in November 2011 and anticipated the need for follow up care. I could not afford to allow a lapse or lose my health insurance coverage.

16. On the 16th of August, I e-mailed Dr. Okafor and relayed the fact that I had been required to take another position, that I was distressed about the situation and had not received a contract, letter or even a call at that date. I recall getting a response that I should not worry about a contract and I had no number to reach me which is, of course, not the case. Only a few days from the start of classes, I had no other choice but to obtain a position. (j. Aug. 16 e-mail) However, Julie Martin and I had discussed that the final date to formally accept the post doc position was August 23rd. If I had gotten a letter of contract or a contract itself, I could have still declined the informal acceptance and gone to SCSU.

17. On the 23rd of August, (classes had started) - that morning - I received a call (left on voice mail) and an e-mail from Debra Darby. (k. Aug 23rd Darby e-mail) She is with Academic Affairs and is the last in the process of hiring and contracting with faculty from what administrators have told me at SCSU. I did call her that day - I recall that morning. (Aug. 23rd.)

18. Debra Darby asked me point blank if I had gotten a contract from Dr. Okafor. I told her I

had not. She (Darby) said that was supposed to be the process and Dr. Okafor was to negotiate it months ago and the contract should have been offered early summer. She also told me that she had been leaving messages for Dr. Okafor and he had not yet returned them. I told her - other than a couple of e-mails - he had not contacted me.

19. Later that morning, from my recollection, I called Dr. Okafor and left a message to call. I also e-mailed Dr. Okafor (l. Aug 23rd Okafor e-mail) I left my number I had - had for many years prior and which was on record with the University.

20. Dr. Okafor did call me that day. He did not offer a contract or discuss salary or anything of substance during the call. I asked him why he had not called or contacted me about the contract and he mentioned again he did not have a good number. I told him to send me a contract and I would try to get out of my current obligation. He was very curt saying I had not been in contact with him; he seemed to not want me there and he said nothing about a contract. He said I should drive down to SCSU and meet face to face. He also said he did not know I was returning to SCSU that semester. I found this odd since he had sent me a teaching schedule in the spring. I was given no information or an obligation from SCSU. That day, 23rd, I had to either accept the post doc offer or tell them I would not be able to formally accept. This would have burned some bridges possibly, but if I would have been sent a reasonable contract or specific offer I would have done so and returned to SCSU.

21. I formally signed the post doc offer on the 23rd (m. Va. Tech. signed faculty agreement) That afternoon (although I did not get to it until evening) Dr. Ihekweazu (Dean), for the first time in months, contacted me by e-mail. (n. Ihekweazu e-mail Aug 23 e-mails.) I had already signed the VA tech agreement on the last possible day and had told Ms. Darby that fact. Dr. Ihekweazu had clearly been misinformed as to the events of the past months and I responded when I got it. (n. 23rd E-mails)

22. I did get messages from Okafor either by e-mail into September. Although it would have been difficult, if I would have been given a specific offer or contract I would have made all attempts to get back to SCSU either as soon as possible that semester or the next and broken the post doc agreement.

23. I received nothing from that point forward. No offers, no letters, no contracts for the Spring or the next academic year. In or about February or March of 2013, to my recollection, I received a letter or message from an attorney stating I breached the agreement. I was never given an appointment letter, an employment letter or contract. I was never told what my term would be, my status, my salary or benefits. South Carolina State University did not hire or re-appoint me as faculty for the academic year of 2012-2013. I learned from a document that I had been terminated in my position as Field Director.

24. From the beginning, I had every intention of returning to SCSU. I left industry with the specific intention to eventually teach at SCSU. I initiated the process of returning in late

2011. I had transcripts forwarded and followed all the procedures. I did not seek other employment that summer as all other recent PhD graduates were doing. I continued working as the SCSU Field Station Director during the summer of 2012. I was simply never given any formal document or indication of reappointment as faculty by letter, oral agreement or written contract. I had no choice but to take an interim and non- permanent post doc position at the last minute.

25. South Carolina State University, during the time I was completing my terminal degree at Clemson, forward to me tuition funds and a stipend. This was part of the Title III grant that we requested. South Carolina State University paid me for the continuing work I did in the summers and, part time during the academic year, for being the Director of the Environmental Sciences Field Station in Aiken. The amount requested by SCSU (Plaintiff) in the complaint and motion appears to include actual wages for my employment during the approximately four years at Clemson. It is not a correct measure of expended funds.

Denise Simmons, PhD.

Sworn to and subscribed
before me this 28 day of
April, 2017

Notary Public for
State of Virginia
Commission expires: May 31, 2020 // Seal:

ROBEL KASSAHUN
NOTARY PUBLIC 7701323
COMMONWEALTH OF VIRGINIA
MY COMMISSION EXPIRES MAY 31, 2020

a.) Simmons, Denise Affidavit (attached document)

T6

Clemson University Graduate Fellowship Nomination Form (complete all information)

Student's Name: Denise Grant CU ID Number: _____

College/Department: CoES/Civil Engr. and Engineering and Science Education Degree Seeking PHD

Program of Study: Research will be in engineering education, but degree will be through CE department

College/Department funding offered to student: TA: $_____ per Year

RA: $[redacted] per Year

I am nominating this student for:

X A Recruitment Fellowship: $5,000 Master's, $10,000 PhD, $15,000 PhD ($15,000 fellowships are rare and require exceptional justification; Committee may reduce to $10,000)

_____ A Distinguished Achievement Fellowship for a current advanced PhD student (standard $10,000; $15,000 fellowships are rare and require exceptional justification; Committee may reduce to $10,000).

Month and Year that student began PhD studies at Clemson _____

Anticipated Graduation (Month, Year) _____ (at least 1 academic year remaining)

Letter of Nomination: Your Letter of Nomination conveys the strengths of the student to the Fellowship Committee, so please give it careful thought. In your letter, address the following:

- Describe how the student's proposed study relates to the emphasis area identified above.
- Describe why this student is important to your academic program.
- Comment on the applicant's academic potential and prior research experiences.
- Describe how the student's proposed study contributes to Clemson University's academic emphasis areas *(Leadership & Entrepreneurship, Information & Communication Technology, Family & Community Living, Advanced Materials, Automotive & Transportation Technology, General Education, Biotechnology & Biomedical Sciences, Sustainable Environment)*.
- If you are nominating a current Clemson graduate student for a Distinguished Achievement Fellowship, describe the "milestones" attained by the student which MUST, at a minimum, include:
  1. Passing their comprehensive exams (Date: _____); and
  2. Submission and presentation of papers at regional, national or international conferences; and
  3. Publication, or acceptance for publication, in a journal; and
  4. Attendance at one or more professional development workshops.

  Other milestones may include (but aren't limited to): nomination for academic or research awards; guest lecturing; student mentoring; department, college or university committee service; significant contribution to sponsored research proposal submitted for external funding.
- Provide any other information that you think will help the committee evaluate the merits of this student. If you are nominating a doctoral student for a $15,000 "Super-Fellowship Award", then you must include information that justifies such an award – what makes this student so outstanding and what contributions do you expect from this student that would merit an award in excess of the standard $10,000 doctoral award?

Signature of nominator: _____ Date: 2/29/08

Name of nominator (print) Scott D. Schiff E-mail: scott.schiff@ces.clemson.edu

Signature of Graduate Program Coordinator: Ronald D Andrus Date: 2/29/08

Nomination forms, nomination letters, and a copy of the student's Personal Statement (from OnBase application) must be emailed as PDF attachments to Sandra Witt in the Graduate School at scmello@clemson.edu. Submission deadlines are 4:30 p.m. on January 5 (for first round consideration), February 1 (for second round consideration), March 1 (for third round consideration), and October 1 (for spring semester admissions). For priority consideration, you are encouraged to submit nominations at the January and February deadlines.

b.) Simmons, Denise Affidavit (attached document)

Summary

I have gained over fourteen years of engineering experience working with public utility companies, a project management consulting company, and a software company. A registered Professional Engineer in TN and a Project Management Professional, I rank teaching as my most rewarding experience. In fall 2004, I joined the civil engineering technology (CET) department at South Carolina State University (SCSU) as a full time, untenured, assistant professor in a tenured track position. I believe excellence in teaching is an attitude, a partnership with students and the University, and is composed of those techniques necessary to instruct each student which includes remaining current in one's field and engaging oneself and students in research.

I am writing to present a proposal for professional leave and to request support while I am away. I have been accepted into Clemson University (CU) to pursue a PhD in Civil Engineering. Please find my letter of acceptance attached. Starting July 1, 2008, I will enroll in two courses and in fall 2008, I will enroll as a fulltime, in-resident student. It is expected that I will complete the program by December 2011. This proposal will describe my rationale, major goals or objectives, methodology, previous support including results, impact on development of application, and relevance and impact on departmental, school or university goals. The professional development plan I outline will allow me to strengthen and broaden scholarships, expand my expertise, pursue new and innovative ideas to improve the quality of instruction, and stimulate exploration of new areas to increase my visibility in the scholarly community.

FACULTY DEVELOPMENT PROJECT/PLAN

Description

Rationale

I have gained admission to the civil engineering department at Clemson University (CU) to pursue a PhD with a research focus in sustainable construction and engineering and science education. My planned program of study will combine my teaching experience with my work experience in engineering and in project and construction management.

I believe that only an intensive study and comprehensive research work in my field of interest would put me on the right track to achieve my ultimate professional ambitions: to be an effective teacher and to continue to contribute to the body of knowledge in engineering and science education and construction engineering and management. One of my professional goals is to be an effective instructor on the university level. I have been a "teacher" for over twenty years, serving mostly voluntary and part-time roles. My professional development plan (PDP) will provide me formal training and equip me to achieve my ultimate professional objectives.

Major goals or objectives

My entire objective for pursuing the PhD degree has always been to bring my experience back to South Carolina State University (SCSU) with the goal of exposing SCSU students to my areas of specialty, authoring scholarly works on sustainable development and engineering education, recruiting students to attend the University and enhancing the academic and research capabilities of the University.

I am extremely interested in increasing the involvement of minorities in science and engineering related careers and have worked toward this end. In the summer of 2005, I served as

the project director of the Summer Transportation Institute (STI) at SCSU. This program exposes secondary school students with an expressed interest in transportation careers to further information about this field through career speakers, engineering experiments, field trips, and interactive lectures. The program also endeavors to provide the students with mathematics, science, and technological enrichment, which will enable them to pursue a career in transportation. I currently serve as the interim director of the Environmental Sciences Field Station which is aimed at recruiting and retaining women and minorities in environmental science and engineering and natural resources-related fields of study.

I plan to continue my involvement in all of these activities and programs in an effort to encourage minorities to pursue science- and engineering-related degrees and become involved in research. In the past, I have engaged a group of Eisenhower Fellows to assist in the planning of these programs. My PDP includes coursework and research in engineering education and it will allow me to pursue new and innovative ideas to improve the quality of instruction and introduce me to effective ways to engage and retain women and minorities in science, technology, engineering and math (STEM) related disciplines.

Methodology

The focus of my research has been the study of environmental metrics used to evaluate guidelines for green building practices and the development of hands-on tools that can assist civil engineers, construction professionals and those who manage LEED™ projects. Information and tools that will help guide their decisions and implementation of LEED-NC™ have been developed. I have already presented my research at two workshops and one conference. At CU, I will pursue a cross disciplinary degree in civil engineering (sustainable construction) and in engineering and science education. The benefit of such a program is that I will increase my

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competency in civil engineering, in how to teach engineering, and in how engineering students learn. Coursework in assessment methods will also complement my role as the Technology Accreditation Commission (TAC) of ABET Continuous Improvement Committee (CIC) coordinator and allow me to better understand how to support the University in future SACS accreditation visits.

Sustainable construction is a new topic that is currently being debated among public and private entities. I have begun research in sustainable/green construction with the thought of advancing knowledge in construction process improvement for campus building projects. My interest within the research focus of engineering and science education is broad. I am interested in studying how to improve student learning and application of knowledge; how to introduce current topics, such as sustainability, into curriculums; and how to attract and retain women and minorities in STEM fields of study. Besides being of great interest to me, these are topics in need of further research. Further study and discussion with my committee, which has begun, will help me define my interests and lead me to a well-defined research project.

I have chosen CU due primarily to the reputation of the program, the regard I hold for the department and its faculty, and the opportunity to conduct research in engineering and science education as well as sustainable construction. I have maintained relationships with several members of the CU faculty and staff for nearly twenty years. Under the guidance of my committee, I know that I can receive a quality education that will prepare me for my stated professional endeavors. My PDP will allow me to increase my visibility in the scholarly community

Previous support and support from other sources

I have not received any previous support; therefore, I have no results to share. I am currently seeking salary support for the duration of my professional development leave.

Impact on development of application

My PDP will equip me to expose SCSU students to my area of research; to author scholarly works; and to enhance the academic and research capabilities of the University. Once I complete the PhD program and return to SCSU, I plan to conduct research with SCSU faculty as well as faculty from other educational institutions. Through collaborating with other faculty, I hope to gain support for research, learn new teaching strategies, and develop mentoring relationships.

In terms of mentoring students, I want students to see me as a source of information and guidance on how to discern truth and understanding and how to think critically. I want to be able to engage both undergraduate and graduate students as active collaborators with me in research and scholarship. Finally, I would like every student to be able to find a professor who is a true mentor and role model who can also offer meaningful guidance about general questions and life skills unrelated to a particular course or research project, but necessary for them to be successful in any undertaking. I endeavor to be such a professor.

Relevance and impact on departmental, school or university goals

Currently, the CET program at SCSU is seeking to form a partnership with in-state institutions offering EAC of ABET degree programs. CU is one such institution. It is thought that my presence on CU's campus may be timely as we seek to formalize an agreement that, if approved, would allow SCSU students to matriculate to CU and earn an earn a ABET

Mot. to Settle Ex. 8 - 039

Engineering Accreditation Commission (EAC) degree. The impact of such an opportunity on SCSU's engineering technology departments is huge as it will enhance the marketability of our degree programs to current and future students and it will improve the earning potential of the graduates from such a program. In addition, there is no one on faculty in CET with a niche in project management or sustainable construction. My PDP will allow me to strengthen and broaden scholarships and expand my expertise. I am also interested in being involved with recruitment and retention initiatives that would increase the number of students in CET and other STEM-related disciplines.

I predict my chances of success for completing the PhD program are high due to my experience conducting research and my own ambition. I have an idea of the discipline and fortitude required to write a dissertation. I have also the benefit of wisdom received through life's experiences. By selecting a topic that intrigues me, I will improve my chances for success. I will succeed because I am prepared and determined to succeed. I am apprehensive about my ability to pay for the educational fees associated with earning the PhD as a fulltime student living in Clemson while still sustaining myself and assisting my spouse in the support of our household in Columbia. I need to be able to attend Clemson as a full time student in order to make the most of my PhD experience and to expand my breath and depth of experience and knowledge. Financial support will allow me to make the most of this full experience and enable me to achieve my goals while easing my monetary concerns. I appreciate your time to review my PDP and ask for your consideration the requested support.

SPECIFIC ACTIVITIES TO BE PURSUED (i.e., COURSES TO BE TAKEN, SEMINARS CONFERENCES, etc.) WITH TITLE III FINANCIAL SUPPORT

PROFESSIONAL IMPROVED ACTIVITY	DATE	LOCATION
Enroll in courses required by PhD program. Summer session II.	7/1/2008	Clemson University
Enroll in courses required by PhD program. Fall semester.	8/15/2008	Clemson University
Enroll in courses required by PhD program. Spring semester.	1/4/2009	Clemson University
Enroll in courses required by PhD program. Summer session I.	5/28/2009	Clemson University
Enroll in courses required by PhD program. Summer session II.	7/1/2009	Clemson University
Enroll in courses required by PhD program. Fall semester.	8/15/2009	Clemson University
Enroll in courses required by PhD program. Spring semester.	1/4/2010	Clemson University
Enroll in courses required by PhD program. Summer session I.	5/28/2010	Clemson University
Enroll in courses required by PhD program. Summer session II.	7/1/2010	Clemson University
Enroll in courses required by PhD program. Fall semester.	8/15/2010	Clemson University
Enroll in courses required by PhD program. Spring semester.	1/4/2011	Clemson University
Enroll in courses required by PhD program. Summer session I.	5/28/2011	Clemson University
Enroll in courses required by PhD program. Summer session II.	7/1/2011	Clemson University
Enroll in courses required by PhD program. Fall semester.	8/15/2011	Clemson University

Name Denise S. Grant	**SS# 248-47-3833**
School/Area College of Science, Math and Engineering Technology	**DEPT. Civil & Mech Engring**
Office Address PO Box 8143	
Mailing Address 3409 Northshore Road, Columbia, SC 29206	
Present area of concentration/assignment	
Civil Engineering - Project Management	
Proposed area of concentration/assignment upon completion of PIP Civil Engineering - Sustainable Construction and Engineering & Science Education	

c.) Simmons, Denise Affidavit (attached document)

SOUTH CAROLINA STATE UNIVERSITY
Orangeburg, South Carolina 29117

MEMORANDUM OF UNDERSTANDING

I understand that the advance payment of a stipend in the amount of $5000 plus tuition and fees for each summer session and $9000 plus tuition and fees for each fall and spring semester is issued to enable me to defray the expenses of pursuing a PhD in Civil Engineering. I further understand that I may be required to reimburse the Program for all or a portion of this amount if the course is not successfully completed.

Denise S Grant
Name

6/10/2008
Date

d.) Simmons, Denise Affidavit (attached document)

MEMORANDUM OF AGREEMENT
BETWEEN
SOUTH CROLINA STATE UNIVERSITY

AND

DENISE S. GRANT

A. **Reporting Requirements**

1. **Official grade reports must be submitted for all courses taken prior to reimbursement.**

2. **A written report detailing progress toward the accomplishments of the objectives outlined in the Professional Improvement Plan must be submitted after each period of enrollment.**

3. **If activities other than courses are pursued, a written summary detailing benefits derived and the specific skills acquired from participation must be submitted prior to reimbursement. In addition, a comprehensive report providing similar information must be submitted upon the conclusion of the Professional Improvement Plan.**

B. **Receipt of Assistance Requirements**

1. **For all courses pursued, a satisfactory grade must be obtained in order to receive reimbursement.**

2. Any changes or modifications in the Professional Improvement Plan must have the approval of all individuals who originally signed the Plan.

3. Failure to complete the Plan as agreed to without justifiable cause may result in mandatory repayment of all funds received.

4. Failure to comply with the reporting requirement outlines in "A" above or other requirement as may be instituted in the future, as deemed necessary, may result in termination of this agreement and/or mandatory repayment of all funds received.

C. Faculty/Administrator Compliance Statement

I, DENISE S. GRANT, agree that I will remain in the active service with South Carolina State University upon completing this agreement for a period equivalent to the amount of time for which financial assistance was received. For the purpose of this agreement, a summer session as well as each conference, workshop, seminar, etc. for which assistance was provided (as outlined in the Professional Improvement Plan) is considered to be the equivalent of a semester. Failure on my part to carry out the above agreement will result in the lump sum repayment of the entire amount expended by South Carolina State University in my behalf.

Denise S Grant
Signature

Witness

Notary Public

Signature, SCSU Authorized Official

SIGNATURE/APPROVALS*

Faculty/Administrator Date 6/10/2008

I, DENISE S. GRANT, certify that if this proposal is approved, funds will only be used to pursue the specific activities outlined above in keeping with Title III and South Carolina State University policies and procedures. Further, as well as the memorandum of agreement.

Chairperson Date _____

I, _____, certify that I have reviewed the proposed Professional Improvement Plan for the faculty/administrator named above and upon successfully completion of this Plan, this individual will be able to perform duties in the proposed area of concentration. An additional letter of support may be attached.

Dean Date _____

I, _____, concur with the Plan as proposed and recommended by the chairperson for the faculty/administrator indicated above.

_____ _____
Additional Approval (if necessary) **Date**

_____ _____
Provost & Vice President for Academic Affairs **Date**

_____ _____
President **Date**

_____ _____
Title III Coordinator **Date**

*NOTE: Approval by chair and dean indicates interest in the unit in the project, availability of requisite internal resources, prior negotiation of cost sharing or released time, and appropriateness of the budget. A proposal involving services, consultation, media services, computer support or physical space beyond the confines of the department or school requires approval of the relevant director.

e.) Simmons, Denise Affidavit (attached document)

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SOUTH CAROLINA STATE UNIVERSITY

Temporary Employment Data Request Form

APR 23 2012

NOTE *After administrative approvals, please forward this form, along with a Position Description and completed Application for Employment to the Budget Office. The Office of Human Resource Management will notify the supervisor when the Request has been approved, after which the employee may report to Human Resources to sign the form and be notified of the date to report to work. Employees will not be paid for work performed prior to approval.*

GENERAL POSITION INFORMATION					
EMPLOYMENT BEGIN DATE	May 16, 2012	EMPLOYMENT END DATE	June 30, 2012	EMPLOYEE ID#	900028263
LAST NAME	Simmons	FIRST NAME	Denise	MI	R.
POSITION TITLE *(Attach Position Description)*	Director - Environmental Sciences Field Station				
SUPERVISOR NAME	Dr. Stanley Ihekweazu	SUPERVISOR TITLE	Interim Dean		
DEPARTMENT	CSMET	INDEX NUMBER		584011 ($6500.00) 584019 ($929.17)	
PAY RATE: ☐ HOURLY ☒ SEMI-MONTHLY		HOURS PER WEEK		37.50	
TOTAL SALARY	$7,429.17	TOTAL NUMBER OF WEEKS		6.40	

APPROVAL SIGNATURES			
DEPARTMENT HEAD		DATE	4/17/12
VICE PRESIDENT/DIVISION HEAD		DATE	

BUDGET OFFICE ACTION			
POSITION NUMBER ASSIGNED		INDEX NUMBER	
ACCOUNT NUMBER	60171	TOTAL SALARY	$7,429.17
BUDGET ANALYST SIGNATURE		DATE	
BUDGET DIRECTOR SIGNATURE		DATE	
FORWARDED TO HUMAN RESOURCES ☐		DATE	

OFFICE OF HUMAN RESOURCE MANAGEMENT ACTION		
POSITION AND SALARY APPROVED ☐	DATE	
ASSIGNMENT INPUT TO HUMAN RESOURCES SYSTEM ☐	DATE	
SUPERVISOR NOTIFIED OF APPROVAL ☐	DATE	
HUMAN RESOURCES SIGNATURE	DATE	

EMPLOYEE CERTIFICATION

I UNDERSTAND THAT THIS IS A TEMPORARY ASSIGNMENT AS DESIGNATED ABOVE AND THAT THIS TEMPORARY EMPLOYMENT DATA REQUEST FORM DOES NOT REPRESENT A CONTRACT WITH SOUTH CAROLINA STATE UNIVERSITY. I ACKNOWLEDGE THAT THE LANGUAGE USED IN THIS DOCUMENT DOES NOT CREATE AN EMPLOYMENT CONTRACT BETWEEN ME AND SOUTH CAROLINA STATE UNIVERSITY, NOR DOES IT CREATE ANY CONTRACTUAL RIGHTS OR ENTITLEMENTS. I UNDERSTAND THAT NO PROMISES OR ASSURANCES, WHETHER WRITTEN OR ORAL, WHICH ARE CONTRARY TO OR INCONSISTENT WITH THE TERMS OF THIS PARAGRAPH CREATE ANY CONTRACT OF EMPLOYMENT.

