

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

67764

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

L. Casey Manning, Circuit Court Judge

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MAR 21 2013

Case No. 2012-CP-40-04857

SC COURT OF APPEALS

Court of Appeals Tracking No. 2013-000340

Lawrence Terry, Appellant,

v.

Allen University, Respondent.

MOTION TO DISMISS

Pursuant to Rule 240 of the South Carolina Appellate Court Rules, Respondent Allen University (hereinafter "Allen") hereby moves to dismiss the above-captioned appeal filed by Lawrence Terry ("Terry"). This motion is based on the fact that the circuit court previously enjoined Terry from bringing the civil lawsuit from which he is appealing. Terry did not appeal the order entering the injunction. Instead, Terry filed a separate action on the same facts, which the circuit court dismissed because of the injunction. To allow appellate review of the dismissal of that action would circumvent the unchallenged injunction order and defeat the very purpose the circuit court imposed the injunction. Therefore, this appeal should be dismissed.

Procedural Background

This current lawsuit and appeal is the fifth lawsuit Terry has filed against Allen since 2010. Each lawsuit arose from the same set of facts relating to a dispute Terry has regarding his fall semester 2003 student records. The circuit court dismissed the first lawsuit for lack of jurisdiction. The second lawsuit was dismissed by Terry. The third and fourth lawsuits were dismissed by the trial court. Notably, in dismissing the fourth action, the circuit court enjoined Terry from bringing any further actions related to this dispute.

Terry, who was a student at Allen in 2002-2003, requested in December 2003 that Allen send his transcript to Midlands Technical College, where he was planning to transfer. (See Complaint attached as Exhibit A). Allen promptly sent his transcript but because the request came prior to the end of the fall 2003 semester, Terry's fall 2003 grades were not included on the transcript sent to Midlands Technical College. Terry's fall semester 2003 grades, however, were included in subsequent transcripts sent to other schools at his request. Terry claims that he did not realize his fall semester grades had been added to his transcript until 2009, at which time he went to Allen to request that the grades be removed. When Allen informed him that it could not remove his fall semester 2003 grades from his official transcript, Terry began this process of suing Allen

On April 26, 2012, the circuit court granted Allen's motion to dismiss Terry's fourth lawsuit in a text order. On June 18, 2012, the circuit court

issued a formal order dismissing the lawsuit and enjoining Terry from bringing further lawsuits against Allen based on these facts. (See Order attached as Exhibit B). The circuit court denied Terry's subsequently filed motion for reconsideration on June 20, 2012. Terry did not appeal this June 18, 2012 Order that enjoined him from filing future actions.

Notwithstanding the fact that he had been enjoined from bringing additional lawsuits against Allen based on his dispute regarding the transcript sent to Midlands Technical College in December 2003, Terry filed this fifth lawsuit against Allen on July 15, 2012, based on the same facts alleged in his other four lawsuits. Allen subsequently moved to dismiss this lawsuit and asked that the court hold Terry in contempt for failing to comply with the court's order enjoining him from filing additional lawsuits against Allen. (See Motion to Show Cause, for Sanctions, and to Dismiss attached as Exhibit C).

On September 17, 2012, the circuit court dismissed Terry's fifth lawsuit with prejudice in a form order. Terry moved for reconsideration on September 18, 2012, and on February 11, 2013, the court denied his motion in a form order. Plaintiff subsequently filed this appeal.

Argument


The Court should dismiss Terry's appeal because the appeal is frivolous and taken solely for the purpose of delay pursuant to Rule 269 of the South Carolina Appellant Court Rules. As noted above, Terry appeals from the dismissal of his fifth lawsuit. The circuit court dismissed this action because Terry violated the circuit court's prior, unappealed order that enjoined him from

filing this action. Had Terry wished to pursue his claims against Allen or challenge the injunction, then he should have appealed the trial court's June 18, 2012 Order that dismissed his fourth lawsuit and enjoined him from bringing further action based on the same facts. Instead, Terry failed to timely appeal the dismissal of his fourth lawsuit and, defying the circuit court's injunction order, filed this fifth lawsuit based on the same facts.

Because Terry was enjoined from bringing the fifth lawsuit, and he failed to appeal the order imposing the injunction, he cannot obtain relief from this Court because the injunction is the law of the case. Bone v. U.S. Food Serv., 399 S.C. 566, 576, 733 S.E.2d 200, 205 (2012) (holding that the law of the case doctrine applies where a party does not challenge an issue on appeal when there has been an opportunity to do so); Ables v. Gladden, 378 S.C. 558, 569, 664 S.E.2d 442, 448 (2008) ("An unappealed order, right or wrong, is the law of the case"). As a result, this appeal is frivolous and taken solely for the purpose of delay. See Rule 269, SCACR ("Where an appeal, petition, motion or return is frivolous or taken solely for the purposes of delay . . . the appellate court may upon its own motion or that of a party . . . impose upon offending attorneys or parties **such sanctions as the circumstances of the case and discouragement of like conduct in the future may require**") (emphasis added). The appropriate relief in this case is to dismiss the appeal. To allow appellate review of the dismissal of that action would circumvent the unchallenged injunction order, thwart the very purpose of the injunction, and

allow Terry to seek an appeal in which he cannot obtain relief. Therefore, this appeal should be dismissed.

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March 21, 2013

EXHIBIT A

1 IN THE COURT OF COMMON PLEAS FOR THE STATE OF SOUTH CAROLINA
2 IN AND FOR RICHLAND COUNTY

3
4 Lawrence Terry,

5 Plaintiff,

6 vs.

7 Allen University,

8 Defendant

) Case No. :
)

) PLAINTIFF'S COMPLAINT FOR LIBEL,
) NEGLIGENCE, INTENTIONAL
) INFLECTION OF EMOTIONAL
) DISTRESS, CONSTRUCTIVE FRAUD,
) AND SILENT FRAUD

2012 JUL 16 AM 4:06
JEANETTE M. McBRIDE
G.S.

RICHLAND COUNTY
FILED

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11 I, Lawrence Terry, the plaintiff in this civil action do make the following claims:

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14 1. I believe the Defendant, Allen University, is a business of Richland County in South Carolina,
15 and does business at 1530 Harden Street Columbia, SC 29204 for which this Complaint is
16 properly filed in Richland County.

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18 2. Plaintiff complains and for causes of action alleges as follows:

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20 **Allen University has established a pattern of Fraud and Negligence in**
21 **regards to financial aid mishandling, see Exhibit A. This Compliant is based on, but not**
22 **wholly on, the Sworn Affidavit of Marilyn Young the current Registrar at Allen University,**
23 **submitted to this Court on January 11, 2012 and other evidence.** The last sentence on page two
24 paragraph #8, the Defendant stated and I quote, **"It was simply an error that has since been**
25 **corrected."** end quote. That statement shows ownership of their negligence and attempted fix.
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27 **Allen University admitted to Libel, Negligence, and Fraud within their Sworn Affidavit.**
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1 They admitted to and provided evidence that they sent false grades to multiple 3rd parties. That is
2 the definition of Libel. It is also Fraudulent and Grossly Negligent of Allen University. It without
3 a doubt proves my claims of Libel, Intentional Infliction of Emotional Distress, both counts of
4 Fraud, and Negligence.

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7 **As for the claim of Negligence**, the December 2003 transcript sent to Midlands Tech did
8 not have grades on it for the fall 2003 semester. Marilyn Young stated in her Sworn Affidavit,
9 submitted January 2012, that I requested that transcript on December 8, 2003 and exams were
10 still going on at that time. Now keep in mind that she stated I "requested" it on December 8,
11 2003. **I had no control over when they were sent out. That is the Registrar's job.** She also
12 stated and I quote, "final grades were not due to the Registrar until December 16, 2003." She
13 later stated and I quote, "Once the fall semester 2003 grades were reported, Mr. Terry's
14 transcript was updated to reflect those grades." On track 1 of the audio transcript attached to the
15 Complaint I asked Marilyn Young and once again I quote, "If you knew my grades or yall were
16 going to add grades to my transcript, in four days. Why wouldn't you tell me oh wait we can't do
17 that, we are about to add some grades?" she responded with, **"Yeah, that's what we would put.**
18 **Yeah that's what we would do."** She also stated "I will have to pull your file...cause then, cause
19 ummm, if they sent it without those grades on it then we, are going to have to note it in the
20 system and that's how we are going to have to sent it out because if that's how it was sent out,
21 because we can't just go back and add." , end quote. The question to be answered is: What would
22 the **reasonable professional** have done under the same or similar circumstances? Well with the
23 current Registrar Marilyn Young stating that she would not do that, we have our answer. Allen
24 University's Registrar Marilyn Young stated in Exhibit B that they would not do the same
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1 actions as the previous did in handling my transcript request. The current or previous registrar
2 Marilyn Young also stated on the audio transcript attached to this Complaint, track 3, that she
3 **could not verify my student records** from when I attended because, "they weren't taking
4 accurate records so I can't see what they sent." The current registrar and/or staff were also
5 **grossly negligent** because it is clear that they knew of at least one issue with some students'
6 transcripts and when I initially asked NOBODY told me that major material fact. Since the
7 President is supposed to be head of the university then I would guess she would be the one that
8 the claim of Negligence would fall on. Allen University stated in their Sworn Affidavit,
9 submitted on January 11, 2012, that they did not discover one error(s) in the system that caused
10 false information to be published on some students' transcripts until 2008 and did not disclose
11 that material fact to any of the students affected by that information. The last sentence on page
12 two, paragraph #8, of their Sworn Affidavit the Defendant stated and I quote, "It was simply an
13 error that has since been corrected." end quote. That statement shows ownership of their gross
14 negligence and attempted fix. Therefore, because of this the Plaintiff was injured.
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19 **As for the claim of Libel**, Allen University has been and continues to print and send out
20 false information about me and admitted to it in the Sworn Affidavit. The Defendant stated and
21 attached evidence in their Sworn Affidavit that they printed false information concerning my
22 educational background and published and sent it to multiple 3rd parties. On page two, paragraph
23 #8, of the Defendant's Sworn Affidavit they stated and I quote, "I have also reviewed the copy of
24 Mr. Terry's transcript dated November 27, 2007, which he filed with the Court on September 23,
25 2001 also. This copy has an error in it..." end quote. They later went on to state that beginning
26 in 2008 they discovered for some "**unknown reason**" they were printing false grades on
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1 multiple students' transcripts. They have sent those false grades to numerous schools therefore
2 causing me to be humiliated and denied acceptance into schools. **The Defendant later went on**
3 **to admit and attach evidence that they sent those false grades to Morris College, the**
4 **University Of South Carolina, and Coastal Carolina University.** Allen University has
5 satisfied ALL elements of Libel. There is no reason for a trial on this issue because of this.
6 My character, reputation, and name have been ruined many times over! I cannot begin to explain
7 the embarrassment I suffered and continue to suffer daily. It is clear that by Allen University
8 publishing multiple official transcripts with false information it created defamatory statements
9 and/or representations that conveys an unjustly unfavorable impression of me and my
10 educational background. I have multiple official documents and/or transcripts from Allen
11 University with different grades and GPAs on them. Now only one can be true meaning the
12 others are false, containing false information. Carelessness, negligence, or recklessness is not an
13 excuse for libel. The incorporated document on page 9 of the Complaint proves that Allen
14 published false information about me and I have an Official Transcript from 2007, that the
15 Defendant stated had false grades on it in their Sworn Affidavit, and 2009 that Allen University
16 published that have different grades and GPAs. Correct and true photo copies of the official
17 transcripts published by Allen University are incorporated herein:
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Allen University - 003417
Office of the Registrar
1420 Hudson Street, Columbia, SC 29204

