IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

Machelle Thompson,

Plaintiff,

v.

Richland County School District One; and Craig Witherspoon, Sanita Savage Cousar, and Susan Williams in their official and individual capacities,

Defendants.

C/A No. 3:17-cv-510-MBS

AMENDED COMPLAINT[1]
(Jury Trial Demanded)

EMPLOYMENT CASE

The Plaintiff complaining of the Defendant respectfully alleges as follows.

PARTIES AND JURISDICTION

1. The Plaintiff, Machelle Thompson, is a citizen and resident of Richland County, South Carolina.

2. The Defendant, Richland County School District One (hereinafter "the District") is a political subdivision of the state of South Carolina, providing educational needs to the public within a defined geographical area headquartered in Richland County, South Carolina, where it maintained an office, agents, teachers, and employees including the Plaintiff and Defendants.

[1] This amendment is made within 21 days of service (2/21/17), prior to any responsive pleading, in accord with Fed. Civ. Pro. R. 15(a)(1)(A). Fed. Civ. Pro. R. 15(a)(1)(A) allows a party to amend a complaint once as a matter of course within 21 days of service.

3. The Defendant Sanita Savage Cousar (hereinafter "Cousar") was at all times mentioned herein the Chief of Human Resources of the District and upon information and belief is a resident of Richland County, South Carolina.

4. The Defendant Susan Williams (hereinafter "Williams") was at all times mentioned herein an attorney and General Counsel for the District and upon information and belief is a resident of Richland County, South Carolina.

5. The Defendant Craig Witherspoon (hereinafter "Witherspoon") was at all times mentioned herein the Superintendent of the District and was at all times mentioned herein a resident of Richland County, South Carolina.

6. This action alleges retaliation under Section 15(a)(3) of the Fair Labor Standards Act (FLSA)(41), public policy discharge and defamation claims against the Defendant Department, as well as a claim of civil conspiracy against the individual Defendants.

7. The parties have sufficient connections to Richland County, the occurrences giving rise to this action occurred in Richland County, and jurisdiction is proper.

FACTUAL ALLEGATIONS

8. On May 18, 2015, Plaintiff began work as Director of Classified Employment Services for the District. Her hiring roughly paralleled the selection of a new superintendent.

9. Throughout her service to the District, Plaintiff was under the direct supervision and control of the Defendant Cousar, Chief of Human Resources of the District.

10. Upon assuming her position and observing the operations within the District, particularly in the area of classified personnel and human resources issues, Plaintiff

discovered many unusual and questionable practices and began to make inquiry into many of them with the hope and expectation of making procedures smoother and compliant with professional and ethical standards which she had previously experienced.

11. Although her first eleven months were fairly smooth with her supervisor and others, in the spring of 2016, she began to realize that many, including the Defendant Cousar, were resistant to change and deeply imbedded in the self-serving and patronizing history of the District.

12. In April 2016, Plaintiff received her first letter of reprimand from Defendant Cousar containing false and pretextual charges which Plaintiff strongly denied. Nevertheless, Plaintiff proceeded to do her work in an acceptable and professional manner.

13. On August 24, 2016, Cousar followed up with a second written reprimand again based on false and pretextual charges related to staffing issues. Plaintiff vigorously denied these allegations but once again continued to do her job in an acceptable and professional manner.

14. A large part of Plaintiff's duties involved the research and application of the proper classification and overtime provisions of the Fair Labor Standards Act (FLSA) to classified employees of the District which affected whether or not District employees should receive additional pay for overtime hours worked.

15. In early 2016 the U.S. Department of Labor announced that new overtime rules governing the minimum salary threshold for exempt classified employees to receive

overtime would take effect on December 1, 2016. The old salary threshold was $23,660 and the rule raised the salary threshold to $47,476 a year.

16. Throughout most of 2016, the District was not only trying to identify employees within the above gap, but were more fairly exploring the classification of many employees as "exempt" who were in reality non-exempt and entitled to overtime pay for their work, some for long periods of time.

17. The U.S. Department of Labor provides a "job duties" test which, when properly applied, determines whether or not an employee should receive time and a half compensation for more than forty (40) hours worked each week or should be "exempt" from such overtime pay.

18. Defendant Cousar directed the Plaintiff, as the Director of Classified Employment Services, to be the person responsible to look at the issue and to guide the District to correct any deficiencies.

19. During the weeks preceding October 11, 2016, Plaintiff made presentations to the District's Executive Team (which included Cousar, Williams and the Superintendent) as well as to the District's Board Committees (which included several Board members) and then prepared a PowerPoint and delivered it to the Regular School Board Meeting, a presentation explaining how the U.S. Department of Labor's new rule would affect the District. Plaintiff's presentation explained the salary threshold proposed changes, what steps the District should take to apply the "duties test" to ensure employees were properly classified as "exempt" or "non-exempt" and the possible penalties for non-compliance with the new rule.

20. On November 22, 2016, Defendant Cousar sent an email letter to a large number of employees and their supervisors, alerting them to the new rule and advising that if they were identified as non-exempt, beginning on December 1, 2016, and henceforth, they would have to "swipe in" their hours each day. Plaintiff had nothing to do with this transmission. A copy of the letter is attached as Exhibit "A" and incorporated by reference herein.

