

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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May 11 2022

SC Court of Appeals

APPEAL FROM RICHLAND COUNTY
L. Casey Manning, Circuit Court Judge
Joseph M. Strickland, Master-in-Equity

Appellate Case No. 2021-000539
Case No. 2020-CP-40-3674

Ammon L. “Treigh” Sullivan, ... Respondent,

v.

Richland County School District One and
South Carolina Department of Education, ... Defendants,

Of which, South Carolina Department of Education, is Appellant.

RECORD ON APPEAL

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*Counsel for Appellant South Carolina
Department of Education*

Counsel for Respondent

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STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
IN THE FIFTH JUDICIAL CIRCUIT
CASE NO. 2020-CP-40-3674

Ammon L. "Treigh" Sullivan,

Plaintiff,

v.

Richland County School District One and
South Carolina Department of Education,

Defendants.

ORDER

This matter is before the Court on Plaintiff's Motion for Entry of Default Against Defendant South Carolina Department of Education.

In his Motion for Entry of Default, Plaintiff requests this Court enter an Entry of Default. It having been made clear the Defendant South Carolina Department of Education failed to answer or otherwise file a responsive pleading, and more than thirty (30) days have passed since service of Plaintiff's Summons and Complaint without otherwise requesting an extension of time, Defendant South Carolina Department of Education is now in default pursuant to Rule 55 of the South Carolina Rules of Civil Procedure.

Plaintiff's Motion for Entry of Default Against Defendant South Carolina Department of Education is hereby GRANTED.

IT IS FURTHER ORDERED that the Clerk of Court enter an Entry of Default against Defendant South Carolina Department of Education.



Richland Common Pleas

Case Caption: Ammon L Treigh Sullivan vs Richland County School District One ,
defendant, et al
Case Number: 2020CP4003674
Type: Order/Entry of Default

So Ordered

s/Jeanette W. McBride, by Virginia F. Belcher,
Chief Deputy Clerk of Court

Electronically signed on 2020-10-29 09:13:13 page 2 of 2

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
IN THE FIFTH JUDICIAL CIRCUIT
CASE NO. 2020-CP-40-3674

Ammon L. “Treigh” Sullivan,

Plaintiff,

v.

Richland County School District One and
South Carolina Department of Education,

Defendants.

ORDER ON DAMAGES

A hearing was held before the undersigned on April 7, 2021, pursuant to an Order Denying Defendant South Carolina Department of Education’s Motion to Set Aside Entry of Default and Motion to Dismiss filed by the Honorable L. Casey Manning, on January 13, 2021, wherein the undersigned was appointed as Master-in-Equity to make a determination of Plaintiff’s damages to be entered against Defendant South Carolina Department of Education. Plaintiff was represented by Ryan K. Hicks, Esquire of Columbia, Defendant, South Carolina Department of Education (hereinafter “SCDE”) was represented Andrew F. Lindemann, Esquire of Columbia.¹

Because the alleged damages were not liquidated, Rule 55(b)(2), SCRCP, authorizes a damages hearing “to enable the court to enter judgment or to carry it into effect, [and] to determine the amount of damages or establish the truth of any averment by evidence or to make an investigation of any other matter.” In addition to argument by counsel, the Court received testimony from Plaintiff, Ammon L. “Treigh” Sullivan (“Sullivan”). Sullivan also offered a number of exhibits into evidence to support his alleged damages.

¹ Counsel for Defendant, Richland County School District One, Sheneka S. Lodenquai, Esquire, was also present at the hearing but did not participate.

Based on the evidence and argument presented at the hearing, and as set forth in more detail below, the Court enters judgment in favor of Sullivan in the amount of \$37,724.13.

DISCUSSION

I. SCDE's renewed motion

At the start of the hearing, Defendant's counsel renewed its prior motion that Plaintiff: (1) had not proven entitlement to judgment by default against a state agency; (2) had failed to state a cause upon which relief may be granted; and/or (3) entry of a default judgment is/was premature. [Def. Mem. In Opp. To Plt. Motion for Default Judgment, filed March 31, 2021]. Having reviewed the memorandum, prior motions of Defendant, and argument of counsel, the Court is not persuaded by such arguments. Such arguments were previously presented to Judge Manning pursuant both a Motion to Set Aside Entry of Default and Motion to Dismiss, and a Motion to Alter or Amend Order or Motion to Reconsider. Judge Manning denied both motions, and further referred the matter to the undersigned for the purpose of a hearing to determine the Plaintiff's damages.

Accordingly, Defendant's renewed motion(s) is denied.

II. Damages

Regarding Sullivan's unliquidated damages, Sullivan testified that he began his employment with Defendant, Richland County School District One ("RCSD") in or around August 2010. Prior to beginning at RCSD, Sullivan had worked at Lexington School District One ("LCSD") from 2006-2010 as a Teaching Aide – a classified position. Sullivan testified that upon beginning his employment at RCSD – a certified position – he inquired about his years of service at LCSD being applied as Step credits. Specifically, Sullivan testified that despite having four (4) years of service at LCSD, RCSD was not providing him any such credit and was starting him as a Step 0. Sullivan testified that he contacted SCDE for guidance but was provided little insight, and because he was a new employee with RCSD

he did not further push the issue for fear of losing his employment. Accordingly, Sullivan began his employment in August 2010 as a Step 0.

Sullivan testified that in 2019 he learned from a colleague about a SCDE Experience Verification Form that was to be completed to provide him credit for the time at LCSD as provided for in S.C. Code Reg. § 43-57.2. Sullivan testified that SCDE never advised him of the form and/or regulation, and that if they had he would have prepared and submitted the form well prior to 2019 – nine years after having begun his employment with RCSD. Sullivan testified that in or around June 2019 he personally provided the Experience Verification Form to LCSD, which was completed and returned to him; Sullivan then provided the Form to SCDE.

Sullivan testified that in August 2019, SCDE updated Plaintiff's years of service to reflect him having thirteen (13) years of experience (Step 13) instead of the nine years (Step 9) previously reflected. Sullivan went on to testify that following the August 2019 change in his Step, RCSD increased his pay to account for the additional four (4) years of service and that since August 2019 he has properly been paid in accordance with the applicable Step to include his years of service at LCSD.

Sullivan testified that as a result of SCDE's actions, for the first nine (9) years of his employment with RCSD, he was paid according to the Teacher Salary Schedule as if he had four (4) less years of experience (i.e. Steps). Sullivan testified and provided documentation that he suffered a difference in pay from 2010-2019 of \$25,907.00. Additionally, Sullivan testified that as a result of this error, he suffered a loss of benefits value of \$11,817.13.²

² Sullivan testified, which was clarified during the hearing, that this benefits calculation was gathered using the Benefits Calculator disseminated publicly on the South Carolina Department of Administration – State Human Resources website. www.admin.sc.gov/dshr/benefits_and_leave

Now, therefore, the undersigned hereby awards Plaintiff judgment against Defendant South Carolina Department of Education in the amount of Thirty-Seven Thousand Seven-Hundred Twenty-Four and 13/100 (\$37,724.13) Dollars.

AND IT IS SO ORDERED.

Joseph M. Strickland
Master-in-Equity for Richland County



Richland Common Pleas

Case Caption: Ammon L Treigh Sullivan vs Richland County School District One ,
defendant, et al
Case Number: 2020CP4003674
Type: Order/Damages

It is so Ordered

s/Joseph M. Strickland, 3055

Electronically signed on 2021-05-11 13:41:33 page 5 of 5

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

IN THE FIFTH JUDICIAL CIRCUIT

CASE NO. 2020-CP-40-03674

Ammon L. "Treigh" Sullivan,

Plaintiff,

v.

Richland County School District One and
South Carolina Department of Education,

Defendants.

**PLAINTIFF'S ORDER DENYING
DEFENDANT SOUTH CAROLINA
DEPARTMENT OF EDUCATION'S
MOTION TO SET ASIDE ENTRY OF
DEFAULT AND MOTION TO DISMISS**

Presiding Judge: L. Casey Manning

Plaintiff's Attorney: Ryan K. Hicks

Defendant's Attorney: Andrew F. Lindemann

Date of Hearing: November 19, 2020

This matter is before the Court on Plaintiff's Entry of Default against Defendant South Carolina Department of Education, and Defendant South Carolina Department of Education's Notice of Motion and Motion to Set Aside Entry of Default and Motion to Dismiss. The Order/Entry of Default was entered by the Court on October 29, 2020. The Court held a hearing on Defendant's motion on November 19, 2020.

In its Motion, Defendant requests that this Court set aside the Entry of Default entered by the Court on October 29, 2020. It having been made clear the Defendant failed to answer or otherwise file a responsive pleading, more than thirty (30) days have passed since service of Plaintiff's Summons and Complaint, and without good cause shown, Defendant South Carolina Department of Education is in default pursuant to Rule 55 of the South Carolina Rules of Civil Procedure.

Defendant South Carolina Department of Education's Notice of Motion and Motion to Set Aside Entry of Default and Motion to Dismiss is hereby DENIED.¹

IT IS FURTHER ORDERED:

2. The matter is referred to the Richland County Master-in-Equity for the purposes of a hearing to determine the Plaintiff's damages to be entered against Defendant South Carolina Department of Education.

AND IT IS SO ORDERED.

L. Casey Manning
Presiding Judge, Fifth Judicial Circuit

¹ As the Court has denied Defendant's Motion to Set Aside Entry of Default it need not substantively address Defendant's Motion to Dismiss as such arguments are moot.



Richland Common Pleas

Case Caption: Ammon L Treigh Sullivan vs Richland County School District One ,
defendant, et al
Case Number: 2020CP4003674
Type: Order/Other

So Ordered

s/L. Casey Manning, 2061

Electronically signed on 2021-01-13 11:29:40 page 3 of 3

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
IN THE FIFTH JUDICIAL CIRCUIT
CASE NO. 2020-CP-40-3674

Ammon L. "Treigh" Sullivan,

Plaintiff,

v.

Richland County School District One and South
Carolina Department of Education,

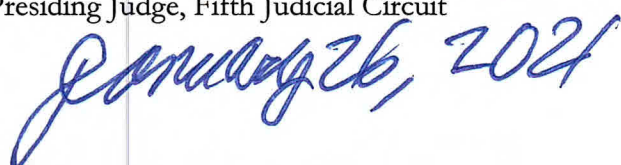
Defendants.

**ORDER DENYING DEFENDANT
SOUTH CAROLINA DEPARTMENT OF
EDUCATION'S MOTION TO ALTER OR
AMEND ORDER OR MOTION TO
RECONSIDER**

This matter is before the Court on Defendant South Carolina Department of Education's Motion to Alter or Amend Order or Motion to Reconsider, which it filed pursuant Rule 59(e), SCRCP, on January 25, 2021. Defendant's motion was filed in response to the Court's Order entered January 13, 2021, wherein the Court denied Defendant's Motion to Set Aside Entry of Default and Motion to Dismiss, and further ordered the matter be referred to the Master-in-Equity for the purposes of a damages hearing.

After careful consideration of the Defendant's instant motion, as well as the memoranda and oral arguments presented at the hearing held on November 19, 2020, the Court denies Defendant's Motion to Alter or Amend Order or Motion to Reconsider. Therefore, Court's Order entered on January 13, 2021, is upheld.

IT IS SO ORDERED.


L. Casey Manning
Presiding Judge, Fifth Judicial Circuit


STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

Ammon L. “Treigh” Sullivan,

Plaintiff,

v.

Richland County School District One and
South Carolina Department of Education,

Defendants.

COMPLAINT
(Jury Trial Demanded)

The Plaintiff complaining of the Defendants respectfully alleges as follows:

PARTIES & JURISDICTION

1. Plaintiff, Ammon L. “Treigh” Sullivan (hereinafter “Plaintiff”), is a resident of Lexington County, South Carolina.
2. Defendant, Richland County School District One (hereinafter “RCSD”) is a school district located in Richland County and provides educational services to students within its geographically defined boundaries.
3. Defendant, South Carolina Department of Education (hereinafter “SCDE”) is a state agency, headquartered in Richland County, South Carolina, tasked with overseeing public education in the State of South Carolina.
4. This action arises under the South Carolina Payment of Wages Act (S.C. Code Ann. § 41-10-10) and the common law of South Carolina.
4. The events giving rise to this action occurred in Richland County, the parties have substantial connections to Richland County, and jurisdiction is proper.

FACTUAL ALLEGATIONS

5. Plaintiff began his employment with Defendant RCSD in or around August 2010 when he was hired as a teacher. Plaintiff has also been employed as athletics personnel, including, but not limited to, athletics director and head football coach.

6. In relevant part, Plaintiff has spent his tenure with RCSD at Dreher High School.

7. Prior to beginning his employment with Defendant RCSD, Plaintiff spent several years employed at Lexington County School District One (hereinafter "LCSD") where he served as a teacher aid. Plaintiff's first year at LCSD was the 2006-2007 school year.

8. Accordingly, upon his arrival at Defendant RCSD, Plaintiff met with Defendant's human resources personnel to confirm his prior years of service credit as he expected to start at "Step 4" with corresponding pay.

9. To the contrary, Defendant RCSH human resources advised Plaintiff that he would be deemed a new teacher and would be classified as a "Step 0."

10. When Plaintiff questioned Defendant RCSD's determination that he had zero years of service, including confirming with LCSD that his prior years of service were sufficient experience, Defendant RCSD refused to take any further action to address the discrepancy.

11. Because Plaintiff was a new employee of Defendant RCSD and did not want to jeopardize his new employment as well as trusted the Defendant that it was accurately reflecting his years of experience, Plaintiff began the 2010-2011 school year at "Step 0."

12. Over the following year, Plaintiff did have periodic discussions with Defendant RCSD personnel about his renewed concern about his years of service being incorrect; notwithstanding, no action was ever taken.

13. In or around January 2015, Plaintiff received his Bachelor's +18, which should have provided him an increase in pay based upon the education supplement.

14. In or around May 2016, Plaintiff received his Master's, which should have provided him an increase in pay based upon the education supplement.

15. In or around December 2018, Plaintiff received his Master's +30, which should have provided him an increase in pay based upon the education supplement.

16. Upon information and belief, Defendant RCSD failed to timely adjust Plaintiff's pay pursuant its education supplement set forth in its Salary Guide for Teachers in 2015, 2016, and 2018, respectively.

17. On August 29, 2019, Defendant SCDE updated Plaintiff's years of service to reflect him having thirteen (13) years of experience as compared to the previous nine (9) years it had showed. Specifically, Defendant SCDE updated Plaintiff's years of service to include his four (4) years of experience at LCSD.

18. Defendants RCSD and SCDE should have been aware that Plaintiff's teaching experience at LCSD should have been counted toward his teaching experience upon his hire by RCSD in 2010. To wit:

- a. SC Code Regulation § 43-57.2 is titled "Teaching Experience Acceptable for Credit" and provides, in pertinent part, "A position as a teacher's aide, provided the applicant had an earned undergraduate degree during the period of employment."
- b. S.C. Code Regulation § 43-57.2 was effective June 22, 2001, well prior to Plaintiff even beginning his teaching career.

19. Upon information and belief, Defendants ignored the Regulation despite Plaintiff's raising cause for concern as to his years of experience as of 2010 as well as LCSD's affirmation that Plaintiff was deemed to have four (4) years of experience within its District.

20. In September 2019, Defendant RCSD retroactively paid Plaintiff a sum of money to address a discrepancy in his pay from January 2019 through September 2019, and then adjusted his salary moving forward.

21. Upon information and belief, this September 2019 adjustment was to address Plaintiff having received his Master's +30 in December 2018, which was to include a increase in pay pursuant Defendant RCSD's Salary Guide for Teachers.

22. Upon information and belief, Defendant RCSD continues to pay Plaintiff as a Master's +30 (Class 7) at a Step equal to the presumption that as of the 2010-2011 school year he was a "Step 0" (i.e. for the 2019-2020 school year Plaintiff was paid as a "Step 9").

**FOR A FIRST CAUSE OF ACTION
AGAINST THE DEFENDANT RCSD
(Violation of the S.C. Payment of Wages Act; S.C. Code Ann. § 41-1-10 *et seq.*)**

23. Plaintiff realleges the paragraphs herein as if set forth verbatim, where not inconsistent herewith.

24. Plaintiff has been underpaid and continues to be underpaid wages due and owed to him in accordance with the written notice from Defendant RCSD provided to Plaintiff annually that he would be paid pursuant RCSD's salary schedule based upon his years of experience.

25. This disparity has happened from August 2010 to the present despite Plaintiff's having tried on several occasions to have the disparity cured.

26. Moreover, the Defendant is/was fully aware of the pay disparity as of at least August 2019 when Defendant SCDE took initiative to finally address the discrepancy in Plaintiff's years of experience.

27. Plaintiff is due and owed the difference in wages from what he received as compare to what he *should* have received had Defendant RCSD properly calculated his years of experience and educational supplement.

28. Because Defendant RCSD only publishes the current year Salary Guide for Teachers, Plaintiff is unable to accurately calculate the discrepancy in pay from year to year, and requests an accounting to determine the actual amount Plaintiff's pay has been shorted annually.

29. Defendant RCSD is liable to the Plaintiff for all past, present, and continuing otherwise due to Plaintiff for the work he completed in accordance with his employment as well as the pay structure applicable to him. Plaintiff further seeks treble damages for the willful withholding of the payment of these wages as well as attorney's fees and costs associated with this action.

**FOR A SECOND AND SEPARATE CAUSE OF ACTION
AGAINST THE DEFENDANT RCSD
(Breach of Contract)**

30. Plaintiff realleges the paragraphs herein as if set forth verbatim, where not inconsistent herewith.

31. Annually, Defendant RCSD required Plaintiff to execute an employment contract to accept his teaching position with RCSD.

32. Notably, Defendant RCSD asserts on the face of the contract that "THIS IS NOT A CONTRACT" but the cover letter accompanying the same specifically denotes that Plaintiff must "return one contract (letter of agreement) to our office within ten days of the date on the contract (letter of agreement).

33. In pertinent part, the annual contract(s) provides that Plaintiff will be paid in accordance with the teacher salary schedule that Defendant RCSD releases annually.

34. Defendant RCSD is in breach of the employment contract as it has failed to properly pay Plaintiff pursuant the Salary Guide for Teachers based upon his years of experience and educational supplements, respectively.

35. Plaintiff has sustained damages as a result of Defendant RCSD's failure to properly pay Plaintiff in accordance with the contract.

36. Because Defendant RCSD only publishes the current year Salary Guide for Teachers, Plaintiff is unable to accurately calculate the discrepancy in pay from year to year, and requests an accounting to determine the actual amount Plaintiff's pay has been shorted annually.

37. Defendant RCSD is liable to the Plaintiff for all past, present, and continuing otherwise due to Plaintiff for the work he completed in accordance with his employment contract as well as the pay structure applicable to him.

**FOR A THIRD AND SEPARATE CAUSE OF ACTION
AGAINST THE DEFENDANT RCSD
(Unjust Enrichment)**

38. Plaintiff realleges the paragraphs herein as if set forth verbatim, where not inconsistent herewith.

39. Annually, Plaintiff receives/received notice from Defendant RCSD that his pay will be provided in accordance with RCSD's Salary Guide for Teachers.

40. Additionally, upon his hire in 2010, Plaintiff met with Defendant RCSD human resources about his concern that RCSD was improperly calculating his years of experience and disparately paying him in accordance with the salary guide.

41. Despite his raising concern, Defendant reiterated that it would not adjust Plaintiff's years of service to include his time at LCSD and that he was going to be paid beginning in 2010 as if he had zero (0) years of experience.

42. Plaintiff relied upon Defendant RCSD's assertion(s) as it was the hiring District and Plaintiff's current employer.

43. Plaintiff has sustained damages as a result of Defendant RCSD's promise that it was properly paying him in accordance with the salary guide as it had in fact failed to properly calculate Plaintiff's years of experience and educational supplement, respectively.

44. Moreover, because of Defendant's failure, it has received the benefit of a teacher with four (4) more years of experience than what it was paying under the salary guide.

45. Because Defendant RCSD only publishes the current year Salary Guide for Teachers, Plaintiff is unable to accurately calculate the discrepancy in pay from year to year, and requests an accounting to determine the actual amount Plaintiff's pay has been shorted annually.

46. Defendant RCSD is liable to the Plaintiff for all past, present, and continuing otherwise due to Plaintiff for the work he completed in accordance with Defendant RCSD's promise to accurately pay him pursuant to the salary guide based upon his years of experience and educational supplement.

**FOR A FOURTH AND SEPARATE CAUSE OF ACTION
AGAINST THE DEFENDANT RCSD
(Negligence)**

47. Plaintiff realleges the paragraphs herein as if set forth verbatim, where not inconsistent herewith.

48. Defendant RCSD, as Plaintiff's employer, created a duty upon itself upon Plaintiff approaching RCSD human resources and questioning the disparity in his years of experience, to which it agreed to investigate.

49. Defendant RCSD breached its duty by failing to actually investigate Plaintiff's prior employment at LCSD and whether such years should count toward his years of experience upon his hire at RCSD.

50. Defendant RCSD was further negligent in failing to properly advise Plaintiff of S.C. Code Regulation § 43-57.2 as well as his purported responsibility to ensure that Defendant SCDE was properly documenting his years of experience.

51. As a direct and proximate result of the negligence on the part of Defendant RCSD, Plaintiff is entitled to an award in an amount equal to the sum of his actual damages.

**FOR A FIFTH AND SEPARATE CAUSE OF ACTION
AGAINST THE DEFENDANT SCDE
(Negligence)**

52. Plaintiff realleges the paragraphs herein as if set forth verbatim, where not inconsistent herewith.

53. Defendant SCDE, as the state agency tasked over public education in South Carolina, has a duty to maintain and accurately report South Carolina teacher's credentials, including, but not limited to, a teacher's applicable years of experience.

54. Defendant SCDE breached its duty by failing to properly document and/or update Plaintiff's years of experience being reported to include his years of service at LCSD.

55. Defendant SCED was further negligent, upon information and belief, by failing to update Plaintiff's years of experience even after being contacted by Defendant RCSD and/or LCSD regarding the same.

56. Defendant SCDE was further negligent in failing to properly advise Plaintiff and/or Defendant RCSD as to the applicability of S.C. Code Regulation § 43-57.2.

57. Defendant SCDE was fully aware of its breach as it ultimately corrected the same, but not until in or around August 2019, nearly nine (9) years later.

58. As a direct and proximate result of the negligence on the part of Defendant SCDE, Plaintiff is entitled to an award in an amount equal to the sum of his actual damages.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment against the Defendants RCSD and SCDE for all damages, including treble damages, caused by the actions herein alleged to be determined and awarded reasonable by a jury. Plaintiff also prays for pre-judgment interest, for attorney's fees and costs, where applicable, and for any such other and further relief as this Court may deem just and proper.

CROMER BABB PORTER & HICKS, LLC

BY: s/ Ryan K. Hicks
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Attorneys for Plaintiff

August 3, 2020
Columbia, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
IN THE FIFTH JUDICIAL CIRCUIT
CASE NO. 2020-CP-40-3674

Ammon L. “Treigh” Sullivan,

Plaintiff,

v.

Richland County School District One and South
Carolina Department of Education,

Defendants.

**MOTION FOR ENTRY OF
DEFAULT AGAINST DEFENDANT
SOUTH CAROLINA
DEPARTMENT OF EDUCATION**

TO: DEFENDANTS ABOVE-NAMED:

Plaintiff, Ammon L. “Treigh” Sullivan (hereinafter “Plaintiff”), by and through his undersigned counsel, pursuant to Rule 55 of the South Carolina Rules of Civil Procedure, hereby moves this Court for the entry of an order holding Defendant South Carolina Department of Education in default and granting default judgment as to Plaintiff’s claims against said Defendant. In support of this motion Plaintiff would show as follows:

1. A Complaint in this matter was electronically filed with the Court of Common Pleas, Richland County, State of South Carolina on August 3, 2020, at or around 4:10 p.m.

2. Pursuant to Rules 4(d)(4), 4(d)(5), and 4(d)(8) of the South Carolina Rules of Civil Procedure, service was perfected on Defendant South Carolina Department of Education on August 17, 2020 at 9:43 a.m. Proof of service was electronically filed with the Court on August 20, 2020, including a copy of the Affidavit of Service of Catherine Young.

3. The Attorney General was also served by Certified Mail/Return Receipt Requested on August 7, 2020, as required by the South Carolina Rules of Civil Procedure. Proof of service was electronically filed with the Court on August 20, 2020, including a copy of the signed Certified Mail, Return Receipt slip.

4. No answer or responsive pleading was filed by Defendant South Carolina Department of Education, and Plaintiff's counsel has not received a request – nor provided – an extension for Defendant to otherwise plead as indicated by the Affidavit of Default filed contemporaneously herewith.

4. As more than thirty (30) days have passed since service of Plaintiff's Summons and Complaint, Defendant is now in default pursuant to Rules 12(a) and 55, SCRCPP.

5. Plaintiff seeks the following judgment against Defendant South Carolina Department of Education: damages for past, present and future lost wages; special damages; awarding costs, expenses, reasonable attorney's fees, interest and disbursement of this action; and further relief as this Court may deem appropriate.

6. The Clerk of Court shall enter default pursuant Rule 55(a), SCRCPP.

7. A hearing on damages is required under Rule 55, SCRCPP, as it is necessary to determine the amount of damages.

Based on the foregoing, Plaintiff respectfully requests that the Clerk of Court enter the Default of Defendant South Carolina Department of Education in this matter.

[Signature Block on Next Page]

Respectfully Submitted,

CROMER BABB PORTER & HICKS, LLC

BY: s/Ryan K. Hicks

Ryan K. Hicks (#100941)
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Columbia, South Carolina 29211
Phone 803-799-9530
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Attorneys for Plaintiff

October 26, 2020
Columbia, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
IN THE FIFTH JUDICIAL CIRCUIT
CASE NO. 2020-CP-40-3674

Ammon L. "Treigh" Sullivan,
Plaintiff,

v.

Richland County School District One and South
Carolina Department of Education,
Defendants.

AFFIDAVIT OF DEFAULT

1. My name is Ryan K. Hicks, and I am a resident of Lexington County, South Carolina.
2. I am currently employed as an attorney with Cromer Babb Porter & Hicks, LLC, in Columbia, South Carolina.
3. I am licensed to practice law in the State of South Carolina.
4. My law firm has previously been retained to represent the Plaintiff, Ammon L. "Treigh" Sullivan, in the above-captioned matter.
5. I electronically filed a Summons and Complaint on behalf of Mr. Sullivan with the Court of Common Pleas, Richland County, South Carolina on August 3, 2020.
6. On August 17, 2020, my office had the Defendant South Carolina Department of Education personally served by Palmetto Legal Gophers, LLC. Henry Gunter, Deputy General Counsel authorized to accept service on behalf of Defendant, and an Affidavit of Service was filed with the Court on August 20, 2020.

7. On August 7, 2020, my office further placed a copy of the Summons and Complaint, via First Class Mail, Certified Mail, return receipt requested, postage prepaid into the mail for service to:

Hon. Alan Wilson
SC Attorney General
P.O. Box 11549
Columbia, SC 29211

8. Proof of Service of the Attorney General, including copies of the signed Certified mail, Return Receipt slip was filed with the Court on August 20, 2020.

9. I have not received a request for an extension of time from either Defendant South Carolina Department of Education and/or its representative in this matter.

10. I have not received a copy of a responsive pleading filed by either Defendant South Carolina Department of Education and/or its representative in this matter.

11. More than thirty (30) days have passed within which Defendant may file a responsive pleading as set forth in Rule 12(a) of the South Carolina Rules of Civil Procedure.

12. Further Affiant sayeth not.



RYAN K. HICKS

Sword to and subscribed before me

This the 26 day of October 2020

Mrs W. Ray
Notary Public for South Carolina

My Commission Expires: 9/04/29

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	
 Ammon L. "Treigh" Sullivan,	)	
	)	Civil Action No. 2020-CP-40-3674
Plaintiff,	)	
	)	
v.	)	NOTICE OF MOTION AND
	)	MOTION TO SET ASIDE ENTRY OF
Richland County School District One and	)	DEFAULT AND MOTION TO DISMISS
South Carolina Department of Education,	)	
	)	
Defendants.	)	
_____	)	

TO: RYAN K. HICKS, COUNSEL FOR PLAINTIFF

YOU WILL PLEASE TAKE NOTICE that the undersigned counsel for the Defendant South Carolina Department of Education ("SCDE") will move before the Presiding Judge of the Fifth Judicial Circuit at the Richland County Judicial Center, Columbia, South Carolina, at such time and place as may be set by the Court, pursuant to Rule 55(c) and Rule 12(b)(6), SCRCPP, for an order setting aside the entry of default and dismissing the Plaintiff's Complaint as against the Defendant SCDE for failure to state a claim upon which relief may be granted.

This Defendant SCDE's motion is based on the following grounds:

1. A judgment by default may not be entered against the Defendant SCDE pursuant to Rule 55(e), SCRCPP. Rule 55(e) provides that "[n]o judgment by default shall be entered against the State of South Carolina or an officer or agency thereof ... unless the claimant establishes his claim to relief by evidence satisfactory to the Court." Rule 55(e) embodies the principle that it is contrary to public policy for a governmental entity to be held in default unless liability of the governmental may be proven on the merits. *See, Compania Interamericana Export-Import, S.A. v. Compania*

Dominicana de Aviacion, 88 F.3d 948, 951 (11th Cir. 1996) (“Rule 55(e) rests on the rationale that the taxpayers at large should not be subjected to the cost of a judgment entered as a penalty against a government official which comes as a windfall to the individual litigant”). As discussed below and further demonstrated by the Affidavit of Mary Hipp, the Plaintiff is unable to prevent evidence to satisfy the exception in Rule 55(e).

2. The Plaintiff's Complaint fails to state a cause of action upon which relief may be granted. South Carolina law provides that "if a complaint fails to state a cause of action, then rendering of a default judgment thereon is without authority of law and therefore reversible error." *Masters v. Rodgers Development Group*, 283 S.C. 251, 321 S.E.2d 194, 196 (1984). "An objection that the complaint does not state facts sufficient to constitute a cause of action is not waived by a default." *Id.* See also, *Mutual Savings & Loan Assn. v. McKenzie*, 274 S.C. 630, 266 S.E.2d 423 (1980).

In his Complaint, the Plaintiff alleges a negligence cause of action against the Defendant SCDE. The Plaintiff alleges that the SCDE breached its “duty to maintain and accurately report South Carolina teacher’s credentials, including, but not limited to, a teacher’s applicable years of experience.” See, Complaint, ¶ 53. The Plaintiff alleges that this duty of care arises by regulation, specifically S.C. Code Regs. § 43-57.2, which states that an educator may receive “experience credit” by “verify[ing] full-time or half-time employment” in various categories of educational positions. See, Complaint, ¶ 18. Moreover, S.C. Code Regs. § 43-57 provides that “[t]he State Department of Education shall maintain records indicating the work experience for which persons are entitled.” The regulations on which the Plaintiff bases the duty of care clearly give rise only to a “public duty,” and as a result, the Plaintiff has failed to state facts sufficient to constitute a cause of action. In other words, S.C. Code Regs. § 43-57 does not give rise to a private right of action based upon application of the public duty rule.

Importantly, the Supreme Court has recognized that "statutes which create or define the duties of a public office have the essential purpose of providing for the structure and operation of government or for securing the general welfare and safety of the public. Such statutes create no duty of care towards individual members of the general public." *Arthurs v. Aiken County*, 346 S.C. 97, 551 S.E.2d 579, 582 (2001). *See also, Platt v. CSX Transportation, Inc.*, 379 S.C. 249, 665 S.E.2d 631 (Ct. App. 2008). A plaintiff, therefore, has no right of action against a public officer or entity for breach of a duty owing to the public only, even though such plaintiff may have been injured by the breach of that public duty. *Summers v. Harrison Const.*, 298 S.C. 451, 381 S.E.2d 493 (Ct. App. 1989). "The public duty rule is a negative defense which denies an essential element of the plaintiff's cause of action: the existence of a duty of care to the individual plaintiff." *Arthurs*, 551 S.E.2d at 582. In other words, the public duty rule "is a rule of statutory construction, that is, a means of determining whether the legislative body that enacted the statute or ordinance intended to create a private cause of action for its breach." *Id.*

Additionally, even if S.C. Code Regs. § 43-57 gives rise to a private right of action against the Defendant SCDE, which is denied, the Plaintiff still cannot recover for simple negligence as has been alleged. In other words, even if the Plaintiff's allegations of negligence are deemed true, that does not allow for the Plaintiff to state a claim and recover damages, which thereby defeats the request for a default judgment. As discussed, the Plaintiff alleges that the Defendant SCDE is liable for failing to document four years of "educator experience credit" for the Plaintiff from 2006 to 2010 as part of the educator certification process. That claim clearly falls within the scope of S.C. Code Ann. § 15-78-60(12), which exempts from liability "licensing powers or functions including, but not limited to, the ... failure or refusal to issue ... any ... certificate, approval, ... or similar authority except when the power or function is exercised in a grossly negligent manner." Thus, as a matter of law, the SCDE can only be liable for gross negligence,

but the Plaintiff has sued only for simple negligence. On this additional basis, the Plaintiff has failed to allege sufficient facts to constitute a viable cause of action, and for that reason, no default judgment may be entered on that negligence claim.

3. The Defendant SCDE has shown “good cause” as required under Rule 55(c), SCRCP, to set aside an entry of default. Rule 55(c) is “liberally construed to promote justice and dispose of cases on the merits.” *Dixon v. Besco Engineering, Inc.*, 320 S.C. 174, 463 S.E.2d 636, 638 (Ct. App. 1995). In deciding whether to set aside an entry of default, the court should consider the following factors: (1) the timing of the motion for relief; (2) whether the defendant has a meritorious defense; and (3) the degree of prejudice to the plaintiff if relief is granted. *Wham v. Shearson Lehman Bros., Inc.*, 298 S.C. 462, 381 S.E.2d 499, 501-502 (Ct. App. 1989).

An assessment of the three *Wham* factors demonstrates that the Defendant SCDE has shown “good cause.” The Order of Entry of Default was filed on October 29, 2020. According to the Affidavit of Cathy L. Hazelwood filed herewith, the Defendant SCDE learned of the default on that same date and immediately forwarded the pleadings to the undersigned counsel. This Motion to Set Aside Entry of Default was filed within two business days.

The Defendant SCDE has multiple meritorious defenses, two of which are already addressed at length above. In addition, as outlined in the Affidavit of Mary Hipp filed herewith, the Defendant SCDE never received an Experience Verification Form from the Plaintiff or from Lexington County School District One until June 2019, and SCDE promptly acted on that information and the experience credit was added to the Plaintiff’s certificate at that time. No such information was received prior to June 2019, and at no time did the Plaintiff request a review by SCDE of the educator experience credit on his certificate or challenge any absence of credit to SCDE. Thus, the evidence does not support a finding that SCDE was negligent in failing to document or maintain records of the educator experience credit which had never been

submitted or verified by the Plaintiff or his prior employer. In fact, the evidence shows instead that the Plaintiff was negligent in failing to take care of his own affairs and in failing to make certain that an Experience Verification Form was submitted from Lexington County School District One so as to properly verify his prior employment. As explained in the Hipp Affidavit, in 2010, the Plaintiff submitted a PACE application on which he listed “none” under the section of Educator Experience. At that time, he did not ensure that an Experience Verification Form was submitted by his prior employer to the SCDE so that he received the proper amount of educator experience credit.

In addition, the allegations in the Complaint as well as the Hipp Affidavit also show that the SCDE has a meritorious statute of limitations defense. The Plaintiff is complaining of alleged omissions occurring more than two years prior to the filing of his Complaint. In fact, the discovery rule will be inapplicable because the Plaintiff alleges in his Complaint that he knew he was not getting sufficient educator experience credit in 2010, but he took no action to challenge that or seek a correction at that time. *See*, Complaint, ¶¶ 8-11.

As for the third *Wham* factor, there is no legal prejudice to the Plaintiff by setting aside the entry of default. The case is still in its early stages. Upon information and belief, no substantial discovery has yet to take place in the case. Moreover, it is clear from the Complaint that the Defendant Richland County School District One is the primary or “target” defendant. Additionally, even if the entry of default is not set aside, the application of the *Frow* doctrine will not allow the entry of a default judgment against the SCDE until the case is fully adjudicated against the Defendant School District. *See*, *Frow v. De La Vega*, 82 U.S. (15 Wall.) 552 (1872).

Finally, as outlined in detail in the Hazelwood Affidavit, the failure of the Defendant SCDE to timely answer was inadvertent and resulted from the extraordinary circumstances encountered by SCDE personnel primarily due to the ongoing COVID-19 pandemic.

Additionally, the pleadings were timely forwarded to the SCDE's insurer after service, but then were returned after coverage was unexpectedly denied, at which point outside counsel had to be retained through procedures required by the Attorney General's Office and errors were inadvertently made that resulted in a timely answer not being filed. In short, these unusual factual circumstances also weigh heavily in favor of a finding of "good cause."

This motion is based upon the pleadings, motions, and orders previously filed in this case; the Affidavit of Cathy Hazelwood; the Affidavit of Mary Hipp; a supporting memorandum of law to be filed; and such other matters as may be presented to the Court at or before the time of the hearing.

In accordance with Rule 11, SCRCP, the undersigned counsel has attempted to consult with Plaintiff's counsel prior to the filing of this motion but received no response.

LINDEMANN & DAVIS, P.A.

BY: s/ Andrew F. Lindemann
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 Columbia, South Carolina 29260
 (803) 881-8920
 Email: andrew@ldlawsc.com

Counsel for Defendant
South Carolina Department of Education

November 2, 2020

STATE OF SOUTH CAROLINA)
)
 COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS

Ammon L. "Treigh" Sullivan,)

Plaintiff,)

Civil Action No. 2020-CP-40-3674

v.)

AFFIDAVIT OF MARY HIPPI

Richland County School District One and)
 South Carolina Department of Education,)

Defendants.)
 _____)

PERSONALLY APPEARED BEFORE ME, MARY HIPPI, who first being duly sworn,
 deposes and states as follows:

1. I am employed by the South Carolina Department of Education ("SCDE") as the Director of the Office of Educator Services. The Office of Educator Services handles matters related to educator certification.

2. I am familiar with the educator certification for the Plaintiff Ammon L. Sullivan.

3. Mr. Sullivan currently holds a South Carolina professional educator certificate in the fields of Business/Marketing/Computer Technology and Physical Education. The certificate is valid through June 30, 2023. The current certificate reflects a class level of Master's Plus 30 and 14 years of educator experience.

4. An educator certificate itself lists both the class level and years of experience on file. An educator can view this information at any time through the View Certification Status link on the certification portion of the SCDE website. All educator experience must be submitted on

an Experience Verification Form completed by the employer. Experience credit that meets State Board of Education regulations and guidelines can then be added to the educator certificate for compensation purposes. It is the educator's responsibility to provide verification of educator experience to obtain credit.

5. Mr. Sullivan's certification file goes back to 2006 when he first applied to participate in the Program of Alternative Certification for Educators (PACE). He did not actually begin PACE until 2010, when he began employment in Richland County School District One.

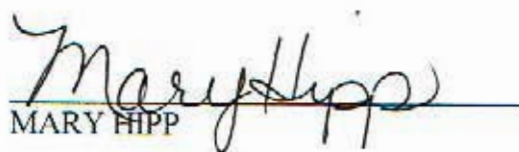
6. When Mr. Sullivan submitted a new application for PACE in 2010, he listed "none" under the section of Educator Experience. In the application Section V Employment Record (other than education), Mr. Sullivan listed employment as an ISS Monitor at Pleasant Hill Middle School in Lexington, SC from August 2006 to the date of the application. The application included this text underneath Section V: "Note: Guidelines for work experience that will count towards educator experience can be found at www.scteachers.org/Cert/index.cfm. Additional work experience is required for PACE. The required form for PACE may be found at <http://www.scteachers.org/cert/certpdf/pacewkexp.pdf>." Thus, the application form included text and a link to information about acceptable educator experience credit. Mr. Sullivan did not submit an Experience Verification form completed by the employer with that application.

7. Although many documents have been submitted to the SCDE by and on the behalf of Mr. Sullivan since 2006, the first request to add educator experience for the employment as an ISS Monitor was submitted by Lexington County School District One and received on June 26, 2019. Our internal review committee considered the request on August 28, 2019, to verify that the position of ISS Monitor met experience guidelines. The committee determined the employment

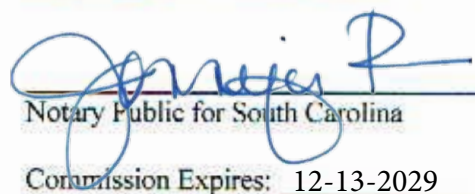
did met guidelines, and the experience credit was added to Mr. Sullivan's certificate the following day.

8. There is no indication in the certification record that Mr. Sullivan requested a review of the educator experience credit on file prior to Lexington County School District One submitting the Experience Verification form in June 2019.

FURTHER AFFIANT SAYETH NOT.


MARY HIPPI

Sworn to and subscribed before me this
the 2nd day of November 2020.

 (SEAL)
Notary Public for South Carolina
Commission Expires: 12-13-2029

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS

Ammon L. "Treigh" Sullivan,)
Plaintiff,)

Civil Action No. 2020-CP-40-3674

v.)

AFFIDAVIT OF CATHY L. HAZELWOOD

Richland County School District One and)
South Carolina Department of Education,)
Defendants.)

PERSONALLY APPEARED BEFORE ME, CATHY L. HAZELWOOD, who first being
duly sworn, deposes and states as follows:

1. I am employed by the South Carolina Department of Education ("SCDE") as the
Deputy Superintendent of Legal Affairs.

2. On August 17, 2020, the SCDE was served with a Summons and Complaint in this
case.

3. My legal assistant opened a file internally. Because the Complaint included a
negligence claim against the SCDE, it was sent to the South Carolina Insurance Reserve Fund for
a defense, which is our normal procedure. I had no expectation that coverage would be denied. I
had therefore expected that a defense attorney would be appointed by the Insurance Reserve Fund
and the case would be defended like other tort cases in which the SCDE is named.

4. On September 15, 2020, I received a letter from the Insurance Reserve Fund
denying coverage. I did opt to use the prepaid legal defense cost coverage as offered by the
Insurance Reserve Fund, but that requires a state agency to retain its own outside counsel, and the

Insurance Reserve Fund will later reimburse the agency for defense costs after they are expended. On that same date, I requested my legal assistant to prepare an Attorney General Request for Authorization to Employ Associate Counsel (AG 1 Form) which was needed in order to obtain permission from the Attorney General's Office to retain outside counsel. The form was approved internally and forwarded to the Attorney General's Office on September 17, 2020.

5. In error, I did not recognize that the deadline for a responsive pleading was September 16, 2020, and I regrettably did not take the necessary action to obtain an extension of time from Plaintiff's counsel.

6. The AG 1 Form was received back from the Attorney General's Office with approvals on October 1, 2020. However, as a result of oversight and miscommunication internally, the Summons and Complaint was not forwarded to outside counsel until after an email was received from Plaintiff's counsel on October 29, 2020, with a copy of the Order of Entry of Default. I immediately recognized the error and assigned the case to outside counsel that day.

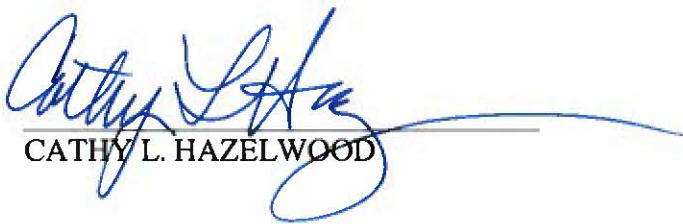


7. During this period of time -- from August through October 2020, the Division for Legal Affairs has been operating under less than normal or ideal circumstances due to the COVID-19 pandemic and the increased workload and stress that the pandemic has brought. Both myself and my legal assistant have been working primarily remotely, which has not allowed for the same level of communication and interaction on administrative matters that we are accustomed to. That has contributed, in my opinion, to the error that occurred with the handling of the Summons and Complaint in this case. In addition, the implementation of the CARES Act and developing protocols for and approving the re-opening of schools in August and September, among many other issues, have resulted in our focus being on these novel and unusual challenges rather than the typical administrative matters that are more routine during pre-pandemic times. These

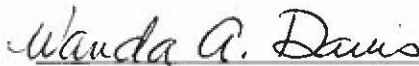
challenges have also contributed, in my opinion, to the error that occurred with the handling of the Summons and Complaint in this case.

8. As soon as the error was discovered, I acted promptly to get the case assigned to outside counsel, namely Andrew Lindemann, and have directed that he promptly communicate with Plaintiff's counsel and take action as necessary to request the Court to set aside the entry of default. The failure to timely request an extension to answer or to get the Complaint answered was not intentional or deliberate and is very much out of character for the SCDE and myself.

FURTHER AFFIANT SAYETH NOT.


CATHY L. HAZELWOOD

Sworn to and subscribed before me this
the 24 day of November 2020.

 (SEAL)
Notary Public for South Carolina
Commission Expires: 2/23/2026



STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
IN THE FIFTH JUDICIAL CIRCUIT
CASE NO. 2020-CP-40-3674

Ammon L. “Treigh” Sullivan,

Plaintiff,

v.

Richland County School District One and South
Carolina Department of Education,

Defendants.

**PLAINTIFF’S MEMORANDUM IN OPPOSITION TO DEFENDANT SOUTH
CAROLINA DEPARTMENT OF EDUCATION’S NOTICE OF MOTION AND
MOTION TO SET ASIDE ENTRY OF DEFAULT**

Plaintiff, Ammon L. “Treigh” Sullivan (hereinafter “Plaintiff”), by and through his undersigned counsel, respectfully requests that this Honorable Court deny Defendant South Carolina Department of Education’s Motion to Set Aside Entry of Default. In support thereof, Plaintiff would state the following:

PROCEDURAL BACKGROUND

Plaintiff filed his Complaint in this matter with the Court of Common Pleas, Richland County, State of South Carolina on August 3, 2020. Pursuant to Rules 4(d)(4), 4(d)(5), and 4(d)(8) of the South Carolina Rules of Civil Procedure, service was perfected on Defendant South Carolina Department of Education on August 17, 2020 at 9:43 a.m. Proof of service was electronically filed with the Court on August 20, 2020, including a copy of the Affidavit of Service of Catherine Young. Additionally, the Attorney General was also served by Certified Mail/Return Receipt Requested on August 7, 2020, as required by the South Carolina Rules of Civil Procedure. Proof of service was

electronically filed with the Court on August 20, 2020, including a copy of the signed Certified Mail, Return Receipt slip.

Following service of the Complaint, no responsive pleading was filed by Defendant nor did Plaintiff's counsel receive a request for an extension to allow Defendant to otherwise plead. After more than thirty (30) days passed since serving of Plaintiff's Summons and Complaint, Plaintiff filed a Motion for Entry of Default against Defendant pursuant to Rule 55, SCRPC, on October 26, 2020.¹ The Clerk of Court entered an Order of Default Against Defendant South Carolina Department of Education on October 29, 2020.

STANDARD OF REVIEW

Pursuant Rule 55(a), SCRPC, "When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend... the clerk shall enter his default upon the calendar." Rule 55(a), South Carolina Rules of Civil Procedure.

Rule 55(c) permits a party to move to set aside the entry of default. The standard for granting relief from an entry of default under Rule 55(c) is "good cause." *Sundown Operating Co. v. Intedge Indus., Inc.*, 383 S.C. 601, 607, 681 S.E.2d 885, 888 (2009) (quoting Rule 55(c), SCRPC). The "good cause" standard "requires a party seeking relief from an entry of default under Rule 55(c) to provide an explanation for the default and give reasons why vacation of the default entry would serve the interests of justice." *Sundown Operating Co.*, 383 S.C. at 608, 681 S.E.2d at 888. Whether good cause is established is within the sound discretion of the court. *Williams v. Vanvolkenburg*, 312 S.C. 373, 440 S.E.2d 408, 409 (Ct. App. 1994). "Once a party has put forth a satisfactory explanation for the default, the trial court must also consider: (1) the timing of the motion for relief; (2) whether the defendant has a meritorious defense; and (3) the degree of prejudice to the plaintiff if relief is

¹ Defendant actually had approximately seventy (70) days within which it *could* have filed a responsive pleading.

granted.” *Id.* at 607-08, 681 S.E.2d at 888 (citing *Wham v. Shearson Lehman Bros., Inc.*, 298 S.C. 462, 465, 381 S.E.2d499, 501-02 (Ct. App. 1989)). The *Wham* factors are considered only if a satisfactory explanation for the default has been shown.

ARGUMENT

A. Defendant has failed to establish “good cause”

In seeking to set aside an Entry of Default, a Defendant must first establish “good cause.” *Wilder v. Blue Ribbon Taxicab Corp.*, 396 S.C. 139, 719 S.E.2d 703, 706 (Ct. App. 2011). “This standard requires a party seeking relief from an entry of default...to provide an explanation for the default and give reasons why vacation of the default entry would serve the interests of justice.” *Id.* Only after the party has set forth a reasonable explanation should the Court consider the *Wham* factors. *Id.* (emphasis added).

In its motion, Defendant ostensibly argues that “good cause” exists because Rule 55(e), SCRCP, stands for the proposition that Entry of Default against the State is discouraged. [Def. motion, pp. 1-2]. Defendant then immediately redirects its argument to the *Wham* factors. Defendant’s argument misses the point and more importantly fails to establish “good cause.”

Notably, in its motion and supporting Affidavit, Defendant admits: (1) the Summons and Complaint was properly served; (2) the Complaint was sent to the South Carolina Insurance Reserve Fund (“IRF”) as is normal procedure; (3) that on September 15, 2020, Defendant’s Deputy Superintendent of Legal Affairs received notice that the IRF was denying coverage²; (4) that approval to employ associate counsel was approved and forwarded to the Attorney General on September 17, 2020; (5) that Defendant “regrettably did not take the necessary action to obtain an extension of time from Plaintiff’s counsel; (6) “as a result of oversight and miscommunication internally, the Summons and Complaint was not forwarded to outside counsel until after an email

² This response by the IRF was still within Defendant’s thirty (30) days to answer or otherwise plead.

was received from Plaintiff's Counsel on October 29, 2020, with a copy of the Order of Entry of Default"; and (7) Defendant did not file its Motion to Set Aside until November 2, 2020. [Affidavit of Cathy L. Hazelwood, pp. 1-2].

In brief, Defendant has failed to identify any potential "good cause" outside of its bald reliance on Rule 55(e), SCRCP.

"In South Carolina, negligence on the part of an attorney is imputable to the client and will not be the basis of finding good cause to set aside entry of default." *Limehouse v. Hulsey*, 397 S.C. 49, 723 S.E.2d 211, 223 (Ct. App. 2011). In *Campbell*, the City of North Charleston move to set aside an entry of default arguing its "failure to forward an e-mail to its risk manager was an administrative 'mistake from inadvertence,' which satisfied the 'mere' good case standard." *Campbell v. City of North Charleston*, 848 S.E.2d 788 (Ct. App. 2020). The City further argued that it had satisfied the *Wham* factors, and further that it was "good public policy for the State of South Carolina to be heard on the merits." *Id.* The Court held that the circuit court did not abuse its discretion by finding the City's failure to forward an internal e-mail was not good cause warranting the court to set aside the entry of default. *Id.* (citing *Roche* wherein the Supreme Court held that failure to forward a summons and complaint after receiving it did not constitute inadvertence or excusable neglect. *Roche v. Young Bros. of Florence*, 318 S.C. 207, 210-12 (1995)). Moreover, in *Campbell*, as in the instant matter, it was not disputed that the complaint was properly served and that it failed to forward the complaint, but only that the failure was "out of character." *Id.*; see also Affidavit of Cathy L. Hazelwood, ¶ 8. Defendant's attempts to rely upon the COVID-19 pandemic are even less persuasive as it was admittedly able to process the Summons and Complaint in a timely manner in order to have it submitted to the IRF on sometime prior to September 15, 2020; it is nonsensical to think that the pandemic did not interfere with its submission to the IRF seeking coverage but later interfered with its ability to forward to outside counsel once it was returned and admittedly received.

Notwithstanding the persuasiveness of *Campbell* based upon both its factual similarity as well as it being a 2020 opinion by the South Carolina Court of Appeals, Defendant cites to *Compania* to supports its conclusive argument under Rule 55(e), SCRCF. *Compania Interamericana Export-Import, S.A. v. Compania Dominicana de Aviacion*, 88 F.3d 948, 951 (11th Cir. 1996). As a principal matter, *Compania* is a 2011 decision from the Eleventh Circuit Court of Appeals and not the Fourth Circuit. Moreover, *Compania* does not substantively address the proposition for which Defendant suggests but only likens 28 U.S.C. § 1608(e), which was at issue in *Compania*, to Fed.R.Civ.P. 55(e).³ Defendant also ignores that to the extent *Compania* is remotely relevant, the Court denied the motion to set aside the entry of default. Simply put, *Compania* is not controlling on this Court and reliance upon the same is an attempt by the Defendant to ‘pick and choose’ language from an opinion and have it misapplied out of context.⁴

B. Defendant’s citing to the *Wham* factors is moot⁵

Despite its failure to remotely set forth an explanation that would support good cause, Defendant nevertheless turns to the *Wham* factors. Because it has failed to articulate this condition precedent to the *Wham* factors, Defendant’s argument(s) should be ignored.

Turning to the first factor, Defendant filed its Motion to Set Aside an additional two days after it had been served, by Plaintiff’s Counsel, with the Entry of Default. [Def. motion, p. 4]. Notably, Defendant’s filing occurred approximately seventy (70) days after it had been served with the Summons and Complaint.

³ It is worth noting that there is no longer a Rule 55(e) in the Federal Rules of Civil Procedure. Ostensibly, to the extent even relevant, *Compania* would have to be referring to Rule 55(d), FRCP, which addresses default judgments against the United States.

⁴ Based upon a cursory review of Westlaw, Plaintiff’s undersigned counsel was unable to locate a South Carolina case that supports Defendant’s argument under Rule 55(e), including that such an explanation would be “good cause.”

⁵ Plaintiff would further cite the below as his response in opposition to Defendant’s motion to dismiss. Plaintiff maintains that because Defendant has failed to establish good cause Defendant’s motion to dismiss should be rendered moot.

Second, Defendant's Motion to Vacate, which it alternatively couches as a motion to dismiss, only generally identifies prospective meritorious defenses. Regarding the public duty rule, Defendant has failed to cite any law that supports its suggestion that S.C. Code Reg. § 43-57 "does not give rise to a private right of action based upon application of the public duty rule." [Def. motion, p. 2]. Indeed, as a State educator, Plaintiff falls squarely within the entitled persons the Regulation references and is not merely a member of the general public as suggested.⁶ Defendant's secondary argument that Plaintiff has only sued for simple negligence is rhetorical and does not constitute a meritorious defense as Defendant concedes that it can be sue for negligence. Lastly, Defendant's statute of limitations defense is both misguided and self-serving; curiously, Defendant's statute of limitation argument is the quintessential "have your cake and eat it to." Specifically, Defendant wants this Court to look past the civil rules and applicable case law to let it out from under the Default, but presumptively enforce a statute of limitations defense against Plaintiff.

Turning the prejudicial effect, it is without question that Plaintiff will be prejudiced should this Court set aside the Default. Plaintiff has done nothing but follow the applicable Court rules with respect to the filing and service of a Summons and Complaint. Moreover, Plaintiff gave Defendant, without even the request of an extension, approximately seventy (70) days to file an answer or responsive pleading – Defendant failed to do so. To now turn a blind-eye to the rules would do nothing more than bolster the State's ability to litigate cases at its convenience without consideration of other parties so involved.

⁶ Stated differently, the statute is not directed to the public at-large but only to recognized educators in South Carolina of whom it is required to maintain records.

CONCLUSION

Based on the foregoing, Plaintiff respectfully requests that this Court deny Defendant's Motion to Set Aside Entry of Default and Motion to Dismiss in this matter, and that a hearing to determine Plaintiff's damages be scheduled.

Respectfully Submitted,

CROMER BABB PORTER & HICKS, LLC

BY: s/Ryan K. Hicks
Ryan K. Hicks (#100941)
1418 Laurel Street, Suite A (29201)
Post Office Box 11675
Columbia, South Carolina 29211
Phone 803-799-9530
Fax 803-799-9533

Attorneys for Plaintiff

November 17, 2020
Columbia, South Carolina

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	
 Ammon L. "Treigh" Sullivan,	)	
	)	Civil Action No. 2020-CP-40-3674
Plaintiff,	)	
	)	
v.	)	NOTICE OF MOTION AND
	)	MOTION TO ALTER OR AMEND ORDER
Richland County School District One and	)	OR MOTION TO RECONSIDER
South Carolina Department of Education,	)	
	)	
Defendants.	)	
_____	)	

TO: THE HONORABLE L. CASEY MANNING
 RYAN K. HICKS, COUNSEL FOR PLAINTIFF

YOU WILL PLEASE TAKE NOTICE that the undersigned attorney for the Defendant South Carolina Department of Education ("SCDE") will move before the Honorable L. Casey Manning at such time and place as may be set by the Court, for an Order, pursuant to Rule 59(e), SCRCPP, altering, amending, and reconsidering the Order Denying Defendant South Carolina Department of Education's Motion to Set Aside Entry of Default and Motion to Dismiss filed on January 13, 2021.

The Defendant SCDE's counsel received written notice of entry of the Plaintiff's Order Denying Defendant South Carolina Department of Education's Motion to Set Aside Entry of Default and Motion to Dismiss on January 13, 2021.

The Defendant SCDE's motion is based on the following grounds:

In its Order Denying Defendant South Carolina Department of Education's Motion to Set Aside Entry of Default and Motion to Dismiss, the Court did not address the merits of any of the

arguments made by the Defendant SCDE in its Motion to Set Aside Entry of Default. The Defendant SCDE respectfully requests that the Court reconsider the following arguments and issue an order that addresses each specific basis for setting aside the entry of default rather than providing a summary denial that will not allow for appellate review.

The Defendant SCDE has presented three separate and independent bases for the setting aside of the entry of default. First, SCDE argues that the default should be set aside under Rule 55(e), SCRCPP, which is specifically applicable to the State and its agencies. Second, SCDE argues that the Plaintiff's allegations fail to state an actionable claim upon which a default judgment may be entered. Third, SCDE contends that it has shown "good cause" under Rule 55(c), SCRCPP. Each issue will be addressed in turn.

I. Rule 55(e)

The Defendant SCDE contends that a judgment by default may not be entered against the Defendant SCDE pursuant to Rule 55(e), SCRCPP. Rule 55(e) provides that "[n]o judgment by default shall be entered against the State of South Carolina or an officer or agency thereof ... unless the claimant establishes his claim to relief by evidence satisfactory to the Court." Rule 55(e), SCRCPP.

Rule 55(e) was adopted from the Federal Rules of Civil Procedure. There is no appellate opinion that applies Rule 55(e). In its recent decision in *Campbell v. City of North Charleston*, 431 S.C. 454, 848 S.E.2d 788 (Ct. App. 2020), the Court of Appeals did not directly address the application of Rule 55(e) because it was not an issue raised on appeal. However, the Court did note in the procedural history of the case that the Circuit Court had found Rule 55(e) to be inapplicable because the defendant was "not a state agency under Rule 55(e)." 848 S.E.2d at 791. *Campbell* is readily distinguishable because the defendant at issue in this case is a state agency.

Given the absence of governing law on a rule of civil procedure, the Supreme Court directs that courts seek guidance from case law interpreting and applying the equivalent federal rule. In *Gardner v. Newsome Chevrolet-Buick, Inc.*, 304 S.C. 328, 404 S.E.2d 200 (1991), the Supreme Court states: “Since our Rules of Procedure are based on the Federal Rules, where there is no South Carolina law, we look to the construction placed on the Federal Rules of Civil Procedure.” 404 S.E.2d at 201.

The federal equivalent rule is now codified as Rule 55(d), FRCP, although it was formerly Rule 55(e). Using essentially the same operative language of the state rule, the Federal rule states: “A default judgment may be entered against the United States, its officers, or its agencies only if the claimant establishes a claim or right to relief by evidence that satisfies the court.” Rule 55(d), FRCP. As the District Court in South Carolina has explained, “Rule 55(d) is intended to prevent the entry of default judgments against the United States for mere procedural missteps.” *Burr v. United States*, 2010 WL 11674099, *3 (D.S.C. 2010). The District Court cited favorably to *Sun v. United States*, 342 F.Supp.2d 1120 (N.D. Ga. 2004), which ruled that “entry of default judgment against the United States will not be based on a failure to file an answer or responsive pleading.” 342 F.Supp.2d at 1124. The District Court also cited to *Arevalo v. United States*, 2008 WL 3874795 (E.D. Pa. 2008), which ruled that Rule 55(d) “is intended to prevent entry of a default judgment against the United States for procedural flaws” and that “judgment cannot be entered against the government based solely on its failure to comply with civil rules.” 2008 WL 3874795, *6. See also, *Moore v. United Kingdom*, 384 F.3d 1079, 1090, n.16 (9th Cir. 2009) (noting that Rule 55(e) is “interpreted as requiring district courts to reach the merits of a plaintiff’s claim before entering a default judgment against the government”). Rule 55(d), as previously codified as Rule 55(e), embodies the principle that it is contrary to public policy for a governmental entity to be held in

default unless liability of the governmental may be proven on the merits. *See also, Compania Interamericana Export-Import, S.A. v. Compania Dominicana de Aviacion*, 88 F.3d 948, 951 (11th Cir. 1996) (“Rule 55(e) rests on the rationale that the taxpayers at large should not be subjected to the cost of a judgment entered as a penalty against a government official which comes as a windfall to the individual litigant”).

The Defendant SCDE submits that this federal case law interpreting the equivalent rule in the Federal Rules of Civil Procedure should be controlling. The Defendant SCDE has presented the affidavit of Cathy Hazelwood to explain that the failure to file a timely answer was not intentional but was an oversight or error that was brought on, at least in part, by the workload and new challenges that the SCDE was working through in re-opening schools during the COVID-19 pandemic. Moreover, SCDE has presented the affidavit of Mary Hipp, the Director of the Office of Educator Services, to demonstrate that the SCDE has numerous meritorious defenses. Hipp explains that her office maintains records of educator experience credit, but that “all educator experience must be submitted on an Experience Verification Form completed by the employer” and that “[i]t is the educator’s responsibility to provide verification of educator experience to obtain credit.” *See, Hipp Aff.*, ¶ 4. She further attests that with respect to the Plaintiff, “the first request to add educator experience for the employment as an ISS Monitor was submitted by Lexington County School District One and received on June 26, 2019, ... and the experience credit was added to Mr. Sullivan’s certificate the following day.” *See, Hipp Aff.*, ¶ 7. Hipp explained that “[t]here is not indication in the certification record that Mr. Sullivan requested a review of the educator experience credit on file prior to the Lexington County School District One submitting the Experience Verification form in June 2019.” *See, Hipp Aff.*, ¶ 8. Based on that testimony, there is ample evidence that the Defendant SCDE was not negligent as alleged.

In sum, this Court is respectfully requested on reconsideration to rule as a matter of law that Rule 55(e) is designed to prevent the entry of a default judgment against the State or its agencies for mere procedural errors such as the failure to timely file an answer. Moreover, a default judgment cannot be entered against the State or its agencies without a showing that the plaintiff will prevail on the merits. No such showing was made by the Plaintiff, nor does this Court's order include any such analysis. Given the record presented, a proper application of Rule 55(e) requires that this Court set aside the entry of default and allow the Defendant SCDE to file an Answer and for the parties to proceed on the merits.

II. No Claim Upon Which a Default Judgment May be Granted

As an alternative basis for setting aside the entry of default, the Defendant SCDE argued that the Plaintiff's Complaint fails to state a cause of action upon which relief may be granted against the Department. South Carolina law provides that "if a complaint fails to state a cause of action, then rendering of a default judgment thereon is without authority of law and therefore reversible error." *Masters v. Rodgers Development Group*, 283 S.C. 251, 321 S.E.2d 194, 196 (1984). "An objection that the complaint does not state facts sufficient to constitute a cause of action is not waived by a default." *Id.* See also, *Mutual Savings & Loan Assn. v. McKenzie*, 274 S.C. 630, 266 S.E.2d 423 (1980).

As discussed above, in his Complaint, the Plaintiff alleges only a negligence cause of action against the Defendant SCDE. The Plaintiff alleges that the SCDE breached its "duty to maintain and accurately report South Carolina teacher's credentials, including, but not limited to, a teacher's applicable years of experience." See, Complaint, ¶ 53. The Plaintiff alleges that this duty of care arises by regulation, specifically S.C. Code Regs. § 43-57.2, which states that an educator may receive "experience credit" by "verify[ing] full-time or half-time employment" in various categories

of educational positions. See, Complaint, ¶ 18. Moreover, S.C. Code Regs. § 43-57 provides that “[t]he State Department of Education shall maintain records indicating the work experience for which persons are entitled.” SCDE argues that the regulations on which the Plaintiff bases the duty of care give rise only to a “public duty,” and as a result, the Plaintiff has failed to state facts sufficient to constitute a cause of action. In other words, SCDE submits that S.C. Code Regs. § 43-57 does not give rise to a private right of action based upon application of the public duty rule.

As support, SCDE pointed out that the Supreme Court has recognized that "statutes which create or define the duties of a public office have the essential purpose of providing for the structure and operation of government or for securing the general welfare and safety of the public. Such statutes create no duty of care towards individual members of the general public." *Arthurs v. Aiken County*, 346 S.C. 97, 551 S.E.2d 579, 582 (2001). See also, *Platt v. CSX Transportation, Inc.*, 379 S.C. 249, 665 S.E.2d 631 (Ct. App. 2008). A plaintiff, therefore, has no right of action against a public officer or entity for breach of a duty owing to the public only, even though such plaintiff may have been injured by the breach of that public duty. *Summers v. Harrison Const.*, 298 S.C. 451, 381 S.E.2d 493 (Ct. App. 1989). "The public duty rule is a negative defense which denies an essential element of the plaintiff's cause of action: the existence of a duty of care to the individual plaintiff." *Arthurs*, 551 S.E.2d at 582. In other words, the public duty rule "is a rule of statutory construction, that is, a means of determining whether the legislative body that enacted the statute or ordinance intended to create a private cause of action for its breach." *Id.*

Additionally, the Defendant SCDE pointed out that, even if S.C. Code Regs. § 43-57 gives rise to a private right of action against SCDE, the Plaintiff still cannot recover for simple negligence as has been alleged. In other words, even if the Plaintiff's allegations of negligence are deemed true, that does not allow for the Plaintiff to state a claim and recover damages. As

discussed, the Plaintiff alleges that the Defendant SCDE is liable for failing to document four years of “educator experience credit” for the Plaintiff from 2006 to 2010 as part of the educator certification process. That claim arguably falls within the scope of S.C. Code Ann. § 15-78-60(12), which exempts from liability “licensing powers or functions including, but not limited to, the ... failure or refusal to issue ... any ... certificate, approval, ... or similar authority except when the power or function is exercised in a grossly negligent manner.” If that were true, the SCDE can only be liable for gross negligence, but the Plaintiff has sued only for simple negligence.

In sum, this Court is respectfully requested on reconsideration to rule that the Defendant SCDE has made several arguments of sufficient merit to support the position that the Complaint fails to state a viable cause of action. The Court is request to recognize that the SCDE’s arguments do warrant the setting aside of the entry of default so as to allow these issues to be fully litigated on their merits. *See, Micronics, Inc. v. South Carolina Dept. of Revenue*, 345 S.C. 506, 548 S.E.2d 223, 226 (Ct. App. 2001) (recognizing that South Carolina policy favors “the disposition of issues on their merits rather than on technicalities”).

III. Rule 55(c) Showing of “Good Cause”

Rule 55(a) provides that when a party fails to respond to a complaint, the clerk shall record an entry of default. However, Rule 55(c) permits a party to move to set aside the entry of default. The standard for granting relief from an entry of default under Rule 55(c) is mere “good cause.” “This standard requires a party seeking relief from an entry of default under Rule 55(c) to provide an explanation for the default and give reasons why vacation of the default entry would serve the interests of justice.” *Sundown Operating Co. v. Intedg Industries, Inc.*, 383 S.C. 601, 681 S.E.2d 885, 888 (2009). Once a party has put forth a satisfactory explanation for the default, the trial court

must also consider: (1) the timing of the motion for relief; (2) whether the defendant has a meritorious defense; and (3) the degree of prejudice to the plaintiff if relief is granted. *Wham v. Shearson Lehman Bros., Inc.*, 298 S.C. 462, 381 S.E.2d 499, 501-502 (Ct. App. 1989). Rule 55(c) is “liberally construed to promote justice and dispose of cases on the merits.” *Dixon v. Besco Engineering, Inc.*, 320 S.C. 174, 463 S.E.2d 636, 638 (Ct. App. 1995).

This Court is respectfully requested on reconsideration to rule that the Defendant SCDE has made a sufficient showing of “good cause” to asset aside the entry of default. SCDE has presented the affidavit of Cathy Hazelwood, who is the Deputy Superintendent of Legal Affairs, who explains that the failure of the Defendant SCDE to timely answer was inadvertent and resulted from the extraordinary circumstances encountered by SCDE personnel primarily due to the ongoing COVID-19 pandemic. As Hazelwood specifically attests:

During this period of time -- from August through October 2020, the Division for Legal Affairs has been operating under less than normal circumstances due to the COVID-19 pandemic and the increased workload and stress that the pandemic has brought. Both myself and my legal assistant have been working primarily remotely, which has not allowed for the same level of communication and interaction on administrative matters that we are accustomed to. That has contributed, in my opinion, to the error that occurred with the handling of the Summons and Complaint in this case. In addition, the implementation of the CARES Act and developing protocols for and approving the re-opening of schools in August and September, among many other issues, have resulted in our focus being on these novel and unusual challenges rather than the typical administrative matters that are more routine during pre-pandemic times. These challenges have also contributed, in my opinion, to the error that occurred with the handling of the Summons and Complaint in this case.

See, Hazelwood Aff., ¶ 7. Based on this testimony and the Court’s general awareness of the extraordinary circumstances presented during the pandemic, the Court is asked to find on reconsideration that these unusual factual circumstances support a finding of “good cause” under

Rule 55(c). *See, Oppenheimer v. City of Madera*, 2020 WL 5106710, *4 (S.D. Ohio 2000) (finding “the default is a result of unprecedented circumstances rising from the COVID-19 pandemic”).

Additionally, this Court is respectfully requested on reconsideration to rule that an assessment of the three *Wham* factors demonstrates that the Defendant SCDE has shown “good cause.” The Order of Entry of Default was filed on October 29, 2020. According to Cathy Hazelwood, the Defendant SCDE learned of the default on that same date and immediately forwarded the pleadings to the undersigned counsel. This Motion to Set Aside Entry of Default with supporting affidavits was filed within two business days. *See, Hazelwood Aff.*, ¶¶ 6, 8.

The Defendant SCDE has also demonstrated multiple meritorious defenses. As already discussed above, based on the testimony of Mary Hipp, SCDE never received an Experience Verification Form from the Plaintiff or from Lexington County School District One until June 2019, and SCDE promptly acted on that information and the experience credit was added to the Plaintiff’s certificate at that time. No such information was received prior to June 2019, and at no time did the Plaintiff request a review by SCDE of the educator experience credit on his certificate or challenge any absence of credit to SCDE. *See, Hipp Aff.*, ¶¶ 7-8. Thus, that evidence arguably does not support a finding that SCDE was negligent in failing to document or maintain records of the educator experience credit which had never been submitted or verified by the Plaintiff or his prior employer. In addition, the allegations in the Complaint also show that the SCDE may have a meritorious statute of limitations defense. The Plaintiff is complaining of alleged omissions occurring more than two years prior to the filing of his Complaint. The Plaintiff also alleges in his Complaint that he knew he was not getting sufficient educator experience credit in 2010, but he took no action to challenge that or seek a correction at that

time. *See*, Complaint, ¶¶ 8-11.

As for the third *Wham* factor, there is no legal prejudice to the Plaintiff by setting aside the entry of default. The case is still in its early stages. Upon information and belief, no substantial discovery has yet to take place in the case.

Thus, based on the foregoing analysis under Rule 55(c), including consideration of the three *Wham* factors, the Defendant SCDE has shown “good cause” as required under Rule 55(c), SCRCP, to set aside the entry of default.

The Defendant SCDE’s motion is based upon the pleadings filed in this case; the Order Denying Defendant South Carolina Department of Education’s Motion to Set Aside Entry of Default and Motion to Dismiss filed January 13, 2021; the rules of court; and such other matters as may be properly presented to the Court.

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January 25, 2021

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	
 Ammon L. "Treigh" Sullivan,	)	
	)	Civil Action No. 2020-CP-40-3674
Plaintiff,	)	
	)	
v.	)	MEMORANDUM IN OPPOSITION TO
	)	PLAINTIFF'S MOTION FOR
Richland County School District One and	)	DEFAULT JUDGMENT
South Carolina Department of Education,	)	
	)	
Defendants.	)	
_____	)	

INTRODUCTION

The Plaintiff Ammon L. "Treigh" Sullivan is an employee of Richland County School District One ("RCSD"). In his Complaint, the Plaintiff alleges that during much of his tenure with RCSD he was denied prior years of educator experience credit, specifically credit for the four years that he was employed by Lexington County School District One as a teacher's aide from 2006 through 2010. The Plaintiff alleges that he questioned RCSD's determination that he had zero years of educator experience credit when he began his employment and at other times thereafter. The Plaintiff does not allege in his Complaint that he challenged the amount of educator experience credit directly to the Defendant South Carolina Department of Education ("SCDE").

The Plaintiff has alleged several causes of action against the Defendant RCSD including a claim pursuant to the Wage Payment Act, breach of contract, unjust enrichment, and negligence. In addition, the Plaintiff has alleged a single cause of action for negligence against the Defendant SCDE. Specifically, the Plaintiff alleges that SCDE breached its "duty to maintain and accurately report South Carolina teacher's credentials, including, but not limited to, a teacher's applicable

years of experience.” See, Complaint, ¶ 53. The Plaintiff alleges that this duty of care arises by regulation, specifically S.C. Code Regs. § 43-57.2, which states that an educator may receive “experience credit” by “verify[ing] full-time or half-time employment” in various categories of educational positions. See, Complaint, ¶ 18. Moreover, S.C. Code Regs. § 43-57 provides that “[t]he State Department of Education shall maintain records indicating the work experience for which persons are entitled.”

The Plaintiff’s Complaint was filed on August 3, 2020. The Defendant SCDE was served on August 17, 2020; however, it did not file a timely answer or other responsive pleading. The Clerk of Court made an entry of default on October 29, 2020. Thereafter, on November 2, 2020, the Defendant SCDE filed a motion seeking to set aside that entry of default. That motion was denied in summary fashion by Circuit Court Judge L. Casey Manning by Order filed January 13, 2021. In that same Order, Judge Manning referred the case – presumably pursuant to Rule 53(b), SCRCF – “for the purpose of a hearing to determine the Plaintiff’s damages to be entered against Defendant South Carolina Department of Education.” See, Order filed January 13, 2021. A subsequent Rule 59(e) motion was also denied by Judge Manning in summary fashion.

On October 26, 2020, the Plaintiff filed a motion captioned as a “Motion for Entry of Default against Defendant South Carolina Department of Education.” That motion contains a misnomer in the caption given that an entry of default is a ministerial function performed by the Clerk of Court which does not require a motion or court action. See, Rule 55(a), SCRCF. See also, *Stark Truss Co., Inc. v. Superior Construction Corp.*, 360 S.C. 503, 602 S.E.2d 99, 102 (Ct. App. 2004) (“[e]ntry of default is a ministerial act which a clerk is required to perform once default is made to appear by the affidavit of the moving party”). In contrast, the entry of a default judgment requires an application or motion to be made and requires an order of the court. Rule 55(b)(1), SCRCF (requiring a “motion or application of the party seeking default”); Rule 55(b)(2), SCRCF

("the party entitled to a judgment by default shall apply to the court therefor"); Rule 55(b)(2), SCRCP (the defaulting party "shall be served with written notice of the motion or application for judgment"). However, the motion filed by the Plaintiff October 26, 2020, which remains pending presumably, also requests a "default judgment as to Plaintiff's claims against said Defendant [SCDE]." Thus, the Defendant SCDE understands that it is this motion that has been referred to the Master-in-Equity for adjudication.

The Defendant SCDE opposes the entry of a default judgment based on the grounds discussed below.

LEGAL ANALYSIS

I. The Plaintiff has not proven his entitlement to a judgment by default against a state agency per the requirements of Rule 55(e), SCRCP.

The Plaintiff is requesting that the Court enter a default judgment against the Defendant SCDE, which is indisputably a state agency. *See*, S.C. Code Ann. § 1-30-10(A). However, a judgment by default may not be entered against the Defendant SCDE pursuant to Rule 55(e), SCRCP, which provides that "[n]o judgment by default shall be entered against the State of South Carolina or an officer or agency thereof ... unless the claimant establishes his claim to relief by evidence satisfactory to the Court." Rule 55(e), SCRCP.

Rule 55(e) was adopted from the Federal Rules of Civil Procedure. There is no appellate opinion that applies Rule 55(e). In its recent decision in *Campbell v. City of North Charleston*, 431 S.C. 454, 848 S.E.2d 788 (Ct. App. 2020), the Court of Appeals did not directly address the application of Rule 55(e) because it was not an issue raised on appeal. However, the Court did note in the procedural history of the case that the Circuit Court had found Rule 55(e) to be inapplicable because the defendant was "not a state agency under Rule 55(e)." 848 S.E.2d at 791. *Campbell* is readily distinguishable because the defendant at issue in this case is a state agency.

Given the absence of governing law on a rule of civil procedure, the Supreme Court directs that courts seek guidance from case law interpreting and applying the equivalent federal rule. In *Gardner v. Newsome Chevrolet-Buick, Inc.*, 304 S.C. 328, 404 S.E.2d 200 (1991), the Supreme Court states: “Since our Rules of Procedure are based on the Federal Rules, where there is no South Carolina law, we look to the construction placed on the Federal Rules of Civil Procedure.” 404 S.E.2d at 201.

The federal equivalent rule is now codified as Rule 55(d), FRCP, although it was formerly Rule 55(e). Using essentially the same operative language of the state rule, the Federal rule states: “A default judgment may be entered against the United States, its officers, or its agencies only if the claimant establishes a claim or right to relief by evidence that satisfies the court.” Rule 55(d), FRCP. As the District Court in South Carolina has explained, “Rule 55(d) is intended to prevent the entry of default judgments against the United States for mere procedural missteps.” *Burr v. United States*, 2010 WL 11674099, *3 (D.S.C. 2010). The District Court cited favorably to *Sun v. United States*, 342 F.Supp.2d 1120 (N.D. Ga. 2004), which ruled that “entry of default judgment against the United States will not be based on a failure to file an answer or responsive pleading.” 342 F.Supp.2d at 1124. The District Court also cited to *Arevalo v. United States*, 2008 WL 3874795 (E.D. Pa. 2008), which ruled that Rule 55(d) “is intended to prevent entry of a default judgment against the United States for procedural flaws” and that “judgment cannot be entered against the government based solely on its failure to comply with civil rules.” 2008 WL 3874795, *6. See also, *Moore v. United Kingdom*, 384 F.3d 1079, 1090, n.16 (9th Cir. 2009) (noting that Rule 55(e) is “interpreted as requiring district courts to reach the merits of a plaintiff’s claim before entering a default judgment against the government”). Rule 55(d), as previously codified as Rule 55(e), embodies the principle that it is contrary to public policy for a governmental entity to be held in default unless liability of the governmental may be proven on the merits. See also, *Compania*

Interamericana Export-Import, S.A. v. Compania Dominicana de Aviacion, 88 F.3d 948, 951 (11th Cir. 1996) (“Rule 55(e) rests on the rationale that the taxpayers at large should not be subjected to the cost of a judgment entered as a penalty against a government official which comes as a windfall to the individual litigant”). The Defendant SCDE submits that this federal case law interpreting the equivalent rule in the Federal Rules of Civil Procedure should be controlling.

Thus, Rule 55(e), by its very language, places the burden on the Plaintiff to "establish[] his *claim to relief* by evidence satisfactory to the Court.” Rule 55(e), SCRCp. (Emphasis added). The Plaintiff need not only prove his relief, i.e., damages, but he is also required to demonstrate his "claim to relief," meaning he is required to show that the Defendant SCDE is actually liable. The Plaintiff has made no such showing. In contrast, the Defendant SCDE has presented the affidavit of Mary Hipp, the Director of the Office of Educator Services, to demonstrate that the SCDE has numerous meritorious defenses. Hipp explains that her office maintains records of educator experience credit, but that “all educator experience must be submitted on an Experience Verification Form completed by the employer” and that “[i]t is the educator’s responsibility to provide verification of educator experience to obtain credit.” *See*, Hipp Aff., ¶ 4. She further attests that with respect to the Plaintiff, “the first request to add educator experience for the employment as an ISS Monitor was submitted by Lexington County School District One and received on June 26, 2019, ... and the experience credit was added to Mr. Sullivan’s certificate the following day.” *See*, Hipp Aff., ¶ 7. Hipp explained that “[t]here is not indication in the certification record that Mr. Sullivan requested a review of the educator experience credit on file prior to the Lexington County School District One submitting the Experience Verification form in June 2019.” *See*, Hipp Aff., ¶ 8. Based on that testimony, there is ample evidence that the Defendant SCDE was not negligent as alleged.

In sum, Rule 55(e) provides that a default judgment cannot be entered against the State or its agencies without a showing that the plaintiff will prevail on the merits. Without such a showing by the Plaintiff, no judgment by default may be entered against SCDE.

II. The Plaintiff's Fifth Cause of Action fails to state a cause of action against the Defendant SCDE, and based on Supreme Court precedent, the rendering of a default judgment thereon is without authority of law.

In addition, and as a corollary to the requirements of Rule 55(e), SCRCP, the Plaintiff cannot demonstrate that his Fifth Cause of Action even states a cause of action upon which relief may be granted against the Defendant SCDE. South Carolina law provides that "if a complaint fails to state a cause of action, then rendering of a default judgment thereon is without authority of law and therefore reversible error." *Masters v. Rodgers Development Group*, 283 S.C. 251, 321 S.E.2d 194, 196 (1984). "An objection that the complaint does not state facts sufficient to constitute a cause of action is not waived by a default." *Id.* See also, *Mutual Savings & Loan Assn. v. McKenzie*, 274 S.C. 630, 266 S.E.2d 423 (1980).

As discussed above, in his Complaint, the Plaintiff alleges only a negligence cause of action against the Defendant SCDE. The Plaintiff alleges that the SCDE breached its "duty to maintain and accurately report South Carolina teacher's credentials, including, but not limited to, a teacher's applicable years of experience." See, Complaint, ¶ 53. The Plaintiff alleges that this duty of care arises by regulation, specifically S.C. Code Regs. § 43-57.2, which states that an educator may receive "experience credit" by "verify[ing] full-time or half-time employment" in various categories of educational positions. See, Complaint, ¶ 18. Moreover, S.C. Code Regs. § 43-57 provides that "[t]he State Department of Education shall maintain records indicating the work experience for which persons are entitled." SCDE argues that the regulations on which the Plaintiff bases the duty of care give rise only to a "public duty," and as a result, the Plaintiff has failed to state facts

sufficient to constitute a cause of action. In other words, SCDE submits that S.C. Code Regs. § 43-57 does not give rise to a private right of action based upon application of the public duty rule.

This premise is well supported in the case law. The Supreme Court has recognized that "statutes which create or define the duties of a public office have the essential purpose of providing for the structure and operation of government or for securing the general welfare and safety of the public. Such statutes create no duty of care towards individual members of the general public." *Arthurs v. Aiken County*, 346 S.C. 97, 551 S.E.2d 579, 582 (2001). See also, *Platt v. CSX Transportation, Inc.*, 379 S.C. 249, 665 S.E.2d 631 (Ct. App. 2008). A plaintiff, therefore, has no right of action against a public officer or entity for breach of a duty owing to the public only, even though such plaintiff may have been injured by the breach of that public duty. *Summers v. Harrison Const.*, 298 S.C. 451, 381 S.E.2d 493 (Ct. App. 1989). "The public duty rule is a negative defense which denies an essential element of the plaintiff's cause of action: the existence of a duty of care to the individual plaintiff." *Arthurs*, 551 S.E.2d at 582. In other words, the public duty rule "is a rule of statutory construction, that is, a means of determining whether the legislative body that enacted the statute or ordinance intended to create a private cause of action for its breach." *Id.*

Additionally, the Defendant SCDE submits that, even if S.C. Code Regs. § 43-57 gives rise to a private right of action against SCDE, the Plaintiff still cannot recover for simple negligence as has been alleged. In other words, even if the Plaintiff's allegations of negligence are deemed true because of the default, that does not allow for the Plaintiff to state a claim and recover damages. As discussed, the Plaintiff alleges that the Defendant SCDE is liable for failing to document four years of "educator experience credit" for the Plaintiff from 2006 to 2010 as part of the educator certification process. That claim falls within the scope of S.C. Code Ann. § 15-78-60(12), which exempts from liability "licensing powers or functions including, but not limited to, the ... failure or refusal to issue ... any ... certificate, approval, ... or similar authority except

when the power or function is exercised in a grossly negligent manner.” Accordingly, the SCDE can only be liable for gross negligence, but the Plaintiff has sued only for simple negligence. Thus, a claim for simple negligence, which is what has been pled, is not even actionable and, under the rationale of the Supreme Court in *Masters*, will not support the judgment by default that the Plaintiff requests this Court to enter.

III. The entry of a default judgment at this stage of the litigation is premature based upon the *Frow* doctrine.

In the alternative, the Defendant SCDE submits that the application of the *Frow* doctrine will not allow the entry of a default judgment against the SCDE until the case is fully adjudicated against the Defendant RCSD. In *Frow v. De La Vega*, 82 U.S. (15 Wall.) 552 (1872), the Supreme Court established a rule that when one of multiple defendants who is alleged to be jointly liable is in default, judgment should not be entered against that defaulting defendant until the case has been fully adjudicated against all other defendants. The purpose behind this policy is that “[w]hen co-defendants are similarly situated, inconsistent judgments will result if one defendant defends and prevails on the merits and the other suffers a default judgment.” *Angelo Iafrate Construction, LLC v. Potashnick Construction, Inc.*, 370 F.3d 715, 722 (8th Cir. 2004), citing *Frow*, 82 U.S. at 554. “To avoid such inconsistent results, a judgment on the merits for the answering party should accrue to the benefit of the defaulting party.” *Id.*

Many courts have held, based on *Frow*, that when a plaintiff alleges joint liability against multiple defendants, an entry of default as to some of the defendants is appropriate, but a *default judgment* should not be entered until the case has been decided with regard to all of the defendants. See e.g., *Hunt v. Inter-Globe Energy, Inc.*, 770 F.2d 145, 147 (10th Cir. 1985); *Mori Seiki USA, Inc. v. McIntyre*, 2008 WL 577274 at *2 (N.D. Tex. 2008); *Raleigh Cycle Co. of America v. Edward Risha*, 1987 WL 11889, at *1 (S.D. Tex. 1987) (“Where one of multiple

defendants is in default, as a general rule, a decree of default may be entered, but a judgment is withheld pending a decision on the merits as to the other defendants”); *Exquisite Form Industries, Inc. v. Exquisite Fabrics of London*, 378 F.Supp. 403, 416 (S.D.N.Y. 1974) (“When a default is entered against one defendant in a multi-defendant case, the preferred practice is for the court to withhold granting a default judgment until the trial of the action on the merits against the remaining defendants”). For example, the Third Circuit has stated:

We believe that *Frow* stands for the proposition that if at trial facts are proved that exonerate certain defendants and that as a matter of logic preclude the liability of another defendant, the plaintiff should be collaterally estopped from obtaining a judgment against the latter defendants, even though it failed to participate in the proceeding in which the exculpatory facts were proved.

Farzetta v. Turner & Newall, Ltd., 797 F.2d 151, 154 (3d Cir. 1986).

In the present case, the Plaintiff has sued the Defendants for the same damages, and he makes the same or similar allegations of negligence asserting that the Defendants' actions denied him the educator experience credit for the four years that he was employed by Lexington County School District One as a teacher's aide from 2006 through 2010. This is precisely the type of case where the *Frow* doctrine is applicable. Thus, no judgment should be entered against the Defendant SCDE until the liability of all the Defendants is fully adjudicated.

CONCLUSION

For the reasons discussed herein, the Defendant South Carolina Department of Education respectfully requests the Court to deny the Plaintiff's motion or application for a judgment by default.

Respectfully submitted,

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March 31, 2021

1 STATE OF SOUTH CAROLINA) IN THE COURT OF
) GENERAL SESSIONS
 2 COUNTY OF RICHLAND) OF THE FIFTH
) JUDICIAL CIRCUIT
 3)
)
 4 AMMON L. "TREIGH" SULLIVAN,)
) Plaintiff,) TRANSCRIPT OF RECORD
 5) 2020-CP-40-03674
 6 vs.)
)
 7 RICHLAND COUNTY SCHOOL)
 8 DISTRICT ONE AND SOUTH)
 CAROLINA DEPARTMENT OF)
 9 EDUCATION,)
)
 10 Defendants.)
)

11 -----

12 November 19th, 2020
 13 Columbia, South Carolina
 Via Webex

15 B E F O R E:

16 HONORABLE L. CASEY MANNING. Judge.

17 A P P E A R A N C E S

18 RYAN KYLE HICKS, ESQUIRE
 19 For Plaintiff

20 ANDREW F. LINDEMANN, ESQUIRE
 For Defendant South Carolina
 21 Department of Education

22

23

24 Julie A. Cendroski,
 Circuit Court Reporter
 25 Seventh Judicial Circuit

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EXHIBITS

MARKED

ENTERED

NO EXHIBITS PROFFERED

1 AMMON L. "TREIGH" SULLIVAN VS. RICHLAND COUNTY SCHOOL
2 DISTRICT ONE AND SOUTH CAROLINA DEPARTMENT OF EDUCATION

3 THE COURT: All right. This is a Motion to
4 Compel and a Motion to Dismiss. That's an odd
5 combination. So, it sounds like you, Mr. Lindemann. I
6 don't know.

7 MR. LINDEMANN: Judge, it is my motion.

8 THE COURT: Are you ready, Mr. Hicks?

9 MR. HICKS: Of course, Judge, I'm ready to go.

10 THE COURT: All right. Mr. Lindemann, you may
11 proceed, sir.

12 MR. LINDEMANN: Thank you, Your Honor, may it
13 please the Court?

14 THE COURT: Yes, sir.

15 MR. LINDEMANN: I represent the South Carolina
16 Department of Education in this case, Your Honor. This
17 is an action that was brought by a teacher at Dreher
18 High School, who has sued his employer, Richland County
19 School District One, as well as the South Carolina
20 Department of Education.

21 THE COURT: Is it customary to take it by the
22 principal? Go ahead.

23 MR. LINDEMANN: The gist of the case, Your Honor,
24 is Mr. Sullivan started working for Dreher High School
25 in 2010. He had been previously employed by the

1 Lexington County School District Number One in a
2 non-teaching capacity where he was, I think, an ISS
3 monitor, an in-school suspension monitor, for four years
4 prior to coming to Richland School District One.

5 Anyway, when he got hired by Richland School
6 District One, he was not given credit for his four years
7 with the Lexington School District Number One. And,
8 ultimately, he didn't do anything about it, other than
9 ask questions at his particular school, as I understand
10 the pleadings.

11 But ultimately, in 2019, he submitted the
12 appropriate paperwork to the Department of Education,
13 acknowledging the fact that he did have those four years
14 from Lexington School District Number One, and the
15 Department of Education provided credit to him.
16 Ultimately, Your Honor, the application that he filed in
17 2010, with the information that's provided in the
18 affidavit of Mary Hipp that we filed with our motion.
19 And Mary Hipp is the Director of the Office of Educator
20 Services.

21 Ms. Hipp testifies that when he applied for
22 participation in the ACE program, which is the program
23 of Alternative Certification for Educators, in 2010, he
24 did not identify any prior educator experience. In
25 fact, he listed none on the application under that

1 request. And most importantly, he did not submit an
2 experience verification form or have his prior employer
3 at Lexington School District One submit an experience
4 verification form.

5 The reason I'm giving Your Honor this background
6 is the motion itself, as I indicated, is against
7 Richland One, as well as the Department. Four of the
8 five causes of action are against Richland One. The
9 fifth cause of action is the only one alleged against
10 the Department of Education.

11 And then there is a negligence claim where the
12 plaintiff alleges -- and this is a quote from paragraph
13 54 on that The Department, quote, breached its duty by
14 failing to properly document and/or update plaintiff's
15 years of experience, even reported to if a bid, years of
16 service at LCLC.

17 So ultimately, what the Department is being sued
18 for is under their regs, specifically reg. 43-57 that's
19 identified in the complaint, it states: The State
20 Department of Education shall maintain records
21 indicating the work experience for which persons are
22 entitled.

23 The affidavit of Mary Hipp explains why the
24 Department didn't have that information. And once they
25 did get the proper paperwork, either from Mr. Sullivan

1 from his prior employer, they took care of that in 2019.

2 Your Honor, when this lawsuit was filed -- and it
3 is in default. When the lawsuit was filed, it was
4 served on the Department on August 17, 2020. At that
5 period of time, Your Honor, as outlined in the affidavit
6 that was filed with Cathy Hazelwood, who's the director
7 for the Office of Legal Affairs, the Department, of
8 course, was deeply engaged in dealing with the COVID-19,
9 dealing with a number of very weak issues, including
10 trying to apply the CARES act, as well as, trying to get
11 schools re-opened, and looking at each different schools
12 having re-opening plans.

13 It was a very trying, very challenging time, as
14 Ms. Hazelwood indicates in her affidavit. Certainly we
15 can -- the Court can probably take judicial notice that
16 the last few months have not been a normal time. Ms.
17 Hazelwood also explains that her and her legal assistant
18 were primarily working remotely, which impacted, of
19 course, their ability to communicate.

20 What happened, as described by Ms. Hazelwood, is
21 they received the summons and complaint. They
22 immediately forwarded it to the insurance reserve fund,
23 which is their common practice. It was a negligence
24 claim. And then ultimately on September 15th, which was
25 a couple of days -- actually one day before the 30 days

1 ran out, they received a denial letter from the
2 insurance reserve fund. And then offering -- you might
3 be familiar with this, but the fund allows for proving a
4 legal -- or reimbursement of a legal defense policy.
5 But ultimately, the State agency has to retain their own
6 counsel and then apply for reimbursement.

7 So ultimately, at that point with the insurance
8 reserve fund denying coverage, the Department had to go
9 through the approval process, both internally and with
10 the attorney general's office to retain outside counsel.
11 By the time that occurred, the 30 days had run. Ms.
12 Hazelwood did not pick up on that, did not obtain an
13 extension. And ultimately --

14 THE COURT: You don't ---

15 MR. LINDEMANN: -- at the end of October ---

16 THE COURT: I'm sorry. You don't mean to tell me
17 somebody at the Department of Education had difficulty
18 understanding a summons that said you've got 30 days to
19 respond?

20 MR. LINDEMANN: Well, Your Honor, I'm not
21 suggesting that, I'm suggesting that given the wealth of
22 instructions and chaos that was going on in trying to
23 deal with these non-illegal issues and other issues to
24 try to get school opened ---

25 THE COURT: I see that point. This is a simple

1 question.

2 MR. LINDEMANN: Yeah.

3 THE COURT: They couldn't count to 30 in the
4 Department of Education, Mr. Lindemann?

5 MR. LINDEMANN: We're not taking the position
6 that Ms. Hazelwood, who is an attorney, was aware that
7 you've got to answer within 30 days. But ---

8 THE COURT: Isn't that what's called a summons,
9 Mr. Lindemann? It says you have to respond in 30 days,
10 doesn't it?

11 MR. LINDEMANN: It is what it states on the
12 paper.

13 THE COURT: I'm gonna let you respond. Hold on.
14 I'm gonna let you finish your argument, I'm just ---

15 MR. LINDEMANN: Okay.

16 THE COURT: I have the right to sort of interrupt
17 you, and I'll do so again. Go ahead Mr. Lindemann.

18 MR. LINDEMANN: Without question, Your Honor.
19 Without question. And, again, I would stress, Your
20 Honor, that these are not normal times. These are
21 unique times and, particularly, for the August/September
22 timeframe for where the Department of Education was even
23 more stressful and demanding given the attempts to open
24 schools.

25 But anyway, Your Honor, the main basis for us

1 too, at this point there has not been a default
2 judgment, there has simply been an entry of default. So
3 Rule 55 governs and, obviously, we've got to show good
4 cause.

5 But there was also -- there are two other keys,
6 and I'll get to those causes in a moment. But there are
7 two other legal bases for our request that the Court set
8 aside the entry of default. First of all, Your Honor,
9 here's 55(e), which doesn't come up very often and,
10 granted, has not been interpreted by our appellate
11 courts, but it is the equivalent of Rule 55(e) under the
12 Federal Rules of Criminal Procedure that since 2015 got
13 re-codified as 55(d). But it's, once again, the former
14 rules.

15 What 55(e), Your Honor -- actually, Your Honor
16 ruled in my favor on Rule 55 in a case a year ago for
17 the Department of transportation, so you probably recall
18 this. But Rule 55(e) is entitled Judgment Against The
19 State and Certain Other Parties. And it says: No
20 judgment by default shall be entered against the State
21 of South Carolina or an officer or agency thereof,
22 unless the claimant establishes its claim intuitively by
23 evidence satisfactory to the Court.

24 And what Rule 55(e) provides is, in essence, when
25 you're dealing with taxpayer money, there has to be a

1 meritorious claim as one on which liability can be
2 established by the, by the non-defaulting party, by the
3 plaintiff, in order to obtain a default judgment against
4 a state or a state agency. And that's consistent with
5 how the former statute has been applied. I'm sorry,
6 when I said statute. Federal Criminal --

7 THE COURT: So, you're --

8 MR. LINDEMANN: -- rules can apply.

9 THE COURT: -- telling me if I rule against you
10 I'm gonna be reversed. Is that what you're telling me?

11 MR. LINDEMANN: Your Honor, do I have to answer
12 that?

13 THE COURT: No. No.

14 MR. LINDEMANN: Your Honor, if you rule against
15 me, I will certainly try to get you reversed. That's
16 probably a fair guess.

17 THE COURT: Yes, sir.

18 MR. LINDEMANN: Obviously Rule 55(e) was designed
19 to provide protection when you have a governmental
20 defendant. Taxpayer expenses, taxpayer money shouldn't
21 be paid in a default situation unless there's absolutely
22 clear liability and that there's no defense.

23 THE COURT: All right.

24 MR. LINDEMANN: Although, in this particular
25 case, Your Honor, as I get down further and we address

1 it in our motion in detail details was Ms. Hipp's
2 affidavit. There are a number of defenses to this case.

3 That actually brings me to the second point, Your
4 Honor. There is law in South Carolina, *The Masters*
5 *versus Rogers Development Group* case.

6 THE COURT: I lost you. Wait a minute. You're
7 frozen.

8 MR. HICKS: I lost him as well, Judge.

9 THE COURT: That's all right. Mr. Lindemann, we
10 lost you for like about 40 seconds. Could you back up
11 and start again?

12 MR. LINDEMANN: I will. I apologize, Your Honor.

13 THE COURT: Well, no, it's not your fault, but go
14 ahead. Back up just a little bit. I can't see you.
15 Yeah, Mr. Hicks lost you also. I bet the court reporter
16 did too.

17 MR. LINDEMANN: Your Honor, what I was getting to
18 was my next point was that South Carolina has case law,
19 *The Masters vs. Rogers Development Group*, and these are
20 all cited in my motion.

21 THE COURT: Yes, sir.

22 MR. LINDEMANN: As well as, *Mutual Savings and*
23 *Loan Association versus Mackenzie*.

24 And in both of those cases, the appellate courts
25 held that a party seeking a default judgment is only

1 entitled to the relief framed by their pleadings. And
2 as a result, if the complainant fails to state a cause
3 of action, the remedy of a default judgment thereon is
4 without authority of law and, therefore, reversible.
5 Error.

6 So obviously, the plaintiff has to be able to
7 state a cause of action on which the default is based.
8 In this particular case, and I gave you the background
9 already, Your Honor, is a partner has been sued because
10 the plaintiff contains that we didn't keep accurate
11 records regarding his educator experience. And as the
12 affidavit of Mary Hipp explains, the reason for that is
13 his prior employer, nor him, submitted an education
14 experience verification form.

15 But despite that, Your Honor, this falls squarely
16 within the public duty rule. The duty to prepare and
17 send it to the public in general, and I know Your Honor
18 is very well aware and probably has had numerous cases
19 applying the public duty rule over the years, but this
20 is a case where the public duty rule comes right into
21 play. The Supreme Court, in fact, has explained that --
22 and this is a quote from *Arthurs vs. Aiken County*:
23 Statutes which create or define the duties of a public
24 office have the essential purpose of providing for the
25 structure and operation of government or for securing

1 the general welfare and safety of the public. Such
2 statutes create no duty or care towards individual
3 members of the general public.

4 Clearly, the regulation that they're relying on
5 is exactly that. It provides for the operation of
6 government. It basically says, as I quoted Your Honor
7 earlier, the State Department of Education shall
8 maintain records indicating the work experience for
9 which persons are entitled.

10 So, our second argument, Your Honor, is based on
11 the *Masters and Mackenzie* case, the plaintiff needed to
12 state a cause of action against the Department of
13 Education; therefore, there is no cause of action all
14 the way to default judgment can be entered.

15 And then lastly, Your Honor, I would go through
16 the analysis of good cause under Section 55(c). I've
17 already touched on that already, explaining what the
18 circumstances were that resulted in the case being
19 referred out to outside counsel, and an answer being
20 filed within 30 days. Again, we rely on Ms. Hazelwood's
21 affidavit for that, explaining the unique circumstances
22 and challenges the Department was facing as a result of
23 COVID-19 and trying to get the schools to be under the
24 Cares Act in August, September of this year.

25 Ultimately then, that brings you to the three

1 *Wham* factors. We believe the *Wham* factors all support a
2 finding of good cause, Your Honor. First of all, once
3 the Department realized they were in default, they sent
4 the complaint to me. And within two business days we
5 filed our -- the current motion and two affidavits. So
6 acted clearly in a timely manner under the *Wham* factors.

7 Number two, Your Honor, default meritorious
8 defenses. I've already touched on some of those,
9 including the public duty rule. In addition to that,
10 the plaintiff has sued for negligence. And there is an
11 exception under the Tort Claims Act, Subsection 12, that
12 deals specifically, Your Honor, with these situations.
13 In fact, subsection 12 exempts the liability for
14 licensing power and functions, including but not limited
15 to the area or the refusal to issue any certificate,
16 approval, or similar authority except where power or
17 function is exercised in a gross and negligent manner.

18 So pursuant to negligence, the Department would
19 be entitled to immunity as another defense if the error
20 of omission that is being alleged here occurred in 2010.
21 So, therefore, the additional argument that the statute
22 of limitations defense applies.

23 So there are meritorious defenses. There are a
24 number of them. And, again, I repeat that we don't even
25 believe that the cause of action against the Department

1 of Education states a cause of action.

2 And then lastly, Your Honor, on the issue of
3 legal prejudice, the plaintiff -- it's early in the
4 case. To my knowledge there has been no discovery
5 that's been done. And, obviously, having to defend on
6 the merits does not qualify as over prejudice. So we do
7 believe that we've made a showing of all ---

8 THE COURT: Okay. It's all right. It's all
9 right. We'll wait until he comes back.

10 MR. LINDEMANN: Your Honor, can you hear me? I
11 know I think I lost you.

12 THE COURT: You need to back up a little bit.
13 Legal prejudice is, I think, where you left off, a
14 little bit before that, if you can.

15 MR. LINDEMANN: And, I'm sorry. Basically I was
16 saying that the three *Wham* factors are covered here. I
17 did just want to go back and reiterate that we don't
18 have to go beyond, I believe, Rule 55(e) because we are
19 dealing with a unique circumstance, and that rule deals
20 with state agencies.

21 And, ultimately, as we've shown, that there are a
22 number of meritorious defenses, it shows, quite frankly,
23 that the plaintiff is unable to show that this is a case
24 of clear liability and that there is no basis for a
25 defense. So 55(e) would mitigate against entering any

1 type of default against a state agency and rather having
2 the matter handled on the merits.

3 THE COURT: So not only should I not hold you in
4 default, but I should dismiss this case, does that sum
5 it up?

6 MR. LINDEMANN: Well, the only reason I included
7 a Motion to Dismiss, Your Honor, is because my issue is
8 the plaintiff fails to state a cause of action and as a
9 result can't receive a default judgment.

10 THE COURT: All right, sir.

11 MR. LINDEMANN: Your Honor doesn't need to reach
12 that issue, I don't even want to abandon that issue. I
13 think Your Honor can set a thing on default based on
14 Rule 55(e) alone. You could also do it based on 55(c).
15 But those are three separate independent bases for
16 seeking the amount of relief from the default, Your
17 Honor.

18 THE COURT: Thank you, Mr. Lindemann.

19 Mr. Hicks, are you ready?

20 MR. HICKS: I am, Your Honor. May it please the
21 Court?

22 THE COURT: Go ahead, sir.

23 MR. HICKS: Do you got any curve balls you want
24 to throw me first? You've got Andrew, so I guess I'm
25 liable for one.

1 THE COURT: I'll save those until the end.

2 MR. HICKS: Fair enough. Fair enough. Thank
3 you, Judge.

4 Judge, I'll be honest with you, and I'll be
5 extremely brief here, and I provided a referendum to the
6 Court. And I think Your Honor's got it. If you don't,
7 I'll be glad to resend it.

8 THE COURT: No, I have it here.

9 MR. HICKS: And the first thing I note, Your
10 Honor, and it's referenced in my memorandum and it's
11 indirectly referenced in Mr. Lindemann's memorandum, and
12 that this implication, this kind of cart blanche
13 application of 55(e) should just toss this out.

14 There's not a single case cited by Mr. Lindemann
15 that stands for this kind of carte blanche 55(e). I
16 think that he even acknowledged that it hasn't been
17 addressed yet.

18 THE COURT: I think he said it hadn't been ruled
19 on, so...

20 MR. HICKS: Well, and I think it's kind of
21 curious, Judge. And I don't know. And, you know,
22 outside of 55(e), while it was touched on and in the
23 primary case I cited, but everything else I normally
24 don't get to come to the Court with a case that's almost
25 identical.

1 But I cited the Court a very recent opinion from
2 the Court of Appeals, it's the *Campbell* dissension. It
3 was just issued by the Court of Appeals in July of this
4 year, Your Honor. And it's a case against the City of
5 North Charleston, which I believe the Court could have
6 went to 55(e) on if they so choosed and they didn't.

7 In fact, in that case, in the *Campbell* case, the
8 Court and the Court of Appeals affirmed it. They upheld
9 the default against the City of Charleston.

10 THE COURT: North Charleston.

11 MR. HICKS: North Charleston, excuse me. You're
12 correct, Your Honor.

13 THE COURT: There's a difference.

14 MR. HICKS: Yeah. They upheld that.

15 THE COURT: Yes, sir.

16 MR. HICKS: And they could have pointed to 55(e)
17 on that case, Your Honor, and they didn't. And there's
18 some reference in there where the 55(e) argument was
19 made. So I think that, you know, it stands for enough
20 to bypass that 55(e) argument.

21 But, I think, when we turn to the case, even if
22 it satisfied by 55(e) just on the standard that's
23 analyzing a default, Mr. Lindemann went into some pretty
24 in depth stuff. They were trying to argue about the
25 *Wham* factors and his merits and all that stuff. But

1 let's be reminded, Your Honor, you've gotta show good
2 cause before you even get there. Good cause is rule
3 number one. We don't even touch the *Wham* factors if
4 good cause isn't established. And that's point blank
5 clear law.

6 And, in fact, it's reiterated in the, in the
7 *Campbell* case. And it's in my --

8 THE COURT: Memo.

9 MR. HICKS: -- memo. And in South Carolina the
10 Court of Appeals has specifically held negligence at the
11 fault of an attorney is imputable to the client and will
12 not be the basis of a good cause to satisfy an entry of
13 default. That's good law, Your Honor.

14 And if we look at Ms. Hazelwood's affidavit, I
15 find it kind of perplexing because the argument is
16 essentially we didn't have enough time. We had enough
17 stuff going on. We got lost in the wash and we got it
18 back to the IRF and we messed up and we forgot to, you
19 know, file an answer and you should throw us a bone
20 here.

21 Yet, Your Honor, they had the wherewithal and the
22 knowledge and the ability to send it off to the IRF to
23 begin with. It's not like it just never saw the light
24 of day. They got this thing, sent it to the IRF, were
25 cognizant enough to try to get it to their insurance

1 carrier to get coverage. And then it comes back on the
2 15th. She acknowledges she got it back.

3 They never called me. They never even requested
4 that I provide an extension. And this implication that
5 I was, you know, right on top of them on the days in the
6 16th of September passed and they missed it, is
7 misleading at best, Your Honor, because in the long run
8 they had 70 days where they could have filed an answer.
9 They had almost another 30 days, I think it was even
10 more than 30 days from when they got the, the rejection
11 back from the IRF on the 15th before I filed a D form.

12 I filed that D form nearly 70 days after it was
13 served. So they weren't hand up by any timeline.
14 Apparently, their position would be it sat on her desk
15 for an additional 35 days and she did nothing about it.

16 And I think that falls squarely within what
17 *Campbell* addresses in its progeny talking about an
18 attorney's negligence is going to be lacking for good
19 cause. And, in fact, I think what's curious, Your
20 Honor, is in *Campbell*, the argument that was made by the
21 lawyer there is that it was out of their character.
22 That's what they said, "out of their character".

23 Ms. Hazelwood in her own affidavit, I quote, said
24 that the failure was out of her character. I mean, I
25 don't get to walk into a courtroom that often with a

1 case that is this recent, only a couple of months, that
2 is quite candidly this spot on. So, so to try to get to
3 these *Wham* factors and all that stuff when you've not
4 shown good cause is, I think, putting the cart before
5 the horse. I don't know how else to put it.

6 There's been no showing of good cause. The
7 argument that good cause is here is one of two things,
8 that Ms. Hazelwood's inadvertence should be deemed good
9 cause. Well, we know that that doesn't last because of
10 *Campbell*, *Glen Limehouse*, and his progeny saying, no,
11 that doesn't fit.

12 And then this implication that 55(e) should be
13 this cart blanche excuse to come out from under it. I
14 believe the defendant's trying to muddy the waters here
15 and get this thing into the *Wham* factors and a whole
16 bunch of other stuff to try to get off path for how this
17 default is supposed to be evaluated and how, how this
18 actually, how this actually works.

19 You know, I don't -- this doesn't happen very
20 often. I'm perplexed by how it can sit on somebody's
21 desk for 70 days and never be touched, and then we come
22 here and say, well, it's inadvertence yet we had the
23 wherewithal to get it to the IRF and you should just
24 give us a free pass against 55(e) since it's a state
25 act, but there's no law cited to that effect.

1 The only case cited by the defendant was a case
2 out of the Eleventh Circuit referencing the federal
3 rule, but that case wasn't even actually dealing with
4 the federal rule 55(e), it was dealing with a foreign
5 judgment rule and the Court makes essentially an
6 indicative remark that, that the foreign judgment rules
7 are articulated similar to the federal rule.

8 So I just, I feel like we're really, really
9 reaching here to try to just bypass how these cases are
10 argued. And, you know, it baffled me, to speak quite
11 candidly. I struggle with it, you know, because then we
12 go so far to say, you know, well motion dismiss and you
13 should dismiss thing because of a statute of limitations
14 issue.

15 And, you know, I mentioned that with my law
16 partner and the first thing that came to mind is, so to
17 ignore the court rules and the law when it comes to them
18 and how they screwed up and they're in default, yet we
19 should hold my client to the fire on some statute of
20 limitations. It seems like a very big double standard.

21 THE COURT: Well, Mr. Hicks, you can't blame Mr.
22 Lindemann for trying, do you?

23 MR. HICKS: I don't. I like Mr. Lindemann. Mr.
24 Lindemann and I worked close together for years.

25 THE COURT: I know. Relax. Finish your

1 argument. Go ahead, Mr. Hicks.

2 MR. HICKS: Well, Judge, you know, my argument is
3 essentially it can't be laid out anymore clearly than
4 what I put in my memorandum. I don't, I don't
5 understand what can be argued here.

6 THE COURT: Relax both of you. You're just doing
7 your jobs.

8 MR. HICKS: Andrew and I are buddies.

9 THE COURT: Five days or ten days, Mr. Lindemann?
10 How much time do y'all want, proposed orders? Like we
11 do everything and make it ---

12 MR. LINDEMANN: Yeah. Your Honor, can I actually
13 just address two quick points? Is that possible?

14 THE COURT: No, I'm gonna let you. You can say
15 it now, you can say it later, you can say it three
16 times. Go ahead.

17 MR. LINDEMANN: Okay. Well, I just wanted to
18 point out that his -- what Mr. Hicks is relying on, on
19 the *Campbell* case, and I recognize why, but I do want to
20 point out that in the *Igbal* case it was not against a
21 state agency or the state of South Carolina, it was
22 against the City of North Charleston. And the reference
23 there from the Circuit Court order, it's in the opinion,
24 it says: In addition, the city was not a state agency
25 under Rule 55(e).

1 And, in fact, if you look at the brief, and I'm
2 happy to send them, Your Honor, because I was actually
3 asked by the city's insurance carrier in that case to
4 take a look at the brief after they were filed. There
5 wasn't even an appeal raised to the Court of Appeals
6 under 55(e). It's pretty telling the fact that 55(e)
7 cannot apply to them because they were not a state or
8 state agency. This case, of course, we're dealing with
9 state agency.

10 The other point, Your Honor, that I would quickly
11 make is when Mr. Hicks talks about the handling of it
12 within the Department itself, even though Ms. Hazelwood
13 is an in-house counsel, the case law he's citing to
14 saying mistakes made by lawyers are obviously not
15 exceptions or bases for good cause, those cases are
16 talking about outside lawyers.

17 For instance, if they had sent it to me and I
18 forgot to answer or failed to answer in a timely manner,
19 my error is not the client's -- is the client's error.
20 In this case you're dealing with an in-house counsel.
21 And so I think that's an important distinction.

22 And then lastly, Your Honor, the fact that the
23 evidence shows -- Mr. Hicks made a big deal about the
24 fact that they received, that they sent it off to the
25 IRF and then the IRF sent it back, that's when the error

1 was made. I think that works to my favor showing good
2 cause. This isn't a case where a party simply got the
3 summons and complaint and did nothing with it and just
4 absolutely disregarded it, threw it in the trash, stuck
5 it under a pile of paper on their desk.

6 They acted immediately on it, sent it to their
7 insurance carrier. It was a negligence claim. In fact,
8 Ms. Hazelwood said she had no expectation whatsoever the
9 claims were denied and sent back to her. So I think
10 that actually works in our favor in showing good cause.

11 THE COURT: Stop. Go ahead. Go ahead. Go
12 ahead. Finish.

13 MR. LINDEMANN: And, lastly, my Motion to Dismiss
14 is not based on the statute of limitations, Your Honor.
15 I simply raised that because it's my second argument.

16 THE COURT: Mr. Lindemann, you would have raised
17 five different reasons why I should throw it out. Do
18 you want to raise another one, I'm gonna give you ten
19 days to write the proposed order. You all have this
20 report. I'm cutting you off now. Anything else, Mr.
21 Hicks, you want to say?

22 MR. LINDEMANN: That's fine, Your Honor.

23 MR. HICKS: Have a good day, Judge.

24 THE COURT: Submit proposed orders. If you all
25 are not satisfied with your proposed orders, I'll

1 reconvene this hearing and you all can talk some more.

2 MR. LINDEMANN: Thank you, Your Honor.

3 THE COURT: Relax. Come on.

4 MR. HICKS: Have a good day, Judge. It's good
5 seeing you.

6 THE COURT: Just relax. Look, ten days.

7 MR. LINDEMANN: Was it ten days? Ten days?

8 THE COURT: Yes. Good luck to you all. And if
9 you're not good with ten days I'll consider giving you
10 more, but I've heard enough this afternoon, thank you.

11 MR. LINDEMANN: Thank you, Your Honor.

12 MR. HICKS: Have a good day, Judge.

13 THE COURT: All right, bye.

14 (Hearing concluded at 10:45 a.m.)

15

16 --- THIS ENDS REQUESTED TRANSCRIPT ---

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COUNTY OF RICHLAND

Ammon L. "Treigh" Sullivan

$$V.$$

Defendants.

* * * * *

10:20 a.m. - 11:38 a.m.



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Also Present:

Ammon L. Sullivan, Plaintiff

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EXHIBITS

(All exhibits were retained by the Court.)

Plaintiff's Exhibit Number 1	32
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1 **MS. LODENQUAI:** Shaneka Lodenquai for Richland County
2 School District One, and I did just want to put
3 on the record that the District does not have
4 any arguments here today, we just came for
5 observational purposes.

6 **CALL TO ORDER**

7 **THE COURT:** This is Civil Action Number 2020-CP-40-
8 674, Ammon Treigh Sullivan versus Richland
9 County School District One and the South
10 Carolina Department of Education. Here for a
11 damages hearing but there is a motion by the
12 Department of Education. Mr. Lindemann, you
13 may proceed.

14 **DEFENDANT'S ARGUMENT**

15 **MR. LINDEMANN:** Thank you, Your Honor. Actually,
16 you're technically correct. The motion is the
17 Plaintiff's motion for a default judgment,
18 we've just raised a number defenses in
19 opposition to the motion for summary judg- --
20 I mean, for motion for default judgment. The
21 -- and there are several arguments that have
22 been made. The Plaintiffs have previously had
23 an entry of default entered. We filed a motion
24 to set aside that entry of default which was
25 denied by Judge Manning. And Judge Manning's



1 Orders do not address the issues that we are
2 raising here today. And the primary issue that
3 I'm raising here today is based on Rule 55(e).
4 Can Your Honor hear me okay with the mask on or
5 should I take that off.

6 **THE COURT:** I can hear you. Let me ask though, I
7 don't have the Order of Reference in front of
8 me. Is the Order of Reference giving you the
9 authority to handle that issue?

10 **MR. LINDEMANN:** Well the Order of reference simply
11 says -- it was part of the Order denying motion
12 to set aside entry of default. It was just a
13 throw-in that says the matter is referred to
14 Richland County Master-in-Equity for purposes
15 of the hearing to determine damages to be
16 entered against the Defendant South Carolina
17 Department of Education. And at that time
18 there was a motion and it was captioned -- I
19 mean, I went into this in my memorandum. It's
20 very confusing because the Plaintiffs haven't
21 technically filed a motion that's called a
22 motion for a default judgment. They filed a
23 motion that was called a motion for entry of
24 default against Defendant South Carolina
25 Department of Education. Of course a Court



1 isn't required to enter default. That's done
2 by the Clerk of the Court as a administerial
3 task. So I'm not really sure that the caption
4 on that motion -- and that's the only motion
5 that has been filed and is before Your Honor.
6 But within the motion -- out of fairness,
7 within the motion, Plaintiff asks for a default
8 judgment as to Plaintiff's claims against the
9 Defendant South Carolina Department of
10 Education. So I'm understanding that to be a
11 motion that -- for a default judgment, and that
12 that's what has been referred to, Your Honor,
13 to take testimony -- to hold a damages hearing,
14 and to enter judgement -- enter a default
15 judgment. And my argument is the Court cannot
16 enter a default judgment under Rule 55(e)
17 unless the Plaintiff satisfies the requirements
18 of Rule 55(e) which says no judgment by default
19 shall be entered against the state of South
20 Carolina or an officer or agency thereof.
21 Clearly that's what we have here with the
22 Department of Education. And it says unless
23 the claimant establishes his claim to relief by
24 evidence satisfactory to the court. So it
25 doesn't say unless the claimant establishes the



1 relief which is what is typically done in a
2 default matter. It actually requires the claim
3 to relief to be established by evidence.
4 Meaning -- and Rule 55(e) was adopted -- I know
5 Your Honor's well aware that our Rules of Civil
6 Procedure were adopted from the Federal rules,
7 and at the time our rules were adopted Rule
8 55(e) included the exact same language as to
9 the United States government, that you can't
10 enter default against the United States unless
11 the claim for relief is shown by evidence
12 satisfactory to the Court. 55(e) has been
13 since recodified as 55(d) under the Federal
14 Rules of Civil Procedure so you see a lot of
15 the case law referring to Rule 55(d) now.
16 We've cited a number of these cases in our
17 memorandum to Your Honor. We have no case in
18 South Carolina that actually applies 55(e).
19 There was a recent case from the Court of
20 Appeals called Campbell versus City of North
21 Charleston where 55(e) was briefly mentioned,
22 but the Court found that it was not applicable
23 because the City of North Charleston was not a
24 State agency. So Campbell is obviously not
25 binding here because we are dealing -- I mean



1 there's no dispute that they're seeking a
2 default judgment against a State agency. So
3 Rule 55(e) has been interpreted by Federal
4 courts, and of course our Supreme Court has
5 indicated -- and I've cited the Gardner versus
6 Newsome Chevrolet case -- the Supreme Court has
7 indicated the Court should seek guidance from
8 the case law interpreting and applying the
9 equivalent Federal rule when there is no South
10 Carolina law on the subject. In fact, this is
11 a quote from the Gardner case. It says since
12 our rules of procedure are based on the Federal
13 rules where there is no South Carolina law, we
14 look to the construction placed on the Federal
15 Rules of Civil Procedure. And we've cited a
16 number of cases for Your Honor from the Federal
17 rules -- from the Federal courts applying Rule
18 55(e) which is now Rule 55(d) of the Federal
19 rules. In fact here's an example, a 9th
20 Circuit case Moore versus United Kingdom, and
21 the Court said that Rule 55(e) is, quote,
22 interpreted as requiring District courts to
23 reach the merits of a plaintiff's claim before
24 entering a default judgment against the
25 government. So it requires more than in your



1 typical default situation against a non-State
2 entity. It requires the Court to look at the
3 merits and requires -- as the rule itself
4 specifically says -- it requires the claimant
5 to establish his claim to relief by evidence
6 satisfactory to the Court. And I don't know
7 whether Plaintiff's counsel's planning on doing
8 that here today, but our position is they are
9 required to be able to prove the merits of
10 their case in order to -- in order to succeed
11 in having the Court enter a default judgment.

12 **THE COURT:** But it's not -- it's not before me on
13 the merits -- the merits of the case. It's
14 before me for damages only.

15 **MR. LINDEMANN:** Well, it's before You to enter a
16 damages amount, Your Honor, and that's a
17 default judgment. So, I don't know how Your
18 Honor can -- I mean, what -- I don't know
19 what's before You then if it's not to rule on
20 the motion that's currently pending seeking a
21 default judgment.

22 **THE COURT:** Typically when I'm asked to preside over
23 a damages hearing the merits -- the merits of
24 the case have already been resolved. In this
25 case you're saying it can't be resolved because



1 you can't give a default judgment against a
2 State agency?

3 **MR. LINDEMANN:** I'm saying you can't get a default
4 judgment against a State agency without
5 showing -- without, quote, establishing the
6 claim to relief by evidence satisfactory to the
7 Court. So a damages hearing -- a default -- a
8 hearing for a default judgment is different
9 under Rule 55(e) than it is for any non-
10 governmental entity or a non-State governmental
11 entity. It requires consideration of the
12 merits. And so we're here for that hearing, so
13 the damages hearing should include proof that
14 there's absolutely no defense that it is a --
15 they have an absolute claim for relief by
16 evidence satisfactory to the Court. I don't
17 know whether Plaintiff's counsel is gonna
18 present that to Your Honor here today or not,
19 but the Court -- it's our position that the
20 Court cannot issue a default judgment under
21 Rule 55(e) without that evidence being present
22 and findings and conclusions of law being made
23 by the Court to satisfy Rule 55(e). I mean,
24 Rule 55(e) says what it says, Your Honor. I
25 mean ---



1 **THE COURT:** But there's no case interpreting it you
2 said.

3 **MR. LINDEMANN:** There's no case in South Carolina
4 interpreting it, but, again, there's plenty of
5 Federal casing -- case law interpreting the
6 exact same rule and it's exactly as I said.
7 And, again, from a public policy standpoint,
8 Your Honor, it makes perfect sense. It's a
9 point I've mentioned I think before we went on
10 the record, that the tax payers who have to
11 fund this -- any type of default judgment
12 should not be required to pay an amount that is
13 not supported -- that is essentially not due on
14 -- from a liability standpoint. That's the
15 essence behind Rule 55(e) both under the State
16 rule and under the Federal rule.

17 **THE COURT:** All right. Mr. Hicks?

18 **PLAINTIFF'S ARGUMENT**

19 **MR. HICKS:** May it please the Court, Judge.
20 Respectfully, Mr. Lindemann, I believe it's
21 already been adjudicated. I believe it's a
22 moot argument, and let me elaborate why. It's
23 laid out initially in the default. It was
24 filed. It was served. There was no answer.
25 A default was entered. At that point Mr.



1 Lindemann filed, and I'll quote it, a Notice of
2 Motion and Motion to Set Aside Entry of Default
3 and Motion to Dismiss. That motion went before
4 Judge Manning. And in fact -- and I'm gonna
5 read from it -- effectively the first paragraph
6 of Mr. Lindemann's motion -- because the true
7 first paragraph is just the, you know, basis of
8 where this is coming from, this is pursuant to
9 Rule 55. And what the motion says is is this
10 Defendant SCDE's motion is based on the
11 following grounds. A judgement by default may
12 not be entered against the Defendant SCDE
13 pursuant to Rule 55(e). It's the first
14 sentence of his argument in front of Judgment
15 Manning. He goes on to say exactly what he
16 just told Your Honor. Rule 55(e) provides
17 that, quote, no judgment by default unless the
18 claimant establishes claimed relief by
19 satisfactory evidence to the Court. He makes
20 the same exact arguments that he's making in
21 front of you. Now, he likens 55(e) to 55(d) in
22 that motion. That motion was heard by Judge
23 Manning. In response to that Judge Manning on
24 January 13th, 2021 entered an Order denying
25 that motion. And what Judge Manning said is



1 this: In it's motion, Defendant requested this
2 Court set aside the entry of default entered by
3 the Court, and having been clear the Defendant
4 failed to answer or otherwise file a responsive
5 pleading, more than 30 days have passed since
6 service of Plaintiff's Summons and Complaint,
7 and without good cause shown Defendant South
8 Carolina Department of Education is in default
9 pursuant to Rule 55. Defendant South Carolina
10 Department of Education's Notice of Motion and
11 Motion to Set Aside Entry of Default and Motion
12 to Dismiss is hereby denied. And it goes on to
13 say that it is further ordered that this matter
14 is referred to the Richland County Master-in-
15 Equity, Yourself, for the purposes of a hearing
16 to determine the Plaintiff's damages to be
17 entered against Defendant South Carolina
18 Department of Education. He addressed the
19 55(e) argument. Mr. Lindemann doesn't like the
20 fact that he doesn't substantively address it
21 to his liking in this Order, although there is
22 a footnote that says as the Court has denied
23 Defendant's motion to set aside entry of
24 default, it need not substantively address
25 Defendant's motion to dismiss as such arguments



1 are moot. Mr. Lindemann didn't like that. But
2 that's clearly addressing the argument he's
3 making now because the sole argument made in
4 that motion was Rule 55(e). So Mr. Lindemann
5 did exactly what he was entitled to do. He
6 filed a motion to reconsider, Your Honor, to
7 Judge Manning. He filed that motion to
8 reconsider on January 25th, 2021. So it was
9 timely. And in it he filed a notice of motion
10 and motion to alter or amend order or motion to
11 reconsider -- to reconsider. He then,
12 respectfully, Your Honor, rehashes the exact
13 arguments he had argued the first time, which
14 is what he's entitled to do in a motion for
15 reconsideration. And his first argument is
16 captioned Roman numeral one, Rule 55(e). He
17 rebriefs Rule 55(e), again trying to liken it
18 to Rule 55(d) of the Federal rules, making his
19 assertion that a judgment cannot be entered.
20 The exact same things he's doing today in front
21 of Judge Manning who had heard it originally.
22 Judge Manning then issues yet another Order
23 denying Defendant South Carolina Department of
24 Education's Motion to Alter or Amend Order or
25 Motion to Reconsideration -- or Reconsider.



1 And he goes on to say, after careful
2 consideration of Defendant's instant motion as
3 well as the memorandum and oral arguments
4 presented at the hearing held on November 19th,
5 2020, which was the original one, the Court
6 denies Defendant's motion to alter or amend or
7 a motion to reconsider. Therefore the Court's
8 Order entered on January 13th, 2021 is upheld.
9 Respectfully, Your Honor, Judge Manning has
10 heard this two times now. He's issued two
11 Orders on it, and it would be nonsensical if
12 Judge Manning was in disagreement with Your
13 Honor entering a judgement or did not believe
14 that Your Honor could issue a damage judgement
15 then he wouldn't refer it to You. In fact, if
16 55 stood for the proposition and Judge Manning
17 agreed that it meant that the State could never
18 have a default or a default judgement entered
19 against it, it wouldn't be here. He would have
20 granted their motion to set aside the default.
21 He didn't. He heard that evidence, and I can't
22 understand Mr. Lindemann's argument exactly
23 because it says -- it doesn't just carte
24 blanche say that no judgement may be entered
25 against the State or an agency thereof. It



1 only says that they can't unless the claimant
2 establishes his claim to relieve by evidence
3 satisfactory to the Court. That's absolutely
4 what has been done in front of Judge Manning to
5 get it here, and then just like any other
6 damages hearing, testimony and evidence is
7 presented to you to then make a determination
8 on that damages amount. So, I struggle with
9 this concept. There is nothing in the law that
10 stands for this proposition that the judgement
11 cannot be against the State as a matter of
12 course. The arguments as to 55(e) and likening
13 it to 55(d) of the Federal rules has been
14 brought in front of Judge Manning two times
15 now. It's been denied by Judge Manning two
16 times now, and Judge Manning as who sent it
17 here with the specific direction for the
18 purposes of a hearing to determine the
19 plaintiff damages to be entered against
20 Defendant South Carolina Department of
21 Education. Our position, Your Honor, is that
22 55(e) has been fully addressed, considered and
23 an opinion issued by Judge Manning as to that
24 argument. We're trying to get a third bite at
25 the apple here. I don't believe that argument



1 is in front of you. I believe what's in front
2 of you is a determination as to damages because
3 they've been put in default and we know what
4 being put in default means.

5 **THE COURT:** All right. I think also, Mr. Lindemann,
6 the Order of Reference is narrow enough that I
7 can't really grant relief to your folks. All
8 I can do is hear -- have a damages hearing.

9 **MR. LINDEMANN:** Can I respond to what he just argued
10 here?

11 **THE COURT:** Yes, sir.

12 **DEFENDANT'S RESPONSE**

13 **MR. LINDEMANN:** First of all, Your Honor -- and I
14 don't know if you have copies of Judge Mannings
15 Orders in front of you. Well, first of all,
16 one error in what Mr. Hicks has argued to you,
17 he indicated that the Rule 55(e) argument was
18 the only one made to Judge Manning and that's
19 not true. We made the conventional argument
20 under the WAM Factors that good -- that show
21 good cause to set aside the injury of default.
22 But what's very important for Your Honor to
23 recognize is Judge Manning's Orders don't
24 address that issue. And ultimately -- I mean,
25 you can look at his Orders. And I gave him two



1 chances to address it and he didn't address it.
2 So you can't read his Order as rejecting my
3 Rule 55(e) argument or the other argument that
4 we've made that you can't have a default
5 judgement entered on a cause of action that
6 basically would fail the Rule 50 12 B 6 motion
7 relying on the Master's case as we cited in our
8 brief. But the bottom line is Judge Manning
9 hasn't ruled on this -- on these issues. I
10 mean, why Judge Manning presumably hasn't ruled
11 on these issues is because they were probably
12 premature for a motion to satisfy the entry of
13 default because what Judge Manning has done is
14 allowed the entry of default to stand. And
15 ultimately what Rule 55(e) says, it doesn't say
16 no entry of default shall be entered, it says
17 no judgement by default shall be entered. So
18 it's not until we get through this stage that
19 55(e) presumably comes into play. That is what
20 I'm assuming was underlying Judge Manning's
21 absolute refusal to address the issue. But
22 there's no doubt -- you can't read the -- 55(e)
23 isn't even cited. It is not a reference to
24 55(e) in here either of his Orders. He did not
25 address the merits of that argument for



1 whatever reason, but ultimately, Your Honor,
2 Rule 55(e) comes into play and says a judgment
3 by default can't be entered. That's what's
4 before Your Honor. And I would also make the
5 point that Judge Manning didn't enter a default
6 judgement. He did not consider the Plaintiff's
7 motion that is pending. The only motion that
8 Judge Manning ruled on -- and the only -- is
9 the motion to set aside the entry of default
10 and he denied that motion. So, that's in the
11 past. Now we're at the next level in the
12 procedure which is whether or not a judgement
13 by default should be entered. My argument to
14 the Court is 55(e) doesn't allow that unless
15 the plaintiff shows sufficient evidence of
16 their claim to relief, number one, and then we
17 would also argue -- and I don't want the record
18 to overlook the other two arguments that we've
19 made as well, Your Honor, and of course I rely
20 on our brief, but the fifth cause of action is
21 the only one that's asserted against the
22 Department of Education. So that's the cause
23 of action on which they're seeking a default
24 judgement. The South Carolina Supreme Court
25 has held several times -- I'm relying on the



1 Masters versus Rogers Development Group case
2 that says if a complaint fails to state a cause
3 of action then rendering a default judgment
4 thereon is without authority of law and
5 therefore reversible error. So in addition to
6 that, Your Honor, as we pointed out in our
7 brief, what they are arguing as far as the
8 basis of the negligence claim against the
9 Department of Education is something that falls
10 purely within the public duty rule and so there
11 is no cause of action that can be asserted,
12 plus there's immunity under the Tort Claims Act
13 ---

14 **MR. HICKS:** He's waived his defenses, Your Honor.
15 He's in default.

16 **MR. LINDEMANN:** Your Honor, I'm not making this up.
17 Masters versus Rogers Development says if a
18 complaint fails to state a cause of action then
19 rendering a default judgement thereon is
20 without authority of law and therefore a
21 reversible error. Public Duty Rule is not an
22 affirmative defense. Public Duty Rule holds
23 that there is no duty that is owed if it's owed
24 simply to the public. So it's not an
25 affirmative defense that was waived. And quite



1 simply, Your Honor, they haven't alleged a
2 cause of action on which a judgement can be
3 entered in this case. So, that's the second
4 grounds for opposing this. And the third
5 ground which we touched on briefly before
6 getting on the record is that there is
7 authority based on the Fro versus Delavega case
8 from the United States Supreme Court -- and
9 it's been applied by numerous Federal courts --
10 there is no law in South Carolina on it, but
11 there is a rule -- and of course the United
12 States Supreme Court case law is binding on the
13 State courts -- it's a rule that one of --
14 where there are multiple defendants who are
15 jointly liable basically being sued for the
16 same cause of action, being sued for the same
17 damages, the judgement should not be entered
18 against the defaulting judgement -- defendant
19 until the case is fully adjudicated against all
20 defendants. And that's also supported by Rule
21 55 -- 54(d) as well, again, based on Federal
22 case law. We have the same Rule 54(d) in South
23 Carolina. So, again, I certainly want to make
24 certain that that argument is preserved, that
25 it is premature at this point to enter any type



1 of default judgement because you have two
2 governmental entities, Richland School District
3 One as well as the Department of Education.
4 They're being sued for negligence for the same
5 -- for the same damages, for the same claim,
6 and ultimately, Your Honor, under what's called
7 the Fro Doctrine -- and it's well established
8 in Federal law -- that the Court should hold
9 off on holding or entering any type of default
10 judgement until there's been a full
11 adjudication of the case against all parties.
12 So those are our positions. I don't tink you
13 have to go beyond 55(e) 'cause 55(e) requires
14 them to prove the merits of their case, and
15 unless they're prepared to do that here today
16 they shouldn't be able to get a default
17 judgement.

18 **THE COURT:** Okay. The issue I want to go back to is
19 the Order of Reference itself, and the Order of
20 Reference specifically and narrowly gives me
21 the authority to hear the damage hearing, and
22 that's what I'm gonna do.

23 **MR. LINDEMANN:** So just to make sure the record's
24 clear, so you're just going to determine
25 damages but you're not gonna enter a judgement?



1 **THE COURT:** I don't know. Let me hear what the
2 damages are and then -- then ---

3 **MR. LINDEMANN:** Okay, because I'm fine with going
4 back to the Circuit Court to make these
5 arguments as to why a judgement shouldn't be
6 entered, but as I understood what's before Your
7 Honor is to rule on the motion for a default
8 judgment. And so if the Court enters judgment
9 these issues are ripe for you.

10 **THE COURT:** I have to do what Judge Manning said for
11 me to do. I can't go beyond what the Order of
12 Reference says for me to do in this case. Am
13 I not being clear?

14 **MR. LINDEMANN:** Well, I understand what Your Honor
15 is saying, but ---

16 **THE COURT:** Yeah. Yeah.

17 **MR. LINDEMANN:** Again, I mean, I respectfully
18 disagree if the -- if the -- if what either --
19 if the Court is being asked to enter a default
20 judgment in a -- enter an Order -- I mean a
21 judgment by default, these issues that I'm
22 raising are ripe to that, Your Honor.

23 **THE COURT:** I understand. All right. Mr. Hicks,
24 you may proceed.

25 **MR. HICKS:** Thank you, Your Honor. We call Mr.



1 Sullivan to the stand.

2 **COURT REPORTER:** Mr. Sullivan, please raise your
3 right hand. Do you solemnly swear or affirm
4 the testimony you're about to give will be the
5 truth, the whole truth and nothing but the
6 truth so help you God?

7 **MR. SULLIVAN:** I do.

8 **COURT REPORTER:** Would you please state your full
9 name for the record?

10 **MR. SULLIVAN:** Ammon L. Sullivan the Third.

11 **COURT REPORTER:** Thank you, sir.

12 **AMMON L. SULLIVAN, III,** having been duly sworn,
13 testifies as follows:

14 **MR. SULLIVAN - DIRECT EXAMINATION BY MR. HICKS:**

15 Q: Mr. Sullivan, I know you just did this but
16 would you please state your full name again for
17 the record?

18 A: Ammon L. Sullivan the Third.

19 Q: And, Mr. Sullivan, are you currently employed?

20 A: Yes, I am.

21 Q: And where are you currently employed?

22 A: Richland School District One.

23 Q: And when did you begin that employment with
24 Richland One?

25 A: In August of 2010.



1 Q: And just prior to beginning your employment at
2 Richland One where did you work?

3 A: Lexington School District One.

4 Q: Okay. And what years were you employed at
5 Lexington School District One?

6 A: I was there from August of 2006 until I started
7 at Richland School District One, so that would
8 have been July.

9 Q: And during your time at Lexington One what
10 positions did you hold?

11 A: I was an ISS monitor, a classified position
12 there.

13 Q: So you had a classified position not a
14 certified?

15 A: Correct.

16 Q: And are classified positions still documented
17 with the South Carolina Department of
18 Education?

19 **MR. LINDEMANN:** Object to the form, Your Honor.
20 Lack of foundation.

21 **MR. HICKS:** I believe he actually can. He said he
22 was a classified teacher.

23 **THE COURT:** Objection overruled.

24 A: Yes.

25 Q: So, but the four years you spent at Lexington



1 were all classified?

2 A: Yes.

3 Q: And when you started at Richland One what
4 positions were you holding?

5 A: I went to a certified position at that time
6 because I was a certified teacher. I just
7 couldn't get in a -- I was business certified
8 at that time so I couldn't -- there was no job
9 for me in Lexington One, but I was able to
10 attain a job in Richland One at Dreher High
11 School as a certified business education
12 teacher.

13 Q: And when you started Richland One did you
14 receive any STEP or years of credit service
15 from your time at Lexington?

16 A: I did not.

17 Q: And when I say STEP do you understand STEP to
18 be the term that the state uses to be
19 equivalent with years of service?

20 A: Correct.

21 Q: And at the time you began at Richland One had
22 you ever served as a certified teacher at any
23 other district?

24 A: I was certified but I was in a classified role.

25 Q: Now when you began at Richland One did you --



1 strike that. I believe I asked you -- did you
2 receive any STEP credit when you began at
3 Richland One for your time at Lexington?

4 A: I did not.

5 Q: Okay. Did you ask about receiving STEP credit
6 for your time at Lexington?

7 A: I did.

8 Q: Did you ask anybody at the Department of
9 Education about receiving that STEP credit?

10 A: I did.

11 Q: And were you told at this time in 2010 by
12 anybody at Richland One whether or not you
13 would be receiving STEP credit?

14 **MR. LINDEMANN:** Objection, Your Honor. Hearsay.

15 **THE COURT:** Sustained.

16 Q: I'll rephrase. Did you receive any STEP credit
17 at the time you began at Richland One?

18 A: I did not.

19 Q: Mr. Sullivan, do you recognize this form?

20 A: I do.

21 Q: Do you recognize the handwriting at the top of
22 this form?

23 A: I do.

24 Q: And is that your handwriting?

25 A: It is.



1 Q: And what is your understanding of what this
2 form is?

3 A: So when you have an amount of experience in
4 whatever it may be you send that in to the
5 Department of Education for them to verify.
6 It's called an Experience Verification Form.
7 And they update your file accordingly.

8 Q: Do you recall when you first discovered that
9 this form existed?

10 A: I don't know an exact date when I -- with this
11 particular form, when I first started at
12 Richland One I was going from a classified to
13 a certified position so I didn't know policy
14 and procedure very well. But as my time in the
15 District grew, whenever I would add education
16 or certifications I knew that I had to fill out
17 one of these forms for -- a form to show the
18 experience.

19 Q: Did the Department of Education ever provide
20 you with this experience verification form?

21 A: No.

22 Q: And at the top it appears to be a South
23 Carolina State Department of Education
24 Experience Verification Form?

25 A: Correct.



1 Q: Did you ultimately provide this form to
2 Lexington School District one?

3 A: So upon -- when I found out that I was going to
4 be entitled to the years of service at
5 Lexington One I called human resources at
6 Lexington School District One and asked them,
7 because I fell underneath -- I don't know the
8 exact form, but my time there serving because
9 I was in a full-time classified position but
10 was able to teach a certified position I knew
11 that those years of experience would count
12 towards my certified years. So I sent -- I
13 contacted Ms. Dozier at Lexington School
14 District One and she -- and this was in 2019,
15 and I contacted her and asked her to do a
16 Experience Verification Form for me so that I
17 could then send it to the South Carolina
18 Department of Education.

19 Q: And had the South Carolina Department of
20 Education told you that that was the process in
21 order to get that time added to your years of
22 service?

23 **MR. LINDEMANN:** Your Honor, objection. Hearsay.

24 A: I never got anything.

25 **THE COURT:** No, hold on one second. One second.



1 What was the question again?

2 **MR. HICKS:** I asked him had the Department of
3 Education ever told him that this was the
4 document that he needed to submit to get that
5 verification?

6 **THE COURT:** Okay.

7 **MR. LINDEMANN:** And the objection's hearsay, plus
8 has the Department of Education ever told you.
9 I mean that's thousands of people.

10 **MR. HICKS:** But it's serving against party opponent.
11 It's their own form.

12 **MR. LINDEMANN:** Yeah. He's got to specify who he
13 spoke to to be able to say -- you can't just
14 say a department told me something.

15 **MR. HICKS:** He wants us to quote every individual he
16 spoke to on a phone line.

17 **THE COURT:** Hold on a second. Objection's
18 overruled.

19 Q: Let me re-ask my question. Had somebody at the
20 Department of Education ever told you that this
21 form was the process you needed to carry out to
22 get that service credited?

23 A: No, I never got any guidance from them
24 throughout this process.

25 Q: Okay. So you then provided this time that you



1 have in front of you to Lexington One and they
2 completed it?

3 A: Correct.

4 Q: And it's provided back to you?

5 A: Correct.

6 Q: Okay. And then you provided it to the
7 Department of Education?

8 A: Correct.

9 **MR. HICKS:** Your Honor, we move this document into
10 evidence as Plaintiff's Exhibit 1.

11 **MR. LINDEMANN:** There was a previous document and
12 it's ---

13 **MR. HICKS:** I was gonna move it in.

14 **THE COURT:** Okay. You want the completed document -
15 --

16 **MR. HICKS:** Yes, sir.

17 **THE COURT:** Let me ask you to redact the last four
18 of his Social Security number.

19 **MR. HICKS:** I can do that. It's got the last four
20 of your Social. I need to redact.

21 **THE COURT:** Okay. One moment.

22 **MR. HICKS:** Andrew, I think he's asking you if you
23 have any objection.

24 **MR. LINDEMANN:** Oh, I'm sorry. No. I'm sorry.

25 **THE COURT:** Any objection?



1 **MR. LINDEMANN:** Your Honor, objection to Exhibit 1,
2 no, Your Honor.

3 **THE COURT:** Okay. The motion's granted.

4 **(Plaintiff's Exhibit Number 1 was marked for**
5 **identification purposes.)**

6 **MR. HICKS:** Thank you, Your Honor.

7 **Q:** Now after submission of Exhibit 1 in the 2019,
8 were your years of services updated to include
9 your four years at Lexington?

10 **A:** They were. It took about seven or eight weeks
11 but it was updated.

12 **Q:** So as of 2019 you would have originally been a
13 STEP 9.

14 **A:** Originally, yes.

15 **Q:** And they updated you to a STEP 13?

16 **A:** Correct.

17 **Q:** And since that being updated you have been paid
18 in accordance with you STEP as if you had those
19 four years of credit?

20 **A:** Correct.

21 **Q:** Mr. Sullivan, I've handed you a document that
22 says State Regulation. Have you ever seen that
23 State Regulation?

24 **A:** I have.

25 **Q:** And if you could look kind of towards the



1 bottom of that reg there's a section --
2 subsection B, sub-subsection 3; do you see
3 that?

4 A: Yes.

5 Q: Could you read that for me?

6 A: The position as a teacher's aide provided the
7 applicant had an earned undergraduate degree
8 during the period of employment.

9 Q: Was that applicable to you during the time you
10 were at Lexington One?

11 A: Yes, it was.

12 Q: And what's the effective date of that state
13 regulation?

14 A: 6/22/2001.

15 Q: And that would have pre-dated your time at
16 Lexington One?

17 A: Yes.

18 Q: Your Honor, we move this document into Exhibits
19 as Plaintiff's Exhibit 2. I believe the Court
20 could take judicial notice of it because it is
21 a state reg.

22 **THE COURT:** Mr. Lindemann?

23 **MR. LINDEMANN:** Your Honor, it's law. It's not
24 really proper for an exhibit, but it doesn't
25 make a difference to me.



1 **THE COURT:** Okay. I'll take judicial notice of it.

2 You can mark it as exhibit too.

3 **(Plaintiff's Exhibit Number 2 was marked for**
4 **identification purposes.)**

5 **MR. HICKS:** Can you hand that to him?

6 **Q:** Mr. Sullivan, we were talking earlier about the
7 Plaintiff's Exhibit 1, the Experience
8 Verification Form, and your communications with
9 the Department of Education. Did the
10 Department of Education ever direct you to that
11 state regulation that provided for you getting
12 that service credit?

13 **A:** No, they did not.

14 **Q:** And in your employment at Richland One was your
15 salary commensurate with your STEPs or your
16 years of experience?

17 **A:** It does now.

18 **Q:** Let me clarify that. When -- the first nine
19 years of your time at Richland One were you
20 being paid in accordance with the STEP as if
21 you had been a STEP zero as of 2010?

22 **A:** No, I was not.

23 **Q:** As a STEP zero as of 2010?

24 **A:** I was a STEP zero, correct.

25 **Q:** Okay. And you should have been a STEP 4?



1 A: Correct.

2 Q: So for those first nine years you were paid a
3 salary commensurate with a STEP four below what
4 you should have been?

5 A: Each year until I discovered the form.

6 **THE COURT:** One moment.

7 **MR. HICKS:** Absolutely.

8 **THE COURT:** We have to recess at 11:00 for five
9 minutes or so.

10 **MR. HICKS:** Do you want to go ahead and take it?
11 I've only got a few minutes left, but I'll be
12 glad so we don't get in the middle of
13 something.

14 **THE COURT:** Yeah, please. Please, just ---

15 **MR. HICKS:** Let's do that.

16 **THE COURT:** Yeah, I'll stand in recess until 11:05.

17 **MR. HICKS:** Okay.

18 **(Off the Record at 10:58 a.m. until 11:06 a.m.)**

19 Q: Mr. Sullivan, just so I can make sure I think
20 where we left off is in your role as a
21 certified teacher your salary is equated to the
22 STEP you hold?

23 A: Correct.

24 Q: Mr. Sullivan, I'm handing you a spread sheet
25 and it's for several school years from 2010



1 through the 2018-2019 school year; do you see
2 that?

3 A: I do.

4 Q: And that would have been the years that your
5 step was documented incorrectly?

6 A: Correct.

7 Q: Okay. And in the 2010-2011 school year you
8 would have been a STEP zero is what they had
9 you classified as?

10 A: Correct.

11 Q: And you should have been a STEP four?

12 A: Correct.

13 Q: So as of 2010-2011 your salary as a STEP zero
14 was \$33,432 based on the salary schedule for
15 that year?

16 A: Roughly. I don't remember.

17 Q: If I told you that that number came from the
18 salary schedule produced by Richland County
19 School District 1 would you have any reason to
20 contest it?

21 **MR. LINDEMANN:** Your Honor, objection. Lack of
22 foundation. If he's relying on something that
23 came from Richland County School District One,
24 that's the proper evidence of that. Again,
25 this hasn't been entered into evidence and the



1 Plaintiff is testifying from it. I don't know
2 who produced it, what the basis is of it, who
3 did these calculations, so I object to this
4 whole line of testimony. If there's
5 information from Richland School District One
6 as far as the calculation of what his salary
7 would be with additional years of experience,
8 the appropriate people to testify to that would
9 be people from Richland School District One.

10 **THE COURT:** Mr. Hicks?

11 **MR. HICKS:** Your Honor, well, first, I'm laying the
12 foundation. That's why it hasn't been moved
13 into evidence. Two, salary schedules are a
14 fixed salary schedule produced and posted by
15 the school district on an annual basis. Those
16 numbers, they're fixed. So a STEP zero -- I
17 mean I believe that it's State law recognized
18 that, and he's already argued this law
19 shouldn't be put into evidence so now we're
20 kind of going the other way and he wants me to
21 put law into evidence. A STEP zero teacher
22 makes a fixed number based on the salary
23 schedule. Those numbers are from the salary
24 schedule. I mean for me to come in here and
25 produce 40 pages of -- of guides at damages



1 hearings, we're allowed to speak to his
2 monetary figures. I mean that's the whole
3 purposes of a damages hearing.

4 **MR. LINDEMANN:** Your Honor, I don't have a problem
5 with him testifying as to the amount that he
6 was paid in a given year. That's something
7 within his personal knowledge. Testifying as
8 to the amount that he should have been paid in
9 a certain year, that requires a foundation.
10 And there is to my knowledge no, quote,
11 regulation or law that sets this out because
12 otherwise Your Honor could have that. Now as
13 I understood it what he was saying is that
14 there's some sort of document that was produced
15 by Richland School District One. I haven't
16 seen it. It wasn't produced to me. But if
17 that's what they're relying on, that's what
18 needs to be put into evidence and needs to be
19 put into evidence by someone who has knowledge
20 of this particular area and how to make such
21 calculations. And he hasn't laid the
22 foundation that this witness is involved in
23 human resources or how you calculate salaries
24 under any type of information provided by the
25 school district.



1 **MR. HICKS:** If you want me to put a salary guide in
2 to appease Mr. Lindemann I will gladly do it.
3 I mean I have documents -- I only have one
4 copy. I mean I didn't know we were going to a
5 point where we were contesting salary
6 schedules, but, I mean, for example, Richland
7 County School District One Salary Guide for
8 Teachers 2019-2020, and it provides every
9 single STEP from 0 to 31 in equivalent pay, and
10 they do this annually.

11 **THE COURT:** Okay. Objection overruled.

12 **MR. HICKS:** I guess just for clarification, Your
13 Honor, do you want me to put the salary guide
14 in for Your -- I assume You're going to take
15 this under advisement. Do you want it ---

16 **THE COURT:** Well ---

17 **MR. HICKS:** --- or I can provide every single year
18 if they would like to see it. I do not have
19 them in front of me.

20 **THE COURT:** I was under that representation that you
21 have it. I mean, want to look at it?

22 **MR. LINDEMANN:** Your Honor, it's never been provided
23 to me, and I haven't seen it.

24 **MR. HICKS:** You're in default. I don't have to
25 provide everything to you.



1 **MR. LINDEMANN:** Well I recognize that, but you also
2 have to be able to lay a proper foundation for
3 the -- and put into evidence what the judgment
4 is gonna be based upon.

5 **MR. HICKS:** That's what I'm doing.

6 **MR. LINDEMANN:** Your Honor, this is the salary guide
7 for one particular school year. I think
8 they're based on ---

9 **MR. HICKS:** They're not on the same -- the numbers
10 are different.

11 **MR. LINDEMANN:** Based upon this particular
12 spreadsheet they're looking at ---

13 **MR. HICKS:** Your Honor ---

14 **MR. LINDEMANN:** -- nine different school years, Your
15 Honor.

16 **MR. HICKS:** Your Honor, if I may -- and we can do
17 this now -- my intention is to make a motion
18 under Rule 55(b)(1) that a damages hearing is
19 not actually going to be needed here because
20 the amount of his losses because of his STEP
21 inaccuracy as the Rule would put it is a sum
22 certain or a sum which can be computation by
23 being made certain. There's no discrepancy
24 here, Your Honor, that he was four years off.
25 In fact, as of 2019 they have added four years



1 to his time of paying him correctly. So the
2 discrepancy is nothing more than the amount he
3 was paid as a STEP zero, for the first given
4 year for example, and the fact -- as the
5 spreadsheet lays out -- what he should have
6 been paid as a STEP four for that first year
7 and continuing. It's a sum certain which Rule
8 55(b)(1) would stand that can be done on motion
9 or by affidavit.

10 **THE COURT:** Okay. Do you have an affidavit.

11 **MR. HICKS:** I said by motion or affidavit. I would
12 gladly tender an affidavit immediately. I do
13 not have one in front of me, no, sir.

14 **THE COURT:** We can all go to lunch then. I mean if
15 that's what you want to do. Mr. Lindemann, how
16 do you respond to that?

17 **MR. LINDEMANN:** Well, Your Honor, they didn't choose
18 to do it by affidavit. I'm trying to pull my
19 -- my Rule -- I don't know that in the middle
20 of a damages hearing you can all of a sudden
21 contend that you're gonna present the damages
22 by affidavit. The affidavit by Rule 6 is
23 supposed to be filed with the motion and we
24 certainly haven't gotten a motion. When the
25 motion was filed back in October no affidavit



1 was submitted at that particular time. So ---

2 **MR. HICKS:** I'll withdraw it, Your Honor. We'll
3 move under (b)(2). That's fine. We can
4 conclude.

5 **MR. LINDEMANN:** And certainly there's -- it's not a
6 verified complaint with a sum certain in the
7 complaint, Your Honor. So I tend to think that
8 that probably can't be handled that way anyway.

9 **MR. HICKS:** It says a verified pleading may be used
10 in lieu of an affidavit, Your Honor. It
11 doesn't say that a verified pleading has to
12 exist. I'll withdraw the motion.

13 **THE COURT:** The witness is here, I mean.

14 **MR. HICKS:** We'll conclude, Your Honor. I'm trying
15 to streamline it because there seems to be an
16 over-arching amount of debate on what should be
17 a damages hearing.

18 Q: Mr. Sullivan, in looking at that spreadsheet in
19 front of you, if you look at the school year
20 and then over for where it initially says STEP
21 pay, would those have been the STEPs in which
22 your salary was based on for those years?

23 A: Correct.

24 Q: Okay. And then the column beside that says
25 proper STEP. Those would have been the STEPs



1 that you should have been paid at had your four
2 years been documented by the Department of
3 Education?

4 A: Correct.

5 Q: And to the extent you were paid a STEP pay
6 every year, was that based on the Richland
7 County School District One salary schedule?

8 A: Correct.

9 **MR. LINDEMANN:** Object to the form, Your Honor.

10 **MR. HICKS:** He can say how he was paid.

11 **THE COURT:** Overruled.

12 Q: And in this sheet it states that that pay
13 difference for your pay from 2010 to 2019 was
14 \$25,907?

15 A: Correct.

16 Q: And in the far right, as an employee of
17 Richland One do you receive benefits?

18 A: I did.

19 Q: Okay. And do you contribute money to South
20 Carolina Retirement System?

21 A: I do.

22 Q: And had you been paid a higher STEP would you
23 have had more contributions to your benefits
24 and retirement?

25 A: I would have.



1 Q: Mr. Sullivan, are you aware of the State
2 Benefits Calculator that the South Carolina
3 State Office of Human Resources provides
4 employees?

5 A: Yes, I am.

6 Q: And that benefits differ based on that
7 calculator for this spreadsheet would be
8 \$11,817.13?

9 **MR. LINDEMANN:** Your Honor, lack of foundation.
10 Leading.

11 **MR. HICKS:** It's a Judicial Notice, Your Honor. The
12 State Human Resources produces a benefits
13 calculator.

14 **THE COURT:** Objection overruled.

15 Q: And the combination of the total loss for those
16 numbers would be \$37,724.13?

17 A: Correct.

18 Q: And those are losses you sustained as a result
19 of your STEP being incorrect from 2010 to 2019?

20 A: Correct.

21 Q: Your Honor, we move this document into evidence
22 as Plaintiff's Exhibit 3.

23 **(Plaintiff's Exhibit Number 3 was marked for**
24 **identification purposes.)**

25 **THE COURT:** Mr. Lindemann?



1 **MR. LINDEMANN:** Your Honor, based on the objections
2 that I've already raised, lack of foundation.
3 I don't think that we've established that this
4 witness prepared this document. The underlying
5 data that would support it has not been
6 provided to opposing counsel and provided to
7 the Court. It's not an appropriate summary
8 under 1006 in the Rules of Evidence, Your
9 Honor.

10 **THE COURT:** Objection overruled.

11 Q: Mr. Sullivan, just to be sure, did you assist
12 in the preparation of this spreadsheet?

13 A: I gave you the information that I could.

14 Q: What you were paid over the years?

15 A: Correct.

16 Q: And the STEPs that you should have held?

17 A: Correct.

18 Q: Nothing further, Your Honor.

19 **THE COURT:** Okay. Mr. Lindemann, any questions?

20 **MR. LINDEMANN:** Yes, Your Honor.

21 **MR. SULLIVAN - CROSS EXAMINATION BY MR. LINDEMANN:**

22 Q: Tell me what your involvement with the
23 preparation of Exhibit Number 3 was, Mr.
24 Sullivan.

25 A: I gave Mr. Hicks the information that I had,



1 that I knew about, and we came up with these
2 numbers that you have.

3 Q: And what information is it that you provided to
4 him?

5 A: Everything that we've talked about to this
6 point, salary structure, my retirement
7 information that we've been seeing.

8 Q: I mean can you be more specific? I mean what
9 specifically did you give him? I mean pay
10 stubs?

11 A: Everything that you've seen.

12 Q: I haven't seen anything.

13 A: The salary structures that you saw.

14 Q: Okay. I was given a table from 2019, so that's
15 something you provided to counsel?

16 A: Correct.

17 Q: All right. Did you provide him with salary
18 tables for any other years?

19 A: For as many as I could find.

20 Q: And how many could you find?

21 A: I don't recall.

22 Q: Did you find them for each of these school
23 years?

24 A: I think we found them for -- we went back for
25 maybe -- maybe back to 2017. They're public



1 record, I mean, but you can only go back and
2 find them so far.

3 Q: In the Complaint itself you have a reference to
4 salary guides for teachers in 2015, 2016 and
5 2018. That's in paragraph 16 of your
6 Complaint. Did you have more than the tables
7 for those three years?

8 A: I think that's accurate.

9 Q: All right. That's accurate those are the three
10 years you have?

11 A: I think.

12 Q: Okay. And so what did you use to determine the
13 pay differences for the other school years?

14 A: We used I think the most recent form that we
15 had and came up with a number that I was paid
16 versus what I should have been paid versus time
17 of service.

18 Q: Well, but for instance, looking at the first
19 line 2010-2011 school year, so you didn't have
20 the salary guide for that particular year?

21 A: I do not now, no.

22 Q: Okay. So how did you determine what the,
23 quote, proper pay would be for that particular
24 year?

25 A: Based off the most recent salary schedule that



1 we had.

2 Q: So you used the 2019 salary schedule to
3 determine what the proper pay would have been
4 in the 2010-2011 school year?

5 A: It was either that one or the -- it was
6 probably the most recent one, so whatever the
7 most recent one that we had either 2015 or
8 2016. I don't remember. This has been a year.

9 Q: All right. How about the 2011-2012? Did you
10 have the pay schedule for that year?

11 A: I've already told you I didn't.

12 Q: Okay. So again how did you determine what the
13 proper pay would be under that year?

14 A: We used the most recent salary structure.

15 Q: All right. And -- but you have no idea how the
16 most recent salary structure compares to the
17 salary structure ---

18 A: They're very ---

19 Q: --- from 2011 to ---

20 A: --- they're very similar. You could look -- it
21 -- based off your years of service and your
22 education, it may fluctuate 25, 30 -- I don't
23 know exactly.

24 Q: You don't know because you haven't seen the one
25 from 2011-2012, correct?



1 A: I did in 2011.

2 Q: But in putting together this damages document
3 you did not have the precise information from
4 2011-2012; is that correct?

5 A: That is correct.

6 Q: All right. And the salaries -- there were
7 increased in the salaries between when you
8 first started Richland County School District
9 One versus the 2018-2019 school year; was there
10 not?

11 A: Please repeat that?

12 Q: The salaries -- the set salaries for different
13 positions increased over the course of those
14 eight school years; did it not?

15 A: You're talking about STEPs?

16 Q: No, I'm talking about the salaries themselves?

17 A: I don't -- I don't know.

18 Q: You have no idea?

19 A: I'm not a human resources.

20 Q: Okay. So that's something beyond your
21 knowledge?

22 A: They might. I don't know.

23 Q: All right. Did you actually put together and
24 make these calculations that are in this
25 Exhibit?



1 **MR. HICKS:** I'm gonna object. That's attorney
2 client privilege. He said he provided it.

3 **MR. LINDEMANN:** I'm just asking him how he put it
4 together, Your Honor.

5 **THE COURT:** Why the privilege?.

6 **MR. HICKS:** Repeat your question.

7 **THE COURT:** He asked him if he actually made
8 calculations, if he actually did it.

9 A: I can answer.

10 **MR. HICKS:** He can answer. It's fine. I mean we
11 put it together together, but he can answer.

12 **MR. LINDEMANN:** I object to Mr. Hicks testifying for
13 him, but.

14 A: I sent him -- when this -- when this first
15 started, what I could find online based off my
16 years of service and my education, what I
17 thought I was underpaid for this time, and then
18 I also provided him -- we did this together --
19 the benefits difference. So, yes, to answer
20 your question. I have -- we worked together to
21 do this.

22 Q: All right. Now you mentioned the benefits
23 difference. How was that calculated?

24 A: There's a calculator on the State Retirement
25 website.



1 Q: And specifically explain to the Court what that
2 calculator is and where it can be found.

3 A: You just go underneath your account under your
4 PEBA, which is our professional retirement, and
5 you put your whatever the payment amount what
6 you were paid versus what you should have been
7 paid and it gives you your -- you get the
8 amount you put in each time.

9 Q: Okay. And then ---

10 A: So -- go ahead.

11 Q: When was that calculation done?

12 A: It's been within the last 90 days I guess. I
13 don't remember exactly.

14 Q: So you're using the website as -- the benefit
15 calculator as it appeared within the last 90
16 days?

17 **MR. HICKS:** I'm gonna object, Your Honor. It's a
18 complete mischaracterization of how this
19 calculator works. I don't have it pulled up.
20 I'll gladly let Mr. Lindemann see it if he
21 wants to learn about it. It's ---

22 **MR. LINDEMANN:** Your Honor, I think I'm entitled to
23 ask him ---

24 **MR. HICKS:** It's ---

25 **MR. LINDEMANN:** --- about it. I don't think I'm



1 mischaracterizing it. I'm asking him what ---

2 **MR. HICKS:** He's asking how it's calculated. It's a
3 generated form -- a document by the Department
4 of Administration and PEBA, and you plug in the
5 salary and it tells you the benefit.

6 **THE COURT:** Okay. The question was he's done it
7 based on the last 90 days; is that correct?

8 **MR. LINDEMANN:** That's correct.

9 **MR. HICKS:** But what I'm saying is it'd be a
10 mischaracter- -- because you plug in any salary
11 and it tells you what the benefit amount is
12 from that salary.

13 **THE COURT:** I understand. I think he can answer the
14 question.

15 **MR. HICKS:** Okay.

16 **THE COURT:** Go ahead and answer the question, sir.
17 Do you want to repeat the question, Mr.
18 Lindemann?

19 Q: Sure. I'd be happy to. So the benefit
20 calculator that you used was the one that was
21 available to you in the last 90 days?

22 A: Well it's been available for as long as I
23 worked for the State of South Carolina, but,
24 yeah, we just did the calculation within the
25 last 90 days.



1 Q: Okay.

2 A: I don't remember the exact date.

3 Q: Now you didn't make those calculations back for
4 each of the particular school years, did you?

5 A: Yeah.

6 Q: I mean you didn't use the benefit calculator
7 that was available in 2011 to determine the
8 2010-2011 benefit differential, did you?

9 A: Based off the information that we had, the pay
10 scale.

11 Q: And my question is, you didn't do those
12 calculations based upon the available
13 calculator in 2011, correct?

14 A: I don't understand what you're asking.

15 Q: Did you in 2011 use the benefit calculator that
16 was available and do the computation that's
17 listed here on Exhibit 3?

18 A: I just told you I did it within the last 90
19 days.

20 Q: Did it in the last 90 days? Okay. And -- all
21 right. Let me ask you a couple other
22 questions. The Exhibit Number 1, do you have
23 that in front of you?

24 A: Yes.

25 Q: Where did you obtain that form?



1 A: I don't -- this form looks like it was filled
2 out by Lexington School District One so I don't
3 know that I -- it was -- I can't answer that.

4 Q: Well you were initially asked about a form that
5 then was placed into evidence that had
6 handwriting at the top. Weren't you asked
7 about that by your lawyer?

8 A: Right. That's my name. This -- I didn't
9 prepare this form.

10 Q: Okay. And so the one that has your handwriting
11 on it is the same form, it just hasn't been
12 filled out by the school district; is that
13 right?

14 A: Correct.

15 Q: All right. And when did you -- where did you
16 receive that form from?

17 A: Which form?

18 Q: The form that you handwrote.

19 A: This one here?

20 Q: Yes.

21 A: I got it from -- I guess I got it from
22 Lexington School District One in 2019.

23 Q: Okay. Copy that. When did you receive it from
24 Lexington School District One?

25 A: In 2019.



1 Q: Okay.

2 A: It looks like on or about 6/25/19 when this was
3 filled out by Ms. Dozier it looks like.

4 Q: So you never went on the South Carolina
5 Department of Education's website and obtained
6 a copy of this experience verification form?

7 A: Not that I can recall.

8 Q: Did you ever go on the website for the State
9 Department of Education and look at what was
10 required in order to get educator experience
11 credit?

12 A: Yeah. Every time that I spoke -- and this is
13 dating back to 2010 so you're gonna have to
14 forgive me, that's almost 11 years ago -- I
15 wasn't given any guidance or phone calls
16 returned and how this process works. I'm not
17 a human resources employee. I'm a school
18 teacher. So, no, I was -- it was either non-
19 returned phone calls or directed back to my
20 current school district.

21 Q: Did you ever make any type of inquiry in
22 writing either by letter or by e-mail to the
23 Department of Education?

24 A: About what?

25 Q: About -- questions regarding educator credit?



1 A: No, those were all phone calls.

2 Q: Okay. Do you have any -- did you document
3 those phone calls in any way?

4 A: No.

5 Q: Do you know who you spoke with?

6 A: Whatever their title is at the State Department
7 of Education that deals with education
8 certification. I don't know. It's been 11
9 years almost.

10 Q: Okay. So you can't testify to who you spoke
11 with or what that person specifically told you
12 or when you had those conversations; is that
13 correct?

14 A: Those conversations would have been in August
15 of 2010, and it was 11 years ago. I don't know
16 who I spoke to.

17 Q: Had you ever submitted an experience
18 verification form such as Exhibit Number 1
19 prior to June 2019?

20 A: No.

21 Q: Were you aware that the South Carolina
22 Department of Education had a website that
23 provided information regarding educator credits
24 and other certification issues?

25 A: Repeat the question again.



1 Q: Were you aware that the South Carolina
2 Department of Education had a website for
3 teachers -- for certified teachers -- that they
4 will use to get information on the
5 certification process as well as how to get
6 credit for educator experience?

7 A: So, no. All of my conversations from 2010
8 whenever I had a deg- -- it was always by phone
9 and I would always speak to the -- whoever I
10 was dealing with at the time, and whenever I
11 would have a change of action whether it was
12 adding a degree or whatever it may be that
13 information was then faxed, but I'm not
14 familiar their website and how that works. I
15 would just talk to people.

16 Q: And there were numerous documents that you
17 actually submitted since 2010 as your degree
18 changed or as there were different questions
19 that you had regarding your certification,
20 correct?

21 A: Education changes. So when I went from
22 Bachelors to Bachelor plus 18 to Masters. So
23 education -- not certification, but education
24 changes, yes.

25 Q: And that went to the same department, right,



1 with the Department of Education?

2 A: I don't know. I filled out a change of action
3 form and they want usually a transcript.

4 Q: Okay. So there are numerous letters that you
5 sent along with those sorts of documents to the
6 Department of Education within your file there,
7 are there not?

8 A: Correct.

9 Q: Okay. So you knew how to correspond with the
10 educator certification department of the
11 Department of Education? You'd done it
12 numerous times?

13 A: On education, correct.

14 Q: All right. Have you ever made a request of
15 Lexington School District Number Two to submit
16 an education verification form on your behalf
17 prior to June of 2019?

18 A: I've never worked in Lexington School District
19 Two.

20 Q: I'm sorry. Lexington School District One. I
21 misspoke.

22 A: Had I ever done what?

23 Q: Have you ever made a request to HR at Lexington
24 School District One to submit an experience
25 verification form on your behalf prior to June



1 of 2019?

2 A: No. Not until -- what document is that? Not
3 'til I was made aware of document 2.

4 Q: All right. And how were you made aware of
5 document 2, which is the regulation?

6 A: It was through a friend that had a similar
7 situation that I hadn't spoken with in some
8 time, and he was in a similar situation to me
9 -- not -- it hadn't been as long, but he told
10 me that I was entitled to those years, and that
11 night he sent me the document that nobody else
12 could send me. And when he sent that to me I
13 read over the document and I saw that I fell
14 underneath number 3 and then that started the
15 process with Lexington School District One to
16 get those years from 2006 to 2010 verified.
17 And then I sent that document to the State
18 Department of Education and another change of
19 action form.

20 Q: And the document that you're referring to that
21 a friend called to your attention is Exhibit
22 Number 2, the Regulation?

23 A: Correct.

24 Q: All right. Do you understand regulations of
25 law? Do you understand that?



1 A: Sure.

2 Q: You understand laws are available -- were
3 available to you?

4 A: Yeah. And I -- you need to understand that I'm
5 not a human resources employee, and when I
6 asked the State Department of Education I
7 wasn't given any guidance on how to find this
8 document that was in their website.

9 Q: And the only evidence you have that you even
10 made a request to the Department of Education
11 is just your testimony that you spoke to
12 somebody at some time.

13 A: Multiple times.

14 Q: But you have no record of it to show what that
15 was?

16 A: It's been 11 years.

17 Q: And so that occurred back in 2010 then?

18 A: When was hired by Richland One.

19 Q: All right. How about since 2010? Any
20 communications with the Department of
21 Education?

22 A: We've discussed this.

23 Q: Well I'm asking you as far as your educator
24 experience, did you ever make any calls since
25 2010?



1 A: Haven't we discussed that?

2 Q: Well, I'm asking you, sir.

3 A: When I ---

4 **MR. LINDEMANN:** Your Honor ---

5 A: What do you mean by -- what do you mean by
6 communication?

7 Q: You just told me that you had telephone calls,
8 you don't know how many, you had telephone
9 calls in 2010. My question is simple. Have
10 you had telephone calls with the Department of
11 Education since 2010 regarding this issue?

12 A: When I -- when I got the updated form from
13 Lexington One and on the State Department of
14 Education underneath your certification you can
15 see when correspondence is received. I spoke
16 with Ms. Dozier as Lexington One and she says
17 I've updated your experience verification form,
18 and it's been sent to the State Department of
19 Education. I think within a couple of days I
20 called to see because it wasn't showing and
21 then it -- within a day or so it showed that
22 they had received it, and I don't know how that
23 was done. I don't know. And then it took some
24 time -- about seven or eight weeks -- for it to
25 finally update from the nine years of service



1 to the 13. So, yes, there were phone calls
2 once I was given guidance on how to proceed.

3 Q: And that would have been in 2019 you said?

4 A: Correct.

5 Q: Okay. And that was after the education
6 verification form had been submitted to the
7 Department of Education, correct?

8 A: Correct.

9 Q: And you understood that this educator
10 verification form was required in order for you
11 to get credit for work experience prior to your
12 certification; is that correct?

13 A: Once I -- once I was made aware of this
14 document -- the document 2.

15 Q: And this document is the Regulation which is
16 Exhibit 2?

17 A: Correct.

18 Q: The Court's indulgence. I have no further
19 questions. Thank you, Your Honor.

20 **MR. SULLIVAN - REDIRECT EXAMINATION BY MR. HICKS:**

21 Q: One redirect question. Mr. Sullivan, if the
22 Department of Education had advised you of the
23 experience verification form in August 2010,
24 would you have completed it then?

25 **MR. LINDEMANN:** Object to the form, Your Honor.



1 A: I would have.

2 **RULING OF THE COURT:**

3 **THE COURT:** Overruled.

4 **MR. HICKS:** Nothing further, Your Honor.

5 **THE COURT:** Okay. Mr. Sullivan, you can come down.

6 **MR. SULLIVAN:** Sir, do I leave these documents here?

7 **THE COURT:** Yes, please. Anything further from
8 either side?

9 **MR. HICKS:** Nothing further from the Plaintiff, Your
10 Honor.

11 **MR. LINDEMANN:** Just preserving our arguments, Your
12 Honor, that were made earlier, Your Honor.

13 **THE COURT:** Okay. Mr. Hicks, if you would e-file a
14 proposed order specifying the damages that you
15 think your client's entitled to. Share that
16 with Mr. Lindemann and we'll take it from
17 there.

18 **MR. HICKS:** Ten days, Your Honor?

19 **THE COURT:** However long it takes.

20 **MR. HICKS:** Okay. That's fine. I always make sure
21 to ask. I'll get it done just as quickly as
22 possible.

23 **THE COURT:** E-file it.

24 **MR. HICKS:** Yeah, I'll e-file it first. Yes, Your
25 Honor.



1 **THE COURT:** All right. Share that with Mr.
2 Lindemann.

3 **MR. HICKS:** I'll do it.

4 **THE COURT:** Okay. Anything further today?

5 **MR. HICKS:** Nothing. Thank you, Judge.

6 **THE COURT:** All right.

7 **MR. LINDEMANN:** Thank you, Your Honor.

8 **(There being nothing further, the hearing concluded**
9 **at 11:38 a.m.)**

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**SOUTH CAROLINA
STATE DEPARTMENT
OF EDUCATION**

Experience Verification Form
Office of Educator Services
8301 Parklane Road
Columbia, SC 29223
(803) 896-0368 | fax
(803) 896-0325 | call center
certification@ed.sc.gov | email

The following must be completed by the Educator.

For information on experience credit, please refer to State Board Regulation 43-57-2 and the Guidelines for Granting Experience Credit

Last Name: Sullivan IV First Name: Ammon MI: L Former Name: _____
Last Four Digits of Social Security Number: [REDACTED] SC Certificate ID (if available): _____

The following must be completed by the employer's Human Resources/Payroll Personnel.

Qualifying verifiers must have direct access to detailed personnel employment records, including days worked

Name of Employing Entity: _____

Type of Entity (Definitions on Reverse):
☐ Public School/District ☐ Institute of Higher Education (IHE)
☐ Private School ☐ Education Regulatory Entity
☐ Service Provider ☐ Industry or Non-Education Based

School Accreditation (If Applicable): ☐ Regionally Accredited ☐ State Department of Education Accredited
☐ Other Accreditation: _____

Please provide a detailed record, including time worked each **school year** (instructions are available on the reverse):

Begin Date of Service (MM/DD/YY)	End Date of Service (MM/DD/YY)	Days Worked Per School Year	Hours Worked Per Day	Certification Required (Y/N)	Semester Hours Taught (Instruction at IHE Only)	Position Title, Subject Taught, and Ages or Grades Served <i>(If the educator provided virtual instruction, please include the state in which the educator was required to hold certificate)</i>

HR/Payroll Personnel Signature: _____ Date: _____

Printed Name: _____ Title: _____

Email Address: _____

Address: _____ Phone: _____

Employer Website Address: _____

Please affix a seal, stamp, or business card if available.

Plaintiff's Exhibit

1

2020-CP-40-3674



Office of Educator Services
8301 Parklane Road
Columbia, SC 29223
(803) 896-0368 | fax
(803) 896-0325 | call center
certification@ed.sc.gov | email

Title of Regulation:

Regulation No.: R43-57.2

**TEACHING EXPERIENCE ACCEPTABLE
FOR CREDIT**

Effective Date: 06/22/01

Constitutional and Statutory Provisions:

Section(s):

59-5-60. General powers of [State] Board.
Code of Laws of South Carolina, 1976.

State Board Regulation:

Teaching Experience Acceptable for Credit

A. To receive experience credit, the applicant must provide an official description of the professional duties for which he or she wishes to receive the credit. These duties must have been connected to the primary educational program through teaching, education administration, curriculum development, or teacher training. With the exception of trade and industry experience credit (see R. 43-63), employment must meet the requirements for full-time or half-time employment as stated below.

B. For an individual to receive experience credit, he or she must verify full-time or half-time employment in one of the following educational positions:

1. A professional position in a public, private, or parochial elementary or secondary school.
2. A professional position in a regionally or nationally accredited institution of higher education or an institution with teacher education programs approved by the South Carolina State Board of Education.
3. A position as a teacher's aide, provided the applicant had an earned undergraduate degree during the period of employment.
4. A professional education position in a teacher exchange program or a city, county, state, or federal education program for school-aged or adult populations.
5. A professional education or training position in a privately funded education program for school-aged or adult populations.
6. A professional education position in a city, county, state, or federal educational system that supports the primary education program for a school-aged or adult population.

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May 11 2022

CERTIFICATE OF COUNSEL

SC Court of Appeals

The undersigned counsel certifies that the Record on Appeal contains all material proposed to be included by all parties and not any other material.

LINDEMANN & DAVIS, P.A.

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*Counsel for Appellant South Carolina
Department of Education*

April 20, 2022

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May 11 2022

SC Court of Appeals

CERTIFICATE OF COMPLIANCE

The undersigned counsel for the Appellant South Carolina Department of Education certifies that the Record on Appeal complies with the Supreme Court's Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings, issued April 15, 2014.

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April 20, 2022