Are you a current member of the S. C. Retirement System? ☒ YES ☐ NO
If yes, please contact the Office of Human Resource Management

EMPLOYEE SIGNATURE | DATE 4/23/2012

Form P-13 (Rev. 07/06)

SCSU v Simmons / SC State 0211

STATE OF SOUTH CAROLINA POSITION DESCRIPTION

GENERAL INFORMATION

☐ OHR COPY ☐ AGENCY COPY

N/A — Position Number
H24 — Agency Code
SOUTH CAROLINA STATE UNIVERSITY — Agency Name
Environmental Sciences Field Station — Division / Section / Unit
ORANGEBURG/ORANGEBURG — City / County
Denise Simmons — Employee Name
38 — County Code
Y — Y/N Is Position in Central Office ?
Interim Director — Current State Title
Alphanumeric Code
N/A — Slot
Band
TEM — Full / Part Time Indicator
37.50 — Hours Per Week
Base Hours
Dean — Supervisor State Title
Alphanumeric Code
Slot

SOURCE OF FUNDING

State % | 100 Federal % | 00 Other %

OFFICE OF HUMAN RESOURCES

Agency Code | Alphanumeric Code | Slot
Authorized Date
☐ Delegated ☐ New Position ☐ Prototype
☐ State Title Changes ☐ Update
Approved State Title
Approval Signature
Date Approved

REQUESTED ACTION INFORMATION

☐ FLSA Designation

Requested Action
Requested State Title
Alphanumeric Code
Stanley Iheakweazu — Supervisor's Signature
Date
Other Required Signature
4/25/12 — Date

THE FOLLOWING SECTION OF THE POSITION DESCRIPTION IS TO BE COMPLETED BY THE SUPERVISOR

1. What are the minimum requirements for the position (Minimum requirements must at least meet the state minimum requirements for classified classes but may include additional requirements.)?

A Master's degree and experience in student services programs/program management.

2. What knowledge, skills, and abilities are needed by an employee upon entry to this job including any special certification or license?

Knowledge of project management principles and methodologies. Ability to manage work and provide guidance to employees. Ability to assign appropriate priorities to work activities based on organizational goals and situational pressures. Ability to effectively plan and organize work activities and prioritize task completion to meet schedules and deadlines. Ability to conceptualize needed change and to initiate appropriate activities to move from concepts to implementation. Ability to develop and manage project budget, materials, and equipment.

3. Describe the guidelines and supervision an employee receives to do this job, including the employee's independence and discretion.

This employee will have supervisory responsibilities over the Environmental Sciences Field Station. Directs and provides project management consultation for all aspects of the design, development, and implementation of programs or projects within a program; prepares final assessment of project achievements and suggests changes for future projects.

4. Indicate additional comments regarding this position (e.g., work environment, physical requirements, overnight travel).

Director will provide services a in a traditional setting, ability to travel (primarily in September-December to support recruitment, but may occur during other months), ability to be in-resident in Aiken, SC from mid-May to late July each year, and ability to adapt to change. Some weekend and overnight travel required.

MISCELLANEOUS DATA

Employee Number
Position Dept. Number

STATE OF SOUTH CAROLINA POSITION DESCRIPTION

1. **Job Purpose:**
The general purpose of this position is to direct and manage functions associated with the Savannah River Environmental Sciences Field Station.

2. Job Functions:	Essential/ Marginal (E or M)	Percentage of Time
• Organization and staffing – Set up and manage the project team, Build teamwork, Work with other internal/external functional units, Establish procedures, Arrange training where necessary, Provide administrative services	E	15%
• Objectives and plans - Define and clarify project objectives, Clarify technical specifications, Develop project plans and schedules, Define, or approve, and distribute all changes in plans, Arrange resources	E	15%
• Management - Be responsible for managing all project aspects, Lead and motivate the project team, Manage human relationships, Resolve conflicts, Manage risks, Maintain quality control, Be responsible to raise funds to support program to include writing grant proposals	E	15%
• Procurement - Select and hire required consultants/faculty based on specific project deliverable requirements, Supervise consultants/faculty to ensure deliverables meet constraints, Organize commitments or contract procurement, Initiate all purchase orders for goods, services and supplies, Supervise project execution to deliver required products	E	15%
• External relations - Communicate with the project's stakeholders as appropriate, Work with stakeholders, Handle public relations, Handle customer relations	E	15%
• Information and communications - Prepare and distribute budgets and project reports, Prepare and distribute schedules and progress reports, Monitor and control actual versus budget, Hold team progress meetings, Hold problem resolution meetings, Liaise with the project's sponsor, Submit progress reports to the project's sponsor and/or upper management, Maintain project records and files	E	15%
• Assessment - Define program goals and determine how they are to be addressed, Develop assessment tools to measure achievement of program goals, Utilize results of assessment activities to further develop programs and to make decisions regarding resource allocations, Coordinate course and end-of-program assessment plans, coordinate assessment plans with faculty, collaborate with the faculty and staff to incorporate in-class assessment techniques at the individual faculty level	E	10%

3. **Position's Supervisory Responsibilities:**
If this position includes supervisory responsibilities, please indicate the state title and number of positions of the three highest subordinates.

	STATE TITLE	NUMBER
(1)		
(2)		
(3)		

Number of employees directly supervised: _____

Total number supervised: _____

4. **Comments:**

5. **The above description is an accurate and complete description of this job.** Denise Simmons 4/24/12

Employee's Signature — Date

f.) Simmons, Denise Affidavit (attached document)

Subject: RE: Fall 2012 Teacher Schedule and Textbook Form
Date: Wednesday, April 11, 2012 10:37:38 AM ET
From: Okafor, Kenneth C
To: Simmons, Denise R

Ms. Simmons,

How are you doing? I hope fine. I saw your email and I wanted to call you but could not reach you on your campus phone (number provided). Regarding your question, it may not be possible to exchange that course for another since the courses were share between you and two other professors (Drs. Eliadorani and Chen) in the program. Unless you can arrange privately with one of them to make the exchange. If you have any further questions, please let me know. Thanks.

From: Simmons, Denise R
Sent: Monday, April 09, 2012 5:58 PM
To: Okafor, Kenneth C
Subject: FW: Fall 2012 Teacher Schedule and Textbook Form

Hi Dr. Okafor. I had a quick question/concern about one course appearing on my fall schedule: plane surveying. I have no experience in the course ... not even the instruments. However, I have loads of experience elsewhere. I do have experience with the codes and contracts course and even engineering econ. I can teach the waste water course. Can you make a change in the schedule?
Regards,
Denise

Denise R. Simmons, PE, PMP, LEED-AP
Assistant Professor, Civil Engineering Technology
Interim Director
Environmental Sciences Field Station
SC State University
PO Box 8143
300 College Street, NE
Orangeburg, SC 29117-0001
803-536-8859
Visit our Website: http://www.cnrt.scsu.edu/fieldstation/index.html
Join us on Facebook: Environmental Sciences Field Station
Follow us on Twitter: @SRESFS

From: "Guinyard, Janice" <jguinyard@scsu.edu>
Date: Mon, 9 Apr 2012 14:43:18 -0400
To: "Denise R. Simmons" <dgrant@scsu.edu>
Subject: RE: Fall 2012 Teacher Schedule and Textbook Form

Good Afternoon Dr. Simmons,

I hope you and your family are doing well these days ☺. I asked Erica about you frequently. Attached is your Fall schedule, please review, print and sign and return to me along with your Textbook Request Forms. If you have any questions regarding your schedule, feel free to contact Dr. Kenneth Okafor 536-

DEFENDANT'S EXHIBIT 6 Okafor

4758) or Dr. Stanley Ihekweazu (536-8860). Looking forward to seeing you in the August.

Thank you,

Janice Guinyard, Administrative Specialist II
Department of Civil and Mechanical Engineering Technology
South Carolina State University
300 College Street
Orangeburg, SC 29117
803 536-7117
803 516-4516-Fax

g.) Simmons, Denise Affidavit (attached document)

South Carolina State University
SAVANNAH RIVER ENVIRONMENTAL SCIENCES FIELD STATION
POST OFFICE BOX 8143
300 COLLEGE STREET, NORTHEAST
ORANGEBURG, SOUTH CAROLINA 29117-0001
OFFICE: (803) 536-8859 FAX: (803) 516-4516

MEMORANDUM

TO: Dean, Office of Sponsored Programs, Division of Academic Affairs, and Human Resources

FROM: Erica Echols/*EE*
Savannah River Environmental Sciences Field Station

DATE: July 17, 2012

SUBJECT: Justification for delayed submission of P-13 (July 1-August 15, 2012) for Denise Simmons

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The above referenced P-13 (July 1-August 15, 2012) for Denise Simmons was submitted late due to misplacing the original P-13 document. Document was originally created and ready for signature as of April 9th along with a P-13 for May 16th-June 30th, 2012 to cover Dr. Simmons summer position working with the Field Station. Your approval of this P-13 is appreciated. If any additional information is necessary, please call Erica Echols at (803) 707-2791.

4-11-26

Williams, Debra Delores

From: Simmons, Denise R
Sent: Thursday, July 19, 2012 1:56 PM
To: Williams, Debra Delores
Subject: RE: P-13
Attachments: image001.jpg

Hi Ms Williams,
Please do proxy for me. Thank you.

DRS

Sent from my Verizon Wireless 4G LTE DROID

"Williams, Debra Delores" <dwilli19@scsu.edu> wrote:

Dr. Simmons,

We actually need an initial for the change on your P-13, however; if you give permission, I can make the change and initial it before getting Mr. Malone's signature.

Thanks,

Debra D. Williams
Project Manager/Coordinator
Office of Sponsored Programs
South Carolina State University
300 College Street
Orangeburg, SC 29117
803-516-4970 Phone
803-533-3679 Fax
DWilli19@scsu.edu

Never make someone a priority in your life, if you're just an option in theirs.....

From: Simmons, Denise R
Sent: Thursday, July 19, 2012 12:21 PM
To: Williams, Debra Delores
Cc: Echols, Erica L; Malone, Elbert R.
Subject: Re: P-13

Thanks, Ms Willliams.

Sent from my Verizon Wireless 4G LTE DROID

SCSU v Simmons / SC State 0336

h.) Simmons, Denise Affidavit (attached document)

STATE OF SOUTH CAROLINA
COUNTY OF ORANGEBURG

EMPLOYMENT AGREEMENT
NON-TENURED, TENURE TRACK FACULTY

THIS EMPLOYMENT AGREEMENT is made this 1st day of July 2005, by and between **MRS. DENISE GRANT,** SSN# **248-47-3833,** (hereinafter **EMPLOYEE**) and **SOUTH CAROLINA STATE UNIVERSITY,** 300 College Street Northeast, Orangeburg, South Carolina 29117-0001 (hereinafter **UNIVERSITY**). It supersedes, replaces and cancels any and all prior Employment Agreements heretofore executed between the two parties.

TERMS AND CONDITIONS

1. **DUTIES AND COMPENSATION:** The **EMPLOYEE,** for and in consideration of a salary of **$ 52,000 annually paid in accordance with University payroll schedule** agrees to serve the **UNIVERSITY** in the capacity of **ASSISTANT PROFESSOR CIVIL ENGINEERING IN THE DEPARTMENT OF CIVIL AND MECHANICAL ENGINEERING TECHNOLOGY;** and to perform the duties as follows: all regular duties and any additional duties assigned by the President of the University and/or your supervisors (including, but not limited to, instruction, off-campus teaching, academic advising, committee assignments, academic scholarship, and attendance at faculty meetings and institution-wide programs).

   Said salary is subject to reduction at all times during the life of this agreement, if in the discretion of the Board of Trustees, a lack of funds should make reduction necessary; or in the event that no funds are available to make the payments as stated herein, then this agreement shall be voidable at the election of the **UNIVERSITY**.

   †All assignments are approved by the President and may be changed at the President's discretion.

2. **TERM:** The term of this agreement shall be for a period of **nine months,** beginning **August 16, 2005,** and ending on **May 15, 2006,** unless otherwise terminated in accordance with the provisions of this agreement. This agreement shall not be effective until signed by the President.

3. **RENEWAL/NONRENEWAL OF AGREEMENT:** The employee is a **NON-TENURED, TENURE TRACK FACULTY** member. The **UNIVERSITY,** at its option, may renew this agreement for one year. Notice of non-renewal shall be given to the **EMPLOYEE** by the **UNIVERSITY** on or before **December 15, 2005.** Should the employee wish to return to employment with the University for the 2006-2007 academic year, the employee must provide written notice of such intent to continue employment on or before **April 1, 2006.** **Failure to provide written notice to your immediate supervisor by April 1, 2006 shall be interpreted as intent on the part of the employee to leave the University's employment, and the University shall have no further obligation to provide employment for the ensuing 2006-2007 academic year.**

   Employee Initials Here DBG

4. **TERMINATION:** This agreement may be terminated by the University prior to the expiration of the term for the following reasons: (1) Failure on the part of the employee to conform in conduct, or to such rules, regulations and policies as the University may deem proper and necessary, or to perform his/her duties, efficiently and satisfactorily to the President and/or State and federal laws; (2) deliberate and serious violations of the duties outlined in this Employment agreement or refusal to perform duties in good faith and to the best of Employee's abilities; (3) conduct which, in the sole judgment of the University, reflects adversely upon S. C. State or is prejudicial to its best interests; (4) financial exigency or programmatic reasons; (5) plagiarism or the illegal use of a person's written work without full documentation to the author or the misrepresentation of findings and conclusions in research; and (6) lapse of or withdrawal of license or certification in the State of South Carolina if the license or certification is required or is necessary for the performance of one's academic duties.

5. **AMENDMENTS:** The **UNIVERSITY** and **EMPLOYEE** specifically agree that this Agreement constitutes the full and complete agreement between the parties and that no amendments, changes, additions, deletions or modifications to or of this agreement shall be valid unless reduced to writing, signed by the parties and attached hereto.

6. **GOVERNING LAW:** The parties agree that venue for any dispute regarding the terms of this agreement shall be in a circuit court in Orangeburg and South Carolina before a judge as a non-jury matter and the terms of this agreement shall be governed by South Carolina law.

7. **SEVERABILITY:** If any provision(s) contained herein is deemed invalid or unenforceable either in whole or in part, this agreement shall be deemed amended to delete or modify, as necessary, the offending provision or provisions or to alter the bounds thereof in order to render it valid and enforceable. It is the intention of the parties that the provisions hereof be enforceable to the fullest extent permissible under applicable law, but that the unenforceability (or modification to conform to such law) of any provision shall not render unenforceable, or impair, the remainder of this agreement.

8. **THE UNIVERSITY RETAINS ALL MATERIALS AND RECORDS:** All equipment, materials or articles of information, including without limitation, work products of employee, manuals, files, student information, or any other equipment, material or data furnished by the **UNIVERSITY**, at its discretion, or for its use, shall remain the sole and exclusive property of the **UNIVERSITY**. With prior approval **EMPLOYEE** may retain an interest in work-products. **EMPLOYEE** assumes responsibility and care for all property in his/her care and for a strict accounting and return of same. Any work produced by **EMPLOYEE** using University resources, unless otherwise specified, shall be the property of the **UNIVERSITY**.

9. **THE UNIVERSITY HAS THE RIGHT TO MAKE DEDUCTIONS:** The **UNIVERSITY** reserves the right and **EMPLOYEE** agrees that the **UNIVERSITY** has the right to make deductions from salary after written notice: (1) where the **EMPLOYEE** is absent without proper arrangements; (2) for debts owed to the **UNIVERSITY** which are past due; and (3) contractual or financial obligation(s) incurred on behalf of the **UNIVERSITY** without proper authorization.

10. **INDEMNIFICATION:** **EMPLOYEE** agrees to hold harmless and indemnify the **UNIVERSITY** from any and all suits, claims, demands, damages, liability, costs and expenses, including attorneys' fees arising out of this agreement, except such suits, claims or demands in which the **EMPLOYEE** seeks to compel the **UNIVERSITY** to comply with its obligations hereunder or in which **EMPLOYEE** seeks to enforce any remedies he/she may have hereunder.

11. **SPECIAL CONDITIONS:** The following special conditions apply:
EMPLOYEE will maintain any or all license or certification required or necessary for the performance of his/her duties.

12. **SALARY ALLOCATION:** The stated nine month salary of **$ 52,000** will be paid per the following source(s).
DEPARTMENT OF CIVIL AND MECHANICAL ENGINEERING TECHNOLOGY
ACCOUNT #: 154325

13. **THIS AGREEMENT MUST BE SIGNED BY THE EMPLOYEE AND RETURNED TO THE OFFICE OF THE VICE PRESIDENT FOR ACADEMIC AFFAIRS BY 12:00 NOON ON AUGUST 16, 2005.** Failure to return this agreement by 12:00 noon on AUGUST 16, 2005, shall be deemed a rejection of this offer of continued employment.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement or caused this Agreement to be executed on the date first written above.

PRESIDENT

Andrew Hugine, Jr.

DATE

EMPLOYEE:

Denise S Grant

DENISE GRANT

8/10/2005

DATE

SCSU v Simmons SC State 0385

Mot. to Settle Ex. 8 - 061

STATE OF SOUTH CAROLINA
COUNTY OF ORANGEBURG

EMPLOYMENT AGREEMENT
NON-TENURED, TENURE TRACK FACULTY

THIS EMPLOYMENT AGREEMENT is made this 1st day of July 2006, by and between **MRS. DENISE GRANT**, SSN# 248-47-3833, (hereinafter **EMPLOYEE**) and **SOUTH CAROLINA STATE UNIVERSITY**, 300 College Street Northeast, Orangeburg, South Carolina 29117-0001 (hereinafter **UNIVERSITY**). It supersedes, replaces and cancels any and all prior Employment Agreements heretofore executed between the two parties.

TERMS AND CONDITIONS

1. **DUTIES AND COMPENSATION:** The **EMPLOYEE**, for and in consideration of a salary of **$ $53,560 annually** paid in accordance with University payroll schedule agrees to serve the **UNIVERSITY** in the capacity of **ASSISTANT PROFESSOR CIVIL ENGINEERING IN THE DEPARTMENT OF CIVIL AND MECHANICAL ENGINEERING TECHNOLOGY**; and to perform the duties as follows: all regular duties and any additional duties assigned by the President of the University and/or your supervisors (including, but not limited to, instruction, off-campus teaching, academic advising, committee assignments, academic scholarship, and attendance at faculty meetings and institution-wide programs).

   Said salary is subject to reduction at all times during the life of this agreement, if in the discretion of the Board of Trustees, a lack of funds should make reduction necessary; or in the event that no funds are available to make the payments as stated herein, then this agreement shall be voidable at the election of the **UNIVERSITY**.

   +All assignments are approved by the President and may be changed at the President's discretion.

2. **TERM:** The term of this agreement shall be for a period of **nine months**, beginning **August 16, 2006**, and ending on **May 15, 2007**, unless otherwise terminated in accordance with the provisions of this agreement. This agreement shall not be effective until signed by the President.

3. **RENEWAL/NONRENEWAL OF AGREEMENT:** The employee is a **NON-TENURED, TENURE TRACK FACULTY** member. The **UNIVERSITY**, at its option, may renew this agreement for one year. Notice of non-renewal shall be given to the **EMPLOYEE** by the **UNIVERSITY** on or before **December 15, 2006.** Should the employee wish to return to employment with the University for the 2007-2008 academic year, the employee must provide written notice of such intent to continue employment on or before **April 1, 2007.** **Failure to provide written notice to your immediate supervisor by April 1, 2007 shall be interpreted as intent on the part of the employee to leave the University's employment, and the University shall have no further obligation to provide employment for the ensuing 2007-2008 academic year.**

   Employee Initials Here ASJ

4. **TERMINATION:** This agreement may be terminated by the University prior to the expiration of the term for the following reasons: (1) Failure on the part of the employee to conform in conduct, or to such rules, regulations and policies as the University may deem proper and necessary, or to perform his/her duties, efficiently and satisfactorily to the President and/or State and federal laws; (2) deliberate and serious violations of the duties outlined in this Employment agreement or refusal to perform duties in good faith and to the best of Employee's abilities; (3) conduct which, in the sole judgment of the University, reflects adversely upon S. C. State or is prejudicial to its best interests; (4) financial exigency or programmatic reasons; (5) plagiarism or the illegal use of a person's written work without full documentation to the author or the misrepresentation of findings and conclusions in research; and (6) lapse of or withdrawal of license or certification in the State of South Carolina if the license or certification is required or is necessary for the performance of one's academic duties.

5. **AMENDMENTS:** The **UNIVERSITY** and **EMPLOYEE** specifically agree that this Agreement constitutes the full and complete agreement between the parties and that no amendments, changes, additions, deletions or modifications to or of this agreement shall be valid unless reduced to writing, signed by the parties and attached hereto.

6. **GOVERNING LAW:** The parties agree that venue for any dispute regarding the terms of this agreement shall be in a circuit court in Orangeburg and South Carolina before a judge as a non-jury matter and the terms of this agreement shall be governed by South Carolina law.

7. **SEVERABILITY:** If any provision(s) contained herein is deemed invalid or unenforceable either in whole or in part, this agreement shall be deemed amended to delete or modify, as necessary, the offending provision or provisions or to alter the bounds thereof in order to render it valid and enforceable. It is the intention of the parties that the provisions hereof be enforceable to the fullest extent permissible under applicable law, but that the unenforceability (or modification to conform to such law) of any provision shall not render unenforceable, or impair, the remainder of this agreement.

8. **THE UNIVERSITY RETAINS ALL MATERIALS AND RECORDS:** All equipment, materials or articles of information, including without limitation, work products of employee, manuals, files, student information, or any other equipment, material or data furnished by the **UNIVERSITY**, at its discretion, or for its use, shall remain the sole and exclusive property of the **UNIVERSITY**. With prior approval **EMPLOYEE** may retain an interest in work-products. **EMPLOYEE** assumes responsibility and care for all property in his/her care and for a strict accounting and return of same. Any work produced by **EMPLOYEE** using University resources, unless otherwise specified, shall be the property of the **UNIVERSITY**.

9. **THE UNIVERSITY HAS THE RIGHT TO MAKE DEDUCTIONS:** The **UNIVERSITY** reserves the right and **EMPLOYEE** agrees that the **UNIVERSITY** has the right to make deductions from salary after written notice: (1) where the **EMPLOYEE** is absent without proper arrangements; (2) for debts owed to the **UNIVERSITY** which are past due; and (3) contractual or financial obligation(s) incurred on behalf of the **UNIVERSITY** without proper authorization.

10. **INDEMNIFICATION:** **EMPLOYEE** agrees to hold harmless and indemnify the **UNIVERSITY** from any and all suits, claims, demands, damages, liability, costs and expenses, including attorneys' fees arising out of this agreement, except such suits, claims or demands in which the **EMPLOYEE** seeks to compel the **UNIVERSITY** to comply with its obligations hereunder or in which **EMPLOYEE** seeks to enforce any remedies he/she may have hereunder.

11. **SPECIAL CONDITIONS:** The following special conditions apply:
EMPLOYEE will maintain any or all license or certification required or necessary for the performance of his/her duties.

12. **SALARY ALLOCATION:** The stated nine month annualized salary of **$53,560** will be paid per the following source(s).

DEPARTMENT OF CIVIL AND MECHANICAL ENGINEERING TECHNOLOGY
ACCOUNT #: 5730 - 154325

13. **THIS AGREEMENT MUST BE SIGNED BY THE EMPLOYEE AND RETURNED TO THE OFFICE OF THE VICE PRESIDENT FOR ACADEMIC AFFAIRS BY 12:00 NOON ON AUGUST 16, 2006.** Failure to return this agreement by 12:00 noon on AUGUST 16, 2006, shall be deemed a rejection of this offer of continued employment.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement or caused this Agreement to be executed on the date first written above.

EMPLOYEE

Denise S Grant
DENISE GRANT

8/16/2006
DATE

PRESIDENT

PAR
Andrew Hugine, Jr.

DATE

Mot. to Settle Ex. 8 - 063

SCSU v Simmons / SC State 0393

STATE OF SOUTH CAROLINA
COUNTY OF ORANGEBURG

EMPLOYMENT AGREEMENT
NON-TENURED, TENURE TRACK FACULTY

THIS EMPLOYMENT AGREEMENT is made this 1st day of AUGUST 2007, by and between **MRS. DENISE GRANT,** SSN# **248-47-3833,** (hereinafter **EMPLOYEE**) and **SOUTH CAROLINA STATE UNIVERSITY,** 300 College Street Northeast, Orangeburg, South Carolina 29117-0001 (hereinafter **UNIVERSITY**). It supersedes, replaces and cancels any and all prior Employment Agreements heretofore executed between the two parties.