21. On that same day, a U.S. District Judge in Texas issued an injunction staying temporarily the change in the threshold salary set by U.S. Department of Labor pending a final hearing. The order had nothing to do with the proper or improper classification of employees as "exempt" or "non-exempt" or their entitlement to overtime pay for hours worked over forty (40) a week.

22. Pursuant to the presentations referred to from the Plaintiff and others, department heads and supervisors, including the Defendant Williams, identified approximately forty-six (46) "exempt" employees who had been wrongfully classified and were entitled to overtime pay, some for a considerable period of time for past services.

23. When an employee is determined to be owed back pay, including overtime, the FLSA and State law provides for payment of back pay, damages, attorney's fees, fines and sanctions.

24. On December 1, 2016, the Defendant Cousar, without consulting or advising the Plaintiff sent another letter to the affected employees advising that while they would still have to "swipe" for their hours of work, they would not be entitled to

overtime or a change in their “exempt” status. A copy of the letter is attached as Exhibit “B” and incorporated by reference herein.

25. Knowing that some or many of the employees affected were being deprived of overtime pay and further aware of ongoing inquires and complaints from employees already seeking the same, Plaintiff prepared and delivered to Defendant Cousar an email on December 5, 2016, advising her of problems caused by her letter and the possibility or likelihood that a DOL investigation could severely impact the District both legally and financially. A copy of the letter is attached as Exhibit “C” and is incorporated by reference herein.

26. Plaintiff was immediately admonished by Defendant Williams and told that it was inappropriate for her to send the email to her supervisor as it could be discoverable through the Freedom of Information Act (FOIA) and that if Plaintiff had a genuine concern for the District and its employees, she should not have put her concerns in writing.

27. On December 16, 2016, the same day the District closed for winter break, Defendant Cousar hand delivered Plaintiff another written reprimand for sending her the email and threatened termination. Defendant Cousar stated that she was submitting all three letters of reprimand in Plaintiff’s personnel file. A copy of the letter is attached as Exhibit “D” and incorporated by reference herein.

28. Upon returning from winter break on January 13, 2017, Plaintiff submitted a rebuttal to Defendant Cousar’s reprimands and requested that the letters not be submitted to her personnel file. Defendant Cousar denied Plaintiff’s request in a letter dated January 17, 2017.

29. Plaintiff immediately filed a grievance under District policy in response to Defendant Cousar's letter of reprimand, retaliating against Plaintiff.

30. On January 20, 2016, Superintendent Craig Witherspoon placed Plaintiff on administrative leave and ordered to leave the District office and not return. Plaintiff never returned to her duties.

31. Plaintiff presented her grievance to Defendant Cousar which was denied and she was fired on February 10, 2017. A copy of her termination letter is attached as Exhibit "E" and incorporated by reference herein.

32. In September of 2016, Plaintiff became aware that she had a serious congenital heart disorder which could require surgery. She reported that to Cousar who had shared the information with the Superintendent who was fully aware of her fragile condition during the events of December and January.

33. On February 27, 2017, Plaintiff was given an appeal hearing before the Defendant Witherspoon, which was transcribed before a court reporter. Only the Plaintiff's statements and answers to the Defendant Witherspoon's questions were admitted. Neither the Defendant Cousar nor the Defendant Williams were present and from the decision made by Defendant Witherspoon on March 6, 2017, it was obvious that he had prejudged the Plaintiff's case and was, in fact, a part of the conspiracy to punish and terminate Plaintiff.

34. Plaintiff was denied the right to confront her accusers, Defendants Cousar and Williams. Nevertheless Defendant Witherspoon rendered his decision, explicitly and implicitly, on the basis of their ex parte statements.

FOR A FIRST CAUSE OF ACTION
AGAINST THE DEFENDANTS
(Retaliation under Section 15(a)(3) of the Fair Labor Standards Act)

35. Plaintiff realleges, where consistent herewith, the foregoing.

36. Sec. 15(a)(3) of the FLSA provides in pertinent part that an employer shall not:

> "discharge or in any other matter discriminate against any employee because such employee has filed any complaint or instituted or caused to be instituted any proceeding under or related to this Act"

37. That the Plaintiff's actions in reporting the matters referred to herein and communicating to Defendant Cousar and Defendant Williams violations or potential violations of the FLSA constitute protected activities under the FLSA and the resulting hostile environment written reprimand and termination are the proximate results of Plaintiff's reports and actions taken in opposition to Defendants' efforts to ignore or reject their obligations under FLSA for the purpose of saving the District extensive overtime wages that belong to its employees who have worked for and deserve that compensation.

38. That as a direct and proximate result of the Defendants' retaliation and actions taken in their official capacities with the District and in the course of their duties, the Plaintiff has sustained the loss of her job, back pay and front pay, as well as attorney's fees and costs. Plaintiff is also entitled an award of actual damages for reputational loss, embarrassment and humiliation, past, present and future. Plaintiff also seeks an award of punitive damages against the individual defendants for their willful, malicious and bad faith conduct in the treatment of the Plaintiff as set forth herein.

39. Further retaliation is found by the Defendant Witherspoon's actions in hearing Plaintiff's grievance appeal on February 27, 2017 and denying the same arbitrarily on

March 6, 2017, when he was aware that Plaintiff's revelation of violations of FLSA and federal law had resulted in an ongoing investigation by the Department of Labor at the District where similar violations had cost the District a fine in excess of $78,000 in 2006.

