

STATE OF SOUTH CAROLINA

COUNTY OF MCCORMICK

Richard W. Lewis, III,

Plaintiff,

v.

Governor's School for Agriculture at John de la Howe, and Timothy Keown, Ken Durham, Scott Mims, and Sharon Wall in their individual and official capacities,

Defendants.

IN THE COURT OF COMMON PLEAS

FOR THE ELEVENTH JUDICIAL CIRCUIT

Civil Action No.: _____

SUMMONS

TO THE DEFENDANTS ABOVE-NAMED:

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

s/ Jack E. Cohoon

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Columbia, South Carolina

December 20, 2021

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COMPLAINT
(Jury Trial Demanded)

(Defamation, Wrongful Discharge in Violation of Public Policy, South Carolina Whistleblower Act, Intentional Infliction of Emotional Distress, Civil Conspiracy)

Plaintiff Richard W. Lewis, III, (hereinafter referred to as "Plaintiff"), complaining against the Defendants Governor's School for Agriculture at John de la Howe and Timothy Keown, Ken Durham, Scott Mims, and Sharon Wall in their individual and official capacities, and would respectfully show unto this Honorable Court as follows:

PARTIES, JURISDICTION, AND VENUE

1. Plaintiff is a citizen and resident of Anderson County, South Carolina. He began working for Defendant Governor's School for Agriculture at John de la Howe (hereinafter referred to as "JDLH" or "the school") in 2008 as a maintenance and grounds specialist.

2. Defendant JDLH is a state-run residential school originally established as an institution to serve orphans in 1797 which was recently been repurposed as the Governor's School for Agriculture at John de la Howe to allow students to receive hands-on training in the fields of agriculture, agribusiness, forestry, land management, food science, and more with the express focus of assessing the needs of modern farms.

3. Defendant Timothy Keown is the President and Agency Head of JDLH, and upon information and belief, is a resident of Anderson County, South Carolina.

4. Defendant Ken Durham is the Director of Facilities and Campus Projects at JDLH and, upon information and belief, is a resident of Edgefield County, South Carolina.

5. Upon information and belief, Defendant Durham is the mayor the Town of Edgefield, South Carolina, and has held this office at all relevant times below.

6. Defendant Scott Mims is the Assistant Director of Facilities Maintenance/Project Manager at JDLH and, upon information and belief, is a resident of Edgefield County, South Carolina.

7. Upon information and belief, Defendant Mims is a member of the Town Council of Edgefield, South Carolina.

8. Upon information and belief, Edgefield Asphalt & Concrete, LLC, is a corporation organized and existing under the laws of the State of South Carolina, having been created by filing with the S.C. Secretary of State on or about September 25, 2013, by Defendant Mims.

9. Defendant Sharon Wall is the former interim President of JDLH and served as a consultant thereafter with Student-Centered Education; and, upon information and belief, she is a resident of Edgefield County, South Carolina.

10. All acts and omissions alleged against Defendants herein occurred during the time Plaintiff was an employee of Defendant JDLH or after he was terminated.

11. The events giving rise to this action occurred in McCormick County and Plaintiff and Defendants have substantial connections to McCormick County.

12. This Court has subject matter and personal jurisdiction in this matter.

13. This lawsuit alleges South Carolina common law claims of defamation, wrongful discharge in violation of public policy, intentional infliction of emotional distress, and civil conspiracy, as well as violation of the South Carolina Whistleblower Act, by S.C. Code § 8-27-10 *et seq.*

14. Venue is appropriate in McCormick County as that is where the acts and omissions giving rise to this lawsuit occurred.

15. The Plaintiff demands a jury trial on all claims.

STATEMENT OF FACTS

16. Plaintiff began working for Defendant JDLH in 2008 as a maintenance and grounds specialist.

17. Plaintiff is 62 years old.

18. Plaintiff has never received any formal or informal disciplinary actions.

19. Defendant JDLH conducted employee reviews of the Plaintiff through the South Carolina Employee Performance Management System (EPMS).

