

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)
)
KARON MITCHELL, INDIVIDUALLY,)
AND ON BEHALF OF ALL OTHERS)
SIMILARLY SITUATED,)
)
PLAINTIFFS,)
)
V.)
)
CITY OF MYRTLE BEACH and the)
MYRTLE BEACH AREA CHAMBER OF)
COMMERCE,)
)
DEFENDANTS.)
_____)

IN THE COURT OF COMMON PLEAS
FOR THE FIFTEENTH JUDICIAL CIRCUIT

CASE NO.: 2018-CP-26-02223

**AMENDED COMPLAINT FOR DECLATORY
JUDGMENT AND INJUNCTIVE RELIEF**

NOW COME Plaintiffs, by their undersigned attorney, and amend their Complaint within the time permitted by law to allege as follows:

THE PARTIES

1. Plaintiff Karon Mitchell is a citizen, resident, taxpayer, and registered elector of Horry County and the City of Myrtle Beach, and brings this action individually and on behalf of all others similarly situated.
2. Defendant City of Myrtle Beach [hereinafter the “City”] is a political subdivision of the State of South Carolina.
3. Defendant Myrtle Beach Area Chamber of Commerce [hereinafter “MBACC”] is a South Carolina Non-Profit Corporation based in Myrtle Beach, South Carolina. MBACC is the designated entity to receive the taxpayer funds related to the Local Option Tourism Development Fee and the Myrtle Beach Accommodations Tax and is therefore acting under color of state law.

JURISDICTION AND STANDING

4. This Court possesses jurisdiction under the South Carolina Constitution, Art. VIII, § 13(D); and under the following decisions, which address public interest and taxpayer standing: *South Carolina Public Interest Foundation v. South Carolina Transportation Infrastructure Bank*, 403 S.C. 640, 744 S.E.2d 521 (2013), *American Petroleum Institute v S.C. Dep't of Revenue*, 382 S.C. 572, 677 S.E.2d 16 (2009), *South Carolina Public Interest Foundation v Harrell*, 378 S.C. 441, 663 S.E.2d 52 (2008), *Sloan v. Department of Transportation*, 379 S.C. 160, 666 S.E.2d 236 (2008), *Sloan v. Hardee*, 357 S.C. 495, 640 S.E.2d 457 (2007); *Cornelius v. Oconee County*, 369 S.C. 531, 633 S.E.2d 492 (2006); *Sloan v. Department of Transportation*, 365 S.C. 299, 618 S.E.2d 876 (2005), *Sloan v. Wilkins*, 362 S.C. 430, 608 S.E.2d 579 (2005); *Sloan v Sanford*, 357 S.C. 431, 593 S.E.2d 470 (2004); *Sloan v. Greenville County*, 356 S.C. 531, 590 S.E.2d 338 (Ct. App. 2003), *Sloan v. School District of Greenville County*, 342 S.C. 515, 537 S.E.2d 299 (Ct. App. 2000), *Baird v. Richland County*, 333 S.C. 519, 511 S.E.2d 69 (1999), *Newman v. Richland County Historic Preservation Commission*, 325 S.C. 79, 480 S.E.2d 72 (1997); and under S. C. Code Ann. § 15-53-10 *et seq.*, known as the Uniform Declaratory Judgment Act.
5. This action raises Constitutional and statutory issues of great public importance, and Plaintiffs ask the Court to grant them standing based upon the great public importance of the issues this action raises.
6. Plaintiffs also possess standing to bring this lawsuit as City of Myrtle Beach taxpayers.

THE TDF STATUTE

7. The South Carolina General Assembly enacted to Title IV, Chapter 10, Article 9 of the South Carolina Code Annotated entitled “Local Option Tourism Development Fee”, which

authorizes counties to adopt an ordinance imposing a Sales and Use Tax for “tourism advertisement and promotion directed at non-South Carolina residents.”