FOR A SECOND CAUSE OF ACTION
AGAINST THE DEFENDANT DISTRICT
(Whistleblower Retaliation)

40. Where not inconsistent herewith and in the alternative, if necessary, the Plaintiff realleges the foregoing.

41. Plaintiff was an employee of the District, a public body. Plaintiff has standing to bring an action for whistleblower retaliation under S.C. Code Ann. § 8-27-10 et. seq.

42. Plaintiff, in writing, complained to the Chief of Human Resources of the District that certain actions ongoing by the District, if continued, could result in severe financial and other adverse consequences to the District since the same violates the letter and spirit of the Fair Labor Standards Act.

43. The same constitutes a violation of § 8-27-10(5) of the South Carolina Whistleblower's Act.

44. Plaintiff was terminated by the Defendant District because of her written report of wrongdoing.

45. Plaintiff properly grieved her termination.

46. Plaintiff was terminated shortly after her report, and has suffered actionable retaliation in violation of the South Carolina Whistleblower's Act for which the Defendant Department is liable. S.C. Code Ann § 8-27-20.

47. The Plaintiff is entitled to recover all damages and remedial action permitted by the South Carolina Whistleblower's Act because of the Defendant Department's conduct as alleged herein. S.C. Code Ann §8-27-30(A).

FOR A THIRD CAUSE OF ACTION
AGAINST THE DEFENDANT DISTRICT
(Defamation *Per Se*)

48. Where not inconsistent herewith and alternatively, if necessary, Plaintiff realleges the foregoing.

49. The individual Defendants and others acting on behalf of the Defendant District have published, together and separately, to numerous persons both within and without the District that the Plaintiff is incompetent in her job and that she has engaged in unprofessional conduct some of which violates the policies and procedures of the District. Those publications have been false, malicious and knowingly made.

50. Such publications have been made to employees and other community members without justification or privilege.

51. Such publications have been made with reckless disregard of the truth. The publication of such false statements as well as the issuing of reprimands and termination of the Plaintiff constitute defamation by actions as well as words creating a malicious and intentionally defamatory insinuation which is actionable under the South Carolina law.

52. The defamation alleged here is *per se* in that the Plaintiff is accused of unfitness in her profession and improper and illegal conduct.

53. That as a direct and proximate result of the defamation alleged herein the individual Defendants as well as the District (since the individual Defendants were

acting in the course of their employment) have caused the District to be liable for the severe and continuing injury to the Plaintiff's reputation, and diminished earning capacity and future retirement benefits, humiliation, embarrassment, pain and suffering and other loss. Further, such conduct was reckless and intentionally done. The individual Defendants are therefore liable for an award of punitive damages as well as actual damages to the Plaintiff.

FOR A FOURTH AND SEPARATE CAUSE OF ACTOIN
AGAINST THE DEFENDANT DISTRICT
(Public Policy Discharge)

54. Where not inconsistent herewith and as an alternative cause of action if necessary, Plaintiff realleges the foregoing.

55. The Defendant District terminated the Plaintiff because she insisted upon compliance with S.C. Payment of Wages Act, and because she had made internal and external complaints with respect to the same. This termination violates the public policy of the state of South Carolina in that the Plaintiff was terminated for resisting and reporting willful disobedience to state law, advocating adherence to proper hiring and procurement proceedings and elimination of waste, fraud, and mismanagement.

56. The Defendants by their actions made Plaintiff's silence a direct condition of her continued employment with the District.

57. That as a direct and proximate result of such termination and violation of public policy the Plaintiff has lost her job, her earning capacity has been affected, her reputation has been damaged and she has suffered loss of earnings, past, present and future together with embarrassment, humiliation and suffering.

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

58. Plaintiff where not inconsistent herewith and as an alternative cause of action if necessary, Plaintiff realleges the foregoing.

59. The Defendant is an "employer" as defined by the South Carolina Payment of Wages Act, S.C. Code Ann. § 41-10-10(1).

60. Plaintiff has been underpaid for two (2) weeks of her salary for work completed when she should have been paid and payment of the same has been requested and refused by the Defendant.

61. Defendant failed to pay the Plaintiff for time worked which she was entitled to receive in a timely fashion in the next paycheck after the hours were worked, as required by code S.C. Code Ann. § 41-10-40 and 50. Defendants are aware of that underpayment and there is no bonafide reason for the non-payment of due wages to the Plaintiff.

62. Plaintiff is owed and due these unpaid wages as salary for work completed.

63. Defendant is liable for all past wages due to the Plaintiff for the work she completed in accordance with her employment as well as the pay structure applicable to her. Plaintiff further seeks treble damages for the willful withholding of the payment of these wages as well as reasonable attorney's fees and costs associated with this action.

FOR A SIXTH CAUSE OF ACTION AGAINST
DEFENDANT DISTRICT AND DEFENDANT WITHERSPOON
(Denial of Due Process)

64. Where not inconsistent herewith and as an alternative cause of action if necessary, Plaintiff realleges the foregoing.

65. That Defendant District and Defendant Witherspoon deliberately manipulated Plaintiff's grievance process provided under District policy by: failing to provide her with the specific charges made against her; failing to allow her to confront her witnesses and accusers; by pre-judging her grievance; and by failing to allow her a fair and impartial avenue of redress, including the finders of fact who were not themselves tainted in the process.

66. That such action constitutes a violation of its rights to both substantive and procedural due process guaranteed to her under the Fifth Amendment to the United States Constitution.