TERMS AND CONDITIONS

1. **DUTIES AND COMPENSATION:** The **EMPLOYEE,** for and in consideration of a salary of **$55,167 paid in accordance with University payroll schedule** agrees to serve the **UNIVERSITY** in the capacity of **ASSISTANT PROFESSOR CIVIL ENGINEERING IN THE DEPARTMENT OF CIVIL AND MECHANICAL ENGINEERING TECHNOLOGY;** and to perform the duties as follows: all regular duties and any additional duties assigned by the President of the University and/or your supervisors (including, but not limited to, instruction, off-campus teaching, academic advising, committee assignments, academic scholarship, and attendance at faculty meetings and institution-wide programs).

   Said salary is subject to reduction at all times during the life of this agreement, if in the discretion of the Board of Trustees, a lack of funds should make reduction necessary; or in the event that no funds are available to make the payments as stated herein, then this agreement shall be voidable at the election of the **UNIVERSITY.**

   +All assignments are approved by the President and may be changed at the President's discretion.

2. **TERM:** The term of this agreement shall be for a period of **NINE-MONTH,** beginning **August 16, 2007,** and ending on **May 15, 2008,** unless otherwise terminated in accordance with the provisions of this agreement. This agreement shall not be effective until signed by the President.

3. **RENEWAL/NONRENEWAL OF AGREEMENT:** The employee is a **NON-TENURED, TENURE TRACK FACULTY** member. The **UNIVERSITY,** at its option, may renew this agreement for one year. Notice of non-renewal shall be given to the **EMPLOYEE** by the **UNIVERSITY** on or before **December 15, 2008.** Should the employee wish to return to employment with the University for the 2008-2009 academic year, the employee must provide written notice of such intent to continue employment on or before **April 1, 2008.** **Failure to provide written notice to your immediate supervisor by April 1, 2008 shall be interpreted as intent on the part of the employee to leave the University's employment, and the University shall have no further obligation to provide employment for the ensuing 2008-2009 academic year.**

   Employee Initials Here DBG

4. **REASSIGNMENT:** It is understood by the parties that the Employer retains the right to reassign the Employee to other positions with different duties during the term of this employment agreement. The Employee will not be reassigned to any position that is inconsistent with his education and experience. If the Employer makes a decision to reassign the Employee and the Employee refuses to accept the reassignment, then the Employer may immediately terminate this employment agreement.

5. **TERMINATION:** This agreement may be terminated by the University prior to the expiration of the term for the following reasons: (1) Failure on the part of the employee to conform in conduct, or to such rules, regulations and policies as the University may deem proper and necessary, or to perform his/her duties, efficiently and satisfactorily to the President and/or State and federal laws; (2) deliberate and serious violations of the duties outlined in this Employment agreement or refusal to perform duties in good faith and to the best of Employee's abilities; (3) conduct which, in the sole judgment of the University, reflects adversely upon S. C. State or is prejudicial to its best interests; (4) financial exigency or programmatic reasons; (5) plagiarism or the illegal use of a person's written work without full documentation to the author or the misrepresentation of findings and conclusions in research; and (6) lapse of or withdrawal of license or certification in the State of South Carolina if the license or certification is required or is necessary for the performance of one's academic duties.

6. **AMENDMENTS:** The **UNIVERSITY** and **EMPLOYEE** specifically agree that this Agreement constitutes the full and complete agreement between the parties and that no amendments, changes, additions, deletions or modifications to or of this agreement shall be valid unless reduced to writing, signed by the parties and attached hereto.

7. **GOVERNING LAW:** The parties agree that venue for any dispute regarding the terms of this agreement shall be in a circuit court in Orangeburg and South Carolina before a judge as a non-jury matter and the terms of this agreement shall be governed by South Carolina law.

8. **SEVERABILITY:** If any provision(s) contained herein is deemed invalid or unenforceable either in whole or in part, this agreement shall be deemed amended to delete or modify, as necessary, the offending provision or provisions or to alter the bounds thereof in order to render it valid and enforceable. It is the intention of the parties that the provisions hereof be enforceable to the fullest extent permissible under applicable law, but that the unenforceability (or modification to conform to such law) of any provision shall not render unenforceable, or impair, the remainder of this agreement.

9. **THE UNIVERSITY RETAINS ALL MATERIALS AND RECORDS:** All equipment, materials or articles of information, including without limitation, work products of employee, manuals, files, student information, or any other equipment, material or data furnished by the **UNIVERSITY**, at its discretion, or for its use, shall remain the sole and exclusive property of the **UNIVERSITY**. With prior approval **EMPLOYEE** may retain an interest in work-products. **EMPLOYEE** assumes responsibility and care for all property in his/her care and for a strict accounting and return of same. Any work produced by **EMPLOYEE** using University resources, unless otherwise specified, shall be the property of the **UNIVERSITY**.

10. **THE UNIVERSITY HAS THE RIGHT TO MAKE DEDUCTIONS:** The **UNIVERSITY** reserves the right and **EMPLOYEE** agrees that the **UNIVERSITY** has the right to make deductions from salary after written notice: (1) where the **EMPLOYEE** is absent without proper arrangements; (2) for debts owed to the **UNIVERSITY** which are past due; and (3) contractual or financial obligation(s) incurred on behalf of the **UNIVERSITY** without proper authorization.

11. **INDEMNIFICATION:** **EMPLOYEE** agrees to hold harmless and indemnify the **UNIVERSITY** from any and all suits, claims, demands, damages, liability, costs and expenses, including attorneys' fees arising out of this agreement, except such suits, claims or demands in which the **EMPLOYEE** seeks to compel the **UNIVERSITY** to comply with its obligations hereunder or in which **EMPLOYEE** seeks to enforce any remedies he/she may have hereunder.

12. **SPECIAL CONDITIONS:** The following special conditions apply:
EMPLOYEE will maintain any or all license or certification required or necessary for the performance of his/her duties.

13. **SALARY ALLOCATION:** The stated **NINE-MONTH** salary of **$55,167** will be paid per the following source(s).

DEPARTMENT OF CIVIL AND MECHANICAL ENGINEERING TECHNOLOGY
ACCOUNT #: 5730 - 154325

14. **THIS AGREEMENT MUST BE SIGNED BY THE EMPLOYEE AND RETURNED TO THE OFFICE OF THE VICE PRESIDENT FOR ACADEMIC AFFAIRS BY 12:00 NOON ON AUGUST 10, 2007.** Failure to return this agreement by **12:00 NOON ON AUGUST 10, 2007**, shall be deemed a rejection of this offer of continued employment.
* Signed contract when received on Aug 15th 2007

IN WITNESS WHEREOF, the parties hereto have executed this Agreement or caused this Agreement to be executed on the date first written above.

EMPLOYEE

Denise S/ Grant
DENISE GRANT

8/15/2007
DATE

PRESIDENT

Andrew Hugine, Jr.

8/15/07
DATE

SCSU / Supreme / SC Slide 0369

Mot. to Settle Ex. 8 - 065

11-32

Field Station

STATE OF SOUTH CAROLINA
COUNTY OF ORANGEBURG

EMPLOYMENT AGREEMENT
TENURE TRACK FACULTY

THIS EMPLOYMENT AGREEMENT is made this 16th day of June 2008, by and between **MRS. DENISE GRANT**, SSN# 248-47-3833, (hereinafter **EMPLOYEE**) and **SOUTH CAROLINA STATE UNIVERSITY**, 300 College Street Northeast, Orangeburg, South Carolina 29117-0001 (hereinafter **UNIVERSITY**). It supersedes, replaces and cancels any and all prior Employment Agreements heretofore executed between the two parties.

Interim Director, Field Station

TERMS AND CONDITIONS

1. **DUTIES AND COMPENSATION:** The **EMPLOYEE**, for and in consideration of a salary of $55,719 paid in accordance with University payroll schedule agrees to serve the **UNIVERSITY** in the capacity of **ASSISTANT PROFESSOR CIVIL ENGINEERING IN THE DEPARTMENT OF CIVIL AND MECHANICAL ENGINEERING TECHNOLOGY**; and to perform the duties as follows: all regular duties and any additional duties assigned by the President of the University and/or your supervisors (including, but not limited to, instruction, off-campus teaching, academic advising, committee assignments, and attendance at faculty meetings and institution-wide programs).

   Said salary is subject to reduction at all times during the life of this agreement, if in the discretion of the Board of Trustees, a lack of funds should make reduction necessary; or in the event that no funds are available to make the payments as stated herein, then this agreement shall be voidable at the election of the **UNIVERSITY**.

   +All assignments are approved by the President and may be changed at the President's discretion.

2. **TERM:** The term of this agreement shall be for a period of **NINE-MONTHS**, beginning **August 16, 2008**, and ending on **May 15, 2009**, unless otherwise terminated in accordance with the provisions of this agreement. This agreement shall not be effective until signed by the President.

3. **RENEWAL/NONRENEWAL OF AGREEMENT:** The employee is a **TENURE TRACK FACULTY** member. The **UNIVERSITY**, at its option, may renew this agreement for one year. Notice of non-renewal shall be given to the **EMPLOYEE** by the **UNIVERSITY** on or before **March 1, 2009**. Should the employee wish to return to employment with the University for the 2009-2010 academic year, the employee must provide written notice of such intent to continue employment on or before **April 1, 2009**. **Failure to provide written notice to your immediate supervisor by April 1, 2009 shall be interpreted as intent on the part of the employee to leave the University's employment, and the University shall have no further obligation to provide employment for the ensuing 2009-2010 academic year.**

   Employee Initials Here DBG

4. **REASSIGNMENT:** It is understood by the parties that the Employer retains the right to reassign the Employee to other positions with different duties during the term of this employment agreement. The Employee will not be reassigned to any position that is inconsistent with the **EMPLOYEE'S** education and experience. If the Employer makes a decision to reassign the Employee and the Employee refuses to accept the reassignment, then the Employer may immediately terminate this employment agreement.

5. **TERMINATION:** This agreement may be terminated by the University prior to the expiration of the term for the following reasons: (1) Failure on the part of the employee to conform in conduct, or to such rules, regulations and policies as the University may deem proper and necessary, or to perform his/her duties, efficiently and satisfactorily to the President and/or State and federal laws; (2) deliberate and serious violations of the duties outlined in this Employment agreement or refusal to perform duties in good faith and to the best of Employee's abilities; (3) conduct which, in the sole judgment of the University, reflects adversely upon S. C. State or is prejudicial to its best interests; (4) financial exigency or programmatic reasons; (5) plagiarism or the illegal use of a person's written work without full documentation to the author or the misrepresentation of findings and conclusions in research; and (6) lapse of or withdrawal of license or certification in the State of South Carolina if the license or certification is required or is necessary for the performance of one's academic duties.

6. **AMENDMENTS:** The **UNIVERSITY** and **EMPLOYEE** specifically agree that this Agreement constitutes the full and complete agreement between the parties and that no amendments, changes, additions, deletions or modifications to or of this agreement shall be valid unless reduced to writing, signed by the parties and attached hereto.

7. **GOVERNING LAW:** The parties agree that venue for any dispute regarding the terms of this agreement shall be in a circuit court in Orangeburg and South Carolina before a judge as a non-jury matter and the terms of this agreement shall be governed by South Carolina law.

8. **SEVERABILITY:** If any provision(s) contained herein is deemed invalid or unenforceable either in whole or in part, this agreement shall be deemed amended to delete or modify, as necessary, the offending provision or provisions or to alter the bounds thereof in order to render it valid and enforceable. It is the intention of the parties that the provisions hereof be enforceable to the fullest extent permissible under applicable law, but that the unenforceability (or modification to conform to such law) of any provision shall not render unenforceable, or impair, the remainder of this agreement.

9. **THE UNIVERSITY RETAINS ALL MATERIALS AND RECORDS:** All equipment, materials or articles of information, including without limitation, work products of employee, manuals, files, student information, or any other equipment, material or data furnished by the **UNIVERSITY**, at its discretion, or for its use, shall remain the sole and exclusive property of the **UNIVERSITY**. With prior approval **EMPLOYEE** may retain an interest in work-products. **EMPLOYEE** assumes responsibility and care for all property in his/her care and for a strict accounting and return of same. Any work produced by **EMPLOYEE** using University resources, unless otherwise specified, shall be the property of the **UNIVERSITY**.

10. **THE UNIVERSITY HAS THE RIGHT TO MAKE DEDUCTIONS:** The **UNIVERSITY** reserves the right and **EMPLOYEE** agrees that the **UNIVERSITY** has the right to make deductions from salary after written notice: (1) where the **EMPLOYEE** is absent without proper arrangements; (2) for debts owed to the **UNIVERSITY** which are past due; and (3) contractual or financial obligation(s) incurred on behalf of the **UNIVERSITY** without proper authorization.

11. **INDEMNIFICATION:** **EMPLOYEE** agrees to hold harmless and indemnify the **UNIVERSITY** from any and all suits, claims, demands, damages, liability, costs and expenses, including attorneys' fees arising out of this agreement, except such suits, claims or demands in which the **EMPLOYEE** seeks to compel the **UNIVERSITY** to comply with its obligations hereunder or in which **EMPLOYEE** seeks to enforce any remedies he/she may have hereunder.

12. **SPECIAL CONDITIONS:** The following special conditions apply:
EMPLOYEE will maintain any or all license or certification required or necessary for the performance of his/her duties.

13. **SALARY ALLOCATION:** The stated NINE-MONTH salary of $55,719 will be paid per the following source(s).

DEPARTMENT OF CIVIL AND MECHANICAL ENGINEERING TECHNOLOGY
Field ACCOUNT #: 5730 - 154325 50%
5840 50%

14. **THIS AGREEMENT MUST BE SIGNED BY THE EMPLOYEE AND RETURNED TO THE OFFICE OF THE VICE PRESIDENT FOR ACADEMIC AFFAIRS BY 5:00 P.M. ON JUNE 26, 2008.** Failure to return this agreement by 5:00 P.M. ON JUNE 26, 2008, shall be deemed a rejection of this offer of continued employment.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement or caused this Agreement to be executed on the date first written above.

EMPLOYEE

Denise S Grant
DENISE GRANT

8/13/2008
DATE

PRESIDENT

George E Cooper
GEORGE E. COOPER

8/14/08
DATE

SCSU v Simmons / SC State 0250

Mot. to Settle Ex. 8 - 067

i.) Simmons, Denise Affidavit (attached document)

GM 7-23

Clark, Juanita S.

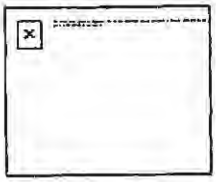
From: Simmons, Denise R
Sent: Friday, June 08, 2012 5:15 AM
To: McCrary-Quarles, Audrey; Clark, Juanita S.
Cc: Gathers-Dantzler, Doris
Subject: Re: Verification of Hours

Hello Ms Clark.
For the CYPRESS grant, I planned an after work schedule with Dr Quarles. Please call me at 803-606-8900 so I may understand what guidelines are in place so that no violations occur.

Regards,
Denise

Denise R. Simmons, PhD, PE, PMP, LEED-AP Assistant Professor, Civil Engineering Technology
Interim Director Environmental Sciences Field Station
SC State University
PO Box 8143 300 College Street, NE
Orangeburg, SC 29117-0001
803-536-8859
Visit our Website: http://www.cnrt.scsu.edu/fieldstation/index.html
Join us on Facebook: Environmental Sciences Field Station
Follow us on Twitter: @SRESFS

-----Original message-----
From: "Clark, Juanita S." <jclark@scsu.edu>
To: "McCrary-Quarles, Audrey" <amccrar1@scsu.edu>, "Simmons, Denise R" <DGrant@scsu.edu>
Cc: "Gathers-Dantzler, Doris" <dgather1@scsu.edu>
Sent: Wed, Jun 6, 2012 10:56:05 EDT
Subject: Verification of Hours



Dear Dr./Ms./Mrs./Mr. Audrey McCrary-Quarles or Denise R. Simmons,

We have received various P-13 job assignments for Dr. Denise Simmons on of which is dated June 1, 2012 thru June 30, 2012 as CYPRESS GRANT – Consultant/Advisor. However, we are required to verify

SCSU v Simmons / SC State 0346

that the job assignments do not conflict. Please submit schedules for all job assignments to the Office Of Human Resource Management A.S.A.P.

Thank you for your time, consideration and prompt response.

Sincerely,

Juanita Clark

Juanita Clark
Program Coordinator I
Office of Human Resource Management
300 College Street, NE
Post Office Box 7597
Orangeburg, SC 29117-0001

Office ext: 6-8210 Fax ext: 3-3630 Email: SC State University's Email

Go Bulldogs!

Confidentiality Notice: *If you have received this email in error, please immediately notify the sender via email at the address shown. This email transmission may contain confidential information. This information is intended only for the use of the individuals or entities to whom it is intended even if addressed incorrectly. Please delete it from your files if you are not the intended recipient. Thank You!*

Cat Debra Williams
When additional Job assignments are received 5-29-12

Sample - Hold

SOUTH CAROLINA STATE UNIVERSITY

* See attached email message Process Inc

Temporary Employment Data Request Form

NOTE: *After administrative approvals, please forward this form, along with a Position Description and completed Application for Employment to the Budget Office. The Office of Human Resource Management will notify the supervisor when the Request has been approved, after which the employee may report to Human Resources to sign the form and be notified of the date to report to work. Employees will not be paid for work performed prior to approval.*

GENERAL POSITION INFORMATION					
EMPLOYMENT BEGIN DATE	June 1, 2012 ~~May 16, 2012~~	EMPLOYMENT END DATE	June 30, 2012 ~~June 15, 2012~~	EMPLOYEE ID#	900028263
LAST NAME	Simmons	FIRST NAME	Denise	MI	
POSITION TITLE (*Attach Position Description*)	CYPRESS Grant - Consultant / Advisor				
SUPERVISOR NAME	Audrey McCrary-Quarles	SUPERVISOR TITLE	Principal Investigator		
DEPARTMENT	Health Sciences (Incorrect Salary)	INDEX NUMBER		533001	
PAY RATE: ☐ HOURLY ☒ SEMI-MONTHLY		HOURS PER WEEK			
TOTAL SALARY	$6,000.00 (4952.18)	TOTAL NUMBER OF WEEKS		4.20	

APPROVAL SIGNATURES			
DEPARTMENT HEAD		DATE	5/8/12
VICE PRESIDENT/DIVISION HEAD		DATE	5/10/12

BUDGET OFFICE ACTION			
POSITION NUMBER ASSIGNED		INDEX NUMBER	
ACCOUNT NUMBER	60170	TOTAL SALARY	
BUDGET ANALYST SIGNATURE		DATE	
BUDGET DIRECTOR SIGNATURE		DATE	
FORWARDED TO HUMAN RESOURCES ☐		DATE	

OFFICE OF HUMAN RESOURCE MANAGEMENT ACTION		
POSITION AND SALARY APPROVED ☐	DATE	
ASSIGNMENT INPUT TO HUMAN RESOURCES SYSTEM ☐	DATE	
SUPERVISOR NOTIFIED OF APPROVAL ☐	DATE	
HUMAN RESOURCES SIGNATURE	DATE	

EMPLOYEE CERTIFICATION

I UNDERSTAND THAT THIS IS A TEMPORARY ASSIGNMENT AS DESIGNATED ABOVE AND THAT THIS TEMPORARY EMPLOYMENT DATA REQUEST FORM DOES NOT REPRESENT A CONTRACT WITH SOUTH CAROLINA STATE UNIVERSITY. I ACKNOWLEDGE THAT THE LANGUAGE USED IN THIS DOCUMENT DOES NOT CREATE AN EMPLOYMENT CONTRACT BETWEEN ME AND SOUTH CAROLINA STATE UNIVERSITY, NOR DOES IT CREATE ANY CONTRACTUAL RIGHTS OR ENTITLEMENTS. I UNDERSTAND THAT NO PROMISES OR ASSURANCES, WHETHER WRITTEN OR ORAL, WHICH ARE CONTRARY TO OR INCONSISTENT WITH THE TERMS OF THIS PARAGRAPH CREATE ANY CONTRACT OF EMPLOYMENT.

Are you a current member of the S. C. Retirement System? ☐ YES ☐ NO
(If yes, *please contact the Office of Human Resource Management*)

EMPLOYEE SIGNATURE	Denise Simmons D.S.	DATE	5/8/12

Form P-13 (Rev. 07/06)

Sent: Friday, April 27, 2012 11:49 AM
Subject: Re: Remaining 1/3 for Spring 2012 Prof Development Support Request from DRSimmons

Yes ... in two weeks. :-)

Denise R. Simmons, PhD, PE

From: "Chatman, Demetrius" <
To: D Simmons <
Sent: Friday, April 27, 2012 9:22 AM
Subject: Re: Remaining 1/3 for Spring 2012 Prof Development Support Request from DRSimmons

Thanks!! Do you graduate next week?

Sent from my iPad

On Apr 26, 2012, at 8:48 PM, "D Simmons" < > wrote:

Hello Demetrius:
Please find attached the documents supporting spring 2012 (1/3 stipend & grade report). Do you need anything else? Thanks in advance for preparing the P-17 for signatures.

Thanks for your continued support.

Regards.
Denise

Denise R. Simmons, PhD, PE, PMP, LEED-AP
Assistant Professor, Civil Engineering Technology
Interim Director
Environmental Sciences Field Station
SC State University
PO Box 8143
300 College Street, NE
Orangeburg, SC 29117-0001
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<Letter to request one-third Spring 2012.pdf>

<Grade Report_Spring 2012.pdf>

T-16

Forwarded Message ----
From: D Simmons <densimm@yahoo.com>
To: "Chatman, Demetrius" <dchatma6@scsu.edu>
Cc: Darby Debra A. <DDarby@scsu.edu>
Sent: Wednesday, July 25, 2012 10:49 AM
Subject: Re: Remaining 1/3 for Spring 2012 Prof Development Support Request from DRSimmons

Hi Demetrius. Academic Affairs has the official transcript. Are you able to obtain it from them?

Denise

Denise R. Simmons, PhD, PE

From: "Chatman, Demetrius" <dchatma6@scsu.edu>
To: D Simmons <densimm@yahoo.com>
Sent: Wednesday, July 25, 2012 10:35 AM
Subject: RE: Remaining 1/3 for Spring 2012 Prof Development Support Request from DRSimmons

Denise,

Hope all is well. We need a copy of your official transcript that confirms you have completed with your Ph.D.

Thanks,

Demetrius Chatman
Program Coordinator for Title III
SOUTH CAROLINA STATE UNIVERSITY
300 College Street Northeast · M. Maceo Nance, Jr. Highway
242 Crawford Zimmerman · Post Office Box 7268
Orangeburg, South Carolina 29117-0001
Phone: (803) 536-8984 (803) 536-8330 · Fax: (803) 536-8945
Email: dchatma6@scsu.edu

From: D Simmons [mailto:densimm@yahoo.com]
Sent: Thursday, May 31, 2012 3:51 PM
To: Chatman, Demetrius
Subject: Re: Remaining 1/3 for Spring 2012 Prof Development Support Request from DRSimmons

Hi Demetrius. I trust all is well with you. Can you tell me the remaining 1/3 support will be processed? Just checking.

Denise

Denise R. Simmons, PhD, PE

From: D Simmons <
To: "Chatman, Demetrius" <

j.) Simmons, Denise Affidavit (attached document)

Okafor, Kenneth C

From: Simmons, Denise R
Sent: Thursday, August 16, 2012 4:53 PM
To: Okafor, Kenneth C
Subject: From Dr. Denise R Simmons

Dr. Okafor:
I hope that you had a productive summer. I have not received an employment contract to date and have not otherwise heard from you or your office. I am a bit distressed, but have sought and secured employment. Please call me if you'd like to discuss the matter further.