20. Defendant JDLH never gave Plaintiff any negative performance evaluations.

21. Plaintiff's performance reviews were always satisfactory.

22. Upon information and belief, Plaintiff is not aware of the existence of any negative performance evaluations related to the discharge of his duties or to his employment with Defendant JDLH.

23. Prior to working for Defendant JDLH, Plaintiff worked for the South Carolina Highway Patrol for 25 years, ultimately achieving the rank of First Sergeant.

24. In February or March 2018, Defendant Wall called Plaintiff at about 9:30 p.m. and told Plaintiff that Defendant JDLH had hired a new maintenance manager, that he had a strong construction background, and that he would “crack the whip.”

25. Upon information and belief, Defendant Wall informed Plaintiff that the first thing the new maintenance manager was going to do was fire four long-term state employees in the maintenance department, to wit: Plaintiff, Frankie Walker, Timothy Myers, and Gary Gable.

26. Defendant JDLH hired Defendant Durham on or about April 2, 2018, for the role of Facilities and Maintenance Manager/Project Manager.

27. Defendant Durham assumed supervisory duties over Plaintiff on or about April 2, 2018.

28. On Defendant Durham’s first day, April 2, 2018, he spoke at a morning maintenance meeting to all the maintenance and custodial employees. Durham said that he “couldn’t build a doghouse with a hammer, nails, or lumber.” Durham claimed that he had good organizational skills but that he had “no hands-on experience at all.”

29. Plaintiff and his coworkers were confused about why someone with no hands-on experience would be chosen for a maintenance or supervisory role.

30. Defendant Durham disclosed on April 2, 2018, that he and Defendant Wall had been friends for years.

31. Defendant Durham noted that he was the Mayor of Town of Edgefield. He also noted that he used to own a construction company, Edgefield Construction, Inc.

32. Within Defendant Durham’s first week, Plaintiff noticed that he was making unlawful demands of maintenance staff.

33. Defendant Durham insisted that the maintenance staff work through lunch and questioned why they were taking short breaks in the morning and afternoon. Defendant Durham vehemently insisted that the workers stop taking lunch and breaks. Plaintiff insisted that a paid lunch and short breaks in the morning and afternoon were legal requirements for workers. In response, Defendant Durham claimed he could do whatever he wanted to. Plaintiff objected, stating that state employees had rights.

34. As a result of this concern, Plaintiff and Defendant Durham met with the Director of Human Resources, Debbie Daniels, who agreed with Plaintiff.

35. As a result of this meeting with Human Resources, Defendant Durham said he would be watching Plaintiff, stating, "everywhere you go on campus, I've got eyes on you."

36. Plaintiff noticed that the school's resource officer, a McCormick County Sheriff's Deputy, began following the maintenance crews around to various places on campus. The deputy would park near work sites and watch them. He would note start and stop times for jobs and breaks and report back to Defendants Durham and Wall.

37. Defendant Durham implemented a variety of policies to micromanage the maintenance staff and create an intolerable working environment.

38. Maintenance staff were prohibited from riding in maintenance trucks together. When working on maintenance jobs, they were not permitted to do so together, which made jobs more difficult and more dangerous to complete. Defendant Durham stated that, "Sharon doesn't like it when you pile up."

39. Plaintiff oversaw a maintenance crew of seven (7) employees who had a total of four (4) trucks to use. There was no possible way of efficiently maintaining the 1,300-acre campus without multiple employees riding in a maintenance truck together.

40. Upon information and belief, Defendant Durham objected to basic safety mandates that required more than one (1) employee to safely operate or manage. Plaintiff was excoriated by Durham for having another maintenance employee assist him in transporting a table saw.

41. Plaintiff is informed and believes that the table saw instructions necessitate two (2) users transport the machinery given its size and weight.

42. Upon information and belief, Defendant Durham objected to more than one (1) staff member using a maintenance truck to travel across the campus even though compliance with Defendant Durham's mandate would have required three (3) of the maintenance staff to walk across acres and acres just to obtain supplies, take lunch, or simply discharge their job responsibilities.

43. Upon information and belief, Defendant Durham required maintenance staff to work in hazardous conditions such as roofing when the heat index exceeded 106° (Degrees) Fahrenheit instead of allowing Plaintiff and his crew to schedule the work in the morning when it was safer.

44. Upon information and belief, Defendant Durham obstructed Plaintiff and the maintenance crew from areas of the campus in an effort to stymie their work. For example, Defendant Durham required access locks to one location that required painting by the maintenance crew but did not provide access to the crew. The maintenance crew had to wait for hours for a private contractor to unlock a campus building.

45. Plaintiff is informed and believes that this access restriction was tailored specifically to impede the maintenance crew as his team was singularly not provided any access keys while private and non-vetted contractors were given unfettered access to the campus.

46. Defendant Durham's campaign of creating an intolerable work environment by limiting movement across the campus in the maintenance trucks resulted in days where the crew was unable to eat lunch out of fear of reprisal because they were too far from the break room to return without doubling up in the vehicles.

47. Plaintiff raised this issue with Defendant Durham on numerous occasions, noting the impossibility of seven (7) staff members maintaining a campus of over 1,300 acres without doubling up in the limited vehicles. Defendant Durham simply stated that the maintenance crew "would have a problem if [he] saw them ganging up."

48. Defendant Durham prohibited maintenance crews from going to certain areas of campus, including, but not limited to, the main entrance of the school campus. This prohibition interfered with Plaintiff's ability to discharge his duties.

49. Upon information and belief, Plaintiff believes Defendant Durham restricted access to the main entrance because a substation for the Sheriff's department had been established at the main entrance. The Plaintiff and maintenance crew were aware of Sheriff Deputies using the main entrance substation as a romantic rendezvous point.

50. Shortly after Defendant Durham's arrival at JDLH, he observed Defendant Durham begin a never-ending course of harassment against fellow maintenance employee Frank Walker, who was about 62 at the time. Each day, Defendant Durham asked Walker when he would retire. Plaintiff objected to the treatment of Walker.

Defendant Durham claimed that he needed to know when he was leaving for scheduling and hiring purposes.

51. When the treatment against Walker continued, Plaintiff met with Defendant Durham and Walker. Plaintiff stated that Walker could make a complaint to Human Resources based on the continued harassment. Defendant Durham stated, "I can do whatever I want."

52. In October 2020, Walker retired. Maintenance worker Gary Gable had already retired. Plaintiff and maintenance employee Timothy Myers were in a vehicle at Carolina Cottage when they overheard Durham talking on the phone with Defendant Walls. Defendant Durham said, "Sharon—two down, and two to go." They understood this to mean that Defendant Wall's plan to eliminate the four maintenance employees was half complete. Both Plaintiff and Myers were concerned about their futures with Defendant JDLH.

53. On July 16, 2020, Defendant JDLH discharged Timothy Myers, leaving Plaintiff as the sole remaining member maintenance staff that predated Defendant Durham's hire.

54. Upon information and belief, Defendant Durham's termination of Myers was predicated upon false or artificial grounds. Defendant Durham's termination of Myers included the falsification of reports that were ultimately presented to law enforcement against Myers.

55. Plaintiff is informed and believes that these intolerable working conditions, pretextual limitations, and pernicious supervision were uniquely brought to bear upon the maintenance crew and no other.

56. Plaintiff is informed and believes that these conditions, limitations, and supervision over the maintenance crew were designed to achieve the stated goal of Defendant Wall to force the resignation or termination of the selected individuals of the maintenance crew.

57. Plaintiff was deeply concerned about his future at JDLH based upon the statements made by Defendant Durham, the statements made by Defendant Wall, and the environment created by the agents of Defendant JDLH.

58. Plaintiff was deeply concerned about the power leveraged by Defendant Durham against the long-time employees of Defendant JDLH and believed that his reputation in the community, his personal standing, and his economic livelihood were threatened by the environment created by the unlawful actions of Defendants Durham and Wall.

59. Plaintiff, as a long-time state employee, is familiar with the ethics guidelines and the statutory requirements regarding contracting and procurement.

60. After Defendant Durham joined JDLH, he began hiring contractors for various renovations on campus. Defendant Durham did not follow normal procurement processes for the hiring of contractors, believing it was not necessary.

61. Defendant Durham required the bids to be sent directly to him in contravention of normal policy and procedure at JDLH. Plaintiff is informed and believes that many of the contractors selected by Defendant Durham were solely selected from the region which Defendant Durham concurrently represented as the elected mayor of Edgefield.

62. Plaintiff raised multiple objections to Defendant Durham going outside of the procurement process to hire contractors throughout the summer of 2018. When Durham insisted that he could “do whatever he wants,” Plaintiff spoke to JDLH’s Director of Finance, Sylvester Coleman, on multiple occasions about the unlawful and irregular contracting practices. Coleman agreed that Durham was violating procurement laws by contracting without bids and consequently Coleman denied many invoices.

63. Upon information and belief, Defendant Keown overruled Coleman’s procurement decisions. This occurred starting in the summer of 2018 and continued until Plaintiff’s retirement.

64. On June 30, 2020, Plaintiff witnessed a distinctive truck that he recognized as being the property of Defendant Mims and his company, Edgefield Asphalt & Concrete, LLC. Plaintiff previously witnessed the truck on at least one occasion; however, signage identifying the vehicle had been removed. Plaintiff witnessed Mims’ company employees pouring concrete for sidewalks on the parade field on JDLH grounds.

65. Plaintiff reported to Finance Director Coleman that he had seen Mims’ company performing contracted work and that Plaintiff believed this to be a violation of state contracting and procurement law. Coleman shared Plaintiff’s substantial concern about procurement violations and non-compliance with state law.

66. Throughout his employment Plaintiff observed favoritism in contracting and procurement toward employees who were associated with principal and inferior officers of Defendant JDLH in commercial relationships, and he experienced targeting due to not being in a prior financial arrangement or relationship.

67. Upon information and belief, Plaintiff was aware that Defendant Keown would persist trying to terminate Plaintiff's position.

68. Plaintiff was constructively discharged on February 16, 2021, as no reasonable employee could be expected to continue working while being subject to retaliation for informing their supervisors of state law violations, ethical violations, and mismanagement.

69. As a result of the work environment created by the Defendants and the likelihood of reprisal or injury to his professional standing and character, the Plaintiff concluded that he had no option remaining but to quit his job at JDLH.

70. After Plaintiff's separation from the job, he remained very concerned about the unlawful practices he had observed and the fact that there seemed be no oversight or consequences for those involved.

71. Plaintiff began conversations with reporters for the Charleston Post and Courier and Greenwood Index Journal describing Defendant JDLH's unlawful contracting processes. These papers ran a series of articles beginning on April 24, 2021.

72. In the article, Plaintiff shared truthful information about the school's operations, as well as the video he had recorded of Defendant Mims' truck at JDLH and Defendant Mims' company performing work.

73. In a quote to a follow up article, Defendant Keown stated, "Notice how the former maintenance director is doing the cell phone 'investigation' from the comfort of the AC in a pickup truck?" After noting that Defendant Mims and others worked outside in the summer heat, Defendant Keown quipped, "No wonder the poor man needed a Gatorade!"

74. On or about that same day, Defendant Keown lashed out at Plaintiff, stating in the public Facebook comments regarding the article that “[t]his is the most poorly investigated journalism I’ve ever read. The former maintenance employees listed in the article are the sole reasons the campus was crumbling.” Plaintiff was a “former maintenance employee” listed in the article.

FOR A FIRST CAUSE OF ACTION

Defamation as against Defendants JDLH and Keown

75. Plaintiff repeats and re-alleges all the preceding paragraphs of this Complaint as if fully set forth in this section.

76. Plaintiff is a private figure.

77. Plaintiff was defamed by the statements and actions of Defendants as agents and servants of Defendant JDLH while acting in the course and scope of their employment.

78. Defendant Keown, agent of Defendant JDLH, defamed the Plaintiff in public statements attacking the Plaintiff, including by the above-referenced statements to the media and on Facebook.

79. The communications made by Defendant Keown were false, known to be false, and were made with malice.

80. The communications were made by Defendant Keown to third parties who had no need to receive such false communications.

81. Defendant Keown’s communications were published in bad faith and without any reasonable effort to first determine the truth or falsity of the allegations they contained.

82. Defendants published these false statements widely and included, but is not limited to, statements made to The Post and Courier as well as to the Index-Journal, statements made in the presence of Plaintiff's coworkers, statements made to a South Carolina lawmaker, and statements made on Facebook.

83. Upon information and belief, Defendant Keown has likely further defamed the Plaintiff's professional standing and character in verbal communications about the Plaintiff during executive meetings of the school board without him in attendance, and to other third parties, as well.

84. The false statements and communications were not privileged as there was no duty to furnish the information to the recipients, and they were circulated to persons other than Plaintiff and his superior, thereby injuring his professional reputation.

85. The above communications amount to unlawful defamation for which the Defendants are liable.

86. The Defendants' communications falsely impugned Plaintiff's professional standing and character and constitute defamation *per se*.

87. As a result of the Defendants' defamatory actions, Plaintiff has suffered damages including reputational losses, diminished earning capacity, embarrassment, lost goodwill, humiliation, and emotional pain and suffering.

88. Plaintiff is entitled to recover actual and punitive damages from the Defendants in an amount to be determined by the jury.

FOR A SECOND CAUSE OF ACTION

Wrongful Discharge in Violation of South Carolina Public Policy
Against All Defendants

89. Plaintiff repeats and re-alleges all the preceding paragraphs of this Complaint as if fully set forth in this section.

90. Plaintiff, at all times relevant to this claim, carried out the functions of his job competently and in accord with Defendants' policies.

91. Defendant JDLH, by and through its agents, deliberately sought to force the Plaintiff to resign from his employment at the school by creating a workplace environment objectively intolerable to a reasonable individual.

92. During Plaintiff's tenure at the school, each of his performance reviews was satisfactory and illustrated Plaintiff's successful discharge of his job duties.

93. During Plaintiff's tenure at the school, he was not once disciplined nor admonished for deficient discharge of his job duties.

94. Regardless, Defendant JDLH deliberately sought to terminate Plaintiff's employment by creating an intolerable work environment.

95. Defendant JDLH's purported basis for Plaintiff's termination is pretextual and retaliatory, predicated upon a shifting series of claims, each created *post hoc*, ranging from deficient discharge of duties and to deficient management.

96. Defendants Keown, Durham, Mims, and Wall knew these allegations were false.

97. It is a violation of public policy for an employer to discharge an employee for making complaints of state procurement violations, working conditions, or ethical concerns about favoritism, self-dealing, and misappropriation of funds.

98. Defendants knowingly and willfully engaged in behavior that was designed and intended to foster such intolerable working conditions that Plaintiff was forced to quit his job.

99. As a result of the objectively intolerable working conditions they created, the Defendants goal of forcing the Plaintiff to quit his job was successful.

100. As a result of Defendants' constructive discharge, Plaintiff suffered damages, including lost wages and benefits associated with employment, as well as mental anguish, anxiety, loss of sleep, and harm to his reputation.

101. Plaintiff will continue to incur expenses, costs, and attorneys' fees as a result of prosecuting this action.

FOR A THIRD CAUSE OF ACTION

South Carolina Whistleblower Act
Against All Defendants

102. Plaintiff repeats and re-alleges all the preceding paragraphs of this Complaint as if fully set forth in this section.

103. Plaintiff was an employee of Defendant JDLH.

104. Defendant JDLH is a "public body," as defined by S.C. Code § 8-27-10.

105. Plaintiff's report of violations of the state procurement laws, nepotism, mismanagement of public funds and retaliatory firings of coworkers to the public body employing Plaintiff, constitutes "reports" of "whistleblowing" of illegal or unethical conduct pursuant to S.C. Code § 8-27-10 *et seq.*

106. Plaintiff made his reports to appropriate authorities.

107. Defendants retaliated against Plaintiff for reporting illegal or unethical conduct to the appropriate authorities.

108. As a result of Defendants' wrongful actions, Plaintiff suffered damages, including lost wages and benefits associated with employment, as well as mental anguish, loss of sleep, anxiety, and harm to his reputation.

109. Plaintiff will continue to incur expenses, costs, and attorneys' fees as a result of prosecuting this action.

FOR A FOURTH CAUSE OF ACTION

Intentional Infliction of Emotion Distress
Against All Defendants

110. Plaintiff repeats and re-alleges all the preceding paragraphs of this Complaint as if fully set forth in this section.

111. Defendants intentionally or recklessly inflicted severe emotional distress upon Plaintiff as alleged in detail above.

112. Defendants' conduct was so extreme and outrageous that it exceeds all possible bounds of decency and is furthermore atrocious and utterly intolerable in a civilized community.

113. The actions of Defendants have caused Plaintiff to suffer severe emotional distress.

114. The emotional distress suffered by Plaintiff is so severe that no reasonable person could be expected to endure it.

115. Plaintiff is entitled to recover in this action actual damages from Defendants sufficient to compensate him for his emotional distress.

116. Plaintiff is entitled to an award of punitive damages against Defendants in an amount to be determined by the jury sufficient to deter Defendants and others from engaging in such outrageous conduct in the future.

FOR A FIFTH CAUSE OF ACTION
Civil Conspiracy
Against All Defendants

117. Plaintiff repeats and re-alleges all the preceding paragraphs of this Complaint as if fully set forth in this section.

118. Defendants Keown, Durham, Mims, and Wall, individually and as agents of Defendant JDLH, conspired to injure Plaintiff through the conduct above-named.

119. These individual Defendants have worked together to tortiously interfere with Plaintiff's job, undermine Plaintiff's professional credibility, and diminish his reputation in the community.

120. These individual Defendants met, conspired, schemed, and planned with others to harm Plaintiff for his speaking up about workplace conditions, and because his speaking up endangered the fiefdom he had built through favors and self-dealing.

121. As part of their efforts, Defendants made false and meritless accusations to various newspapers and to at least one South Carolina lawmaker, which constitutes an overt act.

122. Defendants Keown, Durham, Mims, and Wall have taken such actions with the intent to harm the Plaintiff and to further their own interests.

123. Such actions taken by Defendants and others amount to an unlawful civil conspiracy and approximately caused special damages to the Plaintiff.

124. Defendants Keown, Durham, Mims, and Wall have succeeded in harming the Plaintiff and are liable for damages as a result.

125. Plaintiff is further entitled to an award of punitive damages from the Defendants for their intentional, malicious, and evil actions.

WHEREFORE, having fully pled, Plaintiff requests that this action be tried by a jury and prays that judgment be awarded against the Defendants pursuant to the South Carolina Whistleblower Protection Act, and the common law for actual damages in the amount of wages due, treble damages, punitive damages, prejudgment and post judgment interest, actual and consequential damages, reasonable attorneys' fees and costs incurred in prosecuting this action, and such further relief as the Court deems just and proper.

Respectfully submitted,

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s/ Jack E. Cohoon

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