8. The 1% Sales and Use Tax is collected by the South Carolina Department of Revenue [SCDOR] and distributed to the City on a quarterly basis.
9. Upon receipt of the tax funds from SCDOR, the City is allowed to withhold up to 20% of the tax to use as a credit towards property tax bills for citizens and tourism-related capital projects.
10. Pursuant to S. C. Code § 4-10-970, the remaining funds [hereinafter the “TDF Funds”] “must be used exclusively for tourism advertisement and promotion directed at non-South Carolina residents.”
11. The City is required to designate no more than two organizations to receive the revenues and interest and conduct the promotional activities required under S.C. Code § 4-10-970. Any organization appointed must be “nonprofit destination marketing organizations representing a broad cross-section of tourism interests within the county.”
12. Before an organization may be designated to receive any TDF Funds, it must certify to the City that:
 - its promotional and advertising programs are based on research based outcomes;
 - the organization has a proven record of success in creating new and repeat visitation to the county;
 - it has sufficient resources to create, plan, implement, and measure the marketing program generated by the fee revenues;
 - it will use the funds only for the purposes provided pursuant to subsection (B)(1) of this section.
13. At least quarterly, any organization designated by the City pursuant to S.C. Code § 4-37-970 shall provide a report to the municipality that includes identification of TDF Funds received

during the previous quarter, as well as expenditures made from those funds during the previous quarter. Each report is required to be posted by the organization on its website.

14. In 2009, Myrtle Beach City Council adopted an ordinance to levy and impose a 1% sales and use tax pursuant to S.C. Code Ann. § 4-10-970.
15. In 2018, Myrtle Beach City Council unanimously approved the continuation of the 1% sales and use tax pursuant to S.C. Code Ann. § 4-10-970 without holding a public referendum.

THE ACCOMMODATIONS TAX

16. The South Carolina General Assembly enacted to Title VI, Chapter 4, Article 9 of the South Carolina Code Annotated entitled “Allocations of Accommodations Tax Revenue.”
17. This statute requires certain allocations of revenue if a governing body receives more than \$50,000.00 in such revenue.
18. Myrtle Beach receives more than \$50,000.00 in Accommodations Tax revenue and are subject to the allocations specified in S.C. Code § 6-4-10.
19. Pursuant to S.C. Code § 6-4-10, the funds received must be allocated as follows:
 - a. The first twenty-five thousand dollars must be allocated to the general fund of the municipality or county and is exempt from all other requirements of this chapter.
 - b. Five percent of the balance must be allocated to the general fund of the municipality or county and is exempt from all other requirements of this chapter.
 - c. The first twenty-five thousand dollars must be allocated to the general fund of the municipality or county and is exempt from all other requirements of this chapter.
 - d. Five percent of the balance must be allocated to the general fund of the municipality or county and is exempt from all other requirements of this chapter.
 - e. Thirty percent of the balance must be allocated to a special fund and used only for advertising and promotion of tourism to develop and increase tourist attendance through the generation of publicity. To manage and direct the expenditure of these tourism promotion funds, the municipality or county shall select one or more organizations, such as a chamber of commerce, visitor and

convention bureau, or regional tourism commission, which has an existing, ongoing tourist promotion program. To be eligible for selection the organization must be organized as a nonprofit organization and shall demonstrate to the municipality or county that it has an existing, ongoing tourism promotion program or that it can develop an effective tourism promotion program. Before the beginning of each fiscal year, an organization receiving funds from the accommodations tax from a municipality or county shall submit for approval a budget of planned expenditures. At the end of each fiscal year, an organization receiving funds shall render an accounting of the expenditure to the municipality or county which distributed them.

- f. The remaining balance plus earned interest received by a municipality or county must be allocated to a special fund and used for tourism-related expenditures. This section does not prohibit a municipality or county from using accommodations tax general fund revenues for tourism-related expenditures.
20. Under the Statute, “Tourism-related expenditures” include:
- a. advertising and promotion of tourism so as to develop and increase tourist attendance through the generation of publicity;
 - b. promotion of the arts and cultural events;
 - c. construction, maintenance, and operation of facilities for civic and cultural activities including construction and maintenance of access and other nearby roads and utilities for the facilities;
 - d. the criminal justice system, law enforcement, fire protection, solid waste collection, and health facilities when required to serve tourists and tourist facilities. This is based on the estimated percentage of costs directly attributed to tourists;
 - e. public facilities such as restrooms, dressing rooms, parks, and parking lots;
 - f. tourist shuttle transportation;
 - g. control and repair of waterfront erosion, including beach renourishment;
 - h. operating visitor information centers.