67. That as a direct and proximate result of the denial of Plaintiff's due process rights, Plaintiff has sustained the loss of her job, her earning capacity has been greatly damaged and Plaintiff has suffered reputational injury for which Defendant District and Defendant Witherspoon are fully responsible.

FOR A SEVENTH CAUSE OF ACTION
AGAINST THE INDIVIDUAL DEFENDANTS
WITHERSPOON, WILLIAMS, AND COUSAR IN THEIR INDIVIDUAL CAPACITIES
(Civil Conspiracy)

68. Where not inconsistent herewith the Plaintiff realleges the foregoing and in the alternative, if necessary.

69. That Defendants Witherspoon, Williams, and Cousar wrongfully met, combined, schemed, planned and conspired together and with others, with the explicit

purpose of harming the Plaintiff by thwarting her job as Director of Classified Employment Services and intentionally falsifying, threatening and misleading the Plaintiff causing the Plaintiff to be punished, harassed, reprimanded and ultimately terminated from her position with her grievances fully denied by the conspirators themselves.

70. Such actions on the part of the Defendants and others amount to a civil conspiracy prohibited by law.

71. That these individual Defendants and others knew or should have known that they were able because of their positions with the District to impose a wicked and malicious agenda and to carry out the same which would inflict upon the Plaintiff special damages.

72. The individual Defendants and others acted in furtherance of their combination to harm the Plaintiff by taking unlawful employment action against her, criticizing her publically and simultaneously stripping her of her rights as an employee, criticizing her professional reputation and bringing about a premature end to her work as Director of Classified Employment Services for the District and further to see that all grievance efforts on her part would be unsuccessful.

73. The conduct described herein fell outside of the ordinary course of the Defendant District and the individual Defendants job description.

74. This conspiracy has directly and proximately caused the Plaintiff actual damages including the loss of her job and the attendant economic losses incurred, the necessity to employ counsel and pay attorney's fees and costs for opposing these actions and for the litigation of this action as well as other special damages including

diminished access to public retirement benefits and lost goodwill since the Defendants held positions which allow them to carry out their agenda. Further, such actions have cause emotional distress, pain and suffering.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment against the Defendant District for an award of actual damages in the amount of Six Hundred Thousand ($600,000) dollars, actual damages and an award of actual damages against the individual Defendants in the amount of Five Million ($5,000,000) dollars as well as an award of punitive damages in an amount to be assessed by a jury as well as an award of reasonable attorney's fees, costs and treble damages as provided by law and such injunctive relief as to the court may be just and proper.

CROMER BABB PORTER & HICKS, LLC

BY: s/J. Paul Porter
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Attorneys for Plaintiff

March 8, 2017
Columbia, South Carolina

Exhibit A: 11/22/16 Letter

Human Resource Services

November 22, 2016

Dear Employee:

The Fair Labor Standards Act (FLSA) is federal legislation that governs minimum wage and overtime regulations.

- The FLSA mandates that the minimum salary rate is $7.25 per hour. It also mandates that employees who work over a regular work week (40 hours) will be paid additional compensation at a rate of 1.5 times the employee's regular hourly rate of pay (or if comp time, 1.5 times the amount of hours worked.

- The FLSA sets an annual salary level that employees must be paid in order to be "exempt" from overtime regulations. The FLSA provides exemptions for certain categories of employees such that employers are not required to pay these employees a federal minimum wage or overtime pay. These categories include, but are not limited to, administrative/management employees, academic employees, professional employees, teachers, computer employees, and highly compensated employees. In the school system, typical positions that are exempt (not eligible for overtime) include teachers, principals, assistant principals, nurses, social workers, athletic trainers, and academic counselors.

Effective on December 1, 2016, there will be changes to the FLSA that necessitated a review of positions throughout the District to ensure that we are in compliance with the changes. There is no change to the minimum salary rate of the defined work week (40 hours). There are, however, two major changes that employees must meet to be exempt:

1. The annual salary level that employees must be paid in order to be exempt is being raised from $23,660.00 annually ($455 per week) to $47,476.00 annually ($913 per week).

2. Positions were reviewed to determine if employees met the defined "exemptions" test based on job duties. In other words, there are specific questions that test whether an employee is eligible for overtime (non-exempt) or not eligible for overtime (exempt) based on duties that the employee performs.

As part of this review, we have identified positions that are not currently meeting the annual salary level and whose duties may or may not meet the exemption. Your position has been identified as one we are reviewing to see if there are any changes needed in salary or exemption status. Our office met with your supervisor or department head and obtained information needed to assess the position. Remember, both tests must be met in order for the position to be exempt: the salary AND the duties test. During the review, we found that there were some employees who were designated as non-exempt in the KRONOS system, who were not swiping in and out using KRONOS, who should have been.

So what does this review mean for you individually? One of three options will occur on December 1, 2016 for you:

1. If you perform duties that qualify for an exemption but your salary is not at the $47,476.00 level, you may realize a salary increase effective December 1, 2016.

1616 Richland Street ♦ Columbia, SC 29201 ♦ (803) 231-7418 ♦ Fax (803) 231-7417 ♦ www.richla

PLAINTIFF'S EXHIBIT A

2. Secondly, if your salary meets the test for exemption, but your duties don't meet the test, you will be reclassified as "non-exempt", which means you will be required to swipe in and out in KRONOS, the District's time and attendance management system.

