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VIA US MAIL AND EMAIL (duane.lewis@berkeleycountysc.gov)

Sheriff Duane Lewis
Berkeley County Sheriff's Office
223 N. Live Oak Dr.
Moncks Corner, SC 29461

Re: Former Sgt. Aisha Davis

Dear Sheriff Lewis:

We represent Aisha Davis. Ms. Davis was terminated on July 2, 2024 after close to eight years of employment. In her time with your organization, Ms. Davis performed her job duties in an exemplary fashion and was looking forward to a long career with Berkeley County. My client was never disciplined during her career which spanned the vast majority of her working life. She has received awards for her work in the past. Unfortunately, she discovered illegal activity and reported it, causing precipitously her termination.

We believe that Ms. Davis was wrongfully terminated and that she has several potential causes of action against the Berkeley County Sheriff's office. This letter will outline the improprieties and potential civil liability that BCSO may face in the event Ms. Davis chooses to pursue a litigation against you and your organization.

On June 8, 2024, Ms. Davis was approached by a female inmate. That inmate claimed that she was sexually assaulted by a male corrections officer employed by your office. The inmate gave a detailed account of the assault and showed my client where the activity took place. As is required by law, Ms. Davis informed Lt. James Clarke and Major Anthony Phyll within minutes of the complaint by the inmate. Phyll informed Ms. Davis he would escalate the matter. Ms. Davis brought the inmate to her ranking officers for an interview and then escorted the inmate's attorney to the interview. Later that day, the inmate – who was at the Detention Center on a DUI charge – was released from jail on a personal recognizance bond.

An investigation into the actions of the corrections officer ensued. SLED came to review the criminal acts. Ms. Davis was asked to assist with pulling video regarding the incident, however, she was never required to do so. Sgt. Mallory Martin, the officer that oversaw the medical operations of the jail, took over the majority of the contact with SLED after

the initial review. Martin and my client have never gotten along. During the close to two years they have been assigned to the same area, Martin has created rumors about my client that were designed to harm her or end her employment. Ms. Davis complained to human resources about these acts and no official action was taken on behalf of the Sheriff's Office. On June 27, 2024, Ms. Davis made a complaint about Martin's disparaging conduct directly to Capt. Micheal Crumley. Again, no action was taken.

SLED, directed by Martin for the most part, interviewed multiple victims at the jail as well as employees of the BCSO, but did not take a statement from Ms. Davis. The investigation concluded on or around June 28. The corrections officer was arrested and has since been jailed in a neighboring county.

Just days after the end of the investigation and arrest, Ms. Davis was terminated by you from her position with the BCSO. The reasons given, as you know, were illusory: my client was told that she was a "problem" and would continue being a problem into the future. This claim was, according to you and Chief Jeremy Baker, based on "statements" that some fictional individuals had written. Despite her request to review the same, my client was not provided any specificity regarding who made such statements at all. She was, of course, aware of false claims that Martin had made about her, but she was never confronted about anything she had done wrong or against policy of the BCSO during her tenure. Thus, the facts lead only to one conclusion: Ms. Davis was terminated for her lawful report of sexual assault in the Berkeley County Detention Center. The timing of the termination – less than a month after the report and four days after the conclusion of the investigation – and the acts leading up to it are what we believe create the liability.

We have concluded — and these facts support this conclusion — that Ms. Davis's employment was terminated in violation of the public policy of this state. In South Carolina, actions like those described above against an employee give rise to a tort action for wrongful discharge in violation of a clear mandate of public policy. *Ludwick v. This Minute of Carolina, Inc.*, 287 S.C. 219, 337 S.E.2d 213 (1985), *Evans v. Taylor Made Sandwich Co.*, 337 S.C. 95, 522 S.E.2d 350 (1999), and cases cited therein.

Ms. Davis is required by law, under the laws of South Carolina and the Federal Government, to report sexual assault on inmates of a corrections facility. Section 44-23-1150 of the South Carolina Code of Laws states:

- (1) "Actor" means an employee...of a public entity that has statutory or contractual responsibility for inmates...
- (2) "Victim" means an inmate...who is confined in...jail or mental health facility, or who is an offender on parole, probation, or other community supervision programs. A victim is not capable of providing consent for sexual intercourse or sexual contact with an actor.

(D) A person who knowingly or willfully submits inaccurate or untruthful information concerning sexual misconduct as defined in this section is guilty of the misdemeanor of falsely reporting sexual misconduct and, upon conviction, must be imprisoned for not more than one year.

(E) A person who has knowledge of sexual misconduct *who has received information in the person's professional capacity* and fails to report it to the appropriate law enforcement authority, *or a person who threatens or attempts to intimidate a witness* **is guilty of a misdemeanor** and, upon conviction, must be fined not more than five hundred dollars or imprisoned for not more than six months, or both.

SC Code §44-23-1150 (*Emphasis added*). This law makes it clear that Ms. Davis's report of the assault was required by law and any act of retaliation for that report – including the termination of her employment while still a witness in the matter – would be a criminal act. See SC Code §44-23-1150(E). The Federal Prison Rape Elimination Act also applies in this instance. I am told that there is consistent training on this law, and that the training is mandated by your office. I would presume, then, that you are aware of the law and of your violations of the same.

These laws express the public policy of this state. The BCSO is in clear violation here. Ms. Davis's report and participation as a witness in the criminal matter – through both her conversations with her superiors and with State officials – are protected acts and cannot form the basis of disciplinary action. The decision to terminate Ms. Davis's employment is actionable under the holdings in *Ludwick, supra* and its progeny.

Finally, we believe that Ms. Davis may have one or more actionable defamation claims against you and Sgt. Martin personally, as well as others in the BCSO. In South Carolina, statements about one's fitness to perform their chosen profession are defamation *per se*. Ms. Davis was detrimentally affected by the false statements Martin made to those individuals above her in the chain of command that led to the decision to terminate my client. We believe your decision to terminate was a false publication of Ms. Davis's failure to be fit for her profession. Since Ms. Davis has left her employment, rumors about why she was terminated have swirled throughout your Office and Detention Center – all false, of course, and all that have and will continue to have an adverse effect on my client's prospects for replacement employment. Further dissemination of any false information regarding Ms. Davis would be actionable defamation as well.

It is apparent to us that my client's claims — if they resulted in a verdict for her — would entitle Ms. Davis to a considerable amount. Ms. Davis made around [REDACTED] a year in her position with BCSO. She has accrued, and will continue to accrue, substantial damages until this matter is rectified. My client continues to apply for new employment, but as yet has been unsuccessful in attaining the same.

Given the fact that Ms. Davis may be forced to proceed to litigation, I am hereby notifying you of her potential claims and reminding you of your duty to preserve evidence and avoid spoliation. In particular, I call your attention to your duty to preserve electronic data. This would include, but is not limited to, all relevant data maintained electronically by your organization at any and all locations, all emails, and, additionally, all data stored on any computers at the local office.

Please let me know if you have any questions, or if you need anything further at this time. I look forward to hearing from you or a legal representative of your organization soon. If I have not heard back from you by July 30, 2024, I will assume that an informal resolution is impossible, and we will file suit.

With kind regards, I am

Very truly yours,

Timothy O. Lewis

cc: Aisha Davis (via email only)