21. Additionally, the statute provides:

(c) Allocations to the special fund must be spent by the municipality or county within two years of receipt. However, the time limit may be extended upon the recommendation of the local governing body of the county or municipality and approval of the oversight committee established pursuant to Section 6-4-35. An extension

must include provisions that funds be committed for a specific project or program.

22. The City designated MBACC as the non-profit DMO to handle all tax revenue allocated to the special fund under S.C. Code § 6-4-10 [hereinafter “A-Tax Funds”].

MBACC ACTING UNDER COLOR OF STATE LAW

23. As the designated non-profit organization for the TDF Funds and the A-Tax Funds, MBACC is performing public services under color of state law.
24. By acting as the designated organization to receive taxpayer funds, MBACC was a willful participant in joint activity with the State or its agents.
25. By procuring marketing and advertising services for the City through the expenditure of taxpayer money, MBACC was delegated a public function by those subdivisions of the State.
26. By acting as the designated organization to receive taxpayer funds and procuring marketing and advertising services for the City through the expenditure of taxpayer money, the MBACC is inextricably entwined with governmental policies.
27. By acting under color of state law, MBACC is bound by the statutory and ethical restrictions governing the entities which delegated those duties and made such designations under the applicable statutes.

MBACC ACTING AS AUTHORIZED AGENT FOR MYRTLE BEACH

28. In the alternative, MBACC is acting as the authorized agent of the City with regard to its receipt and disposition of the taxpayer funds.
29. As the authorized agent for the City, the City is responsible for the actions of MBACC.

30. As the authorized agent for the City, MBACC is obligated under the same laws, rules, regulations and ethics as the principals would be under identical circumstances.

“TRANSPARENCY AND ACCOUNTABILITY” REPORTS AND “AUDITS”

31. MBACC provides “Transparency and Accountability” reports on the website of the Myrtle Beach Area Convention and Visitors Bureau.
32. The reports are purportedly provided to satisfy the requirements of state law.
33. A review of the “Transparency and Accountability” reports for the previous three years reveals that MBACC does not implement separate marketing plans for the TDF Funds and the A-Tax Funds.
34. During the previous three years, every transaction on the TDF “Transparency and Accountability” reports appears on the A-Tax “Transparency and Accountability” reports, allocated with a percentage split between the entries.
35. The majority of the percentage splits allocated between the reports are at a 90% to 10% ratio, but other ratios range between 96.1% and 3.9% and 82% and 18% splits.
36. For example, with regard to Visibility and Conversions, LLC, the splits are 3.9% allocated to the A-Tax report and 96.1% allocated to the TDF report.
37. For example, with regard to Right Analytics, LLC, the splits are 18% to the A-Tax Report and 82% to the TDF report.
38. These percentage allocations are consistent through all three years of reports.
39. There is no explanation, justification or calculation for these apparently random splits between the two reports for each quarter.

40. Comparison of the TDF and A-Tax Quarterly reports for 2017 and the Tax Receipts reports for 2017 reveal that **\$907,605** in tax payer funds, \$423,910 of which were A-Tax Funds, remained unspent or unaccounted for by MBACC during that year.
41. The single audit provided by MBACC on the website indicates that only **\$220,492** in taxpayer funds remained at the end of 2017.
42. The single audit provided by MBACC on the website does not provide the definition of “materiality” for the analysis performed therein, making it impossible to determine what level of misappropriation may be disregarded by the auditors.
43. The single audit performed by the MBACC on the website does not provide any justification for the retention of taxpayer funds as “Reserves.”