3. If you were correctly classified as non-exempt but were not using KRONOS, you must start to do so on December 1, 2016.

You will be notified on November 28, 2016, which option applies to you. Realizing that this may mean a change for you and that there may be questions, we are holding meetings on Monday, November 28, 2016 and Tuesday, November 29, 2016, from 3:30 PM to 4:30 PM in Room 102 at the Stevenson Administration Building, for you to attend and get information and answers.

Because there is a possibility that you may be required to swipe in and out using KRONOS on December 1st, please make necessary arrangements in your schedules to meet that mandate. If there are extenuating circumstances, please contact Machelle Thompson at 231-7419 after receiving your notice on Monday, November 28, 2016.

Please note that there has been a law suit filed against the federal government to overturn the changes to the overtime rules. South Carolina has joined 21 other states as part of that lawsuit. In addition the changes due to the new administration may mean delays or changes to the federal stance on this issue. Regardless, we are obligated to implement these changes on December 1, 2016 and will keep you posted on any subsequent changes in this regards.

Sincerely,

Sanita Savage Cousar, Ph.D.
Chief Human Resources Officer

C: Supervisors

Exhibit B: 12/1/16 Email

Thompson, Machelle

From: Parker, Kathleen M
Sent: Thursday, December 01, 2016 11:53 AM
Cc: Witherspoon, Craig; Veasey, Sherry G; Cousar, Sanita L; Carlon, Edward J; Mathews-Hazel, Sherri; Coleman, Jennifer L; Williams, Susan G; York, Karen E; West, Gary W; Prince, H Miundrae; Vickers, Marisa P; Gray, Frankie D; Jennings, Chovan; Haggwood, Quantina T; Thompson, Machelle
Subject: Updated FLSA Information

Sent on Behalf of Dr. Cousar:

Dear Employee:

During Executive Team meeting on yesterday, there was a review and discussion of the FLSA implementation plan and the recent injunction related to the Fair Labor Standards Act. The Executive Team confirmed that we would not implement the increased salary thresholds. It was also confirmed that employees impacted by the changes and classified as non-exempt should begin using KRONOS starting today (December 1st). In the event that the law suit is not successful, we will need to have the documentation to pay any overtime appropriately from December 1st forward. So as indicated in the memo sent on Tuesday, if you were told that you needed to swipe starting December 1st, you will need to swipe beginning on today. Even though you are swiping for documentation purposes, you will not qualify for overtime during this period of injunction because your status did not change. In addition, you will not need to have prior approval forms completed to work over 40 hours.

What changed as a result of the review and discussion at yesterday's meeting is that your classification will not change today. Whatever your classification is on your job description or in pay systems will remain the same for now. (If you were non-exempt before the proposed change, you are still non-exempt and should continue to swipe into Kronos.) The district will continue to keep abreast of the law suit and any impact on employees. As well, the district will continue to review job functions and classifications to ensure positions have been correctly classified and that the district is properly compensating employees as mandated.

Your paymaster can help with immediate questions about swiping, missed punches, or other time-keeping questions or logistics—especially on today as you receive this email. As always, please feel free to contact me at 231-7415 for other questions or clarifications. We have tried to address this situation in an expeditious and proper manner. We appreciate your understanding and cooperation as we have addressed this matter—and we appreciate what you do each day for our students.

Sanita Savage Cousar, Ph.D.
Chief, Human Resource Services

Exhibit C: 12/5/16 Email

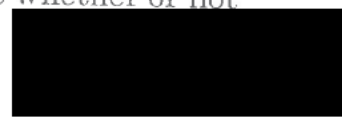
From: Thompson, Machelle
Sent: Monday, December 5, 2016 5:40 PM
To: Cousar, Sanita L
Cc: Williams, Susan G
Subject: FLSA
Importance: High

Dr. Cousar,

The November 22, 2016 injunction of the Department of Labor's (DOL) Fair Labor Standards Act (FLSA) rule served to enjoin the DOL from increasing the salary threshold for exempt employees and for increasing that amount every three years. The injunction did not change the job duties test to properly classify exempt and non-exempt employees. A lot of time and effort was put into properly classifying employees who had been misclassified as exempt. We also identified at least one employee who was misclassified as non-exempt who should have been classified as exempt.

I find the letter that you signed and sent to employees on December 1, 2016 (after your Executive Team meeting) problematic. I agree that the employees that we identified as non-exempt should have begun to swipe using our time-keeping system, KRONOS, on December 1, 2016. What I do not agree with are your statements to them that "[e]ven though you are swiping for documentation purposes, you will not qualify for overtime during this period of injunction because your status did not change. In addition, you will not need to have prior approval forms completed to work over 40 hours." You also stated, "[w]hat changed as a result of the review and discussion at yesterday's meeting is that your classification will not change today."

As stated earlier, the injunction did not have any impact on classifying employees correctly. The District took steps to ensure that its employees were properly classified, with the assistance of department heads and directors signing to that end, and our efforts were correct whether or not



the DOL rule took effect on December 1, 2016. Now that we have notified the employees that they were previously incorrectly classified and they should begin swiping (as non-exempt employees do), it would be a violation of the FLSA if the District withheld any overtime pay accrued "during this period of injunction" or at any other time. When the District identifies that an employee has worked overtime, it should take action to immediately pay that employee any amounts owed without waiting until the next scheduled paycheck. Consequently, the District should not wait until the injunction is lifted or the lawsuit is settled as that will have no effect on whether or not an employee should get paid for hours worked over 40 hours in a workweek.