Regards,
Denise

Denise R. Simmons, PhD, PE, PMP, LEED-AP
Assistant Professor, Civil Engineering Technology
Interim Director
Environmental Sciences Field Station
SC State University
PO Box 8143
300 College Street, NE
Orangeburg, SC 29117-0001
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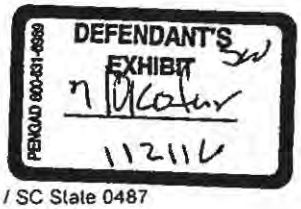

H - 17

Saturday, February 23, 2013 6:31:49 PM ET

Subject: FW: Departmental Faculty Mtg. Fall 2012

Date: Monday, August 13, 2012 3:37:35 PM ET

From: Okafor, Kenneth C

To: Eliadorani, Ali Akbar, Chen, Di-Wen, Emmanwori, Legunchim L, Chang, Zheng, Danjaji, Musa B., Simmons, Denise R, Mwakalonge, Judith, Warner, Charles J., Lari, Saeed Banizm., O'Cain, Ketrina L, Hutton-Moorer, April, Ritter, Warren

CC: Ihekweazu, Stanley N.

Dear All,

FYI

Dr. Kenneth Okafor

From: Guinyard, Janice
Sent: Monday, August 13, 2012 10:59 AM
To: Eliadorani, Ali Akbar; Chen, Di-Wen; Emmanwori, Legunchim L; Chang, Zheng; Danjaji, Musa B.; Ritter, Warren; Mwakalonge, Judith; Simmons, Denise R; Warner, Charles J.; Lari, Saeed Banizm.; O'Cain, Ketrina L; Hutton-Moorer, April
Cc: Okafor, Kenneth C; Ihekweazu, Stanley N.; Downing, Coretta
Subject: Departmental Faculty Mtg. Fall 2012

Hello All,

Please see the attached memorandum regarding the Fall 2012 Faculty meeting.

Thank you.

Janice Guinyard, Administrative Specialist II
Department of Civil and Mechanical Engineering Technology
South Carolina State University
300 College Street
Orangeburg, SC 29117
803 536-7117
803 516-4516-Fax

South Carolina State University
COLLEGE OF SCIENCE, MATHEMATICS AND ENGINEERING TECHNOLOGY
300 COLLEGE STREET, N.E.
ORANGEBURG, SOUTH CAROLINA 29117
(803) 536-7117/8392
(803) 516-4516 (FAX)

DEPARTMENT OF
CIVIL AND MECHANICAL
ENGINEERING TECHNOLOGY
AND
NUCLEAR ENGINEERING

MEMORANDUM

TO: Faculty/Staff
Civil and Mechanical Engineering Technology and
Nuclear Engineering

FROM: Dr. Kenneth Okafor, Interim Chair
Civil and Mechanical Engineering Technology
and Nuclear Engineering

DATE: August 13, 2012

RE: Departmental Meeting

Faculty and Staff, the departmental meeting for the Fall 2012 semester will be held on **Thursday, August 16, 2012 @ 12:00 Noon – *Room HC 201.*** ***Please do everything possible to attend this meeting. It is critically important.***

AGENDA

1. ABET Matters
2. Registration of students / Proper Advisement of Students/ Student Pin Numbers
3. Importance of Class Action Roll Forms
4. Faculty Evaluations
5. Class Attendance
6. Other Concerns/Issues
7. Adjournment

Thank you.

cc: Dr. Stanley Ihekweazu, Interim Dean

k.) Simmons, Denise Affidavit (attached document)

7-20

Saturday, February 23, 2013 6:30:47 PM ET

Subject: Please Call Me
Date: Thursday, August 23, 2012 10:07:19 AM ET
From: Darby, Debra A.
To: Simmons, Denise R
CC: Echols, Erica L

Good morning Dr. Simmons,
Please give me a call today.

Thanks much and have a good one!!!
Darby

Debra A. Darby
Administrative Coordinator
Office of the Vice President for Academic Affairs
South Carolina State University
Post Office Box 7307
Ko W.G. Donma Administration Bulding, Suite 210
Orangeburg, South Carolina 29117
Phone: 803-536-7180
Fax: 803-533-3775

l.) Simmons, Denise Affidavit (attached document)

PO Box 8143
300 College Street, NE
Orangeburg, SC 29117-0001
803-536-8859
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Join us on Facebook: Environmental Sciences Field Station
Follow us on Twitter: @SRESFS

From: <Simmons>, "Denise R. Simmons" <dgrant@scsu.edu>
Date: Thursday, August 23, 2012 11:12 AM
To: "Okafor, Kenneth C" <kokafor@scsu.edu>
Subject: Re: From Dr. Denise R Simmons

Hi Dr. Okafor. I left you a phone message. My cell phone number has not changed (same as is on record with the department): 803-606-8900. Ms Darby and I spoke this morning. She has a time related issue that needs to be resolved today and she needs to hear from you. We need to speak regarding employment.

Regards,
Denise

Denise R. Simmons, PhD, PE, PMP, LEED-AP
Assistant Professor, Civil Engineering Technology
Interim Director
Environmental Sciences Field Station
SC State University
PO Box 8143
300 College Street, NE
Orangeburg, SC 29117-0001
803-536-8859
Visit our Website: http://www.cnrt.scsu.edu/fieldstation/index.html
Join us on Facebook: Environmental Sciences Field Station
Follow us on Twitter: @SRESFS

From: <Okafor>, Kenneth C <kokafor@scsu.edu>
Date: Friday, August 17, 2012 1:52 PM
To: "Denise R. Simmons" <dgrant@scsu.edu>
Subject: RE: From Dr. Denise R Simmons

Dr. Simmons,

Thanks for your email. I hope your Summer went well. Based on your email, there is no viable number to call you at, since the number there is a school number and you have not been here for a while. I had also contacted you for our Semester Departmental meeting. Or did you not get the email? If possible, can call me at 803-474-3634 so we can discuss. By the way, a lot of people have not yet received their "contracts" so that should not discourage you. Thanks.

From: Simmons, Denise R
Sent: Thursday, August 16, 2012 4:53 PM
To: Okafor, Kenneth C
Subject: From Dr. Denise R Simmons

Dr. Okafor:

m.) Simmons, Denise Affidavit (attached document)

Rev 5807

11 - 9 OCB

VirginiaTech
Invent the Future

RECEIVED
AUG 17 2012
VICE PRESIDENT RESEARCH

TERMS OF FACULTY OFFER

Date of Offer: August 15, 2012
Response Due Date: August 22, 2012

Postition Class 09927
E-Class 28
EO Code EN3
CIPC Code 149999

Name:	Denise R. Simmons
Department:	Engineering Education 010900 ✓
Annual Salary:	$48,000 ✓
Effective Date:	August 27, 2012 → pay period 8/25 ✓
Restricted End Date:	August 9, 2013
Position Number:	116506
Rank:	Postdoctoral Associate ✓
Functional Title:	Postdoctoral Associate
Tenure Status:	Non-Tenure-Track
Appointment Type:	Restricted ✓
Period of Appointment:	Calendar Year ✓
Location of Work:	Blacksburg, VA
Funding Information:	478685 ✓

Copy to _____
BOV Copy N/A
Deduction Copy 9/3/12
ID Number 905783134

INITIAL APPOINTMENT:

This is a full-time, calendar year, restricted appointment which may be renewed annually. However, there is no presumption of renewal for this appointment. Neither are there any aspects of tenure. Continuation of this appointment, even during the initial year, is subject to the availability of funds, the need for services, and satisfactory performance. Faculty on restricted appointments are not eligible for severance benefits. Faculty members hired on or after June 1 would be eligible for a merit adjustment to be effective November 25 of the subsequent year.

ANNUAL AND SICK LEAVE:

Full-time, calendar year, restricted faculty, earn annual leave at the rate of two days (16 hours) per month. Annual leave must be taken during the term of appointment. Full-time, restricted employees receive ten hours per month of sick leave. Sick leave will not extend beyond the date of termination. Faculty members who elect the state retirement program (VRS) may select a state-defined program for sick leave and short term disability. This option will be described to eligible faculty members during benefits enrollment. Neither unused sick nor annual leave will be compensated at termination of appointment.

PAY PERIODS AND AUTOMATIC CHECK DEPOSIT:

Salary is paid in semi-monthly installments on the first and sixteenth of the month over the calendar year. There is a one-week lag between the payroll period and receipt of the related pay. Salary for the payroll period of the 10th through the 24th of the month is reflected in the paycheck on the first of the subsequent month. Salary for the payroll period of the 25th through the 9th of the month is reflected in the paycheck on the 16th of the month. Payment is made directly to the faculty member's bank or financial establishment by University policy.

✓CBP

Banner Entry 9/3/12CBP
Manual Check N/A
BDMS SCSU 000618

SA 17 $2000.00 Reg ✓

OTHER TERMS OF THIS APPOINTMENT:

Offer made by:

(Department Head Signature) 8/17/242 (Date)

(Dean or VP Signature) 8/17/12 (Date)

(Vice President for Research) 8/20/12 (Date)

Verify the personal information listed at the beginning of this form. Notification of acceptance of these terms of offer must be received by the Response Due Date stated on the first page of this terms of offer.

I accept the position as described above.

(Candidate's Signature) 8/23/2012 (Date)

Department use only – Assign a Virginia Tech ID number prior to sending to Human Resources

ID number: _____ **Completed by:** _____

n.) **Simmons, Denise Affidavit (attached document)**

Subject: Re: RETURN TO SCSU
Date: Thursday, August 23, 2012 9:05:40 PM ET
From: Simmons, Denise R
To: Ihekweazu, Stanley N.
CC: Okafor, Kenneth C, Guinyard, Janice
Priority: High

Hello Dr Stanley:
I believed you have not been accurately informed. I have received so far one email last week from Dr Okafor and phone calls today from Dr Okafor. I have responded to both. Debra Darby has also called leaving a message yesterday and we spoke early AM today. Please let me know if I have missed something else.

Regards,
Denise

Denise R. Simmons, PhD, PE, PMP, LEED-AP
Assistant Professor, Civil Engineering Technology
Interim Director
Environmental Sciences Field Station
SC State University
PO Box 8143
300 College Street, NE
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803-536-8859
Visit our Website: http://www.cnrt.scsu.edu/fieldstation/index.html
Join us on Facebook: Environmental Sciences Field Station
Follow us on Twitter: @SRESFS

From: <Ihekweazu>, "Stanley N." <sihekwea@scsu.edu>
Date: Thursday, August 23, 2012 1:36 PM
To: "Denise R. Simmons" <dgrant@scsu.edu>
Cc: "Okafor, Kenneth C" <kokafor@scsu.edu>, "Guinyard, Janice" <jguinyard@scsu.edu>
Subject: RETURN TO SCSU

Hello Denise:

I have been informed that you have not reported to SC State since the beginning of the semester. According to our teaching schedule, you were assigned three courses. I need you to return to SC State while the University addresses your concerns about your letter of employment. Any delay in your returning to Classes will not bode well with our students. Please do not forget that you owe an obligation to the University and we need your services.

Thank you.

Stanley N. Ihekweazu

3) Deposition of Okafor (Department Head SCSU)

Transcript of the Testimony of
KENNETH OKAFOR

Date: November 21, 2016

CREEL COURT REPORTING, INC.
Condensed Transcript and Word Index

1230 Richland Street
Columbia, SC 29201
Phone: (803) 252-3445 / (800) 822-0896
Fax: (803) 799-5668
Email: contact@creelreporting.com
Internet: http://creelreporting.com

STATE OF SOUTH CAROLINA) COURT OF COMMON PLEAS
)
COUNTY OF ORANGEBURG) C/A #: 2015-CP-38-0553
)
)
South Carolina State)
University,)
)
Plaintiff,)
)
v.)
)
Denise Simmons)
)
Defendant.)
_____)

DEPOSITION OF

KENNETH OKAFOR

.....

Monday, November 21, 2016
11:48 p.m. - 12:43 p.m.

The deposition of KENNETH OKAFOR, taken on behalf of the Defendant at South Carolina State University, 300 College Street, 2nd Floor, Orangeburg, South Carolina, on the 21st day of November, 2016 before Sonia D. Wallace-Sanders, Court Reporter and Notary Public in and for the State of South Carolina, pursuant to Notice of Deposition and/or agreement of counsel.

APPEARANCES

J. Charles Ormond, Jr., Esquire
Ormond and Dunn Attorneys at Law
301 Stoneridge Drive
Columbia, South Carolina 29210
Attorney for the Plaintiff
Dwyane Mazyck, Esquire
John M. Reagle, Esquire
Childs and Halligan, P.A.
1301 Gervais Street, Suite 900
Columbia, South Carolina 29211
Attorney for Defendant

Also Present:
Denise Simmons (via telephone)

INDEX

MR. OKAFOR. PAGE
MR. ORMOND ...EXAMINATION.....4
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EXHIBITS

Defendant's Exhibits 1 - 4 were submitted in Debra Ann Darby's deposition.)
Defendant's Exhibit Number 5 19
(Copy of email)
Defendant's Exhibit Number 6 20
(Copy of email)
Defendant's Exhibit Number 7 21
(Copy of email)
Defendant's Exhibit Number 8 21
(Copy of email)
Defendant's Exhibit Number 9 22
(Copy of email)
Defendant's Exhibit Number 10 30
(Copy of email)

STIPULATIONS

It is stipulated and agreed that this deposition is being taken pursuant to the South Carolina Rules of Civil Procedure.

It is stipulated by and between counsel and the witness that the reading and signing of the following deposition be, and the same are, hereby waived.

KENNETH OKAFOR, having been duly sworn, deposes and testifies as follows:

MR. OKAFOR - EXAMINATION BY MR. ORMOND:

Q: Dr. Okafor, and I'm going to maybe just use -- just Doctor, 'cause your last name is tough, all right?

A: Yes.

Q: My name is Chuck Ormond. I'm an attorney and I practice in Columbia, South Carolina. I represent Dr. Denise Simmons in a lawsuit. She's the defendant in a lawsuit brought by South Carolina State University. Do you have any knowledge of the decision making process in bringing this lawsuit?

A: Yes.

Q: Okay. Did you have any input into bringing this lawsuit?

A: No.

Q: Okay. Can you tell me who did?

A: It has to -- I suppose from the VP's office.

Q: Okay. And how do you know that?

A: Communications.

Q: Okay. So, you've had communications with the VP -- the office of the vice president? Who is that, sir?

Page 5

A: It was Dr. Franklin Evans.
Q: Okay.
A: And now, Dr. Learie Luke.
Q: Okay. But at the time that the law -- it was determined that a lawsuit needed to be brought, it was Dr. Evans?
A: Yes.
MR. MAZYCK: Object to the form of the question.
Q: The answer was yes?
A: Yes.
Q: Okay. And did you speak to Dr. Evans or he speak to you about the lawsuit?
A: No.
Q: How did you learn about it?
A: Because I had to explain the circumstances surrounding why Dr. Simmons was not there, during the semester, to him directly.
Q: Did he bring you in to ask you to explain that?
A: No.
Q: Okay. Did he go to your office?
A: No.
Q: Okay. How did that happen?
A: Through an email.
Q: Through an email?
A: An email, yes.

Page 6

Q: And so you wrote Dr. Evans an email as to what happened? The circumstances?
A: What I knew.
Q: You wrote what you knew ---
A: Yeah.
Q: --- to Dr. Evans ---
A: Yes.
Q: --- in an email?
A: Yes.
Q: Can you tell me about the timing of that?
A: It was like during the semester, fall 2012.
Q: Okay. Well, we're gonna go over the emails that I have that are -- would it have been an email from you, yes?
A: Say that again.
Q: This email, would it had been from you, to Evans?
A: Yes.
Q: Okay. All right. Let me go over a little bit about depositions. Have you ever had a deposition taken before?
A: No, sir.
Q: All right. Doctor, this is under state Rules of Civil Procedure. In this state, it allows me to take a deposition of a party or a witness

Page 7

in a case. And when you were given the oath -- and it's just like you're in court. Just like if there was a judge there and maybe even a jury there. Do you understand that?
A: Yes.
Q: Okay. And the court reporter is going to take down everything that I say, all the questions. And everything that you say in response. And it will appear that whatever I asked, the next thing would've been your answer. Do you understand that?
A: Yes.
Q: Okay. And because she's taking this down and taping it, verbal responses are also required. In other words, you need to say yes or no rather than shaking the head.
A: Okay.
Q: I tend to do this. And I think everybody's seen that in the prior deposition. Sometimes I'll talk over. I'll ask a question before the answer is finished. And sometimes people answer the question before the question is finished, so let's try not to do that. Is that fair?
A: Yes.

Page 8

Q: Okay. And once you are under oath, which you are now under oath, any questions you have about my questions, you need to refer to me. In other words, you need to ask me rather than your attorney. Is that fair?
A: Yes.
Q: All right. Now, there may be objections during the deposition, but in this kind of deposition, they're relate -- they're limited only to objections to the form of the question because we're trying to get the transcript right. And if your attorney objects to the form of the question, I'll either rephrase the question or I'll ask you to go ahead and answer it. Is that fair?
A: Yes.
Q: All right. And that is -- unless there's a privileged question or something like that, in which he'll -- your attorney will tell you not to answer that. But I promise you, I will not ask you a question like that unless I make some sort of error, you understand?
A: Yes.
Q: Okay. Thank you, sir. You have a Ph.D. in engineering?

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A: Yes, sir.
Q: Where did you get that degree?
A: The Ohio State University.
Q: All right. When did you finish your Ph.D.?
A: 1988.
Q: How did you finance your Ph.D.?
A: I had an assistantship.
Q: Okay. And was that a teaching or a research assistantship?
A: Both.
Q: And this allowed you to pay tuition and some spending money during that time?
A: And some stipend.
Q: Okay. And that's pretty common for a Ph.D. student, especially in engineering or the sciences. Is that correct?
A: Just graduate students, in general.
Q: Okay. Even master's degree students?
A: Yes, even master's degree students.
Q: Okay. When did you start with South Carolina State University?
A: 2005.
Q: And what was your position there in '05?
A: Associate professor.
Q: Associate professor?

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A: Yes, sir.
Q: And then, did you become chair of the department?
A: Yes, sir.
Q: When did you become chair of the department?
A: About 2011.
Q: Okay. When you were an associate professor did you receive contracts prior to each academic year?
A: Yes.
Q: And in the contracts, were there -- was there the term of how long it would last? Say the -- for an academic year for example?
A: Yes.
Q: And a salary and benefit package?
A: Salary and duties.
Q: Okay. And duties?
A: Uh-huh.
Q: Did it discuss whether you were tenure track or not?
A: It's already known. It should be known at that point.
Q: Okay. So your contract may or may not discuss whether a professor is tenure track?
A: No.

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Q: Okay. Would it never -- would a contract of employment at South Carolina State University, for a professor, ever mentioned whether or not it was -- the professor was tenure track or not tenure track?
A: I wouldn't know the procedure about that.
Q: Okay. And I probably missed saying a couple things. Number one, sometimes you may not know a question and there's nothing wrong with that.
A: Yes.
Q: And two, it's very hot in here. And I'm going to probably need a break in about 30 minutes. But if you need a break, just tell me when you need it and I will allow you to take it, of course.
A: Okay.
Q: I may want you to finish the question that's pending if there is one but that would be all. Fair enough?
A: Yes.
MR. MAZYCK: Is Dr. Simmons still on the phone?
MR. ORMOND: Dr. Simmons?
MS. SIMMONS: Yes, I'm here.
MR. ORMOND: Thank you. I have a condition that just drys me out.

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Q: All right, sir. So in 2011, you came -- you became the department chair. Prior to that, did you know Dr. Simmons?
A: Yes.
Q: How did you -- what -- were you all colleagues at the time?
A: Yes, we were colleagues.
Q: What area of engineering do you specialize in?
A: Nuclear engineering.
Q: Nuclear?
A: Yes, sir.
Q: Do you have any knowledge of Title III Grants at South Carolina State University?
A: Yes.
Q: Okay. Give me a very quick version of what your understanding of Title III Grants are.
A: The Title III is a federal program. It has parts A and B. Part A is for English language. And part B is specifically made for the HBCUs, for upgrading the educational infrastructure and their faculty training as an example. And some other stuff.
Q: An HBCU is historically black or college or university, correct?
A: Or university, yes.

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Q: And South Carolina State is an HBCU?
A: HBCU, yes.
Q: Do you know anything about the process to obtain a Title III Grant?
A: No.
Q: Have you ever obtained a ---
A: No.
Q: --- Title III Grant?
A: No.
Q: If one obtains or if a college obtains a Title III Grant, all of that money is from the federal government, right?
A: Yes.
Q: As chair of the department, did you have part responsibility for hiring professors?
A: Yes.
Q: Who else had responsibility?
A: The dean and a committee.
Q: And a committee?
A: Uh-huh.
Q: Who was the committee?
A: It can be anyone on the faculty members.
Q: Any of the faculty?
A: Yeah. In other words, if there is need, you constitute a committee made up of x person

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knowledgeable in the field and some outside of faculty members.
Q: Did the need for faculty in part was it determined by the students that were interested in that area of study?
A: Say that again?
Q: A bad question, strike that. What kinds of things determine need for a professor of engineering?
A: Like we have more -- more students or newer areas in the programs and so and so forth, new programs. And then of course, some -- in some instances you have ABET requirement.
Q: I'm sorry, the what kind of requirement?
A: ABET. It is called, ABET. It's accreditation.
Q: Accreditation.
A: Yeah, accreditation requirement.
Q: Okay. So in other words, for a university to be accredited, they need certain professors.
A: Yes, you have to have some critical mass.
Q: Do you know anything about the process of retaining or rehiring or recontracting with professors?
A: No.
Q: Would that be Ms. Darby and those folks over

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there at Academic Affairs?
A: Academic Affairs.
Q: Okay. In 2012, did you report to the dean? Is that your supervisor?
A: Yes, sir.
Q: And that was Dr. Ihekweazu?
A: Yes, yes, yes. Ihekweazu.
Q: Right. Are those names, your name and his name both Nigerian?
A: Yes.
Q: Could you name the professors that you were over as dean in 2012, spring?
A: As dean?
Q: As, I'm sorry, my fault. As chair, department chair.
A: Dr. Danjaji, Dr. Eliadorani, Dr. Chang, Dr. Legun, Mr. Lari, Dr. Simmons. I think that's about it. If I remember any other one I'll let you know.
Q: Okay. Thank you. In the fall of 2012, in August, did all of those professors have contracts?
A: I don't know.
Q: Where you in anyway responsible for negotiating or getting professors' contracts?

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A: No.
Q: Who did that?
A: You mean in the school?
Q: Yes.
A: Academic Affairs.
Q: Did you have any control over what someone's -- what a professor's salary was?
A: Initially.
Q: When you say, initially, are you talking about a new hire?
A: Yes, at the point of entry.
Q: Okay. Did you have final say over where -- what their salary was?
A: You can, yes.
Q: Okay. So, a new hire, you were the one who set the salary. Is that correct?
A: Yes.
Q: And what about for somebody coming back like Dr. Simmons. Would you set the salary?
A: No, no.
Q: Who did that?
A: Academic Affairs. And by the way ---
Q: Yes, sir.
A: --- the chair can set the salary. However, final authority is Academic Affairs. So

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regardless of what I did as a chair, it has to be approved up here (indicating).
Q: Okay. Let the record reflect that he held his hand up, meaning higher up.
A: Yes, higher up.
Q: And Academic Affairs -- it's all right.
A: That's all right.
Q: Academics Affairs, who would be the head of that?
A: Used to be the vice president for Academic Affairs. But right now, it's the provost.
Q: Okay. Who did it use to be in 2012, Evans?
A: No, I don't think it was Evans. I don't remember right now, but I think it's Dr. Blackwell.
Q: So if a contract is going to have what someone's pay is, a professor, for example, then Dr. Blackwell or whoever the vice president of Academic Affairs was, would have to have seen that and approved it, is that correct?
A: Yes.
Q: Now, in 2011 and 2012, do you recall there was some controversy and concern over financial issues at South Carolina State University?

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A: Yes.
Q: Do you recall that there were at least six academic -- six folks in the administration that were terminated during that time?
A: I don't recall.
Q: Was the student population down in 2012 for the fall semester?
A: Yes.
Q: Was that true also for engineering?
A: Yes.
Q: Were you the chair of Dr. Simmons in her capacity as director of the field station?
A: No.
Q: Who -- who was -- who handled that? Do you know?
A: I don't know.
Q: Okay. Did you know that she was director of the field station? Did you have any knowledge of that?
A: No, no, no.
Q: Okay. Did you have knowledge that she was working for South Carolina State University in some capacity, from 2008 through 2000- or until 2012?
A: No.