Date Processed: Dec 14, 2003

Name: Lawrence M Terry
Program/Degree/Curriculum:
Undergraduate/Minor of Applied Sciences
Previous Institution:
Degree Awarded:
No Degree Yet Awarded
M:
DOB:
Date Graded:
Cumulative GPA: 1.34

Course Id	Title	Grade	Credits	Quality Points	GPAs
Fall 2002 (Aug 24, 2002 - Dec 10, 2002)					
EDU111	University 101	C	3.00	6.000	
ENG101	English Comp I	B	3.00	6.000	
FRN101	French I	A	3.00	12.000	
MAT102	Fund of Math II	F	3.00	0.000	
REL101	Intro to Old Testamts	F	3.00	0.000	
Term	Attempt	Earned	Total	GPACrd	GPAs
	15.00	12.00	15.00	33.000	2.30
Cum	15.00	12.00	15.00	33.000	2.30
Spring 2003 (Jan 3, 2003 - May 2, 2003)					
ART200	Art Appreciation	C	3.00	4.000	
BIOL110	General Biology	F	4.00	0.000	
BSIS200	Microcomputer Apps	W	3.00	0.000	
ENG102	English Comp II	F	3.00	0.000	
FRN102	French II	A	3.00	12.000	
MAT110	Fund of Math II	D	3.00	2.000	
Term	Attempt	Earned	Total	GPACrd	GPAs
	18.00	8.00	26.00	16.000	1.36
Cum	33.00	20.00	32.00	49.000	1.73
Summer I 2003					
BUS203	Microcomputer Apps	B	3.00	6.000	
BSIS200	Microcomputer Apps	B	3.00	6.000	
BSIS200	Microcomputer Apps	C	3.00	3.000	
Term	Attempt	Earned	Total	GPACrd	GPAs
	12.00	12.00	12.00	30.000	2.90
Cum	45.00	32.00	42.00	79.000	1.98
Fall 2003 (Aug 21, 2003 - Dec 12, 2003)					
BIOL110	General Biology	WA	4.00	0.000	
ENG102	English Comp II	F	3.00	0.000	

OFFICIAL TRANSCRIPT

Date Processed: Nov 27, 2007
Name: Lawrence M Terry
Program/Degree/Curriculum:
Previous Institution:
Degree Awarded:
No Degree Yet Awarded
M:
DOB:
Date Graded:
Cumulative GPA: 1.36

Course Id	Title	Grade	Credits	Quality Points	GPAs
Fall 2002 (Aug 24, 2002 - Dec 10, 2002)					
EDU111	University 101	C	3.00	6.000	
ENG101	English Comp I	B	3.00	6.000	
FRN101	French I	A	3.00	12.000	
MAT102	Fund of Math II	F	3.00	0.000	
REL101	Intro to Old Testamts	F	3.00	0.000	
Term	Attempt	Earned	Total	GPACrd	GPAs
	15.00	12.00	15.00	33.000	2.30
Cum	15.00	12.00	15.00	33.000	2.30
Spring 2003 (Jan 3, 2003 - May 2, 2003)					
ART200	Art Appreciation	C	3.00	4.000	
BIOL110	General Biology	F	4.00	0.000	
BSIS200	Microcomputer Apps	W	3.00	0.000	
ENG102	English Comp II	F	3.00	0.000	
FRN102	French II	A	3.00	12.000	
MAT110	Fund of Math II	D	3.00	2.000	
Term	Attempt	Earned	Total	GPACrd	GPAs
	18.00	8.00	26.00	16.000	1.36
Cum	33.00	20.00	32.00	49.000	1.73
Summer I 2003					
BUS203	Microcomputer Apps	B	3.00	6.000	
BSIS200	Microcomputer Apps	B	3.00	6.000	
BSIS200	Microcomputer Apps	C	3.00	3.000	
Term	Attempt	Earned	Total	GPACrd	GPAs
	12.00	12.00	12.00	30.000	2.90
Cum	45.00	32.00	42.00	79.000	1.98
Fall 2003 (Aug 21, 2003 - Dec 12, 2003)					
BIOL110	General Biology	WA	4.00	0.000	
ENG102	English Comp II	F	3.00	0.000	

Lawrence M Terry
Authorized Signature

11-27-07
Date Processed

IN ACCORDANCE WITH THE FAMILY EDUCATIONAL RIGHTS AND PRIVACY ACT OF 1974, AS AMENDED, TRANSCRIPTS MAY NOT BE RELEASED TO A THIRD PARTY WITHOUT THE WRITTEN CONSENT OF THE STUDENT

It is generally known and accepted that the publication need only be to one person, but it must be a statement which claims to be fact and is not clearly identified as an opinion. With the publication being my official college transcript, signed and officially stamped by Allen, it is clear that it is meant to be fact and not opinion.

1 The four elements of libel are:

- 2 • The statement is false- **I provided incorporated evidence to prove false information**
- 3 **and Allen University admitted it in their Sworn Affidavit and submitted evidence of**
- 4 **publication to multiple 3rd parties. That alone is the definition of Libel.**
- 5
- 6 • The statement has a defamatory meaning- **Stating that I had grades to some third**
- 7 **parties and also stating that I did not have grades to other third parties is**
- 8 **fraudulent, defamatory and deceitful. Only one can be right, if that.**
- 9
- 10 • The allegedly injured party is clearly identified in the statement- **My full name is clearly**
- 11 **posted at the top of each transcript and document.**
- 12
- 13 • The statement has been published- **The Defendant admitted to at least sending the**
- 14 **statements to the University of South Carolina and Coastal Carolina University.**

15 I have supplied more than enough evidence, facts, and statements to support my claim of Libel.

16 The last sentence on page two, paragraph #8, in their Sworn Affidavit the Defendant stated and I
17 quote, “It was simply an error that has since been corrected.” end quote. That statement shows
18 ownership of their gross negligence and attempted fix. Because of this the Plaintiff was injured.
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21 **As for the claim of Constructive Fraud, based on the statements by Marilyn Young**

22 **specifically, but not wholly, track one on Exhibit B and the Sworn Affidavit, the school would**

23 **have known that I would be harmed from Allen University adding random grades to students**

24 **transcripts and by knowing that material fact but yet failed to disclose that fact. Marilyn Young**

25 **stated in her Sworn Affidavit, submitted January 2012, that the school has known of issues with**

26 **false grades on some students’ transcripts since 2008 but failed to disclose this material fact.**

27

28 As a young student I trusted that Allen University’s Registrar would help me not hurt me and

1 that confidence was broken. The current staff also knew that by correcting my transcript they
2 would get in trouble with their accrediting agencies and also State and Federal departments for
3 financial aid fraud. As the statements and evidence incorporated into the Complaint show, the
4 Plaintiff has satisfied all of the required elements. As defined by Nolo's Plain-English Law
5 Dictionary, "When the circumstances show that someone's actions give that person an unfair
6 advantage over someone else by unfair means (lying or not telling a buyer about defects in a
7 product, for example), the court may decide to treat the situation as if there was actual fraud even
8 if all the technical elements of fraud have not been proven." So although I may have or may not
9 have satisfied all of the technical elements, as I stated before Allen University actions were
10 clearly to gain an unfair advantage over me. Bad intent or dishonesty is not a requirement to
11 satisfy constructive fraud. The elements for actual and constructive fraud are the same with two
12 exceptions: constructive fraud drops the element of scienter--knowledge on the part of the injurer
13 of the representation's falsity--and adds the element of a fiduciary relationship. As a former
14 student I had complete confidence in Allen University to do the right thing but they did not. This
15 not the first time the Defendant has allegedly committed Fraud in respect to financial aid and
16 most likely won't be the last time unless something is done. The elements of constructive fraud
17 are:
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22 (1) a false misrepresentation; (**Allen University stated in their Sworn Affidavit that they**
23 **knew of false grades being published on multiple student transcripts but failed to disclosed**
24 **that material fact. Marilyn Young also stated that she knew they did not keep accurate**
25 **records in the past. They also sent those false misrepresentations of my grades to multiple**
26 **3rd parties.)**
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1 (2) in reference to a material fact; (**Failing to disclose the material fact of known false grades**
2 **on students' official transcript is of great importance.**)

3
4 (3) for the purpose of inducing the other party to rely on such representation;(**By not disclosing**
5 **that significant material fact they expected me and others to rely on the representation**)

6
7 4) on which the other party did justifiably rely;(**I and other students affected had no choice**
8 **but to rely on those false grades and so did the other 3rd parties who received them**)

9
10 (5) which resulted in damages or injury; and (**My reputation and self-esteem have been**
11 **injured many times over**)

12
13 (6) a fiduciary relationship between the parties.(**As a former student that paid a lot of money**
14 **I had complete confidence in Allen University to do the right thing but they did not**)

15
16 The last sentence on page two, paragraph #8 of their Sworn Affidavit, the Defendant stated and I
17 quote, "It was simply an error that has since been corrected." end quote. That statement shows
18 ownership of their gross negligence and attempted fix. Because of this the Plaintiff was injured.

19
20 **As for the claim of Silent Fraud, Allen University knew that by not disclosing the fact**
21 **that they knew of random false grades** being published on students' official transcripts and if
22 they sent my transcript to Midlands Tech without certain grades I would continue to believe that
23 they did the right thing and that I would rely on that false impression and that is what they
24 intended the happen the whole time in order to keep the financial aid money. I know and they
25 know for a fact that they did not send my transcript with those grades on it to Midlands
26 Technical College. I also have supplemental evidence that supports the sworn statements of the
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1 Defendant that shows multiple false grades being published by Allen University over the years.