If the District is found guilty of a violation of the FLSA, it will have to pay not only any unpaid wages or overtime pay but also an equal amount in automatic liquidated damages. The District will not be able to state that it relied on an official Wage and Hour Division written interpretation or that it had good faith and reasonable ground for believing that it did not violate the Act. The District would also be liable for attorneys' fees and litigation costs. The DOL could assess civil monetary penalties for repeated or willful violations and the Department of Justice could institute criminal proceedings against the District for willful violation. The statute of limitations for FLSA violation is two years, but if the District commits a willful violation, then it may be liable for one additional year of violations.

This is my understanding of the law. I write this out of concern for the District and its employees.

Sincerely,

Machelle Thompson, J.D.

Director, Classified Employment Services
Richland County School District One
1616 Richland Street
Columbia, South Carolina 29201
803-231-7419

Exhibit D: 12/16/16 Letter

December 16, 2016

Human Resource Services

Personal and Confidential

Mrs. Machelle Thompson
Director of Classified Employment Services
Human Resource Services

Dear Mrs. Thompson:

This letter is in follow-up to our meeting on Wednesday, December 14, 2016, regarding the email referencing the district's stance on recent FLSA changes. Several things about this email are of concern as you serve as the Director of Classified Employment Services in the Office of Human Resource Services. As your supervisor, it is imperative that I share these concerns and the impact of your actions.

First, I realize that you led our review efforts and that a great deal of time was expended on the planning and implementation of the mandated changes to the federal mandate, proposed to take effect on December 1, 2016. I heard your concerns. However, a district decision was made and was communicated to you by me in person in a conversation immediately following the Executive team meeting that you referenced. In that discussion, I shared with you that regardless of your perspective, this is the decision and we will carry it out. I also shared with you that an alternative plan was to use the salary review as an option to get external FLSA classifications reviewed and the job descriptions redone. I recommended that you let go of your concerns and we move forward. From the date of the Executive team meeting, there was no further discussion until you made the determination to send the email, which is being insubordinate and in direct opposition to the directive communicated to you.

Throughout your email, you referenced what you find objectionable to you as your immediate supervisor. The following statements were included in your email:" I find the letter that you signed and sent to employees on December 1, 2016 (after your Executive team meeting) problematic" and "What I do not agree with are your statements to them that...." As your immediate supervisor, I view those as documentation indicting my actions or role as the Chief of Human Resources in implementing approved actions.

In addition, your action seems to indict the entire district and the leadership oversight Executive team of the district. You included the following statements: "...it would be a violation of the FLSA if the District withheld any overtime pay accrued "during this period of injunction" or at any other time. When the District identifies that an employee has worked overtime, it should take action to immediately pay that employee any amounts owed without waiting until the next scheduled paycheck." In addition, you stated: "If the District is found guilty of a violation of the FLSA, it will have to pay not only any unpaid wages or overtime pay but also an equal amount in automatic liquidated damages. In conclusion, you stated that you were doing this out of concern for the District and its employees. In fact, I believe your actions to be contrary to that outcome. In my opinion you have created exposure and potential liability for the district.

Your role in the district is not as legal advisor. That was the essence of my response to you as you have raised matters of law. The actions of the district were determined after discussion, review and advisement

on this matter. What was also disconcerting was that as a member of the district's leadership team, you found it not audacious to commit your "interpretation of the law" to writing and to submitting it. This action was ill advised. As a member of the leadership of the district, even though there may be dissenting perspectives, the merits of the action are carefully reviewed, discussed, and deliberated. Once a decision is made, it is incumbent upon all to carry out the collective will of the district and its leadership. Your email indicates your question of the leadership of the Superintendent, legal counsel, and the Executive leadership team. Your isolated position, absent of your participation in the discussion, was suggested as the preferred course of action. Please know that the district will continue to keep abreast of the injunctions regarding the FLSA and will take advisement on appropriate actions in this regards.

When we met to discuss my concerns about this matter on Wednesday, December 14, 2016, you shared that Ms. Kathy Parker, personnel analyst, had received 20-30 calls about the overtime matter. Based on this, you thought it necessary to provide the email re-stating your concerns. As I shared with you, assuming that this was the case, the correct action would have been for you to inform me of the number of calls and the essence of their concerns. You did not share this information with me during the calls. Ms. Parker sent an email with the heading: "OMG the phone calls." The body was, "Have a great day!" Nothing else was shared by her or by you. I asked you about the nature of the calls and whether it was general confusion over the change in actions or whether it was specific to the swiping and overtime issue. You indicated that Kathy had showed you the log and it was mainly pertaining to the swiping and overtime issue. I asked to see the log, but Kathy had left early on Wednesday. I indicated that I would get with Kathy on Thursday, which I did. She indicated that the total calls were about 20-30 and that there were maybe two or three that related specifically to being upset about having to swipe and overtime. Even though the number of related calls were not as you indicated, if your level of concern was as you indicated, then you should have made your concerns known immediately to me as your immediate supervisor. Future actions and discussions could have been determined.

While you reiterated that your intent was not to be oppositional and that your actions were sincerely meant to protect the district and my interest specifically, since the email was sent from me. I shared again the district leadership team's discussion, review, and decision....the decision was not mine alone. On this matter, we must agree to disagree as we are not in consensus on the impact of your action.