MBACC RETENTION OF TAXPAYER MONIES

44. MBACC consistently retains taxpayer funds to hold as “Reserves.”
45. In 2017, MBACC retained \$907,605 in tax payer funds, \$423,910 of which were A-Tax Funds.
46. In 2016, MBACC retained \$518,472 in tax payer funds, \$271,569 of which were A-Tax Funds.
47. MBACC currently holds **\$7,860,844.00** of tax payer funds as “Reserve” funds.
48. These “Reserve” funds are not invested or held in interest bearing accounts.

SOUTH CAROLINA DEPARTMENT OF PARKS, RECREATION & TOURISM DESTINATION SPECIFIC MATCHING GRANTS

49. The South Carolina Department of Parks, Recreation & Tourism (hereinafter “SCDPRT”) provides matching “Destination Specific” Grants (hereinafter “DSG”) for organizations implementing promotional programs based on research-based outcomes.

50. SCDPRT provides a state grant of one dollar for every two dollars of private money pledged for destination specific marketing.
51. The matching funds must be private funds, and the organization must certify:
 - (i) the private funds are new dollars specifically designated for the purpose of matching state funds; (ii) the private funds have not been previously allocated or designated for tourism-related destination marketing; (iii) the organization has on hand or has an approved line of credit of not less than the amount of private funds needed to provide the required match;
52. All funds provided through a DSG must use the public money provided by the grant and private funds only for the purpose of destination specific marketing and public relations designed to stimulate destination travel by persons outside the state to destinations within the state.
53. In the 2015-2016 fiscal year between July 1, 2015 and June 30 2016, MBACC received \$6.7 Million in matching grant money from SCDPRT.
54. Pursuant to the law, MBACC was required to certify that it held \$13.4 million in new, private funds that were not previously allocated or designated for tourism related destination marketing.
55. In the 2016-2017 fiscal year between July 1, 2016 and June 30 2017, MBACC received \$6.7 Million in matching grant money from SCDPRT.
56. Pursuant to the law, MBACC was required to certify that it held \$13.4 million in new, private funds that were not previously allocated or designated for tourism related destination marketing.
57. According to the single audit provided by MBACC on its website, the net proceeds of private funds received by MBACC during the two fiscal years beginning on January 1, 2016 and ending December 31, 2017, equaled a total of \$6,584,493.00.

THE PROCUREMENT CODE AND STATE ETHICS LAW

58. South Carolina law requires all political subdivisions to adopt a procurement code to ensure the fair and equitable treatment of all persons who deal with the procurement system which will promote increased public confidence in the procedures followed in public procurement.
59. The City adopted a procurement code located at Chapter 2, Article 6, Division 2 in the Code of Myrtle Beach Ordinances, Sections 2-241 through 2-255.
60. Section 2-253 of the Myrtle Beach Procurement Code states “In all actions involving the procurement of supplies, services, or construction for the city, the provisions of the State Ethics Act shall be complied with in full.”
61. The South Carolina General Assembly enacted to Title VII, Chapter 13, of the South Carolina Code Annotated entitled “Ethics, Government Accountability, and Campaign Reform” in 1991. This is more commonly known as the State Ethics Act. It is Codified at S.C. Code § 8-13-10, et seq.
62. S.C. Code § 8-13-700, entitled “Use of official position or office for financial gain; disclosure of potential conflict of interest” states:
 - (A) No public official, public member, or public employee may knowingly use his official office, membership, or employment to obtain an economic interest for himself, a family member, an individual with whom he is associated, or a business with which he is associated.
63. The City requires competitive bidding for all procurement of services in excess of \$2500.00.

THE CRONY COMPANIES

64. MBACC has consistently redirected taxpayer funds to businesses started by its current and/or former employees [hereinafter “Crony Companies”].
65. These Crony Companies are receiving taxpayer funds for unsubstantiated goods and services at a mark-up that was not contemplated by the statutory scheme enacted by the legislature.
66. These Crony Companies were chosen solely for their connection to MBACC and not for any “research based outcomes” as required by S.C. Code § 4-10-970.
67. These Crony Companies were not subject to any competitive bidding and were given a substantive advantage through insider information and influence with MBACC, causing substantial harm to all other Myrtle Beach businesses that could have competed for the same goods and services.
68. The following paragraphs identifying Crony Companies is not exhaustive and Plaintiffs believe there are more such companies that have yet been identified.