2 A correct and true photo copy of the transcript evaluation of the official transcript sent to

3 Midlands Technical College, dated 01/05/2004, is incorporated herein:

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STUDENT NAME: Mr. Lawrence M. Terry
ADDRESS: 2813 Shelby Dr.
Columbia, SC 29223

PROGRAM: CE
CO-OP
ALAB

Undergraduate CAREER

Midlands Technical College
Post Office Box 2408
Columbia, South Carolina 29202

INSTITUTION: Allen University

TRANSFER COURSES				MTC EQUIVALENCY COURSES						
Allen University Course	Allen University Credits	Allen University Grade	Allen University Term	MTC Course	MTC Credits	MTC Grade	MTC Term	MTC Grade		
ENG-111	3.00	C	Dec 12, 2003	ENG-000 No Transfer Credit	0.00	NR	00	NR		
ENG-101	3.00	B	Dec 12, 2003	ENG-101 English Comp I	3.00	NR	00	NR		
ENG-102	3.00	A	Dec 12, 2003	ENG-001 Research Language	0.00	NR	00	NR		
ENG-103	3.00	C	Dec 12, 2003	ENG-000 No Transfer Credit	0.00	NR	00	NR		
ENG-104	3.00	C	May 08, 2003	ENG-001 Research Language	3.00	NR	00	NR		
ENG-105	3.00	A	May 08, 2003	ENG-001 Research Language	3.00	NR	00	NR		
ENG-106	3.00	B	May 08, 2003	ENG-001 Research Language	3.00	NR	00	NR		
ENG-107	3.00	C	May 08, 2003	ENG-001 Research Language	3.00	NR	00	NR		
ENG-108	3.00	B	May 08, 2003	ENG-001 Research Language	3.00	NR	00	NR		
ENG-109	3.00	C	May 08, 2003	ENG-001 Research Language	3.00	NR	00	NR		
ENG-110	3.00	D	May 08, 2003	ENG-001 Research Language	3.00	NR	00	NR		
ENG-111	3.00	F	May 08, 2003	ENG-001 Research Language	3.00	NR	00	NR		
ENG-112	3.00	F	May 08, 2003	ENG-001 Research Language	3.00	NR	00	NR		
ENG-113	3.00	F	May 08, 2003	ENG-001 Research Language	3.00	NR	00	NR		
ENG-114	3.00	F	May 08, 2003	ENG-001 Research Language	3.00	NR	00	NR		
ENG-115	3.00	F	May 08, 2003	ENG-001 Research Language	3.00	NR	00	NR		
ENG-116	3.00	F	May 08, 2003	ENG-001 Research Language	3.00	NR	00	NR		
ENG-117	3.00	F	May 08, 2003	ENG-001 Research Language	3.00	NR	00	NR		
ENG-118	3.00	F	May 08, 2003	ENG-001 Research Language	3.00	NR	00	NR		
ENG-119	3.00	F	May 08, 2003	ENG-001 Research Language	3.00	NR	00	NR		
ENG-120	3.00	F	May 08, 2003	ENG-001 Research Language	3.00	NR	00	NR		
ENG-121	3.00	F	May 08, 2003	ENG-001 Research Language	3.00	NR	00	NR		
ENG-122	3.00	F	May 08, 2003	ENG-001 Research Language	3.00	NR	00	NR		
ENG-123	3.00	F	May 08, 2003	ENG-001 Research Language	3.00	NR	00	NR		
ENG-124	3.00	F	May 08, 2003	ENG-001 Research Language	3.00	NR	00	NR		
ENG-125	3.00	F	May 08, 2003	ENG-001 Research Language	3.00	NR	00	NR		
ENG-126	3.00	F	May 08, 2003	ENG-001 Research Language	3.00	NR	00	NR		
ENG-127	3.00	F	May 08, 2003	ENG-001 Research Language	3.00	NR	00	NR		
ENG-128	3.00	F	May 08, 2003	ENG-001 Research Language	3.00	NR	00	NR		
ENG-129	3.00	F	May 08, 2003	ENG-001 Research Language	3.00	NR	00	NR		
ENG-130	3.00	F	May 08, 2003	ENG-001 Research Language	3.00	NR	00	NR		
ENG-131	3.00	F	May 08, 2003	ENG-001 Research Language	3.00	NR	00	NR		
ENG-132	3.00	F	May 08, 2003	ENG-001 Research Language	3.00	NR	00	NR		
ENG-133	3.00	F	May 08, 2003	ENG-001 Research Language	3.00	NR	00	NR		
ENG-134	3.00	F	May 08, 2003	ENG-001 Research Language	3.00	NR	00	NR		
ENG-135	3.00	F	May 08, 2003	ENG-001 Research Language	3.00	NR	00	NR		
ENG-136	3.00	F	May 08, 2003	ENG-001 Research Language	3.00	NR	00	NR		
ENG-137	3.00	F	May 08, 2003	ENG-001 Research Language	3.00	NR	00	NR		
ENG-138	3.00	F	May 08, 2003	ENG-001 Research Language	3.00	NR	00	NR		
ENG-139	3.00	F	May 08, 2003	ENG-001 Research Language	3.00	NR	00	NR		
ENG-140	3.00	F	May 08, 2003	ENG-001 Research Language	3.00	NR	00	NR		
ENG-141	3.00	F	May 08, 2003	ENG-001 Research Language	3.00	NR	00	NR		
ENG-142	3.00	F	May 08, 2003	ENG-001 Research Language	3.00	NR	00	NR		
ENG-143	3.00	F	May 08, 2003	ENG-001 Research Language	3.00	NR	00	NR		
ENG-144	3.00	F	May 08, 2003	ENG-001 Research Language	3.00	NR	00	NR		
ENG-145	3.00	F	May 08, 2003	ENG-001 Research Language	3.00	NR	00	NR		
ENG-146	3.00	F	May 08, 2003	ENG-001 Research Language	3.00	NR	00	NR		
ENG-147	3.00	F	May 08, 2003	ENG-001 Research Language	3.00	NR	00	NR		
ENG-148	3.00	F	May 08, 2003	ENG-001 Research Language	3.00	NR	00	NR		
ENG-149	3.00	F	May 08, 2003	ENG-001 Research Language	3.00	NR	00	NR		
ENG-150	3.00	F	May 08, 2003	ENG-001 Research Language	3.00	NR	00	NR		
ENG-151	3.00	F	May 08, 2003	ENG-001 Research Language	3.00	NR	00	NR		
ENG-152	3.00	F	May 08, 2003	ENG-001 Research Language	3.00	NR	00	NR		
ENG-153	3.00	F	May 08, 2003	ENG-001 Research Language	3.00	NR	00	NR		
ENG-154	3.00	F	May 08, 2003	ENG-001 Research Language	3.00	NR	00	NR		
ENG-155	3.00	F	May 08, 2003	ENG-001 Research Language	3.00	NR	00	NR		
ENG-156	3.00	F	May 08, 2003	ENG-001 Research Language	3.00	NR	00	NR		
ENG-157	3.00	F	May 08, 2003	ENG-001 Research Language	3.00	NR	00	NR		
ENG-158	3.00	F	May 08, 2003	ENG-001 Research Language	3.00	NR	00	NR		
ENG-159	3.00	F	May 08, 2003	ENG-001 Research Language	3.00	NR	00	NR		
ENG-160	3.00	F	May 08, 2003	ENG-001 Research Language	3.00	NR	00	NR		
ENG-161	3.00	F	May 08, 2003	ENG-001 Research Language	3.00	NR	00	NR		
ENG-162	3.00	F	May 08, 2003	ENG-001 Research Language	3.00	NR	00	NR		
ENG-163	3.00	F	May 08, 2003	ENG-001 Research Language	3.00	NR	00	NR		
ENG-164	3.00	F	May 08, 2003	ENG-001 Research Language	3.00	NR	00	NR		
ENG-165	3.00	F	May 08, 2003	ENG-001 Research Language	3.00	NR	00	NR		
ENG-166	3.00	F	May 08, 2003	ENG-001 Research Language	3.00	NR	00	NR		
ENG-167	3.00	F	May 08, 2003	ENG-001 Research Language	3.00	NR	00	NR		
ENG-168	3.00	F	May 08, 2003	ENG-001 Research Language	3.00	NR	00	NR		
ENG-169	3.00	F	May 08, 2003	ENG-001 Research Language	3.00	NR	00	NR		
ENG-170	3.00	F	May 08, 2003	ENG-001 Research Language	3.00	NR	00	NR		
ENG-171	3.00	F	May 08, 2003	ENG-001 Research Language	3.00	NR	00	NR		
ENG-172	3.00	F	May 08, 2003	ENG-001 Research Language	3.00	NR	00	NR		
ENG-173	3.00	F	May 08, 2003	ENG-001 Research Language	3.00	NR	00	NR		
ENG-174	3.00	F	May 08, 2003	ENG-001 Research Language	3.00	NR	00	NR		
ENG-175	3.00	F	May 08, 2003	ENG-001 Research Language	3.00	NR	00	NR		
ENG-176	3.00	F	May 08, 2003	ENG-001 Research Language	3.00	NR	00	NR		
ENG-177	3.00	F	May 08, 2003	ENG-001 Research Language	3.00	NR	00	NR		
ENG-178	3.00	F	May 08, 2003	ENG-001 Research Language	3.00	NR	00	NR		
ENG-179	3.00	F	May 08, 2003	ENG-001 Research Language	3.00	NR	00	NR		
ENG-180	3.00	F	May 08, 2003	ENG-001 Research Language	3.00	NR	00	NR		
ENG-181	3.00	F	May 08, 2003	ENG-001 Research Language	3.00	NR	00	NR		
ENG-182	3.00	F	May 08, 2003	ENG-001 Research Language	3.00	NR	00	NR		
ENG-183	3.00	F	May 08, 2003	ENG-001 Research Language	3.00	NR	00	NR		
ENG-184	3.00	F	May 08, 2003	ENG-001 Research Language	3.00	NR	00	NR		
ENG-185	3.00	F	May 08, 2003	ENG-001 Research Language	3.00	NR	00	NR		
ENG-186	3.00	F	May 08, 2003	ENG-001 Research Language	3.00	NR	00	NR		
ENG-187	3.00	F	May 08, 2003	ENG-001 Research Language	3.00	NR	00	NR		
ENG-188	3.00	F	May 08, 2003	ENG-001 Research Language	3.00	NR	00	NR		
ENG-189	3.00	F	May 08, 2003	ENG-001 Research Language	3.00	NR	00	NR		
ENG-190	3.00	F	May 08, 2003	ENG-001 Research Language	3.00	NR	00	NR		
ENG-191	3.00	F	May 08, 2003	ENG-001 Research Language	3.00	NR	00	NR		
ENG-192	3.00	F	May 08, 2003	ENG-001 Research Language	3.00	NR	00	NR		
ENG-193	3.00	F	May 08, 2003	ENG-001 Research Language	3.00	NR	00	NR		
ENG-194	3.00	F	May 08, 2003	ENG-001 Research Language	3.00	NR	00	NR		
ENG-195	3.00	F	May 08, 2003	ENG-001 Research Language	3.00	NR	00	NR		
ENG-196	3.00	F	May 08, 2003	ENG-001 Research Language	3.00	NR	00	NR		
ENG-197	3.00	F	May 08, 2003	ENG-001 Research Language	3.00	NR	00	NR		
ENG-198	3.00	F	May 08, 2003	ENG-001 Research Language	3.00	NR	00	NR		
ENG-199	3.00	F	May 08, 2003	ENG-001 Research Language	3.00	NR	00	NR		
ENG-200	3.00	F	May 08, 2003	ENG-001 Research Language	3.00	NR	00	NR		

33.00 37.00

Sara S. Jordan
COORDINATOR OF ADVANCED PLACEMENT

19 This clearly shows and supports the fact that they did indeed send my official transcript
20 without grades for the fall 2003 but refused to correct my transcript as promised. They
21 discovered that if they did correct my and others grades they would have to answer to
22 government for stealing/mishandling federal and state financial aid money and their accrediting
23 agencies. That shows cause to commit fraud. Expertlaw.com defines Silent Fraud as, "Silent
24 fraud occurs when a defendant fails to disclose material facts. To establish this, plaintiff has
25 the burden of proving each of the following elements by clear and convincing evidence:
26
27
28

- 1 • The Defendant failed to disclose one or more material fact about the subject matter of the
2 claim- **Allen did fail to disclose fact(s) two, one being the fact that they knew they**
3 **had been publishing false grades and they knew of an error in system since 2008.**
- 4 • The Defendant had actual knowledge of the fact(s)- **Allen did have actual knowledge**
5 **and seen the transcript evaluation form from Midlands Tech and they stated in**
6 **their Sworn Affidavit that they have known since 2008 of some error(s) in the**
7 **system in regards to false grades on some students' transcripts, including mine.**
- 8 • The Defendant's failure to disclose the fact(s) caused the plaintiff to have a false
9 impression- **It created a false impression of good and/or bad grades to me and other**
10 **3rd parties whom received those false grades.**
- 11 • When the Defendant failed to disclose the fact(s), the Defendant knew the failure would
12 create a false impression- **Allen clearly knew the outcome and relied on it**
- 13 • When Defendant failed to disclose the fact(s), Defendant intended that plaintiff rely on
14 the resulting false impression- **Allen definitely intended me to rely on the outcome**
- 15 • The plaintiff relied on the false impression; *and*
- 16 • The plaintiff was damaged as a result of the reliance upon the false impression." **Both**
17 **true.**

18
19
20
21
22 The statements and evidence incorporated into the Complaint satisfy the required elements. The
23 last sentence on page two, paragraph #8, of their Sworn Affidavit the Defendant stated and I
24 quote, "It was simply an error that has since been corrected." end quote. That statement shows
25 ownership of their gross negligence and attempted fix. Because of this the Plaintiff was injured.
26
27
28

1 **As for the claim of Intentional Infliction of Emotional Distress**, based on but not
2 wholly on the statements (Exhibit B) and the Sworn Affidavit made by Allen University's
3 registrar, Marilyn Young, any reasonable person would know with substantial certainty that a
4 student would suffer emotional distress if Allen University randomly added failing grades to a
5 student's transcript or Allen University **recklessly disregards** the high probability that emotional
6 distress will occur. They stated in their Sworn Affidavit that they knew of false grades on
7 students' transcript but intentionally did not inform any students. That material fact is of great
8 importance to me and all other students potential affected. As a young college student trying to
9 better yourself in this tough economy you cannot say that it is not "extremely wicked, brutal, or
10 cruel" for a school, that you paid good money to attend, **refuse** to correct the disputed
11 information within your student records which would clear up important issues concerning your
12 grades, GPA, and educational background? That is absurd and unrealistic. That far exceeds any
13 and all bounds of decency by a university! Their failure to inform and correct the disputed
14 information on my student records is affecting my ability to make a living and my ability to
15 further my education so that I may get a better job during these tough economic times. I am also
16 having issues sleeping and every day enjoyment of life. The tort of intentional infliction of
17 emotional distress has four elements: (1) the defendant must act intentionally or **recklessly**; (2)
18 the defendant's conduct must be extreme and **outrageous**; and (3) the conduct must be the cause
19 (4) of severe emotional distress. The last sentence on page two, paragraph #8, the Defendant
20 stated and I quote, "It was simply an error that has since been corrected." end quote. That
21 statement shows ownership of their negligence and attempted fix. I have proved all of these
22 elements within my complaint and attached evidence. Because of this the Plaintiff was injured.
23
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1 3. I believe, because of the above information, that I am entitled to relief in the form of the
2 specific performance I was offered, general and special damages in an amount to be determined
3 by the court and or a jury, punitive damages requested because the Defendant's actions are
4 particularly egregious, interest on damages, and/or other relief as below requested:
5

6 **Allen University admitted to Libel, Negligence, and Fraud in their Sworn Affidavit.**

7 Allen University admitted to and provided evidence that they sent false grades to multiple 3rd
8 parties. That is Fraud and Grossly Negligent of them. **The last sentence on page two,**
9 **paragraph #8, of their Sworn Affidavit the Defendant stated and I quote, "It was simply an**
10 **error that has since been corrected." end quote.** That statement shows ownership of their
11 **negligence and attempted fix. I did not discover this information until the Defendant filed**
12 **their Sworn Affidavit in January 2012. I confirmed this in my Sworn Affidavit.** I have since
13 undergone extreme mental suffering, problems controlling my emotions, loss of sleep, and
14 emotional distress. It has also affected my enjoyment of life past, present, and future. What I
15 would like to come from this case is to have my Official Transcript corrected by taking off the
16 grades from the Fall 2003 Semester as promised by Allen University, an apology letter, punitive
17 damages requested, general and special damages, including interest, and any costs resulting in
18 this action. For such other and further relief as the Court may deem proper. Thank you.
19
20
21

22 I state under penalty of perjury that the above is correct and truthful, except those based on my
23 information and belief.
24

25 Date

26 July 16, 2012

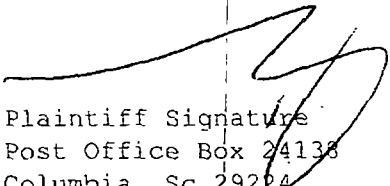
27 
28 Plaintiff Signature
Post Office Box 24138
Columbia, Sc 29224
Lawrence Terry, Pro Se

Exhibit A

<< Back

SITE SEARCH WEB SEARCH BY Google Go

10

Students say they haven't received Allen track scholarships

Posted: Mar 11, 2010 5:33 PM EST
Updated: Mar 16, 2010 12:05 AM EDT

COLUMBIA, SC (WIS) - Some students on Allen University's track team say they were promised a full-ride scholarship but did not receive it.

Members of the team say they started getting bills for student loans they didn't know about, bills for thousands of dollars.

"He promised me that he would pay for everything," said student Kyle Vicks of the proposal.

"I thought he was there genuinely to help us out," said student Mark Walden.

"The money was supposed to cover everything from room and board, book money, tuition," said student Chester Braggs.

Since last week, Allen University track Coach Jeffrey Hughes has not responded to phone calls and could not be found on campus or at his house.

The three students say they are not waiting on answers from the coach they've been meeting with attorneys.

"These young men were asked to sign original documents under duress," said attorney Grant Varner. "They were essentially handed documents by their coach, told sign on the dotted line and then the papers were collected."

"If we don't receive a response from the school in the near future, we're going to have no choice except to file a lawsuit," said attorney Kim Varner.

Allen University's executive vice president says the school is looking into the students' claims.

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worldnow

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Transcript for attached audio cd.

Track 1: On this clip I was talking to Ms. Marilyn Young, Allen University's registrar, about my transcript and why grades were added. I stated (at 5sec mark), "**If you knew my grades or yall were going to add grades to my transcript, in four days. Why wouldn't you tell me oh wait we can't do that, we are about to add some grades?**" she responded with (at 13sec mark), "**Yeah, that's what we would put. Yeah that's what we would do.**" She also stated that (at 20sec mark), "**I will have to pull your file...cause then, cause ummm, if they sent it without those grades on it then we are going to have to note it in the system and that's how we are going to have to sent it out because if that's how it was sent out because we can't just go back and add.**" That statement clearly shows that if it is found that they did not send my transcript to MTC with fall 2003 grades on it then they would note it in the system, take those grades off, and resend my new transcript out without those made up grades. They never completed that investigation and if they did I was never given the results. I know and they know for a fact that they did not send my transcript with those grades on it to Midlands Technical College. They discovered that if they did change my grades they would have to answer to government for stealing/mishandling federal and state financial aid money and their accrediting agencies.

Track 2: On this clip Marilyn Young stated, "**Because what you complained about, that's money from the government. You got to show you wasn't here because the government don't play.**" and I stated, "**They going to come back for yall**" and she stated, "**That's right! but they ain't going to come back for me because I'm the registrar. That's business office.**"

Track 3: This clip is me and Ms Young talking about the record keeping from the past. She stated (21sec mark), "I thought you were talking about December.." I stated, "No not this year, no no '03 that fall." She later when to state (at 28sec mark), "**No I cannot verify that cause umm... cause...back then they weren't taking accurate records so I can't see what they sent.**"

IN THE COURT OF COMMON PLEAS FOR THE STATE OF South Carolina
IN AND FOR Richland COUNTY

Lawrence Terry,)
)
Plaintiff,)
)
vs.)
)
Allen University,)
)
Defendant,)

Case #

JEANETTE W. MCBRIDE
C.C.P. & G.S.

2012 JUL 16 AM 4:06

RICHLAND COUNTY
FILED

AFFIDAVIT OF PLAINTIFF

BEFORE ME, the undersigned Notary,

Wanda J. Thompson, on this 16

day of July, 2012, personally appeared

Lawrence Terry, known to me to be a credible person and of lawful age, who being by me first duly sworn, on his oath, deposes and says:

1. It is Marilyn Young, current Registrar at Allen University, and Lawrence Terry, the Plaintiff, having a conversation on the audio transcript attached to the Complaint.
2. Allen University stated that they would correct my transcript, in their systems, if it was proven that they did indeed send my Official Transcript to Midlands Technical College without certain grades on it.
3. It was later proven by the transcript evaluation form from Midlands Technical College, but they did not make that correction.
4. I asked Allen University for a copy of my class schedule from the so I could clear up some issues but was never given it. I asked Allen University for a copy of my attendance records but was told by an Allen University employee that they did not start keeping attendance until approximately 2005.

5. Allen University published false information about me concerning my educational background and admitted plus provided evidence of it in their Sworn Affidavit of Marilyn Young, submitted January 2012.
6. Allen University did not disclose the material fact that they have known since 2008 of false grades on my student when I initially went to Allen University to dispute my student records. Those material facts play a major role in these issues. I did not learn of that information until I read the Sworn Affidavit of Marilyn Young, January 2012.
7. Allen University has ruined my reputation as a student-athlete, a person, and as an overall productive citizen. My name and has been tarnished by them many times.
8. The actions of Allen University have caused me much stress and I have since undergone extreme mental suffering, problems controlling my emotions, loss of sleep, and emotional distress. It has also affected my enjoyment of life past, present, and future. I constantly find myself thinking about the past and what could have been if not for Allen University's actions.

Signature of affiant

Lawrence Terry

Post Office Box 24138

Columbia, SC 29224

Subscribed and sworn to before me, this 16 day of July, 2012.

Notary Seal:

Signature of Notary

Wanda J. Thompson
typed name of Notary

WANDA J. THOMPSON
Notary Public - State of South Carolina
My Commission Expires October 20, 2019

NOTARY PUBLIC

My commission expires: 10/20, 2019.

EXHIBIT B

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

JUDGM. IN A CIVIL CASE

CASE NUMBER: 2011CP4005469

Lawrence Terry

Allen University

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: _____

Attorney for : Plaintiff Defendant or Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

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

RICHLAND COUNTY
 FILED
 2012 JUN 20 PM 12:01
 JEANETTE W. BRIDGE
 CLERK, C.P. & C.S.

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

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

ORDER INFORMATION

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

INFORMATION FOR THE PUBLIC INDEX

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

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

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

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

Circuit Court Judge _____ Judge Code _____ Date _____

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20 _____ and a copy mailed first class or placed in the appropriate attorney's box on this 20 June 2012 to attorneys of record or to parties (when appearing pro se) as follows:

Lawrence Terry

Debbie Whittle Durban

Lawrence Terry

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter _____

Clerk of Court _____

Jeanette W. Bridge

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND) FIFTH JUDICIAL CIRCUIT

Lawrence Terry.) Civil Action No. 2011-CP-40-05469
)

Plaintiff,)

vs.)

Allen University,)

Defendant.)

**PROPOSED ORDER GRANTING
ALLEN UNIVERSITY'S MOTION
TO DISMISS AND MOTION FOR
SANCTIONS**

2012 JUN 20 AM 11:58
JENNIFER W. McBRIDE
C.C.P. & G.S.

RICHLAND COUNTY
FILED

Defendant Allen University ("Allen") has moved the Court to: dismiss
Plaintiff Lawrence Terry's ("Plaintiff") Complaint pursuant to *res judicata* and Rule
12(b)(6) of the South Carolina Rules of Civil Procedure; and (2) for sanctions pursuant to
the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code § 15-36-10. For
the reasons discussed below, the Court grants Allen's motion to dismiss and motion for
sanctions.

STATEMENT OF FACTS¹

Plaintiff is a former student of Allen, having attended Allen in 2002 and 2003.
On December 9, 2003, at Plaintiff's request, Allen sent a copy of Plaintiff's transcript to
Midlands Technical College ("Midlands Tech"), where Plaintiff was planning to transfer.
Plaintiff subsequently attended Midlands Tech during the spring and summer semesters
in 2004. In August 2004, Plaintiff requested Allen send his transcript to Coastal Carolina
University ("Coastal") and the University of South Carolina ("USC"), which Allen did.

¹ The facts as stated herein are pulled from Plaintiff's latest Complaint and the three other
Complaints Plaintiff filed in the preceding lawsuits as well as Plaintiff's testimony during
a hearing on Allen's Motion to Dismiss his third lawsuit. To the extent these facts are
considered to be outside Plaintiff's current Complaint, the Court has treated Allen's
Motion as a Motion for Summary Judgment.

SCANNED

At some later unspecified date, Plaintiff, who was having issues at his current unnamed school, claims he was told about his previous grade point average ("GPA"). Plaintiff then proceeded to open sealed envelopes he had from Allen and Midlands Tech containing his official transcripts and discovered that the transcript that Allen had sent to Midlands Tech on December 9, 2003 did not contain his fall semester 2003 grades, whereas subsequent transcripts did contain those grades.² According to Plaintiff, the addition of his fall semester 2003 grades in subsequent transcripts sent by Allen caused his GPA to drop.

On December 14, 2009, Plaintiff went to Allen to dispute his student record and claims that the registrar's office and the office of student affairs agreed to investigate the matter. Plaintiff says he was told to wait approximately one week for Allen to complete the investigation; however, he claims that Allen never completed the investigation.

The present lawsuit is the fourth lawsuit Plaintiff has filed against Allen based on a dispute he has regarding his fall semester 2003 student records.

A. Lawsuit No. 1

On January 14, 2010, Plaintiff filed a lawsuit in the United States District Court for South Carolina, Civil Action No. 3:10-cv-00090 ("Lawsuit No. 1"), claiming that Allen had injured him in the amount of \$25,375,000 by sending a copy of his official transcript on December 9, 2003, to Midlands Tech without including his fall semester 2003 grades, and then five days later updating his transcript by adding his fall semester

² Plaintiff requested that Allen send his transcript to Midlands Tech while exams were still ongoing and before grades had to be turned in for the Fall 2003 semester; thus Allen did not have Plaintiff's fall semester 2003 grades to send.

2003 grades without telling him. On April 12, 2010, the court dismissed the lawsuit for lack of subject matter jurisdiction.

B. Lawsuit No. 2

On April 5, 2010, Plaintiff filed a lawsuit in the South Carolina Court of Common Pleas, Civil Action No. 2010-CP-40-02301 ("Lawsuit No. 2") against Allen, alleging the same facts and claims alleged in Lawsuit No. 1, but dropping his claim for damages from \$25,375,000 to \$15,000,000. Allen timely moved to dismiss Lawsuit No. 2 for failure to serve and because his claim, relating to acts occurring in 2003, was beyond the statute of limitations.

C. Lawsuit No. 3

On September 30, 2010, while Allen's Motion to Dismiss Lawsuit No. 2 was pending, Plaintiff filed Lawsuit No. 3, Civil Action No. 2010-CP-40-06803. Plaintiff based his claim in Lawsuit No. 3 on his assertion that Allen failed to investigate his dispute about his grades in December 2009, and reduced his claim for damages from \$15,000,000 to \$3,430,000.

On February 24, 2011, the Court held a hearing on Allen's Motion to Dismiss Plaintiff's Lawsuit No. 3. After hearing argument by both parties, the Court granted Allen's Motion, holding that Plaintiff had not shown any consideration for the agreement he claimed he had with Allen, and that Allen's agreement to investigate was gratuitous and did not create an enforceable contract. On June 1, 2011, Plaintiff filed a Motion to Reconsider which the Court denied on June 6, 2011.

D. Lawsuit No. 4

On August 12, 2011, Plaintiff filed the instant Complaint against Allen ("Lawsuit No. 4") claiming that Allen breached an agreement he had that Allen would investigate his dispute regarding his fall semester 2003 grades. He asserts claims for breach of contract, intentional infliction of emotional distress, constructive fraud, breach of trust, negligent supervision, silent fraud, and libel.

I. ALLEN'S MOTION TO DISMISS

A. Plaintiff's Complaint is barred by *res judicata*.

Allen first moved to dismiss Plaintiff's Complaint on the basis of *res judicata*. *Res judicata*, or claim preclusion as it is sometimes called, bars plaintiffs from pursuing successive suits where the claim was litigated or could have been litigated. *Crestwood Golf Club v. Potter*, 328 S.C. 201, 216, 493 S.E.2d 826, 835 (S.C. 1997).

Plaintiff's claims arising out of his allegation that Allen breached the agreement to investigate was litigated and dismissed in Lawsuit No. 3. It is generally recognized that a dismissal with prejudice indicates an adjudication on the merits. *See Nunnery v. Brantley Constr. Co.*, 289 S.C. 205, 209, 345 S.E.2d 740, 743 (Ct. App. 1986) (holding that where an action has been dismissed with prejudice, the judgment operates, in a subsequent action involving the same subject matter, so as to conclusively settle not only all matters litigated in the earlier proceedings, but also all matter which might have been litigate therein.); *Deel v. Home Depot USA, Inc.*, 2010 U.S. Dist. LEXIS 53131 (D.S.C. May 14, 2010) (holding a dismissal under Rule 12(b)(6) is a final determination on the merits and is accorded *res judicata* effect.) Because the other causes of actions alleged by Plaintiff in Lawsuit 4 all arose out of the same set of facts and had accrued prior to his filing Lawsuit No. 3, these claims are also barred by *res judicata*.

Therefore, the Court finds that Plaintiff's Complaint should be dismissed because *res judicata* bars him from pursuing these claims in a subsequent action.

B. Plaintiff Has Failed to Allege Facts Sufficient to State a Cause of Action.

Even if Plaintiff's claims were not barred by *res judicata*, Plaintiff has failed to allege facts, even if taken as true, which would be sufficient to support the causes of action he alleges.

1. Breach of Contract

Although Plaintiff argued at the hearing on this matter that he had not asserted a claim for breach of contract, his Complaint specifically states that "Allen University breached the said agreement by intentionally refusing to complete the agreed investigation," thus to the extent Plaintiff does assert a claim that Allen breached the agreement Plaintiff says he had that it would investigate his issue regarding his fall semester 2003 grades, Plaintiff has failed to show the consideration necessary to create an enforceable contract. It is well settled law that gratuitous agreements without consideration over and above a party's moral duty are not binding in law. *See, e.g., Walters v. University of South Carolina*, 280 S.C. 572, 313 S.E.2d 346 (Ct. App. 1984) (holding that extra benefits granted by university to student were gratuitous and not part of the student's grant in aid, and therefore university did not breach the contract with the student when it ceased providing the extra benefits); *Coggeshall v. Coggeshall*, 33 S.C.L. 51, 1847 WL 2157 (S.C. App. L.) ("[A]ll executory contracts to give in future, if exclusively gratuitous, i.e., without some valuable consideration, over and above the mere moral duty of the donor, are not binding in law, unless such valuable consideration be both alleged in the pleadings and proved at the trial.").

~~Thus as the Court held in Lawsuit No. 3, any agreement by Allen to investigate was gratuitous and did not create an enforceable contract. Therefore, Plaintiff's breach of contract claim should be dismissed.~~

2. Intentional Infliction of Emotional Distress

To the extent Plaintiff bases this claim of intentional infliction of emotional distress on Allen's "randomly adding failing grades" to his transcript in 2003, the claim is barred by the three-year statute of limitations. S.C. Code § 15-3-530. If Plaintiff is basing this claim on his belief that Allen caused him severe emotional distress because he believes it did not investigate his claim in 2009, Allen's alleged failure to investigate, even if true, does not rise, as a matter of law, to the level required to state a claim for intentional infliction of emotional distress.

As the South Carolina Supreme Court recently held, to state a claim for intentional infliction of emotional distress, Plaintiff must establish that: (1) Allen intentionally or recklessly inflicted severe emotional distress, or was certain, or substantially certain, that such distress would result from its conduct; (2) the conduct was so "extreme and outrageous" so as to exceed "all possible bounds of decency" and must be regarded as "atrocious, and utterly intolerable in a civilized community; (3) Allen's actions caused him emotional distress; and (4) the emotional distress suffered by Plaintiff was "severe" such that "no reasonable man could be expected to endure it." *Argoe v. Three Rivers Behavioral Health, L.L.C.*, 392 S.C. 462, 710 S.E.2d 67 (2011).

Plaintiff's allegation that Allen did not investigate does not meet the standard for an intentional infliction of emotional distress claim and thus the Court dismisses that claims.

3. ~~Constructive Fraud/Silent Fraud~~

To the extent Plaintiff's allegations of fraud pertain to his allegation that Allen wronged him by sending his transcript to another school in 2003 without his fall 2003 grades, these claims are barred by the statute of limitations. S.C. Code § 15-3-550. To the extent Plaintiff is basing these claims on his belief that Allen failed to investigate this issue in 2009, these claims fail as a matter of law.

In order to prove fraud, the following elements must be shown: (1) a representation, (2) its falsity, (3) its materiality, (4) either knowledge of its falsity or a reckless disregard of its truth or falsity, (5) intent that the representation be acted upon, (6) the hearer's ignorance of its falsity, (7) the hearer's reliance on its truth, (8) the hearer's right to rely thereon; and (9) the hearer's consequent and proximate injury. *Ardis v. Cox*, 314 S.C. 512, 515, 431 S.E.2d 267, 269 (Ct. App. 1993). "To establish constructive fraud, all elements of actual fraud except the element of intent must be established." *Id.* In addition, Rule 9(b) of the South Carolina Rules of Civil Procedure requires a plaintiff to plead the circumstances surrounding fraud with particularity. "A complaint is fatally defective if it fails to alleged all nine elements of fraud," and "[w]here the complaint omits allegations on any element of fraud, the trial court should grant the defendant's motion to dismiss the claim. *Id.*

Here, Plaintiff has failed to sufficiently allege any cause of action based on fraud, and therefore the Court dismisses this claim.

4. Breach of Trust

Plaintiff apparently bases his claim of breach of trust on his allegation that he trusted Allen to investigate his claim and when it allegedly did not do so, he was injured.

In South Carolina, breach of trust is usually a criminal act punishable under S.C. § 16-13-230, or a claim brought against trustees for violation of a trustee's duty owed to a beneficiary of a trust under S.C. Code § 62-7-100. Otherwise, there is no civil action for breach of trust cognizable under South law. Therefore, the Court dismisses Plaintiff's claim for breach of trust.

5. Negligent Supervision

Plaintiff's allegation that Allen negligently supervised the registrar when she failed to include his fall 2003 on his transcript she sent in December 2003 is barred by the three-year statute of limitations for negligence claims. S.C. Code § 15-3-530.

6. Libel

Plaintiff claims that Allen "has been and continues to print and send out false information about me," and that "[t]hey have sent those false grades to numerous schools" Nowhere in the Complaint, however, has Plaintiff alleged that the grades on his transcript were false—only that Allen failed to initially include the fall semester 2003 grades on his transcript. To the extent Plaintiff is now claiming that the grades posted for fall semester 2003 are somehow false, then he should have disputed those grades when he received them and thus his claim is barred by the statute of limitations. S.C. Code § 15-3-550. Furthermore, Allen only sent his transcripts to other schools at his explicit request to do so and thus he cannot attempt to hold Allen liable for acts that he requested it do. Therefore, the Court dismisses Plaintiff's libel claim for failure to allege facts sufficient to state a cause of action.

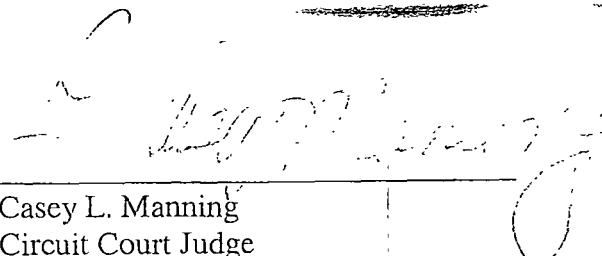
II. ALLEN'S MOTION FOR SANCTIONS

-Allen has also moved for sanctions under the South Carolina ~~Frivolous Civil~~ Proceeding Sanctions Act, S.C. Code § 15-36-10. Under the Act, a pro se litigant participating in a civil action may be sanctioned for making frivolous arguments that are not reasonably supported by the facts. § 15-36-10(A)(4)(b). Sanctions can include an order for a pro se litigant to pay the reasonable costs and attorneys' fees of the prevailing party and/or an order enjoining a plaintiff from bringing future frivolous actions. § 15-36-10(G)(3).

As discussed above, this is the fourth lawsuit Plaintiff has brought against Allen in the last year and a half, all arising from the same set of facts. Plaintiff knows that his complaint regarding his fall semester 2003 grades is time-barred, yet he persists in bringing yet another action based on that issue. Then, in an apparent attempt to avoid dismissal because of the statute of limitations, Plaintiff re-characterize his claim as one pertaining to an alleged agreement he had with Allen in 2009 to investigate what had occurred in 2003. This is nothing more than an attempt to bootstrap his 2003 claim to a "new and improved" 2009 claim, based still, however, on the same facts. Plaintiff also knows that claims based on an alleged 2009 agreement are not valid because he had no enforceable agreement with Allen, as the Court informed him when it dismissed Lawsuit No. 3.

Although the Court respects the rights of persons to bring legitimate claims for adjudication in a court of law, Allen and the Court should not be forced to continue expending time and money in defending these repeated lawsuits brought by Plaintiff. Therefore, The Court grants Allen's Motion for Sanction and enjoins Plaintiff's from bringing further lawsuits against Allen based on these facts.

IT IS SO ORDERED



Casey L. Manning
Circuit Court Judge

June 18, 2012
Columbia, South Carolina

EXHIBIT C

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND) FIFTH JUDICIAL CIRCUIT

Lawrence Terry,) Civil Action No. 2012-CP-4004857
)

Plaintiff,)
)

vs.)

Allen University,)

Defendant.)
)

**DEFENDANT'S MOTIONS TO
SHOW CAUSE, FOR SANCTIONS,
AND TO DISMISS**

JEANETTE W. McBRIDE & G.S.
2012 JUL 31 PM 4:59
FILED IN COURT

Defendant Allen University ("Allen") hereby moves the Court (1) to show cause why Plaintiff should not be held in contempt; (2) to assess sanctions; and (3) to dismiss Plaintiff's Complaint with prejudice.

PROCEDURAL BACKGROUND

The present lawsuit is the fifth lawsuit¹ Plaintiff has filed against Allen in the last year and a half based on a dispute he has regarding his fall semester 2003 student records. As shown in the previous lawsuits, Plaintiff, who was a student at Allen in 2002-2003, requested in December 2003 that Allen send his transcript to Midlands Technical College, where he was planning to transfer. Allen promptly did this but because the request came in prior to the end of the fall 2003 semester, Plaintiff's fall 2003 grades were not included on that transcript sent to Midlands Technical College. Plaintiff's fall semester 2003 grades, however, were included in subsequent transcripts sent to other schools at Plaintiff's request. Plaintiff claims that he did not realize that his fall semester 2003 grades had been added to his transcript until 2009, at which time

¹ Lawsuit No. 1 was dismissed for lack of jurisdiction, Lawsuit No. 2 was voluntarily dismissed by Plaintiff, Lawsuits No. 3 and 4 were dismissed by the Court.

he went to Allen to request that the grades be removed. When Allen refused to remove the grades, Plaintiff began this unending process of suing Allen.

Regarding Plaintiff's fourth lawsuit, on April 26, 2012, the Court granted Allen's Motion to Dismiss and Motion for Sanctions in a text order. On June 18, 2012, the Court issued a formal order denying Plaintiff's claims of breach of contract, intentional infliction of emotional distress, constructive/silent fraud, breach of trust, negligent supervision, and libel on the basis of *res judicata* and failure to allege facts sufficient to support his causes of action. The Court further granted Allen's Motion for Sanctions and enjoined Plaintiff from bringing further lawsuits against Allen based on these facts. A copy of this Order is attached as Exhibit A. Plaintiff subsequently filed a Motion for Reconsideration which the Court denied on June 20, 2012. A copy of this Order is attached as Exhibit B.

On Jun 21, 2012, Plaintiff filed a Motion to Clarify, Alter or Amend Judgment. On June 29, the Court denied Plaintiff's Motion and held that the Order dismissing the case entered on June 20 was sufficiently clear. A copy of this Order is attached as Exhibit C.

On July 5, 2012, Plaintiff filed a Motion for Leave to Amend his Complaint. On July 9, 2012, the Court denied Plaintiff's Motion for Leave to Amend stating that the case had previously been dismissed and a Motion for Reconsideration had already been denied. The Court further enjoined Plaintiff from filing any additional motions in this matter at the circuit court level and informed him that he must proceed to the appellate court level for any further disposition of this case. A copy of this Order is attached as Exhibit D.

PRESENT LAWSUIT

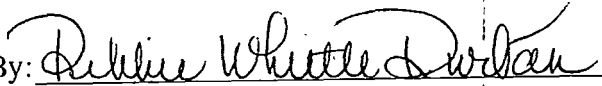
On July 15, 2012, in contravention of the Court's Orders, Plaintiff filed yet a fifth lawsuit against Allen alleging claims of fraud, negligence, and libel, based on the same facts alleged in his other four lawsuits. Plaintiff attempts to color this new lawsuit as being based on different facts stating that the lawsuit is based in part, but not entirely on an affidavit filed by Allen in the fourth lawsuit. In the affidavit by Marilyn Young, the Registrar at Allen, Ms. Young stated that at some point after 2003, courses that Plaintiff had taken at Midlands Technical College were added twice to his transcript. When this mistake was discovered, his transcript was corrected by deleting the duplicate courses. Plaintiff claims this is evidence that Allen has committed fraud, negligence and libel. Plaintiff, however, misses an integral point—that the innocent mistake was to Plaintiff's benefit, not his detriment. This is because the addition of the duplicate courses increased his grade point ratio rather than decreasing it. Therefore Plaintiff can show no harm to him by this innocent error and this alleged "new fact" does not support any of his alleged causes of action. Furthermore, any statements made in the course of litigation, as was the statements in Ms. Young's affidavit, are absolutely privileged and thus cannot support Plaintiff's claims.

Therefore, Allen requests the following:

- (1) The Court hold Plaintiff in contempt for failing to adhere to the Court's order enjoining him from filing additional lawsuits against Allen based on these facts;
- (2) The Court assess sanctions against Plaintiff in the form of Allen's fees and costs for violating the injunction; and

(3) The Court dismiss Plaintiff's instant lawsuit on the basis of *res judicata* and failure for Plaintiff to allege facts sufficient to support his causes of action.

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: 
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(803) 799-2000

Attorney for Allen University

Columbia, South Carolina

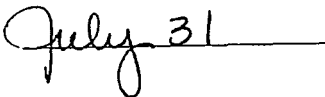
, 2012

Exhibit A

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
 COUNTY OF RICHLAND) FIFTH JUDICIAL CIRCUIT

Lawrence Terry,) Civil Action No. 2011-CP-40-05469
)
 Plaintiff,)
)
 vs.)
)
 Allen University,)
)
 Defendant.)

**PROPOSED ORDER GRANTING
 ALLEN UNIVERSITY'S MOTION
 TO DISMISS AND MOTION FOR
 SANCTIONS**

2012 JUN 20 AM 11:58
 JUDGE W. McBRIDE
 C.P. & G.S.
 RICHLAND COUNTY
 FILED

Defendant Allen University ("Allen") has moved the Court to: dismiss Plaintiff Lawrence Terry's ("Plaintiff") Complaint pursuant to *res judicata* and Rule 12(b)(6) of the South Carolina Rules of Civil Procedure; and (2) for sanctions pursuant to the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code, § 15-36-10. For the reasons discussed below, the Court grants Allen's motion to dismiss and motion for sanctions.

STATEMENT OF FACTS¹

Plaintiff is a former student of Allen, having attended Allen in 2002 and 2003. On December 9, 2003, at Plaintiff's request, Allen sent a copy of Plaintiff's transcript to Midlands Technical College ("Midlands Tech"), where Plaintiff was planning to transfer. Plaintiff subsequently attended Midlands Tech during the spring and summer semesters in 2004. In August 2004, Plaintiff requested Allen send his transcript to Coastal Carolina University ("Coastal") and the University of South Carolina ("USC"), which Allen did.

¹ The facts as stated herein are pulled from Plaintiff's latest Complaint and the three other Complaints Plaintiff filed in the preceding lawsuits as well as Plaintiff's testimony during a hearing on Allen's Motion to Dismiss his third lawsuit. To the extent these facts are considered to be outside Plaintiff's current Complaint, the Court has treated Allen's Motion as a Motion for Summary Judgment.

At some later unspecified date, Plaintiff, who was having issues at his current unnamed school, claims he was told about his previous grade point average ("GPA"). Plaintiff then proceeded to open sealed envelopes he had from Allen and Midlands Tech containing his official transcripts and discovered that the transcript that Allen had sent to Midlands Tech on December 9, 2003 did not contain his fall semester 2003 grades, whereas subsequent transcripts did contain those grades.² According to Plaintiff, the addition of his fall semester 2003 grades in subsequent transcripts sent by Allen caused his GPA to drop.

On December 14, 2009, Plaintiff went to Allen to dispute his student record and claims that the registrar's office and the office of student affairs agreed to investigate the matter. Plaintiff says he was told to wait approximately one week for Allen to complete the investigation; however, he claims that Allen never completed the investigation.

The present lawsuit is the fourth lawsuit Plaintiff has filed against Allen based on a dispute he has regarding his fall semester 2003 student records.

A. Lawsuit No. 1

On January 14, 2010, Plaintiff filed a lawsuit in the United States District Court for South Carolina, Civil Action No. 3:10-cv-00090 ("Lawsuit No. 1"), claiming that Allen had injured him in the amount of \$25,375,000 by sending a copy of his official transcript on December 9, 2003, to Midlands Tech without including his fall semester 2003 grades, and then five days later updating his transcript by adding his fall semester

² Plaintiff requested that Allen send his transcript to Midlands Tech while exams were still ongoing and before grades had to be turned in for the Fall 2003 semester; thus Allen did not have Plaintiff's fall semester 2003 grades to send.

2003 grades without telling him. On April 12, 2010, the court dismissed the lawsuit for lack of subject matter jurisdiction.

B. Lawsuit No. 2

On April 5, 2010, Plaintiff filed a lawsuit in the South Carolina Court of Common Pleas, Civil Action No. 2010-CP-40-02301 ("Lawsuit No. 2") against Allen, alleging the same facts and claims alleged in Lawsuit No. 1, but dropping his claim for damages from \$25,375,000 to \$15,000,000. Allen timely moved to dismiss Lawsuit No. 2 for failure to serve and because his claim, relating to acts occurring in 2003, was beyond the statute of limitations.

C. Lawsuit No. 3

On September 30, 2010, while Allen's Motion to Dismiss Lawsuit No. 2 was pending, Plaintiff filed Lawsuit No. 3, Civil Action No. 2010-CP-40-06803. Plaintiff based his claim in Lawsuit No. 3 on his assertion that Allen failed to investigate his dispute about his grades in December 2009, and reduced his claim for damages from \$15,000,000 to \$3,430,000.

On February 24, 2011, the Court held a hearing on Allen's Motion to Dismiss Plaintiff's Lawsuit No. 3. After hearing argument by both parties, the Court granted Allen's Motion, holding that Plaintiff had not shown any consideration for the agreement he claimed he had with Allen, and that Allen's agreement to investigate was gratuitous and did not create an enforceable contract. On June 1, 2011, Plaintiff filed a Motion to Reconsider which the Court denied on June 6, 2011.

D. Lawsuit No. 4

On August 12, 2011, Plaintiff filed the instant Complaint against Allen ("Lawsuit No. 4") claiming that Allen breached an agreement he had that Allen would investigate his dispute regarding his fall semester 2003 grades. He asserts claims for breach of contract, intentional infliction of emotional distress, constructive fraud, breach of trust, negligent supervision, silent fraud, and libel.

I. ALLEN'S MOTION TO DISMISS

A. Plaintiff's Complaint is barred by *res judicata*.

Allen first moved to dismiss Plaintiff's Complaint on the basis of *res judicata*. *Res judicata*, or claim preclusion as it is sometimes called, bars plaintiffs from pursuing successive suits where the claim was litigated or could have been litigated. *Crestwood Golf Club v. Potter*, 328 S.C. 201, 216, 493 S.E.2d 826, 835 (S.C. 1997).

Plaintiff's claims arising out of his allegation that Allen breached the agreement to investigate was litigated and dismissed in Lawsuit No. 3. It is generally recognized that a dismissal with prejudice indicates an adjudication on the merits. *See Nunnery v. Brantley Constr. Co.*, 289 S.C. 205, 209, 345 S.E.2d 740, 743 (Ct. App. 1986) (holding that where an action has been dismissed with prejudice, the judgment operates, in a subsequent action involving the same subject matter, so as to conclusively settle not only all matters litigated in the earlier proceedings, but also all matter which might have been litigate therein.); *Deel v. Home Depot USA, Inc.*, 2010 U.S. Dist. LEXIS 53131 (D.S.C. May 14, 2010) (holding a dismissal under Rule 12(b)(6) is a final determination on the merits and is accorded *res judicata* effect.) Because the other causes of actions alleged by Plaintiff in Lawsuit 4 all arose out of the same set of facts and had accrued prior to his filing Lawsuit No. 3, these claims are also barred by *res judicata*.

Therefore, the Court finds that Plaintiff's Complaint should be dismissed because *res judicata* bars him from pursuing these claims in a subsequent action.

B. Plaintiff Has Failed to Allege Facts Sufficient to State a Cause of Action.

Even if Plaintiff's claims were not barred by *res judicata*, Plaintiff has failed to allege facts, even if taken as true, which would be sufficient to support the causes of action he alleges.

1. Breach of Contract

Although Plaintiff argued at the hearing on this matter that he had not asserted a claim for breach of contract, his Complaint specifically states that "Allen University breached the said agreement by intentionally refusing to complete the agreed investigation," thus to the extent Plaintiff does assert a claim that Allen breached the agreement Plaintiff says he had that it would investigate his issue regarding his fall semester 2003 grades, Plaintiff has failed to show the consideration necessary to create an enforceable contract. It is well settled law that gratuitous agreements without consideration over and above a party's moral duty are not binding in law. *See, e.g., Walters v. University of South Carolina*, 280 S.C. 572, 313 S.E.2d 346 (Ct. App. 1984) (holding that extra benefits granted by university to student were gratuitous and not part of the student's grant in aid, and therefore university did not breach the contract with the student when it ceased providing the extra benefits); *Coggeshall v. Coggeshall*, 33 S.C.L. 51, 1847 WL 2157 (S.C. App. L.) ("[A]ll executory contracts to give in future, if exclusively gratuitous, i.e., without some valuable consideration, over and above the mere moral duty of the donor, are not binding in law, unless such valuable consideration be both alleged in the pleadings and proved at the trial.").

Thus as the Court held in Lawsuit No. 3, any agreement by Allen to investigate was gratuitous and did not create an enforceable contract. Therefore, Plaintiff's breach of contract claim should be dismissed.

2. Intentional Infliction of Emotional Distress

To the extent Plaintiff bases this claim of intentional infliction of emotional distress on Allen's "randomly adding failing grades" to his transcript in 2003, the claim is barred by the three-year statute of limitations. S.C. Code § 15-3-530. If Plaintiff is basing this claim on his belief that Allen caused him severe emotional distress because he believes it did not investigate his claim in 2009, Allen's alleged failure to investigate, even if true, does not rise, as a matter of law, to the level required to state a claim for intentional infliction of emotional distress.

As the South Carolina Supreme Court recently held, to state a claim for intentional infliction of emotional distress, Plaintiff must establish that: (1) Allen intentionally or recklessly inflicted severe emotional distress, or was certain, or substantially certain, that such distress would result from its conduct; (2) the conduct was so "extreme and outrageous" so as to exceed "all possible bounds of decency" and must be regarded as "atrocious, and utterly intolerable in a civilized community; (3) Allen's actions caused him emotional distress; and (4) the emotional distress suffered by Plaintiff was "severe" such that "no reasonable man could be expected to endure it." *Argoe v. Three Rivers Behavioral Health, L.L.C.*, 392 S.C. 462, 710 S.E.2d 67 (2011).

Plaintiff's allegation that Allen did not investigate does not meet the standard for an intentional infliction of emotional distress claim and thus the Court dismisses that claims.

3. ~~Constructive Fraud/Silent Fraud~~

To the extent Plaintiff's allegations of fraud pertain to his allegation that Allen wronged him by sending his transcript to another school in 2003 without his fall 2003 grades, these claims are barred by the statute of limitations. S.C. Code § 15-3-550. To the extent Plaintiff is basing these claims on his belief that Allen failed to investigate this issue in 2009, these claims fail as a matter of law.

In order to prove fraud, the following elements must be shown: (1) a representation, (2) its falsity, (3) its materiality, (4) either knowledge of its falsity or a reckless disregard of its truth or falsity, (5) intent that the representation be acted upon, (6) the hearer's ignorance of its falsity, (7) the hearer's reliance on its truth, (8) the hearer's right to rely thereon; and (9) the hearer's consequent and proximate injury. *Ardis v. Cox*, 314 S.C. 512, 515, 431 S.E.2d 267, 269 (Ct. App. 1993). "To establish constructive fraud, all elements of actual fraud except the element of intent must be established." *Id.* In addition, Rule 9(b) of the South Carolina Rules of Civil Procedure requires a plaintiff to plead the circumstances surrounding fraud with particularity. "A complaint is fatally defective if it fails to alleged all nine elements of fraud," and "[w]here the complaint omits allegations on any element of fraud, the trial court should grant the defendant's motion to dismiss the claim. *Id.*

Here, Plaintiff has failed to sufficiently allege any cause of action based on fraud, and therefore the Court dismisses this claim.

4. Breach of Trust

Plaintiff apparently bases his claim of breach of trust on his allegation that he trusted Allen to investigate his claim and when it allegedly did not do so, he was injured.

In South Carolina, breach of trust is usually a criminal act punishable under S.C. § 16-13-230, or a claim brought against trustees for violation of a trustee's duty owed to a beneficiary of a trust under S.C. Code § 62-7-100. Otherwise, there is no civil action for breach of trust cognizable under South law. Therefore, the Court dismisses Plaintiff's claim for breach of trust.

5. Negligent Supervision

Plaintiff's allegation that Allen negligently supervised the registrar when she failed to include his fall 2003 on his transcript she sent in December 2003 is barred by the three-year statute of limitations for negligence claims. S.C. Code § 15-3-530.

6. Libel

Plaintiff claims that Allen "has been and continues to print and send out false information about me," and that "[t]hey have sent those false grades to numerous schools" Nowhere in the Complaint, however, has Plaintiff alleged that the grades on his transcript were false—only that Allen failed to initially include the fall semester 2003 grades on his transcript. To the extent Plaintiff is now claiming that the grades posted for fall semester 2003 are somehow false, then he should have disputed those grades when he received them and thus his claim is barred by the statute of limitations. S.C. Code § 15-3-550. Furthermore, Allen only sent his transcripts to other schools at his explicit request to do so and thus he cannot attempt to hold Allen liable for acts that he requested it do. Therefore, the Court dismisses Plaintiff's libel claim for failure to allege facts sufficient to state a cause of action.

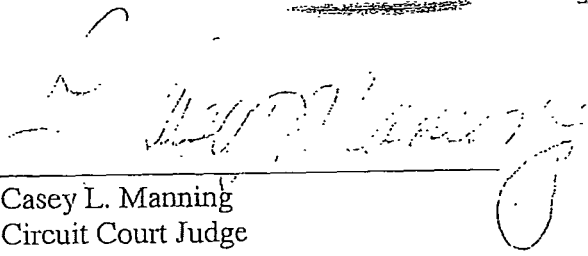
II. ALLEN'S MOTION FOR SANCTIONS

-Allen has also moved for sanctions under the South Carolina ~~Frivolous Civil~~ Proceeding Sanctions Act, S.C. Code § 15-36-10. Under the Act, a pro se litigant participating in a civil action may be sanctioned for making frivolous arguments that are not reasonably supported by the facts. § 15-36-10(A)(4)(b). Sanctions can include an order for a pro se litigant to pay the reasonable costs and attorneys' fees of the prevailing party and/or an order enjoining a plaintiff from bringing future frivolous actions. § 15-36-10(G)(3).

As discussed above, this is the fourth lawsuit Plaintiff has brought against Allen in the last year and a half, all arising from the same set of facts. Plaintiff knows that his complaint regarding his fall semester 2003 grades is time-barred, yet he persists in bringing yet another action based on that issue. Then, in an apparent attempt to avoid dismissal because of the statute of limitations, Plaintiff re-characterize his claim as one pertaining to an alleged agreement he had with Allen in 2009 to investigate what had occurred in 2003. This is nothing more than an attempt to bootstrap his 2003 claim to a "new and improved" 2009 claim, based still, however, on the same facts. Plaintiff also knows that claims based on an alleged 2009 agreement are not valid because he had no enforceable agreement with Allen, as the Court informed him when it dismissed Lawsuit No. 3.

Although the Court respects the rights of persons to bring legitimate claims for adjudication in a court of law, Allen and the Court should not be forced to continue expending time and money in defending these repeated lawsuits brought by Plaintiff. Therefore, The Court grants Allen's Motion for Sanction and enjoins Plaintiff's from bringing further lawsuits against Allen based on these facts.

IT IS SO ORDERED



Casey L. Manning
Circuit Court Judge

June 18, 2012
Columbia, South Carolina

Exhibit B

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

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2011CP4005469

LAWRENCE TERRY

ALLEN UNIVERSITY

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: _____	Attorney for : <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant or <input type="checkbox"/> Self-Represented Litigant
---------------------	--------------------------------------------------------------------------------------------------------------------------------------------

DISPOSITION TYPE (CHECK ONE)

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

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

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

PLAINTIFF'S MOTION FOR RECONSIDERATION IS HEREBY DENIED

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk : _____

INFORMATION FOR THE JUDGMENT INDEX

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

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

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

Circuit Court Judge [Signature] Judge Code 2061 Date JUNE 18, 2012

For Clerk of Court Office Use Only

This judgment was entered on the 20 day of June, 2012 and a copy mailed first class or placed in the appropriate attorney's box on this 20 day of June, 2012 to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter _____

Clerk of Court [Signature]

RICHLAND COUNTY
FILED
2012 JUN 20 PM 12:01
JEANETTE W. McBRIDE
C.C.P. & C.S.S.

Exhibit C

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

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2011CP4005469

LAWRENCE TERRY

ALLEN UNIVERSITY

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: _____

Attorney for : Plaintiff Defendant or Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

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

RICHLAND COUNTY
 FILED
 2012 JUN 29 4:11 PM
 JEANETTE W. BRIDGE
 CLERK OF COURT

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

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

PLAINTIFF'S MOTION TO CLARIFY, ALTER, OR AMEND JUDGMENT TO BE MORE SPECIFIC ON PULING IS HEREBY DENIED. THE ORDER DISMISSING THE CASE ENTERED ON JUNE 20, 2012, IS SUFFICIENTLY CLEAR. FURTHERMORE, THIS COURT IS NOT ABLE TO GIVE LEGAL ADVICE TO ANY LITIGANT.

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX

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

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

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

Circuit Court Judge

Deborah M. Murray

Judge Code

2061

Date

June 27, 2012

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this 29 day of June, 2012 to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

Court Reporter

ATTORNEY(S) FOR THE DEFENDANT(S)

Clerk of Court

Jeanette W. Bridge

Exhibit D

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

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2011CP4005469

LAWRENCE TERRY

ALLEN UNIVERSITY

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: _____

Attorney for : Plaintiff Defendant or Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

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

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

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

PLAINTIFF'S MOTION FOR LEAVE TO AMEND COMPLAINT FILED ON JULY 5, 2012, IS HEREBY DENIED. THIS CASE HAS PREVIOUSLY BEEN DISMISSED AND A MOTION FOR RECONSIDERATION HAS ALREADY BEEN DENIED. PLAINTIFF IS HEREBY ENJOINED FROM FILING ANY ADDITIONAL MOTIONS IN THIS MATTER AT THE CIRCUIT COURT LEVEL AND MUST PROCEED TO THE APPELATE COURT LEVEL FOR ANY FURTHER DISPOSITION OF THIS CASE.

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk : _____

INFORMATION FOR THE JUDGMENT INDEX

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

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled
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Circuit Court Judge

Judge Code 2061

Date JULY 9, 2012

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter

Clerk of Court

CERTIFICATE OF SERVICE

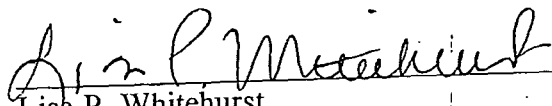
I, the undersigned Administrative Assistant of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for Allen University, do hereby certify that I have served all counsel in this action with a copy of the pleading(s) hereinbelow specified by mailing a copy of the same by United States Mail, postage prepaid, to the following address(es):

Pleadings:

Defendant's Motions to Show Cause, for Sanctions, and to Dismiss

Counsel Served:

Lawrence Terry, Plaintiff Pro Se
P.O. Box 24138
Columbia, SC 29224



Lisa P. Whitehurst
Administrative Assistant

July 31, 2012

JEANETTE W. McBRIDE
C.C.P. & G.S.
2012 JUL 31 PM 4:59
FILED
CLERK OF COURT

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

L. Casey Manning, Circuit Court Judge

Case No. 2012-CP-40-04857

Court of Appeals Tracking No. 2013-000340

RECEIVED

MAR 21 2013

Court of Appeals

Lawrence Terry, Appellant,

v.

Allen University, Respondent.

CERTIFICATE OF SERVICE

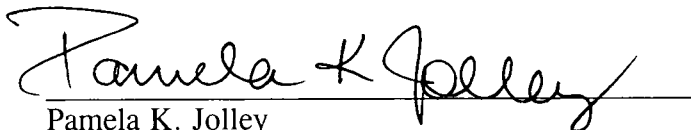
I, the undersigned Administrative Assistant of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for Respondent, do hereby certify that I have served all counsel in this action with a copy of the pleading(s) hereinbelow specified by mailing a copy of the same by United States Mail, postage prepaid, to the following address(es):

Pleadings:

Motion to Dismiss

Counsel Served:

Lawrence Terry, Plaintiff Pro Se
P.O Box 24138
Columbia, SC 29224



Pamela K. Jolley
Administrative Assistant

March 21, 2013