This letter constitutes the third letter in which I have brought to your attention concerns about your actions and your performance as the Director of Classified Employment Services. The first letter of April 20, 2016 included concerns about the issuance of the classified letters of intent. I also advised you to "review directives or information shared on email and in meetings." In this instance, I had met with you after the Executive team meeting and had shared the directives and direction related to the FLSA issue, which included getting the salary review company to also do the job descriptions and the FLSA classifications. In addition, in that letter, I stated, "I am always available for questions, clarification or to assist as possible in the completion of tasks or assignments given to you." You did not consult with me on what you viewed as a larger number of calls (20-30) related to swiping, overtime, and the legality of swiping and not paying overtime. You alluded to a possible class action law suit. A second letter dated August 24, 2016, was issued to express concerns about your performance. In that letter, I directed you to adhere to "use available resources or advisement ...in the completion of critical HR tasks and assignments." In this FLSA matter, you did not adhere to advisement.

In the letter of August 24, 2016, I noted that "your defensive and reactionary stance impedes your ability to interact in a productive manner with all staff and customers." Your action regarding the FLSA matter was yet another instance of reactionary and defensive stance. In addition, in the letter of August 24, 2016, I noted that I had received "numerous complaints from principals, departments, and teachers who were unable to get their calls returned, required responses, or much needed information from you. I noted near daily instances of complaints regarding poor or lack of communication." The recent Studer customer service report included ratings for each division within HR. The Classified Section received the lowest rating of 2.69 out of 5.0, which was the lowest rating of any department or section of the department in the district. This provides external evidence of an on-going concern from our customers.

Based on the remedial steps that I had included in the letter of August 24th, you have made efforts to address some of the items. You have met with principals and supervisors and have forged some relationships. You have visited schools to learn more about the school systems and schools, including being Principal for a Day. You have sought more knowledge and experience about school and school matters. You have created a calendar of HR events. There are still areas which have not been addressed of those included in this correspondence and as a result of your recent actions and the continuing pattern of behavior, I have grave concerns about your level of comprehension for this position. School systems have a unique culture that it is incumbent upon you to operate successfully within. Your actions signal that you still have not grasped the culture or operations of the district—and more importantly your role within that culture.

If you have on-going concerns, you should direct those to me. If additional correspondence on a matter is warranted, I will decide the nature and the mode of communication in which concerns are to be shared.

As I indicated in the letter of August 24th, I reserved the right to submit the April 20th letter and any future correspondence and documentation into your personnel file. Therefore, please be advised that the letter of April 20, 2016, the letter of August 24, 2016, and this letter of December 16, 2016 are being placed in your personnel file. You may submit a response within ten (10) business days, to be included along with this packet.

Sincerely,

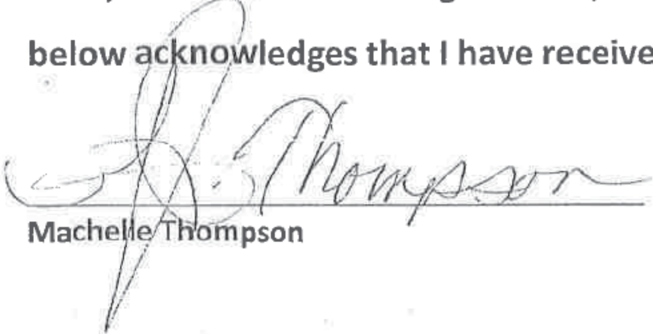
Sanita Savage Cousar, Ph. D.
Chief Human Resources Officer

C: Personnel File

Attachments: Letter of April 20, 2016
Letter of August 24, 2016
Statement of Correspondence Receipt

ACKNOWLEDGMENT OF RECEIPT

I, Machelle Thompson, acknowledge receipt of the letter dated December 16, 2016, from Dr. Sanita Savage Cousar, chief human resources officer. My signature below acknowledges that I have received this document.



Machelle Thompson

16 Dec 16

Date

Witness

HR Representative

December 16, 2016

Date

Exhibit E: 2/10/17 Letter

South Carolina's Capital Schools

Human Resource Services

February 10, 2017

Certified Mail
(7015 3430 0001 1727 7714)

Mrs. Machelle Thompson
14 Olde Springs Road
Columbia, SC 29223

Dear Mrs. Thompson:

This letter is to follow-up on our meeting of February 9, 2017, wherein we discussed concerns which were developed during our investigation of your conduct as an employee of Richland County School District One. While you denied engaging in conduct that either violated your obligations to the District or which was contrary to the terms of your employment and District policy, I believe that there is ample evidence to the contrary. In addition, some of the conduct to which you admitted does violate your obligations to the District and is contrary to the terms of your employment and District policy. Therefore, you are hereby notified that your employment with Richland County School District One has been terminated effective immediately.

The decision to terminate your employment is based upon the following conduct, as more fully discussed in the paragraphs that follow:

(1) your disloyal conduct in violation of the common law duty of loyalty in providing improper assistance to employees who had administrative actions against the District;

(2) violation of District policy that has brought harm to the District;

(3) attempting to improperly influence and manipulate District decisions and actions involving hiring and procurement;

(4) violation of the terms and conditions of your employment;

(5) misuse of District resources for personal financial gain in violation of State law and District policy; and

(6) your failure to adhere to directives provided by me as your supevisor; failure to provide proper supervision to staff; and your inappropriate and unprofessional communication to District staff.