VISIBILITY AND CONVERSIONS, LLC

69. Visibility and Conversions, LLC was formed in 2010 by William Rosenthal, an employee/agent of the MBACC.
70. William Rosenthal is listed as the “Internet Marketing Manager” for MBACC. **Exhibit A**, *Internet listing for William Rosenthal*.
71. The registered “office” for Visibility and Conversions, LLC is located at a self-storage facility in Myrtle Beach, address 10838 Kings Rd., Suite 19, Myrtle Beach, South Carolina. **Exhibit B**, *Articles of Organization for Visibility and Conversions, LLC*. **Exhibit C**, *Photographs of the registered “Office” of Visibility and Conversions, LLC*.

72. While Visibility and Conversions, LLC has not changed its registered office with the Secretary of State, as required by law, an employee of the Myrtle Beach Storage and Business Center reported that the company had “moved” from storage unit 1019 to 1030. **Exhibit D**, *Affidavit of Karon Mitchell*; **Exhibit E**, *Picture of Unit 1019*; **Exhibit F**, *Picture of Unit 1030*.
73. MBACC paid over \$4 million dollars to Visibility and Conversions, LLC in 2011, its second year of operations.
74. In the last seven years, MBACC has paid Visibility and Conversions, LLC more than \$40 million in TDF funds and A-Tax Funds.
75. According to the MBACC, the tax funds were paid for “internet advertising”, “destination publicity”, “campground advertising”, “internet promo”, “online promotion”, and “digital advertising.”

COM-CONNECT, LLC

76. Com-Connect, LLC was formed in 2013 by Nevely Graham, an employee/agent of the MBACC.
77. Nevely Graham is currently listed as the “Visitor Services Manager” for MBACC. **Exhibit G**, *Internet listing for Nevely Graham*.
78. The registered office for Com-Connect, LLC is located the home of Nevely Graham and her husband Jason in Galivant’s Ferry, address 1256 Dog Bluff Rd., Galivants Ferry, South Carolina. **Exhibit H**, *Articles of Organization for Com-Connect, LLC*. **Exhibit I**, *Photographs of the registered “Office” of Com-Connect, LLC*.
79. On April 4, 2018, the employees of Com-Connect stated that they actually work for MBACC. **Exhibit D**, *Affidavit of Karon Mitchell*.

80. MBACC paid over \$186,644.00 to Com-Connect, LLC in 2013, its first year of operations.
81. In the last three years, MBACC has paid Com-Connect, LLC \$952,690.39 in TDF funds, MB-and A-Tax Funds.
82. According to the MBACC, the \$952,690.39 in tax funds were paid for “inquiry fulfillment”, “general consumer promotion”, and “general consumer.”

RIGHT ANALYTICS, LLC

83. Right Analytics, LLC was formed in October 2016 by James E. Wright, an employee/agent of the MBACC.
84. James Wright is listed as the “Vice President of Finance” for MBACC. Exhibit J, *MBACC Tax Return*.
85. The registered office for Right Analytics, LLC is located in the home of James Wright in Florida, address 23084 Sanabria Loop, Bonita Springs, Florida. Exhibit K, *Articles of Organization for Right Analytics, LLC*. Exhibit L, *Deed for “Office” of Right Analytics, LLC*.
86. MBACC paid over \$82,881.90 to Right Analytics, LLC in 2017, its first year of operations.
87. Last year, MBACC paid Right Analytics, LLC \$82,881.90 in TDF funds, A-Tax Funds.
88. According to the MBACC, the \$82,881.90 in tax funds were paid for “research.”

VISUAL DESTINATIONS, LLC

89. Visual Destinations, LLC was formed in September 2014 by unknown persons.
90. The registered office for Visual Destinations, LLC is located in a residential home located at 141 Palladium Drive, Surfside Beach, South Carolina. Exhibit P, *Articles of Organization for Visual Destinations, LLC*. Exhibit Q, *Deed for “Office” of Visual Destinations, LLC*.

91. MBACC paid over \$89,192.01 to Visual Destinations, LLC in 2015, its first year of operations.
92. In the last three years, MBACC paid Visual Destinations, LLC \$269,915.24 in taxpayer funds.
93. According to the MBACC, the \$269,915.24 in tax funds were paid for “website”, “website services”, “video promotion”, “tv production”, “event promotion” and “video production.”

BRANDON ADVERTISING, INC.

94. Brandon Advertising, Inc. was formed in 2000 by W. Scott Brandon.
95. W. Scott Brandon is a former Director of MBACC. Exhibit R, *Brandon Biography*.
96. In the last three years, MBACC paid Brandon Advertising, Inc. \$3,004,634.81 in taxpayer funds.

FUEL INTERACTIVE, LLC.

97. Fuel Interactive, LLC. was formed in 2007 by W. Scott Brandon.
98. W. Scott Brandon is a former Director of MBACC. Exhibit R, *Brandon Biography*.
99. In the last three years, MBACC paid Fuel Interactive. \$703,697.93 in taxpayer funds.

OTHER CHAMBER CONNECTED COMPANIES

BATTLE STRATEGIES, LLC

100. Battle Strategies, LLC was formed in October 2013 by Nora Hembree Battle, an employee/agent of the MBACC.
101. Nora Hembree Battle was the “Media Communications Director” for MBACC. Exhibit M, *Grand Strand Life Style Magazine post*; Exhibit M.1, *2012 Post on MBACC Webpage*.
102. The registered office for Battle Strategies, LLC is located in a residential home, previously owned by Mrs. Battle’s husband, located at 1004 Burroughs St., Conway, South Carolina.

Exhibit N, *Articles of Organization for Battle Strategies, LLC*. **Exhibit O**, *Picture of “Office” of Battle Strategies, LLC*.

103. In the last two years, MBACC paid Battle Strategies, LLC **\$60,470.80** in TDF funds, A-Tax Funds and HC-A-Tax Funds.
104. According to the MBACC, the **\$60,470.80** in tax funds were paid for “video production”, “public relations”, “tourism promotion”, and “internet promotion-social.”

MILLER DIRECT, INC.

105. Miller Direct, Inc. was formed in 2008 by Steve Miller.
106. Upon information and belief, Steve Miller’s wife, Jackie Miller, was the executive assistant to Brad Dean, the former CEO of MBACC.
107. Steve Miller passed away in 2015 and Jackie Miller took over the business.
108. In the last three years, MBACC paid Miller Direct, Inc. **\$1,316,276.00** in TDF funds, A-Tax Funds and HC-A-Tax Funds.
109. According to the MBACC, the **\$1,316,276.00** in tax funds were paid for “general consumer”, “radio promotions”, “event promotion”, “regional production”, “sports marketing” and “Canadian Promotion” and “community specific promotion.”

FAHLGREN MORTINE

110. Fahlgren Mortine is a marketing and communications company based in Ohio.
111. In 2011 and the first quarter of 2012, MBACC paid **\$66,197.00** in TDF Funds for “Publicity and Promotion.”
112. On April 3, 2012, Fahlgren Mortine announced that it hired Kimberly Miles, the public relations director of MBACC as a “Senior Account Specialist” in its Myrtle Beach office.

Exhibit S.

113. During the next three quarters of 2012, MBACC paid Fahlgren Mortine \$297,442 in taxpayer funds for “Publicity and Promotion.”

114. In 2017, Fahlgren Mortine was paid \$353,234.00 in taxpayer funds.

**POLITICAL CONTRIBUTIONS BY CRONY COMPANIES AND CHAMBER
CONNECTED COMPANIES**

115. William Rosenthal and Visibility and Conversions, LLC donated more than \$43,000.00 to various political candidates and political action committees, including the Grand Strand Statewide PAC, the Grand Strand Restaurant PAC, and the Myrtle Beach Lodging PAC between 2010 and 2018. Plaintiff was unable to find any record of any prior political donations from either Rosenthal or Visibility and Conversions, LLC prior to 2010.

116. Scott Brandon, Brandon Advertising, and Fuel Interactive donated more than \$43,000.00 to various political candidates between 2008 and 2018.

117. Miller Direct, Inc., Jackie Miller, and Steve Miller donated more than \$138,000.00 to various political candidates and political action committees, including the Grand Strand Statewide PAC and the Palmetto Leadership Council between 2008 and 2018. Plaintiff was unable to find any record of any political contributions from Miller Direct, Inc., Jackie Miller, or Steve Miller prior to 2008.

118. Fahlgren Mortine has donated \$3500.00 to the Grand Strand Statewide PAC every year since 2013. Plaintiff was unable to find any record of any previous political contributions by Fahlgren Mortine in South Carolina prior to 2013.

ILLEGAL ACTIVITY OF DEFENDANTS

119. Defendants have failed to comply with the applicable procurement laws as no public bidding process of any kind has been implemented by any Defendant since the adoption of

- the TDF tax and the designation of MBACC as the DMO for allocation of the TDF funds and A-Tax Funds.
120. MBACC failed to provide any information regarding the amount of TDF Funds received from the City on a quarterly basis as required by S.C. Code § 4-10-970 until after the initial Complaint in this matter was filed, and continues to violate the law by refusing to identify the funds received from the City in the first quarter of 2018.
 121. The allocation of the TDF funds and A-Tax Funds to the Crony Companies and Chamber Connected Companies listed above were not done pursuant to research-based outcomes, as required by § 4-10-970.
 122. MBACC did not and does not have sufficient resources to create, plan, implement, and measure the marketing program generated by the fee revenues as required by § 4-10-970.
 123. The City of Myrtle Beach failed to conduct any meaningful review of the “reports” provided by MBACC for the last 8 years.
 124. MBACC has consistently provided no information regarding the allocation of millions of dollars by simply reporting the names of vendors as “Search Marketing”, “Display Marketing”, “Video Advertising”, “Email Marketing”, “Social Media Marketing”, “Mobile Marketing”, “Site Visit”, and “Other” in violation of § 4-10-970.
 125. MBACC allocation of taxpayer monies to the Crony Companies and Chamber Connected Companies is a clear conflict of interest under S.C. Code § 8-13-700.
 126. MBACC has consistently utilized the TDF funds and A-Tax Funds to promote members of the Chamber and related entities only, rather than all businesses in Myrtle Beach equally.
 127. MBACC failed to spend the A-Tax funds within two years and continues to hold the funds as “Reserves” in violation of the law that requires the funds to be returned to the City.

128. Upon information and belief, the TDF funds and A-Tax Funds have not been used exclusively for tourism advertisement and promotion as required by S.C. Code § 4-10-970 and S.C. Code § 6-4-10.
129. Upon information and belief, MBACC has funneled the TDF funds and A-Tax Funds through certain companies in order to receive donations and contributions from those companies, effectively converting public funds into the coffers of MBACC.
130. Upon information and belief, MBACC funneled the TDF funds and A-Tax Funds through some, if not all, of its Crony Companies and Connected Companies to redirect some of those funds in the form of political contributions to politicians supported by the MBACC.
131. Upon information and belief, MBACC has funneled the TDF funds and A-Tax Funds through its Crony Companies and Connected Companies to avoid adverse tax consequences through its actions violating its tax-exempt status.
132. Upon information and belief, MBACC provided false certifications to the SCDPRT in order to improperly inflate the matching grant provided for a DSG.

WHEREFORE, Plaintiffs pray this Court:

- A. Declare that Defendants violated the law as specifically described above;
- B. Enjoin any further expenditure or allocation of any and all TDF Funds and A-Tax Funds until Defendants cease the violations of the law as described above and fully comply with the applicable State and local laws;
- C. Enjoin any further expenditure or allocation of any and all TDF Funds and A-Tax Funds until Defendants comply with State and local procurement and ethics laws by implementing a public competitive bidding process for the expenditure of those funds;

- D. Grant Plaintiffs their costs and attorney fees pursuant to S.C. Code § 15-77-300;
- E. Such further and additional relief as the Court deems Proper.

May 14, 2018

RESPECTFULLY SUBMITTED

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