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Q: So you did not know that?
A: No, I did not know that.
Q: Okay. I'm gonna -- okay. I'd like you to take a look at a document. And it'll be Defendant's 5.
(Defendant's Exhibit Number 5 was marked for identification purposes.)
MR. ORMOND: Is that correct or is it ---
COURT REPORTER: Do you want to continue on from before?
MR. ORMOND: Yes.
COURT REPORTER: 5.
MR. ORMOND: It is 5?
COURT REPORTER: Yes.
MR. ORMOND: Okay, good for me.
MR. MAZYCK: So we're just continuing from the last deposition? Is that what you're doing?
MR. ORMOND: Yeah. That's normally what I do, but I'll do whatever you like to do.
MR. MAZYCK: Okay. It really doesn't matter to me. I just want to make sure for clarification.
MR. ORMOND: Because I'll be using the other ones.
MR. MAZYCK: Okay, make sense.
MR. ORMOND: Okay.
Q: This is -- I will suggest to you that this is

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a document that we received from the university in discovery. And it appears to be an email upon which you were -- appeared to be copied. Do you recall this?
A: No.
Q: Okay. The email just talks about -- and I don't seem to have a copy of this. But the email in essence talks about -- it's from Janice Guinyard to the dean, Ihekweazu. And it speaks about she needs to have an original transcript sent to Academic Affairs verifying her degree. You agree with that's what at least what it says?
A: Yes.
Q: Do you have any recall of seeing her transcripts or acknowledging that they did, in fact, come to the university?
A: No.
Q: Okay. Let's go off the record for a second.
(Off the Record)
Q: All right. Don't think this has been marked, so it will be 6.
(Defendant's Exhibit Number 6 was marked for identification purposes.)
Q: All right. Dr. Okafor, if you would take a

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look at this email chain, I guess is a good way to describe it. Tell me if you ever received those or you sent those where they said they were sent by you?
A: Yes.
Q: Okay. And this April 2012, correct?
A: Yes.
Q: Okay. Well, look at the second page. I'm sorry, you -- you're on the second page on there. All right. This needs to ...
(Defendant's Exhibit Number 7 was marked for identification purposes.)
Q: All right. If you take a look at 16. This is an email from Dr. Simmons to you. Can you recall that email? It's August 16.
A: Yes.
Q: Okay. Was that email likely in part referring to this document, this email regarding a faculty meeting?
A: I don't recall the link.
Q: Okay. Let's go ahead put this as Defendant 8.
(Defendant's Exhibit Number 8 was marked for identification purposes.)
Q: All right. Regarding the document that's been labeled, Defendant 8, do you recall this email?

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A: Yes.
Q: Okay. And I asked you earlier about the professors that were under your chairmanship.
A: Uh-huh.
Q: And you named a bunch of names, most of which I couldn't understand. Are these names the two of -- in document eight, Defendant's 8, are these all the professors that are working in that department?
A: They are not all professors.
Q: Okay. All the people?
A: Yes.
Q: Okay.
MR. REAGLE: Sorry.
MR. ORMOND: It's all right. It happened in here while you guys were gone. And all these things blew over the place. I thought I got them back into -- into order and I apparently have not. Let's -- I think this may be another one. Let me look at the old ones. All right, that's fine, we'll just do it. It's Defendant's 9.
(Defendant's Exhibit Number 9 was marked for identification purposes.)
Q: And this is also an email chain. Of course, with email chains you read them from bottom to

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top. And it appears that Dr. Simmons sent you a message. And this would've been on October, I'm sorry goodness gracious, August 16. Would you agree that's what the email says?
A: Uh-huh, yes.
Q: Okay. I'm gonna read it and see if you can recall it. I hope that you had a productive summer. I have not receive an employment contract to date, and not otherwise heard from you or your office. I'm a bit distressed, but I've sought and secured employment. Please call me if you would like to discuss the matter further. Do you recall getting that?
A: Yes.
Q: What was your reaction?
A: This email is a response to this one, to my mine.
Q: That's -- well, this is August 16, correct?
A: Yes, yes.
Q: That's the thing about emails, and I still hate it because you got to go up.
A: Oh, up. Okay. You're going up, okay.
Q: Okay. So you ---
A: So, this is my response ---
Q: Yes.

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A: --- to her email of the August the 16th.
Q: Okay. Well, let me read it. Your response was, thanks for your email. I hope your summer went well. Based on your email, there's no viable number to call you at, since the number there is a school number and you have not been here for awhile. I also contacted you for our semester departmental meeting or did you get the email. If you possible, can you call me and you gave me a number so we can discuss. By the way, a lot of people have not yet received their contract, so that should not discourage you. Is that your writing?
A: Yes.
Q: Okay. Can you tell me what number you were trying to call her if -- well, prior to this, this is August 17th, did you try to call Dr. Simmons?
A: Yes.
Q: What number did you try to call her on?
A: I don't remember.
Q: And what did you get in response to calling the number?
A: I don't remember, but I wasn't able to contact ---

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Q: Okay.
A: --- that number.
Q: But you can't remember whether it just rang or if there was a voicemail or anything else like that?
A: I don't remember.
Q: Okay. It looks like Dr. Simmons then contacts you again by email on August 23rd. And my first question is, do you recall speaking with her on the phone, prior to August 23rd?
A: Earlier, yes.
Q: You did?
A: Yes.
Q: Prior -- earlier than August 23rd?
A: Yes.
Q: Okay. When did you talk to her?
A: I don't remember.
Q: What number would you have called her on?
A: I cannot recollect.
Q: Okay. Can you recall the conversation?
A: Yes.
Q: Okay. What was the conversation?
A: I -- basically, I was asking her to stop by the school so that we can resolve some of her complaints.

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Q: What were her complaints?
A: About -- she had complained to me that out of the three courses that she was assigned to teach that semester ---
Q: Uh-huh.
A: --- that she didn't know anything in one of them. And she wanted me to change it. And to which I answer, I said I wasn't able to change it. But if she can come -- come in, we can discuss it with our other colleagues in the -- in the program.
Q: Was it -- is it possible that that was well prior to this like in April of 2012?
A: It's possible.
Q: Okay. All right. Let me ask you this, and it's hard to remember back this far, and if you can't, I understand, but I'm gonna ask you this, this way. Prior to August 23rd and after August 17th, can you recall speaking on the phone with Dr. Simmons?
A: Say that again.
Q: Okay.
A: Prior to 23rd?
Q: This --- it is in 20- -- prior to August 23rd of 2012. That means, for this email in which she wrote you.
A: Uh-huh.
Q: That's August 23rd, 2012.
A: Uh-huh.
Q: Prior to that, but after September 16th, 2012.
A: Okay.
Q: During this period of time, can you recall speaking with Dr. Simmons on the phone?
A: No.
Q: Okay. Can you recall speaking with Dr. Simmons on the phone on the 23rd of August or the 24th?
A: I don't -- I don't recollect that.
Q: Okay.
A: There is something that needs to be pointed out here.
Q: Okay.
A: Now -- can I have those? This is August the 17th.
Q: Yes, sir.
A: This is August the 16th.
Q: Yes, sir.
A: At this point, we were just starting school.
Q: Yes, sir.
A: Okay? So, when I invited her for the faculty -- the departmental meeting ---

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Q: Yes, sir.
A: --- usually, after we have the faculty meeting, classes usually start a day or two after that.
Q: Okay.
A: So, in other words, anything beyond August the 17th, classes had already started. And I had, if I recall it correctly, I had already contacted the dean ---
Q: Okay.
A: --- about the situation we had.
Q: Okay. What did you tell the dean?
A: It's in the -- one of the emails. I don't recollect what happened. In other words, that she's not here even though she's been assigned the classes. And that prompted him to send an email. There was an email the dean sent to her reminding her of her responsibilities. Okay. So there was no reason for me to keep the contact after classes had started.
Q: Okay.
A: Because we had to find an alternative, how we would cover our classes.
Q: So, that was it? She -- there was no need for her to worry about coming and working there after the 16th?

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A: No, no. That's not what I said.
Q: Okay, sir. I'm trying to understand.
A: In other words -- you understand?
Q: Well, I'm trying to.
A: Or you want to ---
Q: Yes, I want you to explain.
A: In other -- in other words, what I'm saying is, at that point ---
Q: Uh-huh.
A: --- it's now above me. It is now for my supervisor to handle.
Q: Okay.
A: And that resulted in the email the supervisor sent to her to let her know that she needs to come back and cover her classes.
Q: Do you know when that was sent?
A: I don't remember, but it's somewhere in your stack.
Q: Okay. But you did talk to her on the 23rd of August, correct?
A: I don't recollect talking to her on August the 23rd. Like I said, classes had already started.
Q: Okay. And classes actually started on the 21st. Is that correct?

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A: Probably, probably.
Q: All right. All right. This is Defendant's 10.
(Defendant's Exhibit Number 10 was marked for identification purposes.)
Q: And that's an email on August 23rd. She indicates that she did talk to you on the 23rd. Is it possible that you did talk to Dr. Simmons on the 23rd?
A: I don't recollect.
Q: Okay.
A: I don't recollect.
Q: So you may or may not have called her on the 23rd or talk to her on the 23rd?
A: I don't recollect that.
Q: Okay. So if you don't recollect whether or not you called her, I assume you can't recollect what the substance might have been about?
A: No.
Q: Okay. Is there any documents or anything that would allow you to refresh your memory, other than the email that's sitting in front of you?
A: No. In other words ---
Q: Uh-huh.
A: --- this email is on the 23rd.
Q: Yes.

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A: Like I keep emphasizing. I had already sent her case to the dean.
Q: Okay.
A: You understand what I'm saying? The dean was supposed to be handling it ---
Q: Okay.
A: --- at this point because classes had already started. Okay. So that's the ...
Q: So, if she didn't get a contact or any communication from the dean, then she wasn't gonna get any contact or communication from anybody. Is that correct?
MR. MAZYCK: Object to the form of the question.
A: No, that's not the procedure.
Q: Okay. What's the procedure, sir?
A: Well, what I mean by procedure is this, the contract is not the only way somebody knows whether he or she is employed here or can teach. We usually make up a teacher's schedule.
Q: Uh-huh.
A: One semester prior to the semester you will teach. So that teacher schedule, I don't -- I'm sure you have it somewhere. But this teacher was made like months before all this

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communication.
Q: Okay.
A: That was why the admin lady was able to send the teacher schedule to her informing her of her teaching schedule. You understand what I'm saying?
Q: Yes.
A: Okay.
Q: Uh-huh.
A: So, that's how these communications had started. Because if she didn't have a contract, why is she telling about not knowing about the lab course. She was okay with two courses, but she wasn't okay with a third one. And was trying to ask me to change it. If you weren't -- if you weren't coming back to teach, why are we discussing your schedule?
Q: I agree with you one hundred percent, sir. If she -- in April or in the semester, months prior to the fall semester of 2012 ---
A: Uh-huh.
Q: --- it was clear to you that Dr. Simmons was coming back?
A: Yes.
Q: Okay. And partly that because you were talking

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A: And to her too. And to her too.
Q: Well, I'm not gonna ask you what she thought 'cause that's probably not proper.
A: Okay.
Q: But I'm asking you what you understood.
A: Yes.
Q: Okay.
A: Yes, yes.
Q: And you understood this because she responded to a class schedule that she was fine with two of the classes ---
A: Yes.
Q: --- but one of them she hadn't taught before --
A: Yes.
Q: --- etcetera.
A: Yes.
Q: And you all spoke about that, correct?
A: Yes.
Q: Okay. All right. But you agree that she didn't have a contract?
A: I don't know whether she had a contract or not.
Q: All right. If you don't have a contract, you'd have no idea of how much you're making. Would

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that be correct?
A: It's possible.
Q: Okay. Did you have a contract to come back to -- to teach at South Carolina State University in 2012, I'm sorry, fall of 2012?
A: Yes, I did.
Q: Okay. Did any of the professors not have a contract? And I'm talking about professors here, that taught engineering under you in 2012?
A: The contract is a confidential document.
Q: Okay.
A: So I wouldn't know.
Q: Okay. So you don't know whether there were any professors who were working without a contract?
A: I don't know.
Q: Okay. And you would have no idea or knowledge whether professors gotten a contract at that time or not. Is that correct?
A: Say that again.
Q: Would you have any knowledge in August or July of 2012, whether the professors that were under you had gotten a contract?
A: I'm not suppose to know.

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Q: Okay. So you wouldn't know?
A: I wouldn't know, yes.
Q: Okay. Do you recall speaking to Ms. Darby about Dr. Simmons ---
A: No.
Q: --- during this period?
A: No.
Q: Do you recall speaking with Dr. Simmons or emailing Dr. Simmons in September of 2012?
A: I don't recall.
Q: All right. In the fall of 2012, did you all hire any other professors to teach what Dr. Simmons would have been teaching.
A: No.
Q: Who taught those?
A: The dean helped and the other faculty members that took the slack.
Q: Okay. Well, I mean, there were certain classes, correct?
A: Uh-huh.
Q: Were there three classes?
A: Three.
Q: Okay. Did the dean teach one of those classes?
A: He helped. I don't know what he did. I don't remember. I don't recall whether he taught

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anyone of them. I don't know.
Q: Okay. I did what I said we're not suppose to do. I talked right over you, and I apologize.
A: That's okay.
Q: Did -- well, who is the dean at that time?
A: Dr. Ihekweazu.
Q: Ihekweazu.
A: Yes.
Q: And so I believe what you're saying is Dr. Ihekweazu taught, at least in part, one or more of the classes?
A: I will use the language, helped.
Q: Helped.
A: Yes. In teaching one of the classes.
Q: Okay. Which one?
A: I don't recall.
Q: Okay. Who else helped?
A: I don't recall.
Q: Okay. Were there any classes cancelled?
A: No.
Q: Is it your understanding that the college can hire someone just for a semester, a professor for a semester?
A: Yeah, we have adjuncts.
Q: Okay. Would a full-time associate professor be

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able to hire -- be hired for just one semester?
A: It's possible.
Q: Okay. For the spring semester, did your department hire another professor?
A: I don't recall what happened in the spring.
Q: Okay. That would've been 2013, I think.
A: '13. Yes, yes.
Q: You don't recall?
A: I don't -- I don't recall what happened.
Q: It's my understanding that y'all hired somebody in 2014.
A: Yes.
Q: Can you tell me who that was?
A: Dr. Farajapour.
COURT REPORTER: I'm sorry?
A: Dr. Farajapour.
MR. MAZYCK: You're gonna have to spell all of them
Q: Is it possible for you to spell it for me and her? I have it in here somewhere.
A: F-A-R-A-J-A-P-O-U-R, I think.
Q: Okay.
A: Farajapour.
Q: Was he hired for the fall semester of 2014?
A: I suppose -- I think so.
Q: And prior to him, you didn't hire any

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professors for this department, did you?
A: I didn't even hire him.
Q: Okay. Did anyone hire any professors for a department that you chair, prior to fall semester of 2014?
A: I don't recall that, no.
Q: How many professors taught in the department?
A: In the program or the department?
Q: Your department.
A: I don't recall. Those are ---
Q: Okay.
A: --- listed the email. See, the the department is made up of mechanical engineering and technology, civil engineering and technology, industrial engineering and technology and nuclear engineering.
Q: Okay. So, it's a lot of professors?
A: Yes, yes.
Q: And they report to you?
A: Yes.
Q: And you can't remember whether or not you hired between 2012 and 2014, a professor of engineering in one of those categories?
A: No, I did not.
Q: Okay.

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A: I did not.
Q: All right. And no one -- and to -- and one didn't show up either. Is that correct?
A: I don't ---
A: Hired by somebody else?
A: --- I don't -- I don't recall.
Q: Okay. I have the name right here.
A: Yeah.
Q: Do you know who runs the field study now or directs the field study?
A: No, I don't. No, I don't.
Q: Okay. Have you had any conversations or discussions about this lawsuit with anyone, other than the lawyers involved in this case?
A: Yeah, with the dean.
Q: Okay. Can you tell me, dean who?
A: Ihekweazu.
Q: Okay. What did you all talk about?
A: The same emails that's been going around.
Q: Did you speak with him in any manner other than by email?
A: No, no, no. Not by email.
Q: Sorry.
A: I'm talking about -- I'm talking about -- you asked what the subject matter was.

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Q: Yes.
A: It concerned Dr. Simmons and the emails that we send back and forth.
Q: So you spoke to Dr. Ihekweazu, who is the dean ---
A: Yes.
Q: --- about Dr. Simmons.
A: Yes.
Q: And the substance of those discussions were limited to the emails?
A: Dr. Simmons ---
Q: Okay.
A: --- and the deposition today.
Q: Okay.
A: Yeah.
Q: Prior to talking about the deposition today, did you speak with anyone -- any -- the dean, the vice president, anyone at South Carolina State University about the substance of this case or about Dr. Simmons?
A: No.
Q: I couldn't hear you, sir.
A: I said, no.
Q: Okay. I'm sorry. I couldn't hear you. All right. You are not from Orangeburg County, are

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you?
A: No, I am not.
Q: Do you have any relations in Orangeburg County?
A: No, sir.
Q: Do you -- are you married?
A: Yes, sir.
Q: Is your wife from Orangeburg County?
A: No, sir.
Q: Is she from Nigeria too?
A: Yes.
Q: Okay. So you have no relations of any type or in-law relations ---
A: No.
Q: --- in Orangeburg County?
A: No, sir.
Q: Okay. It sounds personal, and I didn't mean it to ---
A: That's fine.
Q: --- seem that way.
A: No, that's all right.
Q: I'm asking because that'll be who are on the jury and I need to know if you know any of those folks.
A: That's fine.
Q: All right. Let me take a few minutes.

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(Off the Record)
Q: All right. Dr. Okafor, did you understand all my questions?
A: Yeah, I think so.
Q: Did you answer them to the best of your ability?
A: That's the best I could do.
Q: And to the best of your recollection?
A: Yes, that's what I meant.
Q: Is there any reason sitting here today that you would be unable to answer questions truthfully?
A: Say that again.
Q: Well, let me ask what I normally ask. It's a little be personal, but are you on any medication or is there any reason, including medication or alcohol or drugs in which would, and I ask this of everybody, usually, which wold preclude you are disallow you to answer all questions, truthfully?
A: I don't think so.
Q: Okay. That's all I have.
MR. MAZYCK: I don't have any questions.
Q: Okay.
(There being no further questions, the deposition concluded at 12:43 p.m.)

4) Deposition of Darby (Academic Affairs / SCSU)

Transcript of the Testimony of
DEBRA ANN DARBY

Date: November 21, 2016

CREEL COURT REPORTING, INC.
Condensed Transcript and Word Index

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STATE OF SOUTH CAROLINA) COURT OF COMMON PLEAS
)
COUNTY OF ORANGEBURG) C/A #: 2015-CP-38-0553
)
)
South Carolina State)
University,)
)
Plaintiff,)
)
v.)
)
Denise Simmons)
)
Defendant.)
_____)

DEPOSITION OF
DEBRA ANN DARBY
****

Monday, November 21, 2016
10:11 p.m. - 11:39 p.m.

The deposition of DEBRA ANN DARBY, taken on behalf of the Defendant at South Carolina State University, 300 College Street, 2nd Floor, Orangeburg, South Carolina, on the 21st day of November, 2016 before Sonia D. Wallace-Sanders, Court Reporter and Notary Public in and for the State of South Carolina, pursuant to Notice of Deposition and/or agreement of counsel.

APPEARANCES

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Attorney for Defendant

Also Present:
Chrystel Rogers
Denise Simmons (via telephone)

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STIPULATIONS

It is stipulated and agreed that this deposition is being taken pursuant to the South Carolina Rules of Civil Procedure.

It is stipulated by and between counsel and the witness that the reading and signing of the following deposition be, and the same are, hereby waived.

DEBRA ANN DARBY, having been duly sworn, deposes and testifies as follows:

MS. DARBY - EXAMINATION BY MR. ORMOND:

Q: Ms. Dar- -- is it Ms. Darby?
A: Yes.
Q: Okay. Ms. Darby, my name is Chuck Ormond. I'm an attorney and I work out of Columbia, South Carolina. And I represent Dr. Denise Simmons, do you know her?
A: I do.
Q: Okay. She is listening on the phone. She's in Virginia.
A: Uh-huh.
Q: So she'll be able to hear the questions I ask and the responses you give. The court reporter here will be taking down anything that I say and anything that you say, and actually, anything anybody says and try to attribute each statement to those people, the people that are speaking. So one of the first rules or rules of thumb we need is, is, I need to try not to talk over you. I admit I do that from time to time. And if you could try not to talk over me, like in other words, let me get my question out before you give an answer, I would

appreciate it. Have you ever had a deposition before?
A: No, I have not.
Q: Okay. This deposition will be taken, it's pursuant to notice and it's under the rules of South -- South Carolina of Rules of Civil Procedure. And it can be used, a transcript and the deposition can be used for any and all purposes that are allowed under the South Carolina rules and interpretive case law.
A: Okay.
Q: You're under oath, you've just been placed under oath. It's just like being in a courtroom. Just like there's a judge there and/or a jury. Sometimes people will desire to give a nonverbal response, like an uh-huh or shake of a head or nod of a head. If you can try not to do that, that would be appreciated. Especially by the court reporter, 'cause at the end of this we'll develop a record. That'll just be written questions and answers. And that's what we're trying to do is have it as clean as possible. I will assume that the answer you give to my question is to the question that I've asked. Sometimes folks

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think of an answer to another question and answer it. And when things are being written down, that doesn't work. So, if you have an answer to a previous question, make sure you let me know that. And otherwise, I will assume that whatever answer you give is, is pursuant to a question that I've asked just prior. If you have any questions about the questions that I've asked or any desire for clarification, please ask me and not your attorney. Once you're under the oath, all questions and so forth need to be directed to me. And the college's or the university's attorneys and you, your discussions that you might have are not privileged during that particular time. And I can ask about them in other words. And in a deposition, under South Carolina rules, other than objections to privilege, for example, if I were ask you what you spoke with the college, I mean, the university's attorneys about, that would be something that I couldn't do. They would raise an objection and tell you not to answer that. Other than that kinda thing, the objections that might come about from university counsel will be objections to

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the form of the question. And I may try to re- -- request- -- re-ask the question or I may just tell you to go ahead and answer the question as it was, and then you're required to answer the question. Is that fair?

A: That's fair.

Q: All right. I -- Ms. Darby, I'm, you know, we're all -- we're all friends here. I'm not trying to trick you. I'm just trying to get some information on what you know, what you don't know. Information that's pertinent to a lawsuit that's been filed by the South Carolina State University against Denise Simmons. There will be some things you don't know, and there will be some things you probably do know. And all I ask is that you answer to the best of your ability. And if you don't know the answer, if you can't recall, then that's a fair answer. Is that fair?

A: That's fair.

Q: Okay. Could you briefly describe your most recent or higher -- highest education?

A: Master's in Rehabilitation Counseling and some hours in Counselor Ed.

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COURT REPORTER: I'm sorry, I need you to speak a little bit louder for me, okay?

MS. DARBY: Okay. All right.

COURT REPORTER: Thank you.

A: Master's in Rehabilitation Counseling and some hours in Counselor Ed.

Q: Okay. And how long have you been at South Carolina State University?

A: Over 30 years.

Q: Have you -- is that a function you perform is counseling?

A: No, it's not.

Q: Okay. What are you're duties at South Carolina State University?

A: I assist the provost for Academic Affairs. And I ensure that the management of the office is done on a daily basis. And answer questions that comes in, whether it's student related or any of the constituents that might call in. Those type things.

Q: Is that the same duty that you had, say in 2011, 2012?

A: Yes.

Q: Do you have knowledge or do you know Denise Simmons?

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A: Well, I know her just from working with her, as a co-worker.

Q: When -- can you recall about when you first met her?

A: Let's see. 2000- -- may have been 2010, I'm not sure. Somewhere around that time. I'm not sure.

Q: Okay. Would -- when you met her, would she have been going to Clemson University doing her Ph.D. work?

A: Okay. Wait a minute, now. 2010 -- it was -- I've known her longer than that. 2008, '08, '09, '10, '11, '12. It may have been around 2005. It may have been around 2005.

Q: Okay. Under what circumstances did you two meet?

A: That's when she was a professor here.

Q: Can you recall her exact title or did she have one that you knew of?

A: I'm not sure if she was assistant professor.

Q: Okay. Do you know what she taught?

A: No, I'm not sure.

Q: Okay. Was she in the engineering department?

A: She was.

Q: Do you have any knowledge of Title III grants?

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A: No. I do know that I was sup- -- my supervisor signs off on them, but I'm not in depth with the Title III grant.
Q: Who is your supervisor?
A: At this time?
Q: At this time, and then I'll ask who it was in 2011 or '12.
A: Okay. It was -- 2012, it was Dr. W. Franklin Evans. And at this time, it's Dr. Learie Luke.
Q: When you say, this time, you're talking about 2016?
A: Yes.
Q: What about in 2008. Evans?
A: 2008. Or was it Dr. Teal? We've had some changes here. I can't recall right now.
Q: So you can't remember who your supervisor was in 2008?
A: No. I wanna say Dr. Rita Teal.
Q: Who at the university would be the most knowledgeable about Titles III grants? Do you know?
A: Yes. Ms. Gloria Pyles.
Q: Do you know if the university has a contact within the federal government regarding Title III grants?

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A: Now I'm not sure of that.
Q: Do you have any knowledge of how Title III works?
A: No, I don't.
Q: Do you have any -- any duties that relate to the retention or the contract and faculty?
A: When you say retention, what you mean?
Q: Retention or that means keeping or the contracting with ---
A: Oh, yes.
Q: Okay. Can you briefly describe the process that the university would go through to hire a professor?
A: Okay. The document -- well the documentation, the hire package, employment package would be submitted to the chair.
Q: Let's talk about a little before that.
A: Before that?
Q: Yeah. Let's say the university is looking to hire somebody.
A: Oh, okay.
Q: How does it work?
A: Well the -- if it's a faculty, the chair ---
Q: Uh-huh.
A: --- would put -- would advertise a position.

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And after advertising a position, they would go through the applicants.
Q: Uh-huh.
A: And then they would make that decision to select a candidate. The paperwork for the candidate would be submitted to the chair.
Q: What would that paperwork entail?
A: It would include their transcripts, three letters of reference, transcript, recommendation to hire, and that's basically it. And if there are any work authorizations they would have to submit those.
Q: And who would be -- who would recommend to hire?
A: The chair would.
Q: And then -- when we're talking about the chair, we're talking about the chair a department within the university?
A: Of a department.
Q: For example, there's an engineering department. Is that correct?
A: Uh-huh, yes.
Q: Okay. And who was the chair in 2012 of the engineering department, do you know?
A: Dr. -- I think it was Dr. Kenneth Okafor.

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Q: Okay. So you pronounce that, Okafor?
A: Yes, Okafor.
Q: Okay. All right. Once a hiring decision was made, would there -- would there be con- -- would there be contract negotiations?
A: Yes.
Q: Okay. What would those entail?
A: Well, once the information is submitted to the -- by the chair to the dean, and it's approved, the dean would submit it to the vice president. And the vice president and the dean would negotiate that. And from there it would go to the -- once the vice president approves it, it would go to the president for final approval. And then once it reaches the president, then we would come back and do the contract.
Q: Okay. Are you one of the people that do the contract?
A: Yes, I am one of the persons.
Q: Who are the other persons?
A: Well, at this present time now, or?
Q: I'm sorry. Let's talk about in 2012.
A: Okay. It was Sharon Owens who would assist with the contracts.

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Q: You and Sharon Owens?
A: Yes.
Q: Is Sharon Owens still with the university?
A: Yes.
Q: All right. Let's talk about the rehire of a professor who used to be an assistant professor or a professor here. Was that same -- same process or similar?
A: You said rehire? Yeah.
Q: Yes.
A: Well, now, not talking about professional development. Just rehiring someone?
Q: Yes.
A: Yeah, with rehires, that would be the same thing.
Q: Okay. All right. Now, you're talking about professional development, that would be somebody who will be somebody who would be going off and getting another degree or something to that affect?
A: Yes.
Q: Okay. What's the process for that?
A: Now, the only way we would get involved is once it's submitted to the provost -- to the vice president, they would look through it, review

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it, sign it and get it back to Title III.
Q: Well, I'm not talking about Title III.
A: Oh.
Q: Is that the only way to go out and get extra -- to do professional development if you will?
A: Yes. To my knowledge, yes.
Q: Is the only way is Title III?
A: To my knowledge, yes.
Q: Okay. All right. So, if -- if you're doing professional development, must be Title III and this -- I'm just -- tell me when I wrong if I'm putting words in your mouth. To your knowledge, it must be Title III and that needs to go to the provost? I'm sorry, who did you say?
A: Well once -- once it -- it would come to the provost for approval.
Q: Uh-huh. And I'm talking about -- I'm talking about the return of the person.
A: Of the return?
Q: Yes.
A: Okay. So -- okay, we talking about professional development, now? Or just ---
Q: Somebody who wasn't working as a professor at the university and now is coming back.

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A: Okay. Well, yeah. They would have to go through that same process, that hiring process.
Q: And that would include a contract?
A: Yes.
Q: Is there ever a professor at the university that's hired without a written contract?
A: No, not to my knowledge.
Q: And there's a contract form that the university uses, isn't there?
A: Yes.
Q: Do you know who designed the form?
A: The form was basically in place when I started.
Q: Okay. Now we were -- this last summer, we were getting ready to go into the academic year of 2016, 2017. Will that be correct?
A: Yes.
Q: When would professor contracts have been delivered or signed by the professors?
A: It depends on when the vice president asks us to forward them. There have been times when, I think at one point, one set was sent -- the one year they were sent, I think, the end of May. But for the most part, they usually send toward the end of June, July.
Q: When you sent, you're sending the contracts to

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the professors ---
A: Yes.
Q: --- is that what that means? Okay. Do you know who decides on salaries and ranges of salaries? Do you know who has that authority?
A: Well, it's the chairs, deans and the vice president.
Q: All right. For those folks like me who are not particularly academic, a chair would be a chair of the department?
A: Yes.
Q: Like for the engineering department in 2012, it was Dr. Okafor, correct?
A: Yes.
Q: Okay. And then there's a dean of the college?
A: Yes.
Q: Is that correct? And I guess that would be the College of Engi- -- what ---
A: College ---
Q: --- college would that be? I'm sorry.
A: College of Science, Mathematics, Engineering and Technology.
Q: Okay. And it changed over time.
A: Yes.
Q: Who would the dean have been in 2012? Do you

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know?
A: Dr. Stanley Ihekweazu.
Q: Okay. I'm not gonna try to spell it, but I do remember the name. And then you said it also goes to the vice president?
A: Yeah, right.
Q: Is it fair to say that the chair could not determine salary without the vice president?
A: That's right.
Q: Does the chair have the final authority to determine who gets a contract for that academic year or does that have to go up the chain also?
A: That goes up the chain.
Q: Do you recall that in 2011 and 2012 and possibly even a little before that and after that, there were some issues and financial issues with South Carolina State University?
A: No, I can't recall that.
Q: You never read the paper that there were some problems with whether or not the university was going to be subsidize by the state anymore and things like that?
A: Just vaguely. Just vaguely.
Q: Do you have any knowledge of Dr. Simmons, and I don't think she was doctor most of this time,

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but when she ran or was employed as a field station coordinator?
A: Yes.
Q: Okay. Am I correct in that terminology?
A: I -- as far as the title?
Q: Yes.
A: I'm not quite sure of the title, but I know she was the director of the field station. That's how we referred to it.
Q: And the field station director, I may have -- I probably said it wrong. Director, is that what you recall it was?
A: Yeah. Director of the field station.
Q: And that field station was in Aiken, South Carolina, correct?
A: Yes.
Q: And is that were she spent her time -- portion of the -- her time there during the fields?
A: Now, yeah as, you know, as I recall, yes.
Q: Okay. And she was the director of the field station during the times that she was going to Clemson to finish her Ph.D. Is that correct?
A: From my understanding, yes.
Q: Okay. And I just said, finish here Ph.D. I imagine it was to start and finish her Ph.D.

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Is that correct or do you know?
A: Now, I'm sure with, you know, from the start and finish.
Q: Fair enough. I understand. Were you aware that Dr. Simmons had procured the grant that provided for the field study ---
A: No.
Q: --- station? Do you know that that is not correct?
A: I don't know.
Q: Okay. And some of this is a fair amount of time ago, so answer to the best of your ability. Do you recall getting an email from Dr. Simmons or it's probably prior to her becoming a Ph.D, where she notified South Carolina State University she would be done with her Ph.D. in Spring or Summer of 2012?
A: Yes.
Q: What was your part? Once that was done, what was -- what did you do? What, if anything?
A: Well, the only thing we would've done was issue her a contract in 2012, in that year.
Q: Okay. Did you do that?
A: Well, no, we did not at that time. But we did -- I did talk to her and at that time she said

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that she had already applied for another job.
Q: When you're saying, that time, we're talking about November of 2011. Is ---
A: In November of 2011.
Q: Did you talk to her in November of 2011 when she emailed and said she's gonna be finished in 2012, either the Spring or Summer?
A: I don't recall 2011.
Q: Okay. Do you recall receiving her transcripts?
A: Yes.
Q: Okay. Now, to receive transcripts from one college to another, that person would've need to have order them, if you will, from the college in which the transcripts were made. Is that correct?
A: That's true.
Q: Okay. In other words, if South Carolina State University, if there was a person in the graduate program here who wanted to go to University of North Carolina, they'd order transcripts from South Carolina State.
A: Yes.
Q: And then South Carolina State would send them to the University of North Carolina, right?

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A: Yes.
Q: Okay. So in April, do you recall that Dr. Simmons ordered the transcripts be sent from Clemson to South Carolina State?
A: Now, I remember them coming in, yes.
Q: Okay. Once the transcripts came in, what was your job, or was there any job that you needed to do?
A: There really wasn't anything that we needed to do at that time.
Q: Okay. Did you notify anyone that the transcripts were in?
A: No, I did not.
Q: Okay. Did you -- do you recall speaking with Dr. Simmons on phone, at all, during this period? When I say this period, I'm talking about April, March, May, 2012.
A: Yes, I recall speaking with her.
Q: During that time?
A: I don't know whether -- I know I spoke with her in, I think, August ---
Q: Okay.
A: --- is when it was.
Q: And I'm not there yet.
A: Oh, okay.

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Q: And I ---
A: Oh, okay.
Q: That's the way we have to work. It's kind of a chronological event sequence. Can you recall speaking with Dr. Simmons in anyway on the phone or email or otherwise, prior to August 2012?
A: Prior to August. Well, I do know that there have sev- -- a couple of times that she's called to check on her pay, to make certain her salary was still in place.
Q: Okay.
A: And also to ensure that we received the necessary documents in regards to her professional development.
Q: Okay. And she would call you?
A: Yes. Well, I spoke with her a couple of times. I don't know if she spoke with anyone else in the office. But I do know that I spoke with her a couple of times.
Q: So prior to August, do you recall speaking with her a couple of times regarding her salary? Is that what you said?
A: Yes.
Q: And when you talk about salary, are you talking about the field study salary?
A: No. It was the state salary. State funded salary.
Q: Do you know if she got a field study salary?
A: I'm not sure.
Q: Okay. Well what were the substance of those conversations to the best of your recollection?
A: Well, she just wanted to check to be sure that we have paperwork in place, be certain that she would be getting her check on time, the state supported check. And to ensure that we had receive the paperwork for her professional development, to make certain that she would -- her classes would be taken care of through Title III.
Q: And you didn't do Title III, but you're the one to spoke to her about this?
A: Yes.
Q: Okay. Did you relay that to the Title III person?
A: No. She was just calling just to check to be certain that our vice president had signed off on her documentation and that everything was still in place.

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Q: Okay. Do you remember in February of 2012, six South Carolina State administrators were terminated? Recall that event?
A: No, I don't.
Q: Did Dr. Simmons give you any indication of when she would be graduating, directly?
A: I can't recall at this time.
Q: Okay. Can you recall that in June of 2012, South Carolina State received the transcripts from Dr. Simmons?
A: I can't remember the exact month, but I do know we received them.
Q: Okay. Do you remember Dr. Simmons contacting you to make sure the transcripts had been received in July?
A: Yes. Well, I know she contacted me, but I don't know the month.
Q: Okay. Well, do you recall at anytime her talking or asking you have the transcripts been received?
A: Yes.
Q: Okay. Can you recall any other substance of that conversation from her or by you?
A: No. No, I can't ---
Q: Was that the gist of that particular

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conversation?
A: That was basically it, yes.
Q: Okay. Do you recall ever seeing an appointment letter to Dr. Simmons?
A: For which year?
Q: For 2012.
A: 2012. We had prepared one but about the time -- well, when I contacted her to she if she was returning, it was never sent out.
Q: When did you contact her?
A: May have been the end of August or the middle of August. I think it was the middle of August.
Q: I will try to find that letter. Okay. Defendant's 1.
(Defendant's Exhibit Number 1 was marked for identification purposes.)
Q: Thank you. Ms. Darby, could you take a look at this.
I will represent to you that we received this from the university in discovery.
A: Okay.
Q: Is that the letter you're referring to?
A: Yes.
Q: Okay. Did you prepare that letter?

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A: Yes.
Q: Okay. Now the date, I'm sorry, I don't have a copy of it, I thought I made one. It's -- it's the interim president is the person whose, whose name is on it, Cynthia Warrick. Did you inform Dr. Warrick that you were preparing this paper?
A: No, I did not.
Q: Okay. And the date on it is July 23, 2012, did you prepare the letter on that date?
A: Well, no. I -- that was -- that's the form letter. So, no, it was not prepared on July 23rd.
Q: Okay. When was it prepared?
A: It may have been prepared August. I don't know, August 1st. It may have been around August 1st.
Q: Okay. But it never was sent out?
A: It was never sent out.
Q: So if Dr. Simmons said she didn't receive it, that would perfectly logical, correct?
A: Yes. Uh-huh.
Q: Okay. And you believe you may have prepared it on August 1st?
A: Yeah, it may have been around August 1st.

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Q: Okay. Although it was dated, July 23, 2012?
A: Yes.
Q: Okay. If you would've sent it out, would you have change the date?
A: Yes.
Q: Okay. Did the other professors have their contracts by August 1st?
A: Yes, most of them had theirs August 1st.
Q: Do you send out a contract to professors prior to August 1st?
A: Yes.
Q: Okay. You said most of them. Do you know who didn't have their contract by August 1st?
A: Well, I can't recall right now, but the majority had gotten them.
Q: Now, if a professor gets a contract, is it possible they say, hey, I -- this isn't wasn't we agreed to. Does that ever happen?
A: I can't recall at this point. If so, they would talk to the vice president about that.
Q: And the contracts that we're speaking about are generally for a term of a year. Is that correct?
A: Yes.
Q: Are any of them longer than that?

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A: No.
Q: Are any of them shorter than that?
A: Not -- unless someone is not -- unless a contract is not being renewed, it'll be for a semester.
Q: Okay. So some contracts were for a semester?
A: It's not many. Just to my recollection, I think that it's happened maybe once, once or twice to my -- to the best of my recollection.
Q: And the contracts also have a salary or information about compensation. Is that correct?
A: Yes.
Q: And do some of the contract have information about whether the professor is tenure track or not?
A: Yes.
Q: Who makes the determination of whether a professor is tenure track or not?
A: The chair. It usually goes up through the chain and the vice president is the one that make that final call.
Q: Would you agree that all of those terms, the salary, the benefits, the length of time of the contract and whether or not they're tenure

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track and things like that are important items in any employment contract?
A: Yes.
Q: All right. I'm gonna show you some emails. Who is Demetrius Chat- -- Chatman?
A: He works in the Title III office.
Q: What does he do there?
A: I don't know his job functions.
Q: Okay. Is he -- would he -- you mentioned another lady that was -- well, another person that was the Title III person, Gloria Pyles. Would he be under her?
A: Yes.
Q: Okay. I'm going to show you two pages. The first one you're not on it, but the second one you are. Defendant 2.
(Defendant's Exhibit Number 2 was marked for identification purposes.)
Q: The -- first, there's two page documents. It's entitled, Defendant's Exhibit 2. And the first page of it is -- I wanna make sure I have it. I want to make sure I look at the right -- same thing, because I don't think I am.
MR. MAZYCK: Up at the top it should say, yes, in

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two weeks.
MR. ORMOND: Okay.
Q: If you look at the second page of that, it looks like you're copied on that.
A. Uh-huh.
Q: Can you read the date?
A: Yeah. July 25th, 2012.
Q: Okay. And in this case, you're speaking to Demetrius about the fact that her transcripts had come, and her meeting with Dr. Denise Simmons. Is that correct?
A: Right.
Q: Okay. Was there any other issues that you needed to do during this period of time?
A: No, there was not.
Q: Okay. Did you call or did -- did you talk with Dr. Simmons on the phone during this period of time?
A: I don't recall.
Q: Would you have had any reason to?
A: No, I would not have.
Q: Okay. And is it fair to say that the reason that that the transcripts would need to be received by South Carolina State would be to begin this process of hiring. Would that be

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correct, or rehiring?
A: Well, to began the -- okay I want to say, to begin the -- well, I wouldn't say, rehiring. But to let us know that she's done and that we can go ahead and issue her letter.
Q: Okay.
A: Uh-huh.
Q: And what's the date on that?
A: July the 25th.
Q: Okay. And then, at some point after that, it's your testimony that you wrote this letter, although it was dated, July 23rd?
A: Okay. Now, I didn't write the letter, but, you know ---
Q: Uh-huh.
A: --- we used the form letter.
Q: Okay.
A: Uh-huh.
Q: Well, did you change the addresses and names on the form letter to reflect Dr. Simmons? Let's look at Number 1 then. Again, we're talking about Defendant's Number 1, correct?
A: Yeah, that's correct.
Q: Okay. Did you do -- I understand there was a form letter. Did you do any work to that

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letter?
A: Well, we only do the address and -- the address, the title, and the salary.
Q: Okay. Did you do that?
A: Yes.
Q: Okay. All right. And you got her address from the file or did talk to Dr. Simmons about the address, her address?
A: That may have been an address that was on file.
Q: Okay.
A: Uh-huh.
Q: But you didn't send it out?
A: No, I did not.
Q: Okay. And you hadn't talk to Dr. Simmons?
A: Only the times that I mentioned to you that I had.
Q: And that was late August?
A: Yes.
Q: Okay. Did you speak with anyone else? Dr. Okafor or anyone else during this period? And I'm talking about late July, very early August, about Dr. Simmons?
A: I know I called the office to see if she had returned to come and pick up a copy of her letter, but they said that they had not heard

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from her.
Q: Well, would the letter have been signed by the person, in theory, who wrote it?
A: Yes, it would have been.
Q: Okay. So, you were waiting for her to come, and then it would be signed? Is that your testimony?
A: No. If they would have said that she was on campus, we would've gotten the letter signed.
Q: So she needed to be on campus in order to get this letter?
A: No, not necessarily on campus. We was just trying to find out if she had reported to work.
Q: Okay. Well, when was she due to report to work?
A: I think it was August 16th. I think, to my recollection, I believe.
Q: How do you know that? Where did you get that information?
A: That -- that's what was in our letters.
Q: In what letter?
A: I think it was August 16th. They usually return the 16th of August, around that time, the faculty does.
Q: So you would agree that Dr. Simmons didn't have

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a contract at this time. Is that correct?
A: She had not.
Q: And you would agree that she hadn't receive this letter, Defendant's 1, correct?
A: She did not.
Q: Okay. And you didn't need to deliver that to her in person?
A: No, I didn't.
Q: Okay.
MR. MAZYCK: Sir, can you ask a better question. You making a statements. Those aren't questions Charles.
MR. ORMOND: You wanna object to the form?
MR. MAZYCK: I just wanted to ask you to ask her questions.
MR. ORMOND: Well, I think I can lead. And this is an adverse witness.
MR. MAZYCK: I do understand that.
MR. ORMOND: Okay.
MR. MAZYCK: You got to lead with a question, Charles, that's all I'm asking you.
Q: I'll rephrase that question. Isn't it true that Dr. Simmons did not have a contract at this time? And this is early August, 2012, correct?

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A: Correct.
Q: And she hadn't received the letter that's designated, Defendant's 1?
A: That's correct.
Q: Okay. And I believe you stated to me that she was to return, at least, in your understanding, on August 16th?
A: Yes.
Q: Okay. And my question to you is, how did you know that she was supposed to return on August 16th?
A: That's when faculty return.
Q: Okay. Do you know if she was ever notified to return on August 16th, by letter or any other way?
A: Well, not by our office.
Q: Okay. I just found the copy. All right. Did I put the -- all right. This -- yeah -- yeah, she needs to -- I tend to grab these things and I'm not suppose to. Once I've marked them, they're hers. If you could take a look at this email. This is from Dr. Simmons to Kenneth Okafor. And it doesn't appear that you are copied on this. Have you ever seen this document?

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A: Huh-uh. I have not.
Q: Okay. Can you indicate to me what documents you reviewed prior to this deposition?
A: Let's see. There was a -- the letter that -- the employment letter. We had -- I saw a copy of that. A couple of emails that did not have any attachments to them. And the court documents.
Q: Okay. Thank you. All right. It is really hot in here. I forgot to say this. I always do and I forgot it. Anytime you need to take a break, this is not a marathon. You let me know if you need a glass of water, you've one, we don't. If you need a glass of water or you need to take a break, that's fine. I only ask you to answer the question that I've asked. If there is one pending. Let me go to here and I think we ought to take a break, 'cause if there's water, I need to get it.
A: Okay.
Q: Okay. Take a look at an email that is -- all right. That's 3.
(Defendant's Exhibit Number 3 was marked for identification purposes.)
Q: Okay. Defendant's 3. Do you recognize that

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email?
A: Yes.
Q: Okay. And it appears to me that it was from you to Denise R. Simmons, and cc'd to Erica Echols. Who is Erica Echols?
A: She was her, if I recall, her assistant. Dr. Simmons' assistant.
Q: Okay. Can you recall what prompted you to ask her to call you?
A: Yes. As we were going -- we had already issued the letters. And as we were going down the roster to ensure that everyone had received a copy, we noticed that she had not received her letter.
Q: Okay. So, and this is August 23. Is that correct?
A: It's little before August 23, yes. Maybe ---
Q: Well, this -- this email.
A: --- around that time, yeah.
Q: Take a look at the email and tell me ---
A: Uh-huh.
Q: --- if that states August 23, 2012.
A: It does.
Q: Okay. Is this when you sent the email, on August 23 ---

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A: Yes.
Q: --- 2012?
A: Uh-huh.
Q: Okay. Had you spoken with her on the phone or otherwise prior to this?
A: No, I had not.
Q: Okay. Now, the classes actually started on August 21, is that correct?
A: I can't remember, but it was around that time.
Q: All right. And all this says is, good morning Dr. Simmons, please give me a call today.
A: Yes.
Q: Okay. Do you recall if she called you?
A: She did call me. I don't know if it was that day, but I know she called me.
Q: Okay. I mean was it three weeks later or was it pretty -- either that day or ---
A: No. It was ---
Q: --- maybe the next?
A: --- within a couple of days, I believe.
Q: Okay.
A: Uh-huh.
Q: What phone would she have called you on? Do you know?
A: I don't if she dialed -- she may have dialed

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the main number. I'm not sure.
Q: Well, it has down there these phones and faxes. Is -- is that 7180 the main number?
A: Yes.
Q: So you don't have a direct number that's just yours?
A: I did. Well, I do.
Q: Okay.
A: Uh-huh.
Q: So if she called, she -- would she have known your direct number?
A: I'm not sure if she would've known it or not.
Q: What is your direct number?
A: 516-4534.
Q: Okay. But you do recall that she did call you?
A: Yes.
Q: Do you recall telling -- on that phone call, do you recall telling Dr. Simmons that Dr. Okafor -- and I'm -- I'm sorry, Okafor.
A: It may be Okafor.
Q: Oh, okay. Well however you pronounce it.
A: We say Okafor.
Q: I'm going to say, Dr. O.
A: Okay.
Q: And when we do that, we're talking about Dr.

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Okafor or Dr. Okafor. Do you recall you telling Dr. Simmons that Dr. Okafor should have been negotiating her contract, even starting the spring of 2012?
A: Now, not with spring, I did not.
Q: What did you say?
A: I do know that when they come back from professional development, the chair is the one who usually negotiate their salaries, if they're going to be any increases in salaries, as well as title change from receiving the doctorate. So I did share with her that Dr. Okafor would be the one that who would negotiate that.
Q: So in August 23 or 24 or 25, one of those dates, roughly ---
A: Uh-huh.
Q: --- you spoke to Dr. Simmons and told her that Dr. Okafor would be the one to negotiate salary. Is that correct?
A: I don't know if I sent her -- if I spoke with her or I sent her an email.
Q: I'm trying to only recall at this time. We have a copy ---
A: Okay.

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Q: --- of the emails ---
A: Okay.
Q: --- and what you said to her and what she said to you. That's what I'm trying to get.
A: I think that that was the conversation that we had.
Q: Okay. And again, the conversation was, in essence, that she -- Dr. Okafor would be or Dr. O. would be the one to discuss or negotiate salary?
A: Yes.
Q: Okay. Did you tell her that because she asked you or you just tell her that?
A: I really at this point, I really can't recall the entire conversation.
Q: Okay. Do you recall being surprised, that she had not had any salary or any contract negotiations at that time, in very late August?
A: Can you repeat that again, please?
Q: Where you -- do you recall being surprised or tell her you were surprised that she had not had any contract negotiations with anyone at the university, at that time?
A: I don't recall that.
Q: Okay. Is it possible that happened, but you

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just don't recall?
A: In that I was surprised that she had not had -- you mean that she did not received her letter?
Q: Yes. Well not letter, just received -- have a contract.
A: Oh, a contract. And it's possible that I could've had that con- -- that conversation with her.
Q: Okay.
A: Okay. Now, you said that -- let me go back to that. That I was surprised that she had not received our contract?
Q: That she had not had any contract negotiations ---
A: Oh, okay.
Q: --- with Dr. Okafor.
A: Okay. All right.
Q: Would you agree that that happened or might've happened?
A: It might've happened.
Q: Okay. Did you tell her that you had left several messages? And again, this is around the late August for Dr. Okafor?
A: I don't recall several messages, but I know there may have been one or two, yes.

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Q: Okay. After the call, did you tell her that you would contact the chair immediately?
A: I don't recall.
Q: Did you -- okay.
A: It's possible.
Q: Okay. And the chair would be Dr. O.?
A: Yes.
Q: All right. I'm going to try to get this thing straight. All right. Now, Defendant's 3 was an email dated, August 23. Is that correct?
MR. MAZYCK: Who are you asking?
MR. ORMOND: Well, I'm asking the witness.
A: What was my question?
Q: I'm sorry. Mr. Darby, I'm ---
A: Uh-huh.
Q: I was looking at the paper, so you probably didn't know I was speaking to you.
A: Uh-huh.
Q: Defendant's 3, the email we were just talking about, is -- was written on August 23 of 2012, correct?
A: That's correct.
Q: Okay. I'm gonna hand you an email chain that says Debra A. Darby on the top left of it.
A: Uh-huh.

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Q: And for further clarification, although it's very light, there's very light numeral or letters and numbers, 0381 on the bottom right. Can you see that?
A: Yes. Okay.
Q: Okay. And this was from you to Sharon Heatley?
A: Yes.
Q: And I will let you know that these emails are emails sent to us by South Carolina State University, the plaintiff in this action, on our request for all emails that are related to this matter at all. Do you recall sending any emails or any other electronic communication to Dr. Simmons, prior to September 6th, and after August 23?
A: No, I don't.
Q: Okay. Do you recall sending any emails after September 23, I'm sorry, August 23, and prior to Thursday, September '06, that related to Denise Simmons?
A: No, I don't.
Q: Okay. So this is the next time, at least from an email perspective, that Dr. Simmons came up?
A: Yes.
Q: Okay. If you could take a look at the second

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page of that document. And we'll go ahead and mark that as Defendant's 4.
(Defendant's Exhibit Number 4 was marked for identification purposes.)
Q: This is -- does that appear to be a -- well, look at that and tell me whether or not you ever received or saw that document, the second page. It'd be Wednesday, September 26.
A: Oh, yes. Uh-huh. Yes, I recall.
Q: Is Dr. Stanley -- Dr. Stanley Ihekweazu, is that who we're talking about?
A: Ihekweazu.
Q: Ihekweazu. Okay.
A: Yes, yes. What's the question again, now?
Q: If you had seen this document.
A: Oh, yes.
Q: You did see this document on September 26?
A: I recall it now, yes.
Q: Okay. But you're not copied on the document? On the emails?
A: Yes, I am.
Q: You are copied?
A: Yes.
Q: Okay. I thought you were.
A: Uh-huh.

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Q: I just don't see it.
MR. MAZYCK: Looking at the same thing, Charlie?
MR. ORMOND: Make sure I was looking at the same one. Is that the same one she's looking at?
MR. MAZYCK: No. This one is -- top of the page starts with just Darby. It just has her -- that's it, yeah, this. And then, if you look at the second page.
MR. ORMOND: Okay. Let's go off the record for a second.
(Off the Record)
Q: Okay. Ms. Darby, we're back on the record. I don't have a whole lot more. We'll take a break and I'll talk with Dr. Simmons and then well come back for maybe a few more questions, that'll be it. Maybe 10, 15 minutes. Is that fair?
A: Okay.
Q: In front of you, you have Defendant's 4. And the very top of it is, Darby, Debra A. And the bottom, there's a 0381 number. Is that correct?
A: It's covered.
Q: It is covered. Well, let's just ---
MR. MAZYCK: I move it.

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MR. ORMOND: All right.
MR. MAZYCK: You don't care if I put it up here (indicating)?
COURT REPORTER: Closer to the bottom.
MR. MAZYCK: Right here. How about right there?
COURT REPORTER: That's good. Thank you.
Q: Okay. Just to confirm we're looking at the same piece of paper.
A: Yes.
Q: Okay. And then, the second page, which I had the wrong second page, but -- is -- it starts with cc Darby and the beginning sentence is gentlemen.
A: Yes.
Q: Okay. And as emails are, they -- you kinda write them -- you read them bottom to top?
A: Yes.
Q: Okay. And the second page says, well it's from Franklin Evans, Ph.D. Is that correct?
A: Yes.
Q: And now, is Franklin Evans the vice president that would need to negotiate with a professor coming in or a returning professor?
A: Yes.
Q: Regarding salary and so forth?

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A: Yes.
Q: Okay. And it says, I have paperwork on my desk for Dr. Denise Simmons, who is supposed to be returning this semester from an educational subbatical after having completed her doctorate last spring. Has she returned to work, it's a question mark. Does she have scheduled courses that she is teaching? Please advised ASAP, so that I can finalized the paperwork on her. Is that what it says?
A: Yes.
Q: Okay. And the paperwork, we've talked about that, right?
A: Yes.
Q: Okay. And that would be, among other things, the contract?
A: Yes.
Q: Okay. You have to go to the first page, then, to see when that was apparently sent from Franklin Evans and to whom it was sent. Is that correct?
A: Yes.
Q: Okay. And it was sent to Okafor and Ihekweazu, however you say that word, Kenneth C., and then copied to you. Is that correct? You kinda

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need to look at both of them.
A: That's correct.
Q: And a few others?
A: Yes.
Q: Okay. Then, the next day, August 24th, there's an email from Kenneth Okafor, correct?
A: Yes.
Q: And it cc's you among other people. Is that correct?
A: That's correct.
Q: Okay. Now, when you were speaking to Dr. Simmons the prior day, which was August 23rd, did you relay to Dr. Okafor to call her?
A: I don't recall asking him to call her.
Q: Okay. It appears that he did call her if you read that?
A: Yes.
Q: Or maybe she called him. Did you tell her to call her -- him?
A: No, no.
Q: Okay. What other information or substantive discussion did you have with Dr. Simmons on the 23rd of August?
A: I think with that conversation, I was just asking her if she was returning.

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Q: Okay. And what did she say?
A: She say that since she had not received her contract. That she had already secured employment with someone else.
Q: Now, did she tell you that that was undo that that could be undone? Was a ---
A: Undone?
Q: With that period of time. That that wasn't set?
A: Okay. I don't understand the question.
Q: What did she tell you about the other job, the ---
A: Oh, she didn't go into detail with her other job.
Q: She didn't tell you anything that you can remember?
A: No. She just said that she had just -- she was employed with another -- someone else.
Q: Okay.
MR. MAZYCK: Charles, I'm going to shut the door because Dr. Okafor is here.
MR. ORMOND: All right. Thank you.
Q: Did you discuss Dr. Simmons with Dr. Okafor at anytime or during this period of time, August 23 or August 24?

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A: I think I had just asked if he had heard from her.
Q: What did he say?
A: And he said, no.
Q: Did he say anything else?
A: If I recall correctly, I think he said he tried to contact her a couple times but she didn't return the call or calls.
Q: And do you have any idea of what phone number he would've called her on?
A: No.
Q: If he had called her on her office phone at South Carolina State University, would he have gotten her during this time?
A: From my understanding, she was not here, so, no.
Q: You called her. Can you recall what number or what phone she was using when you talk to her?
A: No, I don't.
Q: Did you relay any information about how to get a hold of her to Dr. Okafor?
A: No, I don't recall.
Q: Okay. Okay. You can ... Do you recall ever emailing or being copied on anymore emails to Dr. Simmons after this period of time?

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A: No, I don't.
Q: Have you talked to anyone, and I'm not including the lawyers, and that would've included the general counsel at the time of South Carolina State University. Other than attorneys, have you talked to anyone about this case or about the facts associated with this case?
A: No, I have not.
Q: You haven't spoken to Dr. Okafor at all about it?
A: During this time?
Q: During -- anytime.
A: About the case?
Q: Yes.
A: Oh, no.
Q: All right. Are you from Orangeburg County?
A: I am.
Q: Do you have close relations living here that are over 18?
A: Yes.
Q: Can you give me their last names.
A: You mean relatives?
Q: Relatives. I mean ---
A: It's a lot.

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Q: --- it doesn't have to be a fourth cous- -- is there -- I mean, it doesn't have to be a cousin or something like that, but cousins, aunts and uncles.
A: Aunts and uncles. Yes.
Q: In-laws.
A: Yes.
Q: Can you give me their last names?
A: Yes. Uh-huh. Parkers, Coleman, Phelps.
Q: Bells?
A: Phelps. P-H-E-L-P-S.
Q: Phelps? I'm sorry.
A: Phelps.
Q: Okay.
A: Jennings, Johnsons, Moores.
MR. MAZYCK: That's the whole jury pool.
MS. DARBY: It's a lot of them.
Q: Including in-laws?
A: Okay. Darbys. And that's about it. You have Ryants? Ryants?
Q: Ryants? Could you spell that?
A: R-Y-A-N T-S.
Q: R-Y-A-N T.
A: Yeah. R-Y-A-N T.
Q: Okay. And do you attend a church here in

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Orangeburg?
A: Well, in Cope, Macedonia AME.
Q: Are you active in any civic organizations other than the church?
A: No.
Q: All right. Let me take a quick break.
A: Okay.
Q: I'll be back and it shouldn't be very much more time.
(Off the Record)
Q: Ms. Darby, the engineering department didn't hire anyone for the fall of -- the fall semester of 2012, did they?
A: I'm not sure.
Q: Okay. During the phone call that you had with Dr. Simmons on the 23rd of August, do you recall that she was upset or emotional about not having had any process, not having a contract? Having to take another position somewhere else?
A: I don't recall her being upset about anything.
Q: Okay. Try to describe her tone or her mood?
A: Well, I do -- okay. Well, I do recall where she said that someone had passed. She was upset about that. And that she would -- I

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think she would contact them one all of that's done, you know, when she was taking care of the family matters. And she was a little upset about that.
Q: Now in the email from her to you, she does talk about employment. She asked about employment, correct? Can you recall that?
A: I don't recall that.
MR. MAZYCK: Which email are you referring to?
Q: Cancel -- strike the question. Okay. That's all I've got.
A: Okay. That's it?
Q: Uh-huh.
A: Okay.
(There being no further questions, the deposition concluded at 11:39 a.m.)

South Carolina State University

POST OFFICE BOX 7008
300 COLLEGE STREET, NORTHEAST
ORANGEBURG, SOUTH CAROLINA 29117-0001
(803) 536-7013

OFFICE OF THE PRESIDENT

FAX: (803) 533-3622

July 23, 2012

Dr. Denise Simmons
3409 Northshore Road
Columbia, SC 29206

Dear Dr. Simmons:

You are hereby reappointed to the position of Assistant Professor of Engineering Technology in the Department of Civil and Mechanical Engineering for the 2012 – 2013 Academic Year at a nine-month salary of $55,000. This appointment letter completely replaces and supersedes any prior agreement or contract with SC State University.

As a faculty member, you are expected to perform all duties assigned to your position and any additional duties that may be assigned by the Chairperson of your department, Dean of your college, the Vice President for Academic Affairs and/or the President. Your appointment is subject to the applicable SC State University policies and procedures; and state and federal laws and regulations.

Thank you for your services to South Carolina State University. I look forward to working with you during this coming academic year.

Sincerely,

Cynthia Warrick, Ph.D.
Interim President

cc: Rita J. Teal, Ed.D
Vice President for Academic Affairs

Anna D. Haigler
Human Resources Director

DEFENDANT'S EXHIBIT
L Darby
11/2/16
SCSU v Simmons / S

5) Affidavit of Julie Martin, PhD.

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF ORANGEBURG	)	FIRST CIRCUIT
		CA# 2015-CP-38 - 0553
South Carolina State University,	)	
	)	
Plaintiff	)	
vs.	)	**AFFIDAVIT**
	)	
Denise Simmons,	)	
	)	
Defendant,	)	
	)	

I do hereby state the following, under oath, and to the best of my independent knowledge and recollection:

1. My name is Dr. Julie Martin. I reside in the State of South Carolina in the County of Greenville. I was a member of the faculty at Clemson when Denise Simmons was completing her PhD and I am still a member of the Faculty at Clemson University.

2. I was able to get to know Denise Simmons well during the time she was earning her PhD at Clemson. Her goals throughout her tenure were to return to South Carolina State University (SCSU) and teach engineering. She made it known to us that her desire and plans were to teach at South Carolina State University.

3. During the Spring of 2012, as she was completing her dissertation, I learned independently through the news that SCSU was having significant financial and other issues. Denise and I did discuss the problems this might potentially cause for her return there to teach. Dr. Simmons was still determined to return to SCSU.

4. As a professor teaching at the college level for 13 years, I can state that contracts (written) for instructors/professors, certainly at Clemson, are to be offered and negotiated well prior to the coming academic year. In this part of the Country at least, the academic year starts in mid-August. Clemson provides an annual reappointment letter to pre-tenure faculty every April. Therefore, contracts are offered well prior the beginning of the academic year. If a professor or instructor did not have a contract well prior to the initiation of the academic year, it would be unlikely that such professor or instructor would be able to obtain a job anywhere for that academic year.

5. Sometime in late July or into August of 2012, Denise Simmons indicated to me that she had not been offered a contract from SCSU. I looked into any interim positions that might still be open at that late date. I was able to create a "postdoc" position supported by a grant I had recently received for a project between Clemson and Virginia Tech. This was a year long

6) Plaintiff's responses to Defendant's Requests to Admit

STATE OF SOUTH CAROLINA COUNTY OF ORANGEBURG	)	IN THE COURT OF COMMON PLEAS
South Carolina State University, Plaintiff, vs. Denise Simmons , Defendant.	)	C.A. No. 2015-CP-38-553 **PLAINTIFF'S RESPONSES TO DEFENDANT'S FIRST REQUEST TO ADMIT**

TO: J. CHARLES ORMOND, JR., ESQUIRE, COUNSEL FOR THE DEFENDANT

Plaintiff South Carolina State University hereby responds to Defendant's First Request to Admit as follows:

1. Plaintiff never provided a written contract or written offer of employment with material terms, including, but not limited to, pay rate and term to Defendant subsequent to her notifying Plaintiff of the completion date of her Doctorate degree; during the period between November of 2011 through August 2012.

ANSWER:

Plaintiff objects to this discovery request on the grounds that it does not seek information regarding a matter relevant to the subject matter involved in this civil action. Without waiving the foregoing objection, the request is denied.

2. Defendant continued in the employ of Plaintiff in an academic capacity, throughout the duration of her academic studies leading to a PhD. at Clemson.

ANSWER:

Plaintiff objects to this discovery request on the grounds that it does not seek information regarding a matter relevant to the subject matter involved in this civil action. Without waiving the foregoing objection, the request is admitted.

3. Plaintiff never provided or offered to Defendant either in writing, verbally or in any manner, at any time, the terms of the employment for the academic year 2012-2013.

ANSWER:

Plaintiff objects to this discovery request on the grounds that it does not seek information regarding a matter relevant to the subject matter involved in this civil action. Without waiving the foregoing objection, the request is denied.

4. Defendant, during her studies at Clemson and as part of her continuing employment with Plaintiff, wrote and obtained grants which, in whole or in part, provided her wages/compensation during her academic studies at Clemson.

ANSWER:

Plaintiff objects to this discovery request on the grounds that it does not seek information regarding a matter relevant to the subject matter involved in this civil action. Without waiving the foregoing objection, the request is denied, at least with respect to wages/compensation paid to Defendant by Plaintiff.

5. Plaintiff has not been required to repay any Grant money from the Department of Education, or any other source, relating to funds provided to Defendant during her academic studies at Clemson University.

ANSWER:

Plaintiff objects to this discovery request on the grounds that it does not seek information regarding a matter relevant to the subject matter involved in this civil action. Without waiving the foregoing objection, the request is admitted with respect to grants for which Defendant was involved in applying, or under which she provided services, if any.

Respectfully submitted,

CHILDS & HALLIGAN, P.A.

By: _____

Dwayne T. Mazyck, S.C. Bar No. 70240
dmazyck@childs-halligan.net

Kimberly Kelley Blackburn, S.C. Bar No. 73699
kblackburn@childs-halligan.net

John M. Reagle, S.C. Bar No. 14185
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P.O. Box 11367
Columbia, South Carolina 29211
(803) 254-4035

Attorneys for Plaintiff

August 12, 2016
Columbia, South Carolina

Motion to Settle Exhibit 9

The witness, GLORIA DEAN PYLES, was first duly sworn
And testified as follows:

DIRECT EXAMINATION

BY MS. BLACKBURN:

Q Good afternoon, Ms. Pyles.

A Good afternoon.

Q Thank you for being here today. Can you -- you've stated your name for the record. Can you briefly describe your educational and professional background for us?

A I'm Gloria Dean Pyles again. I graduated from high school in New York City, graduated from South Carolina State University with a Bachelors Degree. And then went back home and graduated from Columbia University with two degrees, a Masters and a Masters of Education. Then returned to South Carolina State University to work.

Q Thank you. And what is your current position at South Carolina State University?

A I'm the director of title three program at South Carolina State college -- University, I'm sorry, it was a college whether I was there first, which is a federally funded program that was established by the federal government in 1965 to provide federal funds to institutions to historic black colleges and universities to upgrade their university, to develop programs, keep their accreditation Also provide a professional development plan for faculty to

go to school to get their degrees. Also provide funds for our IT system. Provide funds to construct and renovate buildings. So those funds come in every year to South Carolina State University.

Q Okay. Thank you. And how long have you been the title three director at South Carolina State University?

A Thirty-six years.

Q And what are your job responsibilities as Title III director?

A My job as Title III director is to make sure all of these activities are well written, sent to the federal government for funding and then I disperse the funds. But all of this has to go through -- all through paperwork where they have to get approved by other people before it gets to me, such as a dean, a chairperson and then the provost, then it comes to me and then I will sign off on them.

Q Okay. Thank you. And as part of your job, do you oversee the commitment of Title III funds then to various activities or areas in the university?

A Yes.

Q And you told us a little bit about what Title III is. Are there parameters on how Title III grant funds can be allocated?

A Well, the parameters are whenever you write in your grant have to make sure that you are following everything

that you say you are going to do. And the faculty development activity that Ms. Simmons was in, there's a statement in there that indicates that you will return to the institution and give us a year for every year that we pay for you to go to school. The others have different type of parameters, but that was the parameter in that one. And that gets approved through a dean, and then a chairperson approves the application -- well, that application goes through a process. First of all the university will choose people to get their Ph.D's, and sometimes an employee will request the funds. So in order to get the funds there's an application that they have to fill out, which is a professional development plan. And in this plan they will have to go through the process of having a dean chair -- a chairperson, I'm sorry, complete it first, and then a dean, then the provost. Once that is completed, then all I have to do is make sure there are funds for those funds, and the person will be eligible to attend graduate school.

Q Thank you. And are there other areas besides faculty development that Title III grants can be spent on?

A Yes. We spend funds on equipment, renovations of buildings. We maintain our accreditations by using federal funds. We pay for resources in the library. There are many other things that we use for it.

Q Okay. And as Title III director then, are you familiar

with Title III faculty development program leaves?
A Familiar with what?
Q With factory development program leaves of absence?
A Yeah.
Q Okay. And is South Carolina State University a Historically Black College or university?
A Yes, it is.
Q Okay. And as Title III director, are you familiar with Denise Simmons?
A Yes.
Q How did you come to know Denise Simmons?
A I was became familiar -- I knew Denise on campus because she was very good in the engineering department. She had -- I knew the summer program that she had, the summer institute down there in Akin where she worked sith students in math, science and engineering. And when she applied for the application, she applied to go to graduate school I saw her application, and then we spoke about it. And then she would always send her information to the provost requesting her funds, and they would also cc me a copy and I would get it. So that's how I knew Denise.
Q So in 2008 then did Denise Simmons submit a factory development application?
A Yes, she did.
MS. BLACKBURN: Your Honor, I have in my hand a

document I would like to have marked for identification as Exhibit One. Your Honor, may I approach?

THE COURT: That's Plaintiff's Exhibit One?

MS. BLACKBURN: Yes, Your Honor.

THE COURT: Are you going to want her to look at it?

MS. BLACKBURN: Yes, Your Honor.

Q Now, Ms. Pyles, I would like to show you what I've marked as Plaintiff's Exhibit 1. And do you recognize these documents?

A Yes.

Q Okay. What are they?

A These are documents that -- this is Denise Simmons' application for support to go to Clemson.

Q Okay. And are there also documents at the back of that packet that are approval documents as well?

A Yes. These are all documents where she signed, and when she requested funds each time, and what she said she was going to do after she was received her degree.

Q Okay. Thank you. And how are you familiar with these documents?

A Each semester Denise would have to submit -- let's say the first semester -- she went to summer school but let's say the first semester that August. She would submit to us requesting two-thirds of her stipend, which we would send to her. Then she would receive the her stipend after he were

after her grades were received. She did this each semester and we would make sure she received the funds. Also she would submit how much it cost to go to Clemson, and then we would submit those funds to Clemson University.

Q Okay. And can I ask you, are you familiar with Dr. Simmons' signature?

A Yes, I think I am.

Q Okay. And how are you familiar with her signature?

A Well, you know, I didn't take it and see if it's the same each time, but I would recognize it when I saw it on the application.

Q Okay. And I'm going to ask you to look at page two of the document in front of you --

A Page two?

Q -- page one and two. If you would just look at that.

A Okay. This is Denise Grant.

Q And is that Dr. Simmons' signature on that second page?

A Yes.

Q And what is your understanding of what the first two pages are?

A This is the -- she was writing to submit the application, and she was informing the Provost and informing the Dean what she wanted to do.

Q Okay. So this letter is addressed to whom?

A Dr. Stanley.

Q And when you say Dr. Stanley, is that Dr. Stanley Ihekweazu.
A Ihekweazu, I'm sorry.
Q And this letter is from Denise Simmons?
A Right.
Q And it says Denise Grant, was had that her name at --
A Her maiden name, uh-huh.
Q Now, I'm going to ask you to look at the back of the document, the back four pages of this document. And can you tell me what those four pages specifically are?
A One document reads that she agreed that she would remain in active service with the South Carolina State University after completing her agreement equivalent to the amount of time for assistance was received for purposes of this agreement. A summer session as well as each conference, workshop, improvement is considered. Failure in any part to carry out the above agreement will result in the lump sum payment or the entire amount expended by South Carolina State University on my behalf.
Q Okay. And is Dr. Simmons' signature on these documents as well?
A Yes.
Q Okay. And is your signature on these documents?
A My signature is on the last document after it was signed by the President and all of the other appropriate

signatures are there, and then I'm the last one to sign.
Q Okay. Ad so was Dr. Simmons' application for faculty leave and support approved.
A It was approved.
Q And do the signatures on this document indicate that Dr. Simmons' proposal for professional faculty development leave approved?
A Yes.
Q And is this true and correct copy of the Denise Simmons' grant application and approval records for her faculty development leave?
A Yes, it is.
Q Only I'm going to ask you again to look at page one and two of this exhibit. Can you read aloud the second paragraph on the second page?
A The second paragraph?
Q The second complete paragraph?
A When doctor -- okay. "My entire objective for pursuing the Ph.D Degree has always to bring my independence back to South Carolina State University, provide the goal of exposing students" -- now, this is very, very small writing, I'm sorry -- "to my area of specialty for performing scholarly work in my specialties. Recruiting students to attend the University, and enhancing the academic and research capabilities of the University. I only need the

time and financial support from SCSU in order to accomplish this objective. My expected graduation date from the Ph.D program is December 2011. I will stipulate as many -- I will stipulate as many of the years employment as you deem appropriate in exchange for your support of this proposal and my degree completion at Clemson University.

Q Thank you. And did you understand that paragraph to describe Dr. Simmons' stated objectives for seeking the faculty development leave?

A Yes.

Q And is the objective for her request for leave as stated in her application records consistent with your understanding of the position as Title III Director with South Carolina State University's purpose --

A Yes.

Q -- for providing Dr. Simmons that leave and support?

A Yes.

Q Okay.

MS. BLACKBURN: And, Your Honor, I would like to offer Exhibit One into evidence.

THE COURT: Any objection.

MR. ORMOND: No objection.

THE COURT: Plaintiff's Exhibit Number One is in evidence without objection.

MS. BLACKBURN: Thank you.

Q And, Ms. Pyles, to your knowledge, did Dr. Simmons remain in the active service of South Carolina State upon completion of her degree?
A No.
Q Okay. Is it your understanding that she obtained a position elsewhere?
A Yes. After she didn't come back, yes, uh-huh.
Q Okay. How did you discover that she had obtained a position elsewhere?
A Well, you know, I was going through my files and we realized that she had not come back. And then I was asking around if anyone knew where she was and no one knew. So someone mentioned to me that she might be in Virginia. So I researched it, and I -- you can go on the web pages at the university be find out where people are and I found out she was at Virginia Tech.
Q Okay. Thank you. And as the Title III Director, what was South Carolina State University's expectation about whether Denise Simmons would be returning to teaching at South Carolina State after the completion of her degree program?
A The goal was that Dr. Simmons was an excellent professor there and he she really loved the young students that we had and worked with them. And in her application she said that she wanted to come back and expose our

students to her specialty, and also enhance our research. So it would have been best for her to come back because we expected her to come back, but she didn't, so --

Q Okay. And what was your understanding about what funds would be provided to support Denise Simmons' degree program at Clemson?

A Well, we provided all of her stipend, we provided all of her tuition and fees, and we purchased a few books for her.

Q And was your department responsible for making sure that the Title III funds were dispersed?

A Yes.

Q And were your Title III funds for Dr. Simmons faculty development leave disbursed in one lump sum?

A No. There was -- each semester she received four checks. She received two-thirds of her stipend and one-third for the first semester, and the same for the second semester. And then when she went to summer school she received checks also.

Q Okay. And did Dr. Simmons request her funds every semester as she was required to?

A Yes, she did.

Q Did Dr. Simmons contact -- I'm sorry, I'm going to change that question. As Title III Director, did you determine the entire amount was expended by South Carolina

State University on Dr. Simmons' behalf?
A Yes.
Q And what was the entire amount as funds from the Title III grant program that was expended on her behalf?
A $134,157.
Q Now, did you ever tell Denise Simmons that she did not have employment at South Carolina State University before she took a position with Virginia Tech.?
A No. I never talked with her.
Q And are you aware of anyone else telling her that she did not have employment at South Carolina State before she took a position with Virginia Tech.?
A No.
Q Now, tell me this, do you think the Title III program is important?
A Oh, yes.
Q Why do you think it's so important?
A Because we could have -- well, it enhances our university. It gives us a lot of funds to do things that are needed. We could have used those funds to send someone else to school that would come back to the institution, and we could have used them for deferred maintenance, which is a great need on our campus now.
MS. BLACKBURN: All right. Nothing further at this time, thank you, Ms. Pyles. Answer any questions Mr. Ormond

may have.

THE COURT: Mr. Ormond, any questions of this witness?

MR. ORMOND: Yes, Your Honor, just a couple.

CROSS EXAMINATION

BY MR. ORMOND:

Q Ms. Pyles, the Title III program is federal money; is that correct?

A Yes.

Q And the federal government doesn't just give the college money to do whatever it wants to do with it, it has to be a specific program, right?

A Yes, sir.

Q And in this case with Denise Simmons, the federal money was to go to her education tuition and so forth, correct?

A That particular activity, yes.

Q Okay. And that you tell us now is 134,157, is that correct is? That's the amount of money?

A Yes, sir.

Q And that's the amount that have federal government gave the state to help with the Ph.D?

A To help with that activity, yes, sir.

Q Now, are you asking, or is South Carolina State asking for Dr. Simmons to return federal money to you?

A To the university.

Q Yes.

A Yes, to the university.
Q And this was federal money. Were you going to return it to the federal government?
A We can take that money and use is in any other activities that we have, either in the faculty development area or another area with permission or approval from the federal government.
Q Have you sought that approval?
A No, not yet.
Q Have you asked for federal grant money for these things -- these other things that you're talking about and been denied?
A No.
Q Now, during this time in 2008 Dr. Ihekweazu was the chair of the department; is that correct?
A Yes.
Q And Ken Lewis was the Dean of the school --
A Yes.
Q -- the college. Were you aware that Dr. Ihekwaezu and Dean Lewis were the two people who came and brought up the Title III program to Denise Simmons regarding her Ph.D?
A No, I'm not.
Q But if they had, one would still need to go ahead and write this letter and do what she did, correct?
A Yes.

Q And that's part of the process.
A That's the process.
Q You write a letter and you ask for the funds.
A Yes, sir.
Q Now, you mentioned in direct that you said after she didn't come back. Did you have any knowledge that she was still actually working for South Carolina State and in Akin in August of 2012?
A No, I did not. That's the academic side of it.
Q Well, if she was retained during that summer under contract by South Carolina State University, would you at least have an idea of where to look for her?
A No.
Q Okay. She could be anywhere, not just Akin but anywhere?
A Well, that would not have been my job to look for her at that time.
Q I understand that, ma'am, it may not be your job and I appreciate that, thank you so much. Now, were you aware that when she went up and worked on this post-doc. program, she didn't arrive in Virginia until September?
A No. I don't know when she arrived.
Q Well, when did you look for her on the internet? Was that September or later?
A That was either late September or October.

Q I see. And classes at South Carolina State University had already started by then, correct?
A Yes, sir.
MR. ORMOND: That's all I have.
THE COURT: Anything on redirect?
MS. BLACKBURN: Yes, Your Honor.

REDIRECT EXAMINATION

BY MS. BLACKBURN:
Q Ms. Pyles, how does the federal government determine the amount of money that SC State gets for Title III funds?
A The money is formula driven, and it's determined by the total number of students that receive pell grants, which is a financial assistance for students. It also depends on how many -- your graduation rate. And it also depends on how much students -- how many of your graduate students -- how many of your undergraduate students go to graduate school, so it's formula driven.
Q Okay. So you get a certain amount of money that -- the university gets a certain amount of money from the federal government under the Title III grant --
A Right.
Q -- to expend on various areas within the university?
A Yes.
Q Is that correct?
A Yes.

Q Okay. So would you have applied to the federal government for grant money specifically and in a specific amount for Dr. Simmons to use on faculty development?
A When we send the applications we do not indicate the person's name, we just indicate the department that we're sending someone to school in. So it could be any department. It could be math and computer science, it could be engineering or it could be english. But we don't indicate a person's name, we just indicate the area and how much it's going to cost.
Q And are all of the Title III funds directed to that one individual or do they go in other areas?
A Title III money goes in several areas because we get several dollars. It's not just in a certain area, there are about 12 other activities.
Q Okay. And do you have to reapply for these grants?
A Every year. It's a five year grant but we apply within the five years.

MS. BLACKBURN: Okay. Thank you. No further questions, Your Honor.

THE COURT: Anything on recross?

MR. ORMOND: No, Your Honor.

Motion to Settle Exhibit 10

RECEIVED
Oct 22 2020
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ORANGEBURG COUNTY
Court of Common Pleas

Edgar W. Dickson, Circuit Court Judge, First Judicial Circuit

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Case No. 2020-000671

Denise Simmons,..... Appellant,

v.

South Carolina State University..... Respondent.

RESPONDENT'S DESIGNATION OF MATTER TO BE INCLUDED IN THE RECORD ON APPEAL

In addition to the items designated in Appellant's August 24, 2020 Designation, Respondent, South Carolina State University, pursuant to Rule 209, SCACR, hereby designates the following to be included in the Record on Appeal:

1. Plaintiff's Memorandum of Law in Support of Summary Judgment
2. Plaintiff's proposed jury charges
3. Trial Testimony of Gloria Pyles, trial transcript excerpts: pp. 1-13
4. Trial Testimony of Dr. Larry Luke, trial transcript excerpts: pp. 121-136
5. Plaintiff's Trial Exhibits 3, 5, 7-12

HALLIGAN MAHONEY WILLIAMS SMITH FAWLEY & REAGLE, PA

By:

Dwayne T. Mazyck, S.C. Bar No. 70240
dmazyck@hmwlegal.com

Kimberly Kelley Blackburn,
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P.O. Box 11367
Columbia, South Carolina 29211
(803) 254-4035

Attorneys for Respondent

CERTIFICATION

The undersigned hereby certifies that the Designation contains no matter which is irrelevant to the appeal of the instant action.

HALLIGAN MAHONEY WILLIAMS SMITH FAWLEY & REAGLE, PA

Kimberly Kelley Blackburn, S.C. Bar No. 73699

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Oct 22 2020
SC Court of Appeals

PROOF OF SERVICE

I, Kimberly Kelley Blackburn, attorney for the Respondent, do hereby certify that I served Respondent's Designation of Matter to be Included in the Record on Appeal via U.S. mail on October 22,2020.

.

Martin S. High, Esq.
PO Box 33190
Clemson, SC, 29733

Kimberly Kelley Blackburn, S.C. Bar No. 73699

Motion to Settle Exhibit 11

From: Green, Pamela E.
To: Martin S. High
Subject: Re: South Carolina State University v Simmons, Appellate Case No. 2020-000671
Date: Monday, August 3, 2020 4:55:52 PM

I do not. The Clerk's Office in Orangeburg would have them.

Pamela E. Green
Circuit Court Reporter
At-Large

_____
From: Martin S. High <marty@martyhigh.com>
Sent: Monday, August 3, 2020 4:54:55 PM
To: Green, Pamela E.
Subject: RE: South Carolina State University v Simmons, Appellate Case No. 2020-000671

*** EXTERNAL EMAIL: This email originated from outside the organization. Please exercise caution before clicking any links or opening attachments. ***

Ms. Green,

Do you have the admitted trial exhibits to the subject case that we have been discussing?

Marty

-----Original Message-----
From: Green, Pamela E. <PGreen@sccourts.org>
Sent: Thursday, July 23, 2020 12:02 AM
To: Martin S. High <marty@martyhigh.com>
Subject: Re: South Carolina State University v Simmons, Appellate Case No. 2020-000671

Enclosed is the transcript and invoice. Thank you.

_____
From: Martin S. High <marty@martyhigh.com>
Sent: Thursday, July 16, 2020 5:04 PM
To: Green, Pamela E.
Cc: jreagle@hmwlegal.com; dmazyck@hmwlegal.com
Subject: RE: South Carolina State University v Simmons, Appellate Case No. 2020-000671

*** EXTERNAL EMAIL: This email originated from outside the organization. Please exercise caution before clicking any links or opening attachments. ***

Thank you, Pamela. I will get payment sent ASAP.

Marty

-----Original Message-----
From: Green, Pamela E. <PGreen@sccourts.org>
Sent: Thursday, July 16, 2020 11:10 AM
To: Martin S. High <marty@martyhigh.com>
Subject: Re: South Carolina State University v Simmons, Appellate Case No. 2020-000671

Mr. High,

I have this transcript ready for you. The cost is $620.50. If you could please send a check in that amount to my address of 240 West Lakeview Drive, Duncan, SC 29334. I will then forward the transcript on to you when I receive payment. Thank you.

Pamela E. Green
Circuit Court Reporter
At-Large

_____
From: Martin S. High <marty@martyhigh.com>
Sent: Wednesday, July 8, 2020 11:04:38 AM
To: Watkins, Michael C.
Cc: jreagle@hmwlegal.com; dmazyck@hmwlegal.com; Green, Pamela E.
Subject: RE: South Carolina State University v Simmons, Appellate Case No. 2020-000671

*** EXTERNAL EMAIL: This email originated from outside the organization. Please exercise caution before clicking any links or opening attachments. ***

Mr. Watkins,

Thank you for the information.

Marty

-----Original Message-----
From: Watkins, Michael C. <MWatkins@sccourts.org>
Sent: Wednesday, July 8, 2020 11:02 AM
To: Martin S. High <marty@martyhigh.com>
Subject: Re: South Carolina State University v Simmons, Appellate Case No. 2020-000671

Hi Mr. High,

I will not be preparing this portion of the transcript. I believe Pam Green will be preparing it and she's top notch!!!

Sorry for any confusion.

Mike

From: Martin S. High <marty@martyhigh.com>
Sent: Monday, June 29, 2020 10:02:07 AM
To: 18037341821@myfax.com
Cc: Watkins, Michael C.; Allen, Desiree; jreagle@hmwlegal.com; dmazyck@hmwlegal.com; 18037341839@myfax.com
Subject: South Carolina State University v Simmons, Appellate Case No. 2020-000671

*** EXTERNAL EMAIL: This email originated from outside the organization. Please exercise caution before clicking any links or opening attachments. ***

June 29, 2020

The Honorable Tonnya K. Kohn

Director, South Carolina Court Administration

1220 Senate Street Rm 200

Columbia SC 29201-3769

Via USPS First Class Mail and FAX (803.734.1821)

Subj: South Carolina State University v Simmons, Appellate Case No. 2020-000671

Dear Ms. Kohn:

On April 23, 2020, the transcript of the proceedings in this case was ordered. See attached letter from Martin S. High to Desiree Allen. To my knowledge, the Court has not granted any extension of time to submit a transcript in this case. By my calculations, the transcript was due to be delivered on June 22. As of today, the appellant has not received the transcript from the court reporter.

Sincerely,

[cid:image005.jpg@01D64DF3.F62F1240]

Martin S. High, Esq.

Attorney for Appellant

cc:

1. Michael C. Watkins, Court Reporter via EMAIL (MWatkins@sccourts.org<mailto:MWatkins@sccourts.org>)
2. Desiree Allen, Manager, Court Reporting and Court Interpreters via EMAIL (dallen@sccourts.org<mailto:dallen@sccourts.org>)
3. John M. Reagle, Esq. via EMAIL (jreagle@hmwlegal.com<mailto:jreagle@hmwlegal.com>)
4. Dwayne T. Mazyck, Esq. via EMAIL (dmazyck@hmwlegal.com<mailto:dmazyck@hmwlegal.com>)
5. Clerk, Court of Appeals, via FAX (803-734-1839) and USPS First Class Mail to P.O. Box 11629, Columbia SC 29211-1629.

Enclosure(s)

1. Copy of letter from Martin S. High to Desiree Allen ordering transcript (see attachment)

[cid:image001.jpg@01D23C25.30775870]

Martin S. High, Ph.D., P.E., J.D., Reg. Patent Attorney

Martin S. High, P.C. | Member of OK, TX & SC Bar

864.300.2444 (o) | 405.747.7113 (m) | 866.232.1096 (f) | highms (Skype)

https://urldefense.com/v3/__http://www.martyhigh.com__;!!JHVHxrUang!Cwn4SydJnyYx_7vzx1sfkr2gSV8Uq3VXmlmNhRoemRy7ytabwrwie7IcmCanfDs$
<https://urldefense.com/v3/__http://www.martyhigh.com/__;!!JHVHxrUang!C8oXFzbVabBPMVHe1X3YQXBMHAbTphIpZXAvVDTpD2Ttl7IPAVKlrcoH_l3UkfHQ$> | PO Box 33190 Clemson SC 29633-3190

[cid:image002.jpg@01D23C25.30775870]
<https://urldefense.com/v3/__https://www.linkedin.com/in/martyhigh__;!!JHVHxrUang!C8oXFzbVabBPMVHe1X3YQXBMHAbTphIpZXAvVDTpD2Ttl7IPAVKlrcoH_krdgoqZ$>

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~~~

Motion to Settle Exhibit 12

From:	Martin S. High
To:	Kimberly Kelley Blackburn
Cc:	John M. Reagle; Dwayne T. Mazyck
Subject:	RE: APPEAL - South Carolina State University v. Denise Simmons, Appellate Case No. 2020-000671
Date:	Sunday, October 25, 2020 11:53:00 AM
Attachments:	Pages from 9 - SC State vs Simmons - Transciript Vol II.pdf

You are correct, Dr. Simmons is responsible for requesting the transcript and assembling the record. I have obtained the full transcript, and you have received a copy.

However, the transcript contained no exhibits and only referenced P. Ex. 11 as being entered, even though it does not appear that there was motion during testimony for that document to be entered. *See* attached. However, the transcript identifies Plaintiff's Trial Exhibits 3, 5, 7-10, 12 as being entered by the Court during the relevant testimony, but oddly not Ex. 11. Unfortunately, the exhibits that I received from the court clerk did not identify the documents by number. I assume that that the record was not properly identified by the court clerk, not properly identified by the now retired reporter at trial, and could not properly recorded by Reporter Green who finalized the transcript from the tape.

I cannot assemble a record if I don't have access to the properly identified documents. Now, I believe I have all the elements for the record except for copies of Plaintiff's Trial Exhibits 3, 5, 7-12. I am willing to proceed with assembling the record if I receive these exhibits from you, given that they correspond to the exhibits referenced in the transcript. I reserve the right to object to including Ex. 11 in the record as it does not appear it was entered at any point during testimony.

If I do not receive P's Ex 3, 5, 7-12 from you, I have no alternative but to file a motion to settle so I can get the documents for the record. I'd rather not delay the appeal for that. Again, I will file the motion if I do not have these documents in hand by COB Tuesday.

Let me know if this clarifies the issues.

Regards,

Marty

-----Original Message-----
From: Kimberly Kelley Blackburn <kblackburn@hmwlegal.com>
Sent: Sunday, October 25, 2020 11:17 AM
To: Martin S. High <marty@martyhigh.com>
Cc: John M. Reagle <jreagle@hmwlegal.com>; Dwayne T. Mazyck <dmazyck@hmwlegal.com>
Subject: Re: APPEAL - South Carolina State University v. Denise Simmons, Appellate Case No. 2020-000671

Dr. High,

Thank you for your email. My understanding is that you as appellant are responsible for obtaining the full trial transcript which should include the exhibits. However, I will look into this on Monday

and follow up with you.

Thank you.

Kim Blackburn

Sent from my iPhone

> On Oct 25, 2020, at 10:21 AM, Martin S. High <marty@martyhigh.com> wrote:
>
> Ms. Blackburn,
>
> Thank you for your two emails from yesterday. I am in receipt of the Plaintiff's proposed jury instructions. However, the document you sent via the link below is "Plaintiff's Supplement To Its Memorandum of Law In Support of Motion For Summary Judgment," not the original MOL. As this Supplement to MOL was not included in your Designation of Matter, it will not be included in the record. However, I did find a copy of Plaintiff's "Plaintiff's Memorandum of Law in Support of Summary Judgment" which will be included per your DOM.
>
> I still require the "Plaintiff's Trial Exhibits 3, 5, 7-12" that you indicated in your DOM. Again, these documents were not included in the record that I received from the clerk. if I do not receive these by close of business on Tuesday, Oct. 27, I will file a motion to settle.
>
> Regards,
>
> Marty
>
> -----Original Message-----
> From: Kimberly Kelley Blackburn <kblackburn@hmwlegal.com>
> Sent: Saturday, October 24, 2020 3:13 PM
> To: Martin S. High <marty@martyhigh.com>
> Cc: John M. Reagle <jreagle@hmwlegal.com>; Dwayne T. Mazyck <dmazyck@hmwlegal.com>
> Subject: APPEAL - South Carolina State University v. Denise Simmons, Appellate Case No. 2020-000671
>
> Dr. High,
>
> Please see the link below for the MOL in Support of Summary Judgment.
>
> Kim Blackburn
>
>
> You can view "817867.pdf" at:
> https://documentcloud.adobe.com/link/track?uri=urn:aaid:scds:US:3dc75f29-9b58-4e43-bbb3-5efcb227e717

>
> _____
> Sent with Adobe Document Cloud. Click on the link above to access the file online. No sign up or installation of Acrobat is required to access.
>

Motion to Settle Exhibit 13

From: Charles Ormond
To: Martin S. High
Subject: RE: PROPOSED JURY CHARGES
Date: Tuesday, October 27, 2020 12:03:24 PM

I do not have the marked exhibits. No. Sorry.

J. Charles "Chuck" Ormond, Jr.

ORMOND DUNN
301 STONERIDGE DRIVE
COLUMBIA, SOUTH CAROLINA 29210
PHONE: 803.933.9000 FAX: 803.828.7404

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From: Martin S. High <marty@martyhigh.com>
Sent: Tuesday, October 27, 2020 11:53 AM
To: Charles Ormond <Chuck@ormonddunn.com>
Cc: Ormond Dunn Admin <admin@ormonddunn.com>
Subject: RE: PROPOSED JURY CHARGES

Charles,

I hope you, your colleagues, and family have been dong well and staying healthy.

I am having difficulties assembling the record in Denise Simmons's case. Do you have either Plaintiff's or Defendant's trial exhibits in your possession? They are not with the clerk or the reporter.

This is an urgent request, and NO is a good answer.

Marty

From: Charles Ormond <Chuck@ormonddunn.com>
Sent: Monday, March 30, 2020 9:52 AM
To: Martin S. High <marty@martyhigh.com>
Subject: PROPOSED JURY CHARGES

Here is what was proposed. The only issues for the plaintiffs were the breach of contract acc by fraudulent act.

J. Charles "Chuck" Ormond, Jr.

ORMOND DUNN
301 STONERIDGE DRIVE
COLUMBIA, SOUTH CAROLINA 29210
PHONE: 803.933.9000 FAX: 803.828.7404

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CERTIFICATE OF SERVICE

I, the undersigned, do hereby certify that on this 27th day of October, 2020, a true and correct copy of the above and foregoing was _____ hand-delivered, _____ mailed via USPS Priority mail w/ signature confirmation () with the proper postage to the following, and/or __X__ emailed pursuant to Amended Order (Case No. 2020-000447, SC Supreme Court) at (g)(3) to the following:

Kimberly Kelley Blackburn (kblackburn@hmwlegal.com)
John M. Reagle, Esq. (jreagle@hmwlegal.com)
Dwayne T. Mazyck, Esq.(dmazyck@hmwlegal.com
Halligan Mahoney & Williams PA
PO Box 11367
Columbia SC 29211-1367

s/ Martin S. High
Martin S. High

RECEIVED
Oct 27 2020
SC Court of Appeals