In particular, on January 19, 2017, it appears that you provided substantive assistance to a terminated employee in filing an appeal against the District. Specifically, you advised the former

In particular, on January 19, 2017, it appears that you provided substantive assistance to a terminated employee in filing an appeal against the District. Specifically, you advised the former employee on how to prepare his appeal to the Executive Director to have his employment reinstated and provided documents to assist the employee through the employee's personal email address. This conduct violates Board Policy GBEA, which prohibits an employee from engaging "in any activity that conflicts or raises a reasonable question of conflict while fulfilling the duties of their position and their responsibilities in the District . . . ," as well as Board Policy GBK, which limits the discussion between human resources staff and an employee filing the grievance to a discussion on the process of how to file a grievance. As you are charged with upholding and implementing personnel decisions made by the District, your conduct, in which you effectively participated on both sides of the decision, is disloyal, detrimental to the employment environment, and resulted in the District expending additional resources to resolve the issue.

You have also attempted to manipulate hiring and procurement decisions by communicating to certain individuals that you can influence these District decisions. Among your actions, you communicated with a prospective vendor pursuing possible contracting opportunities in the District and provided information and assistance regarding past sealed bids, which compromises the District's procurement policy and practices. In another situation, you assisted a prospective employee by working to design the proposed job duties and salary for a position that had not yet been posted around the qualifications and salary request of a particular person, which compromises the integrity of the hiring process, as well as the District's compliance with equal employment opportunity requirements. This conduct also violates Board Policy GBEA.

In addition, you have worked as an attorney while in your current position despite a condition stated in your May 19, 2015 employment letter, that "it is vital that [you] refrain from handling future legal cases or practicing in private practice." Specifically, our review of District equipment reveals that you have been assisting your husband in the pursuit of a variety of legal matters, including instances where you have drafted legal documents and consulted with individuals regarding private legal matters. Furthermore, this conduct constitutes the misuse of public resources in violation of S.C Code Ann.§ 8-13-700 and District Policy GBEA, as many of the communications in pursuit of your law practice occurred using District equipment and during the course of the District workday, constituting more than the mere incidental use of the equipment. In fact, while you denied the conduct described in the preceding sentences, you admitted that your office computer contains information regarding your husband's law practice.

Furthermore, your conduct and communications following the District's decision to seek additional consultation before implementing any reclassifications of employees to ensure compliance with the Fair Labor Standards Act (FLSA) were inappropriate and unprofessional, as described in my December 16, 2016 letter to you. In this instance, the District made a decision on a course of action following a nationwide injunction of certain provisions of the FLSA employee classification regulations, which included a decision to seek the services of an experienced professional trained in reclassification issues before addressing any remaining classification issues not covered by the injunction. While I recognize that you worked on reclassification issues, once a District-level decision is made, you are expected to be respectful in your tone and diligent in

carrying out your duties. Your conduct following the District's decision went beyond voicing concerns and rose to a level of insubordination in violation of Board Policy AR GBEB-R.

The conduct discussed above is in addition to the performance issues previously discussed with you in my correspondence to you dated April 20, 2016 and August 24, 2016, the contents of which are hereby incorporated into this letter and which reflect your failure to adhere to my directives, and your failure to provide proper supervision to staff.

Your conduct has impaired your ability to effectively fulfill your responsibilities as Director of Classified Employment Services, and has resulted in the District's lack of confidence in you to perform your duties in the best interests of the District which justifies the immediate termination of your employment in accordance with Board Policy AR GCN-R. You may appeal this decision to the Superintendent or his designee, provided your request is submitted in writing within five (5) days of receipt of this letter.

For persons leaving employment, the State of South Carolina offers the opportunity to continue health insurance for up to eighteen (18) months under the Consolidated Omnibus Budget Reconciliation Act (COBRA). More information regarding your options under COBRA will be mailed to you from the Benefits Office.

Enclosed is your paycheck for all monies owed to you. Should you have any questions regarding this matter, please feel free to contact me directly.

Sincerely,

Sanita Savage Cousar, Ph.D.
Chief Human Resources Officer

Enclosure: Payroll Check

C: Personnel file

UNITED STATES DISTRICT COURT

for the

__________ District of __________

Plaintiff(s)	)	
v.	)	Civil Action No.
Defendant(s)	)	

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)*

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: ____________________

____
Signature of Clerk or Deputy Clerk

Civil Action No.

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* ______________________________
was received by me on *(date)* ________________ .

❒ I personally served the summons on the individual at *(place)* ______________________________
______________________________ on *(date)* ________________ ; or

❒ I left the summons at the individual's residence or usual place of abode with *(name)* ________________
______________________________ , a person of suitable age and discretion who resides there,
on *(date)* ________________ , and mailed a copy to the individual's last known address; or

❒ I served the summons on *(name of individual)* ______________________________ , who is
designated by law to accept service of process on behalf of *(name of organization)* ________________
______________________________ on *(date)* ________________ ; or

❒ I returned the summons unexecuted because ______________________________ ; or

❒ Other *(specify)*:

.

My fees are $ ________ for travel and $ ________ for services, for a total of $ ________ .

I declare under penalty of perjury that this information is true.

Date: ________________

____
Server's signature

____
Printed name and title

____
Server's address

Additional information regarding attempted service, etc: