

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF BERKELEY)	C.A. No.: 2019-CP-08-_____
)	
Berkeley County School District,)	
)	
Plaintiff,)	SUMMONS
)	(Jury Trial Demanded)
vs.)	
)	
Compass Municipal Advisors, First Southwest)	
Securities n/k/a Hilltop Securities, Burr &)	
Forman, LLP f/k/a the McNair Law Firm, PA,)	
Frannie Heizer, Brian Nurick, Michael)	
Gallagher, and Brantley Thomas,)	
)	
Defendants.)	
)	

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, of which a copy is hereby served upon you, and to serve a copy of your Answer to the said Complaint to said Plaintiff's attorneys Joshua S. Whitley, Nicholas C. C. Stewart, and S. Tyler Graves, at their office located at 126 Seven Farms Drive, Suite 150, Charleston, South Carolina 29492, within thirty (30) days after the service hereof; exclusive of the day of such service; and if you fail to do so, judgment by default will be rendered against you for the relief demanded in the Complaint.

Respectfully Submitted,

SMYTH WHITLEY, LLC

s/Joshua S. Whitley
Joshua S. Whitley, Esquire
SC Bar No.: 77824
Nicholas C. C. Stewart, Esquire
SC Bar No.: 102434
S. Tyler Graves, Esquire
SC Bar No.: 103173
126 Seven Farms Drive, Suite 150
Charleston, South Carolina 29492
(843) 606-5635

Counsel for Plaintiff

March 6, 2019
Charleston, South Carolina

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Frannie Heizer, Brian Nurick, Michael)	
Gallagher, and Brantley Thomas,)	
)	
Defendants.)	
)	

COMES NOW Plaintiff, Berkeley County School District, and for its Complaint against Defendants, states as follows:

INTRODUCTION

During his tenure as the Chief Financial Officer of the Berkeley County School District (“BCSD” or the “District”), defendant Brantley Thomas (“Thomas”) used his official position to enrich himself and others at the expense of the District. Over a period of many years, he engaged in a pervasive scheme of corruption, in which he embezzled and misappropriated District funds, demanded and accepted multiple illegal kickbacks, and exposed the District to exorbitant fees and losses that have cost the taxpayers of Berkeley County millions of dollars. Thomas successfully concealed his illegal activities from the District for years, and it was not until February of 2017, when the FBI met with District officials to inform them that Thomas was under investigation, that they came to light.

A South Carolina grand jury handed down a Superseding Indictment for Embezzlement (Ten Counts) in violation of S.C. Code Ann. § 16-13-210, and Forgery (One Count) in violation of S.C. Code Ann. § 16-13-10, against Thomas on October 17, 2017. On November 15, 2017, a South Carolina grand jury handed down a four-count Indictment charging Thomas with embezzlement in

violation of S.C. Code Ann. § 16-13-210. On June 28, 2018, a South Carolina grand jury handed down another indictment against Thomas, including thirteen counts of embezzlement in violation of S.C. Code Ann. § 16-13-10 and one count of forgery in violation of S.C. Code Ann. § 16-13-10. On December 7, 2017, the United States Attorney for the District of South Carolina issued an Information in which it charged Thomas with ten counts of Wire Fraud in violation of 18 U.S.C. §§ 1343 and 1346. Thomas has entered pleas of guilty to all of the federal charges against him. Many of the charges against Thomas arose out of his dealings with his co-defendants herein.

Of course, Thomas could not accomplish, and successfully conceal, such an elaborate scheme of corruption alone. As Judge Sporkin famously asked during the Savings and Loan Crisis of the 1980s, “where were the professionals [accountants and lawyers] . . . when these clearly improper transactions were being consummated? Why didn't any of them speak up or disassociate themselves from the transactions?” *Lincoln Sav. & Loan Ass'n. v. Wall*, 743 F. Supp. 901, 920 (D.D.C. 1990). Here, the question is “where were the District’s financial advisors and legal counsel?” The answer is that they were actively and closely associated with Thomas and benefitted from recurring and lucrative business and fees. These professionals knew that Thomas commingled revenues and accounts, which were required to be segregated under both general accounting principles and debt limit requirements of the South Carolina Constitution. The confusion and commingling disallowed any oversight by the School Board, which allowed Thomas unfettered discretion to engage in his corrupt activities. These professional advisors, charged with duties of loyalty and good faith, should have served as a firewall to shield the District from Thomas’ corruption. Instead, they abandoned their fiduciary duties in exchange for access to millions of dollars in public funds for their personal gain, all at the expense of the District and the taxpayers of Berkeley County.

Through this action, the District seeks compensatory, treble, and punitive damages for the tortious activities of these fiduciaries and Thomas, as alleged herein.

PARTIES

1. Plaintiff, Berkeley County School District (“BCSD” or the “District”), is a body politic and

corporate located in Berkeley County, South Carolina, which is authorized to sue pursuant to S.C. Code § 59-17-10.

2. Defendant Brantley Thomas (“Thomas”) beginning in 1992, was the Comptroller for the District. In 2001, Thomas was named Director of Finance for the District. He became the Chief Financial Officer of the District in 2008. Thomas’ employment was terminated by the District on February 6, 2017 due to “conduct that was seriously prejudicial to the District, including, but not limited to, unprofessional conduct, gross neglect of duty, or gross inefficiency.” At the time of his termination, Thomas was receiving a full District salary in excess of \$130,000 per year, plus full retirement benefits as a working retiree. Upon information and belief, Thomas is a resident of Berkeley County, South Carolina.

3. Defendant Compass Municipal Advisors, LLC (“Compass”) is a company organized and doing business in the State of South Carolina, including the County of Berkeley, which had, at times material to this Complaint, the majority of the market share of the school district municipal public financial advising work in the State of South Carolina, and served as the financial advisor to the District beginning in November 2014.

4. Defendant First Southwest Securities n/k/a Hilltop Securities (“First Southwest”) is one of the nation’s largest municipal advisors and is where defendants Brian Nurick and Michael Gallagher were formerly employed at times relevant to this Complaint. First Southwest served as the financial advisor to the District from January 2012 through November 2014, and Nurick and Gallagher were both employed by First Southwest during that period.

5. Defendant Brian Nurick (“Nurick”) is now, and has been a partner and principal in Compass since November 2014, and serves as its managing director. From January 2012 through November 13, 2014, Nurick was employed by First Southwest. Prior to joining First Southwest, Nurick was employed by Ross, Sinclair & Associates, Inc. (“Ross Sinclair”). Nurick conducts business throughout the state of South Carolina, including Berkeley County.

6. Defendant Michael Gallagher (“Gallagher”) is now, and has been a partner and principal in

Compass, since November 14, 2014, and serves as a director of Compass. Gallagher is also the former brother-in-law of Defendant Thomas. From January 2012 through November 2014, Gallagher was a partner in Defendant First Southwest n/k/a Hilltop. Like Nurick, Gallagher was employed by Ross Sinclair before joining First Southwest. Upon information and belief, Gallagher is a resident of Berkeley County and conducts business throughout the state of South Carolina, including Berkeley County.

7. Defendants Compass, Nurick, Gallagher, First Southwest, and Hilltop are referred to herein collectively as the “Financial Advisor Defendants.”

8. Defendant Frannie Heizer (“Heizer”) is a partner and attorney at the Burr & Forman, LLP f/k/a McNair Law Firm, PA. Upon information and belief, Heizer is a resident of Richland County and conducts business throughout the state of South Carolina, including Berkeley County.

9. Defendant Burr & Forman, LLP f/k/a McNair Law Firm, PA (“Burr & Forman”) is a for-profit law firm with offices throughout the State of South Carolina and conducts business in the State of South Carolina, including the County of Berkeley.

10. Heizer and Burr & Forman are referred to herein together as the “Bond Counsel Defendants.”

JURISDICTION AND VENUE

11. This Court has subject matter and personal jurisdiction over the Defendants pursuant to S.C. Const. Ann. Art. V & 11 and S.C. Code Ann. § 36-2-803, and venue is proper in this Court pursuant to S.C. Code Ann. § 15-7-30, because the causes of action alleged herein arose in Berkeley County.

FACTUAL BACKGROUND

12. Over the course of his tenure, Thomas oversaw all of the District’s accounts, *inter alia*, its General Fund (which amounted to \$260 million in the last year before his termination); its Fund Balance (which amounted to \$50 million in the last year before his termination); its Equipment Bond (which amounted to \$58 million in proceeds before his termination), and \$100,000,000.00 in voter-approved bond proceeds.

13. On Sunday, February 5, 2017, Wells Fargo Bank, the financial institution for the District, contacted the District and requested a meeting between BCSD officials and legal counsel and representatives of Wells Fargo and the Federal Bureau of Investigation (FBI).

14. On February 6, 2017, attorneys for the District, along with the Berkeley County School Board Chair Sally Wofford, Vice Chair Mac McQuillin, and Superintendent Brenda Blackburn met with Wells Fargo and the FBI, at which time they were informed of an investigation into criminal misconduct by Thomas. Based on the information provided by Wells Fargo and the FBI, Thomas was terminated on February 6, 2017.

15. Since that time, the District has unearthed and unraveled a complex and multi-faceted web of fraud, corruption, conspiracy, and professional negligence, as explained below, involving all of the Defendants named herein that was successfully concealed from the District for years.

VIOLATION OF THE SOUTH CAROLINA ETHICS ACT – CONFLICT OF INTEREST BASED ON THE FAMILIAL RELATIONSHIP BETWEEN THOMAS AND DEFENDANT GALLAGHER

16. On or before 2006, Thomas caused the District to engage Ross Sinclair as the District's financial advisor. At that time, Gallagher, Thomas' brother-in-law, was employed by Ross Sinclair.

17. In 2012, Thomas caused the District to engage First Southwest as the District's financial advisor, where Gallagher was employed.

18. On November 14, 2014, Nurick and Gallagher incorporated Compass in South Carolina. Thereafter, pursuant to an "Agreement for Municipal Advisory Services" dated January 11, 2015 (the "1/15 Agreement"), which was endorsed by Thomas and Nurick, Compass became the Municipal Advisor for the BCSD. **Exhibit A.**

19. On April 7, 2016, the District and Compass entered into a second "Agreement for Municipal Advisory Services" (the "4/16 Agreement"), which purported to update and replace the 1/15 Agreement. The 4/16 Agreement was signed on behalf of the District by Thomas alone, for the provision of Compass's services as municipal advisor. **Exhibit B.**

20. Nurick and Gallagher were employed by each of the foregoing entities while they served as the District's financial advisor.

21. Compass advertises on its website that it “serves as a fiduciary, guiding each client through their financial goals and objectives while positioning them for continued success through strategic long term capital planning.” It claims further that, “[o]ur status as an independent municipal advisory firm strategically positions us to secure optimal financial outcomes, *without restrictions or conflicts of interest.*” <http://www.compassmuni.com> (emphasis added).

22. Compass also states on its website that “[c]onsistent with certain regulatory authorities, Compass hereby discloses that such contingent and/or transactional compensation present a conflict of interest, because it may cause Compass to recommend a transaction that is unnecessary or in a size that be larger than is necessary. This conflict of interest will not impair *Compass' ability to render unbiased and competent* advice or to fulfill its fiduciary duty.”

23. In the “Conflict of Interest” disclosures in the 1/15 Agreement, Compass represents as follows:

As of the date hereof, the Municipal Advisor represents that it has no known material conflicts of interest, based on the exercise of reasonable diligence. However, in connection with the issuance of any Bond and pursuant to Section III, the Municipal Advisor may receive compensation for the services enumerated herein, which compensation contingent upon the successful closing of a transaction or is based on the size of a transaction. Consistent with the requirements of certain regulatory authorities, the Municipal Advisor hereby discloses that such contingent and/or transactional compensation may present a conflict of interest, because it may cause the Municipal Advisor to recommend a transaction that is unnecessary or in a size that be [sic] larger than is necessary.

Exhibit A, p. 5.

24. The hiring of Ross Sinclair, First Southwest, and Compass violated the State Ethics Act, S.C. Code Ann. § 8-13-700, which provides in part that, “[n]o 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.” S.C. Code Ann. § 8-13-700(A).

25. The Financial Advisor Defendants were fully aware of Gallagher’s familial relationship with Thomas and that Thomas, in engaging the services of the Financial Advisor Defendants, was using his official office to obtain an economic interest for himself and the Financial Advisor Defendants

that was in violation of the State Ethics Act.

26. All Defendants were aware of the conflict of interest and failed to advise the Board.

27. The Financial Advisor Defendants attempted to conceal the familial relationship between Thomas and Gallagher by using Nurick to make all public presentations and outward associations instead of Gallagher.

28. When Mac McQuillin, a member of the District's Board of Trustees, questioned the potential conflict of interest created by the familial relationship between Gallagher and Thomas, he was assured that Thomas and his brother-in-law did not work together.

29. Even if Gallagher and Thomas did not work together, Gallagher financially benefited from all transactions with the District, which was a direct violation of S.C. Code Ann. § 8-13-700.

30. Further, Gallagher did interact with Thomas through the South Carolina Association of Governmental Organizations (hereinafter "SCAGO") – a group created by the Financial Advisor Defendants - and it was Gallagher who hand-delivered to Thomas the rebate checks that Thomas embezzled, as discussed further *infra*.

BREACH OF FIDUCIARY DUTY IN THE SETTING OF BOND COUNSEL'S FEES

31. In the Bond Counsel Defendant's engagement letter accompanying the Resolution for the issuance of \$198,000,000 in general obligation bonds after the referendum, the Bond Counsel Defendants stated, "Our fee as Bond Counsel, excluding disbursements, will be based upon the scale provided by the financial advisor." **Exhibit C** (Engagement letter dated January 8, 2013).

32. The Financial Advisor Defendants and Bond Counsel Defendants owed a fiduciary duty to the District, which was breached by placing the Financial Advisor Defendant in the position of agent for the District in the setting of the Bond Counsel Defendants' fee.

33. The determination of the amount of the Bond Counsel Defendants' fee should have been a matter between Bond Counsel Defendants and its client, the District. Setting the legal fee based on a scale provided by the Financial Advisor Defendants, and not an agreement between the District and the Bond Counsel Defendants, created a conflict of interest and a breach of the fiduciary duties owed

by the Financial Advisor Defendants and the Bond Counsel Defendants to the District.

CREATION OF SCAGO FOR THE PURPOSE OF CHARGING EXCESSIVE FEES

34. Nurick and Gallagher created SCAGO and marketed it as an organization with the main objective of promoting financing and investment opportunities to benefit South Carolina's Public School Districts.

35. The Financial Advisor Defendants represented to the District that membership in SCAGO would save the District costs related to bond issuance and interest.

36. Specifically, the Financial Advisor Defendants represented that school districts, including the BCSD, would save bond counsel fees, municipal advisor fees, and other costs of issuance of debt if each member pooled and shared in the cost of one issuance through their membership in SCAGO.

37. Interest would be saved, according to the Financial Advisor Defendants, due to the aggregation of the needs of the member districts to make a larger offering, which would, ostensibly, result in a lower interest rate for all members.

38. Due to the relative size of the District, as compared to the smaller size of the vast majority of other member districts, the District did not realize lower interest rates through membership in SCAGO as represented by the Financial Advisor Defendants; for the smaller districts, however, having the District as a member of SCAGO was beneficial.

39. The Financial Advisor Defendants knew that the District would not enjoy any savings in cost or interest as a result of its membership in SCAGO, but they sought and depended upon the District's membership in SCAGO to advance their financial interests and client development. In fact, the Financial Advisor Defendants used Thomas as a spokesperson to convince other school districts across the State to become members of SCAGO.

40. Furthermore, the Financial Advisor Defendants' representation that the District's membership in SCAGO would save the District costs was false because Compass charged more costs to the pooled services than was appropriate for such transactions.

*EXCESSIVE ISSUANCES OF INSTALLMENT PURCHASE REVENUE BONDS TO CHURN
FINANCIAL ADVISOR AND LEGAL FEES*

41. As the District's financial advisors and bond counsel, the Financial Advisor Defendants and Bond Counsel Defendants worked with the District multiple times a year on debt issuances and advised the District on how and when to issue debt.

42. In order to maximize the District's debt capacity, the District issued installment purchase revenue (IPR) bonds that are then paid bi-yearly (on June 1 and December 1), with General Obligation (GO) bonds.

43. Instead of issuing one GO bond a year to be able to make the IPR Bond payments on June 1st and December 1st, the Financial Advisor Defendants advised that the District (and other South Carolina school districts) should issue multiple GO bonds per year, and then caused such multiple issuances. This action was reckless and imprudent in light of the then-current interest rates. The real purpose for the multiple issuances was to allow the Financial Advisor Defendants and the Bond Counsel Defendants to collect increased advisor and bond counsel fees.

44. The Financial Advisor Defendants and Bond Counsel Defendants used their relationship with Thomas to cause multiple issuances, the chief purpose of which was to generate fees that benefitted the Financial Advisor Defendants and the Bond Counsel Defendants. There was no benefit to the District in issuing multiple bonds per year in the then-current tax environment, and neither the Financial Advisor Defendants nor the Bond Counsel Defendants disclosed this to the Board or provided any analysis concerning the need for multiple issuances. The only benefit of issuing multiple general obligation bonds was to the Financial Advisor Defendants and the Bond Counsel Defendants, as it permitted them to charge additional fees.

*THE SCAGO TAN PROGRAM, CONCEALMENT OF THOMAS'
MISAPPROPRIATION OF FUNDS*

45. The Financial Advisor Defendants and Thomas caused the District to participate in a TAN program through SCAGO that the BCSD did not need and that ultimately resulted in excessive costs and fees to the District and Thomas' embezzlement of TAN rebate checks.

46. Under South Carolina law, school districts “are authorized and empowered to incur general obligation debt in anticipation of the collection of ad valorem taxes (tax anticipation notes). Tax anticipation notes shall be expressed to mature not later than ninety days from the date as of which such taxes may be paid without penalty.” S.C. Code Ann. § 11-27-50; S.C. Const. art. X, § 15 (7).

47. Thus, South Carolina school districts may incur short-term debt in anticipation of tax collections to remedy cash flow shortfalls during a fiscal year.

48. Under federal tax law, in order to receive a TAN, a governmental entity must show a cash flow deficit projected during the upcoming year and certify the same. 26 U.S.C. § 148(f)(3)(B)(iii).

49. The School Board of Trustees for the District relied on the expertise of the Financial Advisor Defendants and Bond Counsel Defendants in their determination that the District qualified for, and needed to issue, TANs.

50. Thomas, with the assistance and knowledge of the Financial Advisor Defendants and Bond Counsel Defendants, devised a scheme to make it appear that the District had a cash flow deficit, and therefore qualified for TANs, when it actually did not.

51. All Defendants knew that the District had \$25 million available in an investment account that could have been used at all times for cash flow purposes, and, in fact, was used by Thomas for cash flow purposes. Hence, the District never needed to issue a TAN.

52. The Defendants devised an investment policy disallowing the use of investment proceeds to ostensibly force the need for the TAN. Assuming *arguendo* that not using investment funds was appropriate, the District still did not need to participate robustly in the TAN program.

THE TAN REBATE SCHEME

53. Through the TAN program, SCAGO issued rebate checks to the District. Those checks, however, were written to the District in care of Gallagher, a principal in SCAGO and Compass, and also Thomas’ brother-in-law. Gallagher obtained possession of those checks and hand-delivered them to Thomas, who then converted them to cashier’s checks and deposited the funds in his personal account. In this way, Thomas was able to embezzle TAN rebate checks in the amount of \$22,994.68,

\$49,422.25, and \$59,104.49 from the District. **Exhibit D** (Check from Regions SCAGO TAN 2014 Sinking Fund dated April 28, 2015 (\$22,994.68); email chain between Joshua Pack of Regions Bank and Thomas; Wells Fargo receipt for deposit of \$22,000.00; check from Thomas to himself for \$22,000.00 dated May 5, 2015); **Exhibit E** (Check from Regions SCAGO TAN 2013 Sinking Fund dated April 25, 2014 (\$49,422.25); **Exhibit F** (Check from Regions SCAGO TAN 2015 dated April 26, 2016 (\$59,104.49); email from Thomas to Angie at Wells Fargo regarding cashier's checks totaling \$59,104.49).

54. It is inappropriate for a financial advisor to handle any checks on behalf of his or her school district. Financial advisors should be part of a conversation where trustees and others, including officers within the school district, dictate how checks are handled, but there should be no opportunity for financial advisors to ever handle checks on behalf of a school district.

55. Nevertheless, the Financial Advisor Defendants arranged for rebate checks of participating SCAGO counties to be handled by Nurick and Gallagher and other Compass employees so that they could ceremoniously present checks, upon information and belief, to participating counties, so that their clients would believe they were doing something for them, even though it was the members' own money.

56. The Financial Advisor Defendants and Bond Counsel Defendants thereby participated in, aided, abetted, and enabled Thomas' embezzlement of the TAN rebate checks received as a result of the District's participation in the TAN program.

COMMINGLING OF FUNDS AND OVERSPENDING

57. The District has certain operating and capital funds and accounts that are intended to meet different needs and must be kept segregated in separate accounts and not commingled.

58. The District maintains a General Fund, which is the fund into which tax receipts are deposited, and from which most of the District's general operating expenses are paid. During the year prior to Thomas' termination, the General Fund amounted to \$260 million.

59. The District also maintains a Fund Balance. During the year prior to Thomas' termination, the Fund Balance amounted to \$53 million.

60. In addition, the District may issue general obligation bonds, but the debt that a school district may incur is constitutionally limited by Article X, section 15 of the South Carolina Constitution, which provides in pertinent part, "the governing body of any school district may incur general obligation debt in an amount not exceeding eight percent of the assessed value of all taxable property of such school district subject to the provisions of subsection (3) of this section and upon such terms and conditions as the General Assembly may prescribe." S.C. Const. art. X, § 15(6). If the school district intends to exceed this constitutionally-limited amount, a majority of the voters in the school district must provide otherwise by referendum. S.C. Const. art. X, § 15(5).

61. In November 2012, a majority of the voters in the District approved the "Yes 4 Schools" referendum, pursuant to which the District was permitted to issue \$198 million in bonds.

62. The District may also issue bonds for equipment (include heating and air conditioning, technology, or kitchen equipment). The 2012 referendum, however, did not include equipment, so the District issued an Equipment Bond in the amount of \$53 million, which funds could only be used for those items and not commingled.

63. In 2013, on the advice of the Financial Advisor Defendants, the District issued the first \$100 million in debt on the referendum.

64. Although all of the foregoing bonds, accounts, and funds are required to be kept separate, Thomas engaged in fraudulent handling of cost overruns during the construction projects approved by the Yes 4 Schools referendum.

65. During 2014, \$1.4 million of the bond referendum construction fund was transferred to the District's Fund Balance. The account that the funds were transferred into was unrelated to the investment accounts that held the funds for the bond referendum projects.

66. Subsequently, the \$1.4 million was transferred from the aforementioned Fund Balance to the General Fund. Ultimately, this left the bond referendum construction fund \$1.4 million short, which

had to be replaced from the District's Fund Balance. **Exhibit G** (\$1.4M Transfer from the Referendum Fund to the General Fund).

67. The District's Fund Balance sustained a loss of \$7.2 million as a result of Thomas' fraudulent activities. Thomas concealed construction cost overruns on the construction projects included in the voter-authorized \$198 million referendum by "borrowing" approximately \$35 million — or 68 percent of the total amount available — from the District's Fund Balance, plus \$11.8 million from the Equipment Fund, without the knowledge or approval of district officials or board members.

68. By the time Thomas was terminated, Thomas had spent nearly \$150 million towards projects to be funded by the voter-authorized \$198 million referendum. Ultimately, and to date, Thomas' fraudulent activities left the building fund tens of millions of dollars short, which had to be replaced from the District's Fund Balance and by issuing additional 8-percent debt to cover the cost overruns. **Exhibit H** (\$11.8M Equipment Bond Fund Balance Improperly Transferred to General Fund (1 of 2 (Calculation) and 2 of 2 (Claim Letters/Support))).

69. The Financial Advisor Defendants and Bond Counsel Defendants knew that Thomas had spent much more than the \$100 million that had been issued in 2013 and that he was spending away the District's Fund Balance and Equipment Funds, but did not alert the District. (**Exhibit I** – February 8, 2016 Memo from Burr & Forman to Thomas concerning overruns ("I understand that the renovation of Old Berkeley High School is now approximately \$3,000,000 over budget and there are not sufficient funds to complete the project."); **Exhibit J** –November 29, 2016 email from Nurick to Thomas ("Brantley, looking at balances at Regions is [sic] seems you are blowing through your bond proceeds. Do you know when you need the balance of the referendum?").

70. The Defendants, as fiduciaries of the District, should have advised the Board that Thomas' expenditures had exceeded the debt issuance of \$100 million, and that it was time to issue the remaining \$98 million. Instead, Defendants knowingly allowed Thomas to deplete the Fund Balance and the Equipment Funds without advising the Board of his activities.

71. In order to avoid a major downgrading of the District's financial ratings, the District had to

expeditiously issue debt to reimburse the above inappropriate expenditures.

HIGHER INTEREST RATES DUE TO THE NEED TO ISSUE TAXABLE BONDS

72. Under federal law, an issuer may adopt a reimbursement resolution, or statement of official intent, allowing it to reimburse itself for expenditures made before issuance of tax-exempt debt. 26 CFR § 1.150-2.

73. The Regulation requires that the issuer make a prior declaration of its official intent to reimburse itself for such prior expenditures out of the proceeds of a subsequently issued borrowing no later than 60 days after payment of the original expenditure, that the borrowing occur and the reimbursement allocation be made from the proceeds of such borrowing within eighteen months of the payment of the expenditure or, if longer, within eighteen months of the date the project is placed in service, but in no event more than three years after the date the original expenditure was paid and that the expenditure must either be a capital expenditure, or a cost of issuance of the obligation. 26 CFR 1.150-2.

74. Thus, under federal tax law, an issuer may not generally reimburse itself with proceeds of tax-exempt bonds for expenditures made more than 60 days prior to the issuer adopting an official intent.

75. The Financial Advisor Defendants and Bond Counsel Defendants knew, within 60 days of Thomas' original expenditures for the construction projects included in the \$198 million referendum, that he had exceeded the initial debt issuance of \$100 million. **Exhibit I** (Heizer memorandum to Thomas dated February 8, 2016); **Exhibit J** (November 29, 2016 email from Nurick to Thomas, with carbon copy to Defendant Heizer).

76. Despite their knowledge, neither the Financial Advisor Defendants nor the Bond Counsel Defendants alerted the District that a reimbursement resolution, or any other mechanism or step, was necessary to prevent the issuance of the remaining \$98 million as taxable bonds. Had the District been so informed, it could have executed a resolution, or taken other necessary steps, in time to ensure that the remaining debt was issued as tax-exempt.

77. As a result, on May 18, 2017, when the District issued the final \$98 million installment of

general obligation bonds from the county's 2012 Yes 4 Schools campaign, \$30.8 million of the \$98 million bond sale was issued as taxable bonds, which was made necessary due to the concealed cost overruns and misappropriation of funds and the lack of an effective reimbursement resolution.

78. The issuance of taxable bonds was required because Thomas used the Fund Balance for capital projects without an effective reimbursement resolution or other mechanism, all of which was known by the Financial Advisor Defendants and the Bond Counsel Defendants well in advance of the deadline for the adoption of a reimbursement resolution or the taking of any additional step that would have avoided the taxable issuance.

79. The Bond Counsel Defendants and the Financial Advisor Defendants knew or should have known that a reimbursement resolution, or some other mechanism, was required under federal tax law to allow the debt to remain tax-exempt. *See Exhibit K* (Memorandum from Frannie Heizer dated April 25, 2017 regarding Issues Regarding Reimbursements from Proceeds of \$98,000,000 General Obligation Bond Issue).

80. The issuance of \$30.8 million in taxable bonds resulted in more than \$1 million in higher interest rate costs and a loss of bond premium of \$3-5 million on the same.

*VIOLATION OF THE SOUTH CAROLINA ETHICS ACT –EXTRAVAGANT JUNKETS,
SCHOLARSHIPS, AND SPONSORSHIPS*

81. The Financial Advisor Defendants, through SCAGO, also inappropriately charged the District for unnecessary and extravagant junkets, including trips to New York City, by passing the costs of those trips to the taxpayers of Berkeley County and other districts.

82. The Financial Advisor Defendants interviewed bank executives for issuance of bonds in New York City, when it was more appropriate to do so in Charlotte, NC, where the banks were actually located. To conduct those interviews, the Financial Advisor Defendants booked expensive hotel rooms, first class airfare, meals, and Broadway Shows, and then added those costs to the issuances funded by the school districts.

83. SCAGO also used the school districts' money to become a large sponsor of the South Carolina

Association of School Administrators and the South Carolina Association of School Business Officers, which cost taxpayers \$25,000 per year. These sponsorships did nothing more than promote Defendants' financial interests.

84. The Financial Advisor Defendants, through SCAGO, used similar tactics to award scholarships to the children of the financial officers of participating counties on an annual basis. These arrangements clearly indicate a kickback scheme and, at a minimum, a misuse of resources of the taxpaying counties, which were participating in SCAGO for the sole purpose of cutting costs.

85. Defendants, including the Bond Counsel Defendants, were all knowingly a part of the scheme to fleece the District through excessive fees and costs to further their financial interests at the expense of the citizens of Berkeley County and similarly situated counties in South Carolina, and all of the Defendants were in violation of the South Carolina Ethics Act, including, *inter alia*, S.C. Code § 8-13-705, which prohibits the offering, giving, soliciting, or receiving anything of value to influence action of public employee, member or official.

CONFLICT OF INTEREST IN THE PURCHASE OF 2015 PICKENS COUNTY IPR BOND

86. The Financial Advisor Defendants provided financial advising services to numerous South Carolina school district and counties, including the BCSD and Pickens County School District.

87. On or about December 1, 2015, upon the advice of the Financial Advisor Defendants, the District purchased an IPR bond issued on behalf of the Pickens County School District by SCAGO Educational Facilities Corporation in the principal amount of 3,250,000.00. Compass served as Financial Advisor and the Bond Counsel Defendants served as bond counsel on the offering. **Exhibit L** (Emails and documents relating to Pickens offering).

88. In addition, Thomas served on the Board of the SCAGO Educational Facilities Corporation at the time of the offering, which was a conflict of interest.

89. As financial advisors for both the District and Pickens County School District, the Financial Advisor Defendants recommended the sale price to Pickens and advised Thomas to bid on it.

90. The District could have purchased the Pickens County School District bond at a lower price

on the open market; however, the Financial Advisor Defendants were artificially setting the price for both the buyer and the seller, which was a conflict of interest.

CONFLICT OF INTEREST IN THE PURCHASE OF OCONEE COUNTY BOND

91. As noted *supra*, the Financial Advisor Defendants provided financial advising services to numerous South Carolina school district and counties. This included Oconee County, South Carolina.

92. On or about December 22, 2015, upon the advice of the Financial Advisor Defendants, the District purchased a general obligation bond issued by Oconee County in the principal amount of \$900,000.00. The Financial Advisor Defendants served as financial advisor, and Bond Counsel Defendants served as bond counsel for Oconee County on the offering. **Exhibit M** (Oconee Notice of Sale). As financial advisors for both the District and Oconee County, the Financial Advisor Defendants recommended the sale price to Oconee and advised the District to bid on it. **Exhibit N** (Nurick email forward dated November 18, 2015).

93. The District could have purchased the Oconee County bond at a lower price on the open market; however, the Financial Advisor Defendants were artificially setting the price for both the buyer and the seller without disclosing the conflict of interest.

MULTIPLE KICKBACK SCHEMES

94. In addition and unrelated to their role as financial advisors, the Financial Advisor Defendants introduced Thomas to vendors who provided kickbacks to Thomas in exchange for District business. Upon information and belief, the Financial Advisor Defendants introduced Thomas to waste management vendors, cell phone tower sales companies, and vending machine and IT equipment vendors, among others.

95. In this way, upon information and belief, Thomas received kickbacks, which included expensive meals, annual trips to the Kentucky Derby, cigar subscriptions, and Omaha Steak subscriptions.

CAUSES OF ACTION
FOR A FIRST CAUSE OF ACTION
COMMON LAW FRAUD
All Defendants

96. Plaintiff hereby incorporates by reference, as if fully set forth herein, each and every allegation asserted in the preceding and following paragraphs, including each and every factual and legal allegation hereinbefore and hereinafter alleged, and hereby re-adopts and re-alleges each such allegation.

97. Thomas made false representations of material fact to, and fraudulently concealed material facts from, the District, including, but not limited to, the following:

- a. Concealing from the District the conflict of interest created by the engagement of Compass due to the familial relationship between Thomas and Gallagher, in violation of the State Ethics Act;
- b. Representing to the District that membership in SCAGO, an organization created and managed by the Financial Advisor Defendants, was of financial benefit to the District, when in fact Thomas knew that such membership was a financial detriment to the District;
- c. Representing to the District that multiple issuances of bonds was a financial benefit to the District, when he knew that the cost of issuance would outweigh any financial benefit the District might realize;
- d. Representing to the District that the multiple issuances of bonds were a financial benefit to the District, where the real reason for the excessive issuances was to allow the Financial Advisor Defendants and the Bond Counsel Defendants to churn fees;
- e. Misappropriating and concealing the misappropriation of public funds, including the invasion of the Fund Balance and spending \$150 million on projects to be funded by the \$198 million Yes 4 Schools referendum when only \$100 million had been issued, resulting in the need to issue taxable bonds at a higher interest rate and resulting in a loss to the District of \$1 million in higher interest rate costs and a loss of bond premium of \$3-5 million on the same;

- f. Representing to the District that it needed to participate in the SCAGO TAN program due to cash flow deficits, and concealing the fact that no cash flow deficit actually existed;
- g. Embezzling District funds, concealing his embezzlement, and conspiring and engaging in a scheme with the Financial Advisor Defendants that allowed him to embezzle said funds;
- h. Causing the District's purchase of a bond from Oconee County in the principal amount of \$900,000, and a bond from the Pickens County School District in the principal amount of \$3,250,000, and concealing from the District that the bonds could have been purchased for less on the open market, and concealing from the District the Financial Advisors Defendants and Bond Counsel Defendants' conflict of interest in representing the interests of both the District and the issuers in both offerings;
- i. Concealing from the District the conflict of interest presented by his service on the Board of the SCAGO Educational Facilities Corporation (SCAGO-EFC) in December 2015, at the same time SCAGO-EFC served as the issuer on behalf of the Pickens County School District of the bond purchased by the District, leaving the District with no one representing its interests in the transaction with undivided loyalty;
- j. Concealing the cost of various junket trips to New York City, where the sole purpose was to develop the Financial Advisor Defendants' and Bond Counsel Defendants' client base, provide a personal kickback to Thomas and others, and charge the cost back to the taxpayers of Berkeley County, in violation of S.C. Code § 8-13-705, which prohibits the offering, giving, soliciting, or receiving anything of value to influence action of public employee, member or official,
- k. Concealing the inappropriate and illegal contracts entered into, and kickbacks he received as the Chief Financial Officer of the District, which were known by the Financial Advisor Defendants without the knowledge of the District;
- l. Concealing construction cost overruns by "borrowing" approximately \$35 million — or 68 percent of the total amount available — from the District's Fund Balance, plus \$11 million

from a fund intended to pay for equipment, without the knowledge or approval of district officials or board members, which ultimately resulted in the need to issue \$31 million in taxable bonds at a cost to the District of \$1 million in lost interest, and a loss of bond premium in the amount of \$3.5 to \$5 million.

98. The Financial Advisor Defendants made false representations of material fact to, and fraudulently concealed material facts from, the District, including, but not limited to, the following:

- a. Concealing from the District the conflict of interest created by the engagement of Compass as the District's financial advisor, where the relationship created economic benefits for Gallagher, Thomas' then brother-in-law, in violation of the State Ethics Act;
- b. Representing to the District that membership in SCAGO, an organization created and managed by the Financial Advisor Defendants, was of financial benefit to the District, when in fact the Financial Advisor Defendants knew that such membership was a financial detriment to the District and only benefited the Financial Advisor Defendants and the Bond Counsel Defendants by allowing them to develop their client base and churn and collect excessive advising and legal fees;
- c. Advising the District to issue multiple general obligation bonds per year, and concealing from the District that the only benefit of such excessive issuances was to the Financial Advisor Defendants and the Bond Counsel Defendants by allowing them to churn and collect excessive advising and legal fees;
- d. Representing to the District that it needed to participate in the SCAGO TAN program – despite their knowledge that the District did not have a cash flow deficit - so that they could churn and collect excessive advising fees;
- e. Participating in a scheme with Thomas and the Bond Counsel Defendants whereby Gallagher would sign and deliver to Thomas TAN rebate checks from SCAGO intended for the District, thereby allowing Thomas to embezzle them, and concealing Thomas' embezzlement from the District;

- f. Representing the interests of both District and Oconee County in the District's purchase of a \$900,000 bond from Oconee County, and the District and Pickens County School District in the District's purchase of a bond from Pickens County School District in the principal amount of \$3,250,000, and advising the District to make the purchases, where the District could have purchased the bonds for less on the open market, and without disclosing the conflict to the District;
 - g. Concealing from the District the conflict of interest presented by Thomas' service on the Board of the SCAGO Educational Facilities Corporation (SCAGO-EFC) in December 2015, at the same time SCAGO-EFC served as the issuer on behalf of the Pickens County School District of the bond purchased by the District, leaving the District with no one representing its interests with undivided loyalty;
 - h. Concealing the costs of various junket trips to New York City, the sole purpose of which was to develop the Financial Advisor Defendants and Bond Counsel Defendants' client base and charge the cost back to the taxpayers of Berkeley County, which were in violation of S.C. Code § 8-13-705, which prohibits the offering, giving, soliciting, or receiving anything of value to influence action of public employee, member or official;
 - i. Concealing the inappropriate and illegal contracts entered into, and kickbacks received, by Thomas, which were known by the Financial Advisor Defendants without the knowledge of the District;
 - j. Concealing construction cost overruns resulting in Thomas' borrowing of approximately \$35 million — or 68 percent of the total amount available — from the District's Fund Balance fund, plus \$11 million from a fund intended to pay for equipment, without the knowledge or approval of district officials or board members, which ultimately resulted in the need to issue \$31 million in taxable bonds at a cost to the District of \$1 million in lost interest, and a loss of bond premium in the amount of \$3 to \$5 million.
99. The Bond Counsel Defendants made false representations and engaged in fraudulent

concealment of material facts, including, but not limited to, the following:

- a. Concealing from the District the conflict of interest created by the engagement of Compass as the District's financial advisor, where the relationship created economic benefits for Gallagher, Thomas' then brother-in-law, in violation of the State Ethics Act;
- b. Advising the District to issue multiple general obligation bonds per year, and concealing from the District that the only benefit of such excessive issuances was to the Financial Advisor Defendants and the Bond Counsel Defendants by allowing them to churn and collect excessive advising and legal fees;
- c. Representing to the District that it needed to participate in the SCAGO TAN program – despite their knowledge that the District did not have a cash flow deficit - so that they could churn and collect excessive legal fees;
- d. Participating in a scheme with Thomas and the Financial Advisor Defendants whereby Gallagher would sign and deliver to Thomas TAN rebate checks from SCAGO intended for the District, thereby allowing Thomas to embezzle them, and concealing Thomas' embezzlement from the District;
- e. Representing the interests of both the District and Oconee County in the District's purchase of a bond in the principal amount of \$900,000 from Oconee County, and the District and Pickens County School District in the District's purchase of an IPR bond in the principal amount of \$3,250,000, and advising the District to make the purchases, where the District could have purchased the bonds for less on the open market, and without disclosing the conflict to the District;
- f. Concealing from the District the conflict of interest presented by Thomas' service on the Board of the SCAGO Educational Facilities Corporation (SCAGO-EFC) in December 2015, at the same time SCAGO-EFC served as the issuer on behalf of the Pickens County School District of the bond purchased by the District, leaving the District with no one representing its interests with undivided loyalty;

- g. Concealing the costs of various junket trips to New York City, the sole purpose of which was to develop the Financial Advisor Defendants and Bond Counsel Defendants' client base and charge the cost back to the taxpayers of Berkeley County, in violation of S.C. Code § 8-13-705, which prohibits the offering, giving, soliciting, or receiving anything of value to influence action of public employee, member or official;
 - h. Concealing construction cost overruns that resulted in Thomas' "borrowing" of approximately \$35 million — or 68 percent of the total amount available — from the District's Fund Balance, plus \$11 million from a fund intended to pay for equipment, without the knowledge or approval of district officials or board members, which ultimately resulted in the need to issue \$31 million in taxable bonds at a cost to the District of \$1 million in lost interest and a loss of bond premium in the amount of \$3 to \$5 million; and,
 - i. Concealing from the District that a reimbursement resolution was required to avoid the issuance of taxable debt, resulting in the issuance of taxable bonds and a loss of \$1 million in higher interest rate costs and a loss of bond premium of \$3 to \$5 million on the \$31 million offering.
100. Defendants knew that the foregoing material facts were false, or recklessly disregarded their truth or falsity, or fraudulently concealed the truth from the District, with the intent that their representations and/or concealments be acted upon.
101. The District had no knowledge of the falsity of the material facts misrepresented and concealed by Defendants and relied upon them to its detriment and consequent and proximate injury.
102. The damages sustained by the District as a result of fraud perpetrated by Defendants include, but are not limited to, the following:
- a. Fees and costs associated with the excessive issuances of bonds;
 - b.** Loss of funds embezzled by Thomas in the amount of \$131,521.42;
 - c. Interest on the issuance of taxable debt in May of 2017 in the amount of \$1 million, and loss of bond premium in the amount of \$3 to \$5 million;

- d. The loss associated with the purchase of a bond in the principal amount of \$900,000 from Oconee County and a bond in the principal amount of \$3,250,000 from Pickens County School District, at an enhanced price where the Financial Advisor and Bond Counsel Defendants represented both parties in both offerings and failed to disclose their conflict of interest, and the loss associated with the conflict of interest created by Thomas' service on the Board of SCAGO-EFC;
 - e. The cost of expensive and unnecessary junket trips to New York for the sole purpose of the Financial Advisor Defendants and the Bond Counsel Defendants' client development, at the expense of the taxpayers of Berkeley County and not reported on the SEI and in violation of S.C. Code § 8-13-705, which prohibits the offering, giving, soliciting, or receiving anything of value to influence action of public employee, member or official;
 - f. The cost of scholarships to the children of financial officers of the District, charged to the District, which was a kickback arrangement with SCAGO;
 - g. The cost of sponsorship of the South Carolina Association of School Administrators and the South Carolina Association of School Business Officers, in the amount of \$25,000 per year, which provided no benefit to the District and did nothing more than promote the financial interests of the Financial Advisor Defendants and the Bond Counsel Defendants; and
 - h. The costs associated with the illegal and inappropriate contracts and kickbacks received by Thomas as the Chief Financial Officer of the District.
103. Each Defendant is jointly and severally liable to the District for all of the acts of common law fraud alleged herein.

FOR A SECOND CAUSE OF ACTION
CONVERSION
All Defendants

104. Plaintiff hereby incorporates by reference, as if fully set forth herein, each and every allegation asserted in the preceding and following paragraphs, including each and every factual and legal

allegation hereinbefore and hereinafter alleged, and hereby re-adopts and re-alleges each such allegation.

105. Defendants engaged in an unauthorized assumption and exercise of the right of ownership over the District funds, including all funds embezzled by Thomas, to the exclusion of the District's rights.

106. The Defendants assumed and exercised the right of ownership over funds belonging to District in the form of TAN rebate checks that Thomas converted between July 2012 and December 2016 to cashier's checks, depositing the funds in his personal account, resulting in a loss to the District of \$131,521.42.

107. Defendants are jointly and severally liable to the District for the conversion of the District's funds as aforesaid.

FOR A THIRD CAUSE OF ACTION
BREACH OF FIDUCIARY DUTY

The Financial Advisor Defendants and the Bond Counsel Defendants

108. Plaintiff hereby incorporates by reference, as if fully set forth herein, each and every allegation asserted in the preceding and following paragraphs, including each and every factual and legal allegation hereinbefore and hereinafter alleged, and hereby re-adopts and re-alleges each such allegation.

109. The District imposed a special confidence in the Financial Advisor Defendants and the Bond Counsel Defendants so that these Defendants, in equity and good conscience, were bound to act in good faith and with due regard to the interests of Plaintiff, thereby giving rise to fiduciary relationships with Plaintiff.

110. As the fiduciaries of the District, the Financial Advisor Defendants and the Bond Counsel Defendants owed a clear duty to the District of undivided loyalty, absolute faithfulness, and a duty to exercise due care and diligence with respect to the advice related to and the management of District funds.

111. With the fiduciary relationship assumed by the Financial Advisor Defendants and the Bond Counsel Defendants, also came the duties and obligations to keep the District informed of all facts pertinent to and materially affecting the District's financial well-being, to avoid conflicts of interest, to disclose to the District any actual or potential conflicts of interest, and to exercise reasonable care, diligence, and prudence in the performance of their duties.

112. The Financial Advisor Defendants and the Bond Counsel Defendants breached their fiduciary duties to the District, *inter alia*, in the following ways:

- a. Concealing from the District the conflict of interest created by the engagement of Compass as the District's financial advisor, where the relationship created economic benefits for Gallagher, Thomas' brother-in-law, in violation of the State Ethics Act;
- b. Representing to the District that membership in SCAGO, an organization created and managed by the Financial Advisor Defendants, was of financial benefit to the District, when in fact the Financial Advisor Defendants knew that such membership was a financial detriment to the District and only benefited the Financial Advisor Defendants and the Bond Counsel Defendants by allowing them to develop their client base and churn and collect excessive advising and legal fees;
- c. Advising the District to issue multiple general obligation bonds per year, and concealing from the District that the only benefit of such excessive issuances was to the Financial Advisor Defendants and the Bond Counsel Defendants by allowing them to churn and collect excessive advising and legal fees;
- d. Representing to the District that it needed to participate in the SCAGO TAN program – despite their knowledge that the District did not have a cash flow deficit - so that they could churn and collect excessive advising fees;
- e. Participating in a scheme with Thomas and the Bond Counsel Defendants whereby Gallagher would sign and deliver to Thomas TAN rebate checks from SCAGO intended for the District, thereby allowing Thomas to embezzle them, and concealing Thomas' embezzlement from the

District;

- f. Representing the interests of both District and Oconee County in the District's purchase of a \$900,000 bond from Oconee County, and the District and Pickens County School District in the District's purchase of a bond from Pickens County School District in the principal amount of \$3,250,000, and advising the District to make the purchases, where the District could have purchased the bonds for less on the open market, and without disclosing the conflict to the District;
- g. Concealing from the District the conflict of interest presented by Thomas' service on the Board of the SCAGO Educational Facilities Corporation (SCAGO-EFC) in December 2015, at the same time SCAGO-EFC served as the issuer on behalf of the Pickens County School District of the bond purchased by the District, leaving the District with no one representing its interests with undivided loyalty;
- h. Concealing the costs of various junket trips to New York City, the sole purpose of which was to develop the Financial Advisor Defendants and Bond Counsel Defendants' client base and charge the cost back to the taxpayers of Berkeley County, which were in violation of S.C. Code § 8-13-705, which prohibits the offering, giving, soliciting, or receiving anything of value to influence action of public employee, member or official;
- i. Concealing the inappropriate and illegal contracts entered into, and kickbacks received, by Thomas, which were known by the Financial Advisor Defendants without the knowledge of the District;
- j. Concealing construction cost overruns resulting in Thomas' borrowing of approximately \$35 million — or 68 percent of the total amount available — from the District's Fund Balance, plus \$11 million from a fund intended to pay for equipment, without the knowledge or approval of district officials or board members, which ultimately resulted in the need to issue \$31 million in taxable bonds at a cost to the District of \$1 million in lost interest, and a loss of bond premium in the amount of \$3 to \$5 million.

113. The Financial Advisor Defendants and the Bond Counsel Defendants acted with imprudence, negligence, gross negligence, recklessness, willful misconduct, fraudulent intent and bad faith and thereby breached the fiduciary duties owed to the District proximately causing it to suffer damages, including, but not limited to:

- a. Excessive and unnecessary financial advising and legal fees;
- b. Higher interest rates in the amount of \$1 million as a result of having to issue taxable bonds due to Thomas' mismanagement of the District's funds, of which all Defendants were aware, and the failure of the Bond Counsel Defendants to provide a reimbursement resolution;
- c. The loss of bond premium in the amount of \$3 to \$5 million;
- d. The loss of \$131,521.42 in rebates for the TAN program, which was embezzled by Thomas and enabled, aided, and abetted by the Financial Advisor Defendants;
- e. The loss associated with the purchase of a bond in the principal amount of \$900,000 from Oconee County and a bond in the principal amount of \$3,250,000 from Pickens County School District, at an enhanced price where the Financial Advisor and Bond Counsel Defendants represented both parties in both offerings and failed to disclose their conflict of interest as well as the loss associated with the conflict of interest presented by Thomas' service on the Board of SCAGO-EFC in December 2015, so that there was no one representing, with undivided loyalty, the District's interests in the District's purchase of the Pickens County School District bond;
- f. The cost of expensive and unnecessary junket trips to New York for the sole purpose of the Financial Advisor Defendants and the Bond Counsel Defendants' client development, at the expense of the taxpayers of Berkeley County and not reported on the SEI and in violation of S.C. Code § 8-13-705, which prohibits the offering, giving, soliciting, or receiving anything of value to influence action of public employee, member or official;
- g. The cost of scholarships and sponsorships entered into for the sole purpose of the Financial Advisor Defendants and the Bond Counsel Defendants' client development and for the

provision of kickbacks to financial employees of the District, at the expense of the taxpayers of Berkeley County;

- h. The cost of sponsorship of the South Carolina Association of School Administrators and the South Carolina Association of School Business Officers, in the amount of \$25,000 per year, which provided no benefit to the District and did nothing more than promote the financial interests of the Financial Advisor Defendants and the Bond Counsel Defendants;
- i. The costs associated with the illegal and inappropriate contracts and kickbacks received by Thomas as the Chief Financial Officer of the District.

FOR A FOURTH CAUSE OF ACTION
AIDING AND ABETTING BREACH OF FIDUCIARY DUTY
All Defendants

114. Plaintiff hereby incorporates by reference, as if fully set forth herein, each and every allegation asserted in the preceding and following paragraphs, including each and every factual and legal allegation hereinbefore and hereinafter alleged, and hereby re-adopts and re-alleges each such allegation.

115. The Financial Advisor Defendants and the Bond Counsel Defendants each owed fiduciary duties to the District.

116. The Financial Advisor Defendants knowingly participated in the breaches of fiduciary duty by the Bond Counsel.

117. The Bond Counsel Defendants knowingly participated in the breaches of fiduciary duty by the Financial Advisor Defendants.

118. As the Chief Financial Officer of the District, Thomas owed a duty to the District to act in good faith and with due regard to the interests of the District, thereby giving rise to a fiduciary relationship with the District.

119. As the District's fiduciary, Thomas owed a clear duty to the District of undivided loyalty, absolute faithfulness, and a duty to exercise due care and diligence with respect to all financial matters

impacting the District.

120. Each Defendant was aware of the fiduciary duties of their co-defendants, and were aware that they were violating their fiduciary duties by their participation in the scheme to defraud the District by churning fees, participation in SCAGO and the TAN program, embezzlement of TAN rebate checks, taking junket trips to New York that were not reported on SEI, and funding scholarships and sponsorships for the sole purpose of client development.

121. Nevertheless, each Defendant knowingly provided substantial assistance to, and participated in, the conduct of their co-defendants that constituted violations of these fiduciary duties.

122. As a direct and proximate result of the Defendants' aiding and abetting of the breaches of fiduciary duties of their co-defendants herein, the District incurred the following damages:

- a. Excessive and unnecessary financial advising and legal fees;
- b. Higher interest rates in the amount of \$1 million as a result of having to issue taxable bonds due to Thomas' mismanagement of District funds, of which all Defendants were aware, and the failure of the Bond Counsel Defendants to provide a reimbursement resolution or other mechanism to avoid the issuance of taxable debt;
- c. The loss of bond premium in the amount of \$3 to \$5 million;
- d. The loss of \$131,521.42 in rebates for the TAN program, which was embezzled by Thomas and enabled, aided, and abetted by the Financial Advisor Defendants;
- e. The loss associated with the purchase of a bond in the principal amount of \$900,000 from Oconee County and a bond in the principal amount of \$3,250,000 from Pickens County School District, at an enhanced price where the Financial Advisor and Bond Counsel Defendants represented both parties in both offerings and failed to disclose their conflict of interest; and the loss associated with the concealment of the conflict of interest presented by Thomas' service on the Board of SCAGO-EFC in the Pickens County School District offering, leaving the District without anyone representing its interests with undivided loyalty in the transaction;
- f. The cost of expensive and unnecessary junket trips to New York for the sole purpose of the

- Financial Advisor Defendants and the Bond Counsel Defendants' client development, at the expense of the taxpayers of Berkeley County and not reported on the SEI and in violation of S.C. Code § 8-13-705, which prohibits the offering, giving, soliciting, or receiving anything of value to influence action of public employee, member or official;
- g. The cost of scholarships and sponsorships entered into for the sole purpose of the Financial Advisor Defendants and the Bond Counsel Defendants' client development and for the provision of kickbacks to financial employees of the District, at the expense of the taxpayers of Berkeley County;
 - h. The cost of sponsorship of the South Carolina Association of School Administrators and the South Carolina Association of School Business Officers, in the amount of \$25,000 per year, which provided no benefit to the District and did nothing more than promote the financial interests of the Financial Advisor Defendants and the Bond Counsel Defendants;
 - i. The costs associated with the illegal and inappropriate contracts and kickbacks received by Thomas as the Chief Financial Officer of the District.
123. The Financial Advisor Defendants and the Bond Counsel Defendants are jointly and severally liable to the District for aiding and abetting breach of fiduciary duty.

FOR A FIFTH CAUSE OF ACTION
NEGLIGENCE

The Financial Advisor Defendants and Bond Counsel Defendants

124. Plaintiff hereby incorporates by reference, as if fully set forth herein, each and every allegation asserted in the preceding and following paragraphs, including each and every factual and legal allegation hereinbefore and hereinafter alleged, and hereby re-adopts and re-alleges each such allegation.
125. The Financial Advisor Defendants and the Bond Counsel Defendants owed a duty of due care to the District to exercise that degree of skill normally expected advisors performing financial advisory services and attorneys performing legal services for municipal clients.

126. The Financial Advisor Defendants and the Bond Counsel Defendants, in performing financial advisor services and legal services for the District, failed to exercise the degree of care, skill, and competence exercised by competent members of their professions, as follows:

- a. Concealing from the District the conflict of interest created by the engagement of Compass as the District's financial advisor, where the relationship created economic benefits for Gallagher, Thomas' brother-in-law, in violation of the State Ethics Act;
- b. Representing to the District that membership in SCAGO, an organization created and managed by the Financial Advisor Defendants, was of financial benefit to the District, when in fact the Financial Advisor Defendants knew that such membership was a financial detriment to the District and only benefited the Financial Advisor Defendants and the Bond Counsel Defendants by allowing them to develop their client base and churn and collect excessive advising and legal fees;
- c. Advising the District to issue multiple general obligation bonds per year, and concealing from the District that the only benefit of such excessive issuances was to the Financial Advisor Defendants and the Bond Counsel Defendants by allowing them to churn and collect excessive advising and legal fees;
- d. Representing to the District that it needed to participate in the SCAGO TAN program – despite their knowledge that the District did not have a cash flow deficit - so that they could churn and collect excessive advising fees;
- e. Participating in a scheme with Thomas and the Bond Counsel Defendants whereby Gallagher would sign and deliver to Thomas TAN rebate checks from SCAGO intended for the District, thereby allowing Thomas to embezzle them, and concealing Thomas' embezzlement from the District;
- f. Representing the interests of both District and Oconee County in the District's purchase of a \$900,000 bond from Oconee County, and the District and Pickens County School District in the District's purchase of a bond from Pickens County School District in the principal amount

- of \$3,250,000, and advising the District to make the purchases, where the District could have purchased the bonds for less on the open market, and without disclosing the conflict to the District;
- g. Concealing from the District the conflict of interest presented by his service on the Board of the SCAGO Educational Facilities Corporation (SCAGO-EFC) in December 2015, at the same time SCAGO-EFC served as the issuer on behalf of the Pickens County School District of the bond purchased by the District, leaving the District with no one representing its interests in the transaction with undivided loyalty;
 - h. Concealing the costs of various junket trips to New York City, the sole purpose of which was to develop the Financial Advisor Defendants and Bond Counsel Defendants' client base and charge the cost back to the taxpayers of Berkeley County, which were in violation of S.C. Code § 8-13-705, which prohibits the offering, giving, soliciting, or receiving anything of value to influence action of public employee, member or official;
 - i. Concealing the inappropriate and illegal contracts entered into, and kickbacks received, by Thomas, which were known by the Financial Advisor Defendants without the knowledge of the District;
 - j. Concealing from the District that a reimbursement resolution, or some other mechanism, was required to avoid the issuance of taxable debt, resulting in the issuance of taxable bonds and a loss of \$1 million in interest on a \$31 million offering.
 - k. Concealing construction cost overruns resulting in Thomas' borrowing of approximately \$35 million — or 68 percent of the total amount available — from the District's Fund Balance, plus \$11 million from a fund intended to pay for equipment, without the knowledge or approval of district officials or board members, which ultimately resulted in the need to issue \$31 million in taxable bonds at a cost to the District of \$1 million in lost interest, and a loss of bond premium in the amount of \$3 to \$5 million.
127. As a direct and proximate result of the negligence of the Financial Advisor Defendants and

Bond Counsel Defendants, the District suffered, *inter alia*, the following damages:

- a. Excessive and unnecessary financial advising and legal fees;
- b. Higher interest rates in the amount of \$1 million as a result of having to issue taxable bonds due to Thomas' mismanagement of District funds, of which all Defendants were aware, and the failure of the Bond Counsel Defendants to provide a reimbursement resolution or other mechanism to avoid the issuance of taxable debt;
- c. The loss of bond premium in the amount of \$3 to \$5 million;
- d. The loss of \$131,521.42 in rebates for the TAN program, which was embezzled by Thomas and enabled, aided, and abetted by the Financial Advisor Defendants;
- e. The loss associated with the purchase of a bond in the principal amount of \$900,000 from Oconee County and a bond in the principal amount of \$3,250,000 from Pickens County School District, at an enhanced price where the Financial Advisor and Bond Counsel Defendants represented both parties in both offerings and failed to disclose their conflict of interest;
- f. The cost of expensive and unnecessary junket trips to New York for the sole purpose of the Financial Advisor Defendants and the Bond Counsel Defendants' client development, at the expense of the taxpayers of Berkeley County and not reported on the SEI and in violation of S.C. Code § 8-13-705, which prohibits the offering, giving, soliciting, or receiving anything of value to influence action of public employee, member or official;
- g. The cost of scholarships and sponsorships entered into for the sole purpose of the Financial Advisor Defendants and the Bond Counsel Defendants' client development and for the provision of kickbacks to financial employees of the District, at the expense of the taxpayers of Berkeley County;
- h. The cost of sponsorship of the South Carolina Association of School Administrators and the South Carolina Association of School Business Officers, in the amount of \$25,000 per year, which provided no benefit to the District and did nothing more than promote the financial interests of the Financial Advisor Defendants and the Bond Counsel Defendants.

FOR A SIXTH CAUSE OF ACTION
CIVIL CONSPIRACY
All Defendants

128. Plaintiff hereby incorporates by reference, as if fully set forth herein, each and every allegation asserted in the preceding and following paragraphs, including each and every factual and legal allegation hereinbefore and hereinafter alleged, and hereby re-adopts and re-alleges each such allegation.

129. All Defendants herein combined for the purpose of injuring the District, and caused it special damage.

130. The Financial Advisor Defendants, in combination with the other defendants, used their relationship with Thomas to convince other Districts that held Thomas in high regard to use their financial advising services and to participate in SCAGO.

131. In turn, the Bond Counsel Defendants were given a large market share of the school finance work to participate with the co-defendants.

132. All of the Defendants were aware that Thomas was using District time and resources to enrich the Defendants and was using the District to transfer risk of other smaller counties through higher interest rates by participating in SCAGO.

133. The District suffered special damage as a result of the conspiracy between Defendants in the form of loss of time and resources that should have been expended on behalf of the District, but which were instead spent on the generation of business opportunities for the Financial Advisor and Bond Counsel Defendants with other counties at the expense of the District.

FOR A SEVENTH CAUSE OF ACTION
VIOLATIONS OF THE SOUTH CAROLINA UNFAIR TRADE
PRACTICES ACT, S.C. CODE ANN. § 39-5-20, et seq. ("SCUTPA")
The Financial Advisor Defendants and Bond Counsel Defendants

134. Plaintiff hereby incorporates by reference, as if fully set forth herein, each and every allegation asserted in the preceding and following paragraphs, including each and every factual and legal allegation hereinbefore and hereinafter alleged, and hereby re-adopts and re-alleges each such

allegation.

135. The Financial Advisor Defendants and the Bond Counsel Defendants engaged in unfair and deceptive acts in the conduct of their trades and commerce, in violation of the South Carolina Unfair Trade Practices Act, S.C. Code Ann. § 39-5-20 (“SCUTPA”), including the following:

- a. Concealing from the District the conflict of interest created by the engagement of Compass as the District’s financial advisor, where the relationship created economic benefits for Gallagher, Thomas’ brother-in-law, in violation of the State Ethics Act;
- b. Advising the District to issue multiple general obligation bonds per year, and concealing from the District that the only benefit of such excessive issuances was to the Financial Advisor Defendants and the Bond Counsel Defendants by allowing them to churn and collect excessive advising and legal fees;
- c. Representing to the District that it needed to participate in the SCAGO TAN program – despite their knowledge that the District did not have a cash flow deficit - so that they could churn and collect excessive legal fees;
- d. Participating in a scheme with Thomas whereby Gallagher would sign and deliver to Thomas TAN rebate checks from SCAGO intended for the District, thereby allowing Thomas to embezzle them, and concealing Thomas’ embezzlement from the District;
- e. Representing the interests of both the District and Oconee County in the District’s purchase of a \$900,000 bond from Oconee County, and the District and Pickens County School District in the District’s purchase of a \$3,250,000 bond from Pickens County School District, and advising the District to make the purchases, where the District could have purchased the bonds for less on the open market, and without disclosing the conflict to the District;
- f. Concealing from the District the conflict of interest presented by his service on the Board of the SCAGO Educational Facilities Corporation (SCAGO-EFC) in December 2015, at the same time SCAGO-EFC served as the issuer on behalf of the Pickens County School District of the bond purchased by the District, leaving the District with no one representing its interests

- in the transaction with undivided loyalty;
- g. Concealing the costs of various junket trips to New York City, the sole purpose of which was to develop the Financial Advisor Defendants and Bond Counsel Defendants' client base and charge the cost back to the taxpayers of Berkeley County, in violation of S.C. Code § 8-13-705, which prohibits the offering, giving, soliciting, or receiving anything of value to influence action of public employee, member or official;
 - h. Concealing the inappropriate and illegal contracts entered into, and kickbacks received, by Thomas on behalf of the District, which were known by the Financial Advisor Defendants without the knowledge of the District;
 - i. Concealing construction cost overruns that resulted in Thomas' "borrowing" of approximately \$35 million — or 68 percent of the total amount available — from the District's Fund Balance, plus \$11 million from a fund intended to pay for equipment, without the knowledge or approval of district officials or board members, which ultimately resulted in the need to issue \$31 million in taxable bonds at a cost to the District of \$1 million in lost interest and a loss of bond premium in the amount of \$3 to \$5 million;
 - j. Concealing from the District that a reimbursement resolution, or some other mechanism, was required to avoid the issuance of taxable debt, resulting in the issuance of taxable bonds and a loss of \$1 million in interest on a \$31 million offering.
136. Defendants' actions as aforesaid were immoral, unethical, and oppressive.
137. Plaintiff and Defendants qualify as "persons" for purposes of the SCUTPA.
138. The foregoing unfair or deceptive acts affected the public interest, in particular, the interests of the taxpayers of Berkeley County.
139. The District suffered monetary or property loss as a result of the Defendants' unfair or deceptive act(s) as stated in previously and as follows:
- a. Excessive and unnecessary financial advising and legal fees;
 - b. Higher interest rates in the amount of \$1 million as a result of having to issue taxable bonds

- due to Thomas' mismanagement of District funds, of which all Defendants were aware, and the failure of the Bond Counsel Defendants to provide a reimbursement resolution or some other mechanism to avoid the issuance of taxable debt;
- c. The loss of bond premium in the amount of \$3 to \$5 million;
 - d. The loss of \$131,521.42 in rebates for the TAN program, which was embezzled by Thomas and enabled, aided, and abetted by the Financial Advisor Defendants;
 - e. The loss associated with the purchase of a bond in the principal amount of \$900,000 from Oconee County and a bond in the principal amount of \$3,250,000 from Pickens County School District, at an enhanced price where the Financial Advisor and Bond Counsel Defendants represented both parties in both offerings and failed to disclose their conflict of interest;
 - f. The cost of expensive and unnecessary junket trips to New York for the sole purpose of the Financial Advisor Defendants and the Bond Counsel Defendants' client development, at the expense of the taxpayers of Berkeley County and not reported on the SEI and in violation of S.C. Code § 8-13-705, which prohibits the offering, giving, soliciting, or receiving anything of value to influence action of public employee, member or official;
 - g. The cost of scholarships and sponsorships entered into for the sole purpose of the Financial Advisor Defendants and the Bond Counsel Defendants' client development and for the provision of kickbacks to financial employees of the District, at the expense of the taxpayers of Berkeley County;
 - h. The cost of sponsorship of the South Carolina Association of School Administrators and the South Carolina Association of School Business Officers, in the amount of \$25,000 per year, which provided no benefit to the District and did nothing more than promote the financial interests of the Financial Advisor Defendants and the Bond Counsel Defendants.
140. Defendants' violation of the SCUTPA was willful and knowing, thereby subjecting Defendants to treble damages under South Carolina law. S.C. Code Ann. § 39-5-20; § 39-57-80.

141. Plaintiff is also entitled to the payment of its attorneys' fees and costs associated with this action.

FOR AN EIGHTH CAUSE OF ACTION
CONSTRUCTIVE TRUST
All Defendants

142. Plaintiff hereby incorporates by reference, as if fully set forth herein, each and every allegation asserted in the preceding and following paragraphs, including each and every factual and legal allegation hereinbefore and hereinafter alleged, and hereby re-adopts and re-alleges each such allegation.

143. Plaintiff was in a confidential and fiduciary relationship with the Financial Advisor Defendants and the Bond Counsel Defendants in which Plaintiff reposed special confidence in these Defendants, so that Defendants, in equity and good conscience, were bound to act in good faith and with due regard to the interests of the District.

144. The Financial Advisor Defendants and the Bond Counsel Defendants acquired funds from the District through a breach of trust and violations of their fiduciary duties.

145. Through their fraudulent schemes as aforesaid, the Financial Advisor Defendants and the Bond Counsel Defendants obtained money which does not equitably belong to them and which they cannot in good conscience retain or withhold from the District, which is beneficially entitled to it.

146. The damages suffered by the District include, but are not limited to, the following:

- a. Excessive and unnecessary financial advising and legal fees;
- b. Higher interest rates in the amount of \$1 million as a result of having to issue taxable bonds due to Thomas' mismanagement of District funds, of which all Defendants were aware, and the failure of the Bond Counsel Defendants to provide a reimbursement resolution or some other mechanism to avoid the issuance of taxable debt;
- c. The loss of bond premium in the amount of \$3 to \$5 million;
- d. The loss of \$131,521.42 in rebates for the TAN program, which was embezzled by Thomas and enabled, aided, and abetted by the Financial Advisor Defendants;

- e. The loss associated with the purchase of a bond in the principal amount of \$900,000 from Oconee County and a bond in the principal amount of \$3,250,000 from Pickens County School District, at an enhanced price where the Financial Advisor and Bond Counsel Defendants represented both parties in both offerings and failed to disclose their conflict of interest;
- f. The cost of expensive and unnecessary junket trips to New York for the sole purpose of the Financial Advisor Defendants and the Bond Counsel Defendants' client development, at the expense of the taxpayers of Berkeley County and not reported on the SEI and in violation of S.C. Code § 8-13-705, which prohibits the offering, giving, soliciting, or receiving anything of value to influence action of public employee, member or official;
- g. The cost of scholarships and sponsorships entered into for the sole purpose of the Financial Advisor Defendants and the Bond Counsel Defendants' client development and for the provision of kickbacks to financial employees of the District, at the expense of the taxpayers of Berkeley County;
- h. The cost of sponsorship of the South Carolina Association of School Administrators and the South Carolina Association of School Business Officers, in the amount of \$25,000 per year, which provided no benefit to the District and did nothing more than promote the financial interests of the Financial Advisor Defendants and the Bond Counsel Defendants.

FOR A NINTH CAUSE OF ACTION
UNJUST ENRICHMENT

The Financial Advisor Defendants and the Bond Counsel Defendants

147. Plaintiff hereby incorporates by reference, as if fully set forth herein, each and every allegation asserted in the preceding and following paragraphs, including each and every factual and legal allegation hereinbefore and hereinafter alleged, and hereby re-adopts and re-alleges each such allegation.

148. In connection with the fraudulent scheme as aforesaid, each of the Defendants received moneys paid by the District, purportedly for, among other things, the provision of professional

services. In fact, Defendants knew that, rather than receiving valuable professional services, Plaintiff was being charged for unnecessary services associated with Defendants' marketing and client development efforts.

149. Consequently, Defendants were unjustly enriched at the expense of the District. Defendants should, therefore, not be entitled to retain any of these moneys and should be required to repay all fees and other payment so received from the District for the period from 2007 to 2016.

150. Each Defendant is jointly and severally liable to the District for unjust enrichment.

FOR A TENTH CAUSE OF ACTION
BREACH OF CONTRACT
The Financial Advisor Defendants

151. Plaintiff hereby incorporates by reference, as if fully set forth herein, each and every allegation asserted in the preceding and following paragraphs, including each and every factual and legal allegation hereinbefore and hereinafter alleged, and hereby re-adopts and re-alleges each such allegation.

152. On January 11, 2015 and April 7, 2016, the District and Compass entered into an "Agreement for Municipal Advisory Services" signed on behalf of the District by Thomas alone, for the provision of Compass's services as municipal advisor. **Exhibits A and B.**

153. In the April 7, 2016, which updated and replaced a previous agreement made and entered into on January 11, 2015, Compass agreed, *inter alia*, to "determine, analyze and recommend options regarding a capital needs finance plan which is both financially sound and mindful of the impact on the Issuer's taxpayers or rate payers, as applicable;" "evaluate capital funding alternatives, develop and recommend *a financial* plan including advice on debt structuring," "continually monitor the market to determine if, and when, refinancing of existing debt is favorable and advise the Issuer of such determination," "assist in the planning and structuring of bond issues and assist with obtaining required authorizations, as well as assist the Issuer's bond counsel (the "Bond Counsel") in preparing the bond resolution or ordinance (as applicable)," "provide advice on method of sale and recommend

timing of Bonds;” “assist the Issuer in development of a request for proposals or other acceptable selection method for a finance team and/or an underwriter, as necessary (the “Underwriter”), and assist in the evaluation of proposal submissions;” “identify tasks, responsibilities, and dates for completing activities leading up to Bond authorizations and issuances;” “design a debt structure, provide advice on approach to ratings and conduct rating presentations and appropriate follow-up,” “advise in the development of debt limits, debt service coverage ratios, reserve funds or other debt policies, as needed;” “provide advice on tax exempt lease/purchase transaction options or other such financial matters as may be required by the Issuer,” “perform all other such duties and services customarily and usually performed by a Municipal Advisor with respect to the services outlined or at the request of the Issuer,” and “otherwise provide services in the capacity commonly referred to as Financial Advisor in the industry.” **Exhibit B** (4/7/16 Agreement for Municipal Advisory Services).

154. Compass breached its responsibilities under the Agreement and its predecessor by advising the District that multiple issuances of bonds was a financial benefit to the District, without informing the District that the cost of issuance would outweigh any financial benefit it might realize; misrepresenting to the District that multiple issuances of bonds was a financial benefit to the District, where it was not, and where the real reason for the excessive issuances was to churn fees, resulting in excessive financial advising and legal fees; representing to the District that it needed to participate in the SCAGO TAN program, even though the District did not have a cash flow deficit; engaging in a scheme with Thomas that allowed Thomas to embezzle TAN rebate checks in the amount of \$131,521.42; representing the interests of both the District and Oconee County in the District’s purchase of a \$900,000 bond from Oconee County and advising the District to make the purchase; and representing the interests of both the District and Pickens County in the District’s purchase of a \$3,250,000 bond from Pickens County and advising the District to make the purchase.

155. As a direct and proximate result of the foregoing breaches of contract, the District suffered damages including, but not limited to, the following:

- a. Excessive and unnecessary financial advising and legal fees;

- b. Higher interest rates in the amount of \$1 million as a result of having to issue taxable bonds due to Thomas' mismanagement of District funds, of which all Defendants were aware, and the failure of the Bond Counsel Defendants to provide a reimbursement resolution or some other mechanism to avoid the issuance of taxable debt;
- c. The loss of bond premium in the amount of \$3 to \$5 million;
- d. The loss of \$131,521.42 in rebates for the TAN program, which was embezzled by Thomas and enabled, aided, and abetted by the Financial Advisor Defendants;
- e. The loss associated with the purchase of a bond in the principal amount of \$900,000 from Oconee County and a bond in the principal amount of \$3,250,000 from Pickens County School District, at an enhanced price where the Financial Advisor and Bond Counsel Defendants represented both parties in both offerings and failed to disclose their conflict of interest;
- f. The cost of expensive and unnecessary junket trips to New York for the sole purpose of the Financial Advisor Defendants and the Bond Counsel Defendants' client development, at the expense of the taxpayers of Berkeley County and not reported on the SEI and in violation of S.C. Code § 8-13-705, which prohibits the offering, giving, soliciting, or receiving anything of value to influence action of public employee, member or official;
- g. The cost of scholarships and sponsorships entered into for the sole purpose of the Financial Advisor Defendants and the Bond Counsel Defendants' client development and for the provision of kickbacks to financial employees of the District, at the expense of the taxpayers of Berkeley County;
- h. The cost of sponsorship of the South Carolina Association of School Administrators and the South Carolina Association of School Business Officers, in the amount of \$25,000 per year, which provided no benefit to the District and did nothing more than promote the financial interests of the Financial Advisor Defendants and the Bond Counsel Defendants.

JURY DEMAND

Plaintiff hereby requests a jury trial, as a matter of right, on all claims alleged herein.

WHEREFORE, Plaintiff, Berkeley County School District, by counsel, respectfully requests this Court to enter judgment in its favor against Defendants in the amount of **\$50,000,000.00**, and trebled damages or other amount to be determined at trial, plus punitive damages, pre-judgment and post-judgment interest at the maximum rate allowed by law, reasonable attorneys' fees, Court costs, and such further relief as the Court deems just.

Respectfully Submitted,

SMYTH WHITLEY, LLC

s/Joshua S. Whitley

Joshua S. Whitley, Esquire

SC Bar No.: 77824

Nicholas C. C. Stewart, Esquire

SC Bar No.: 102434

S. Tyler Graves, Esquire

SC Bar No.: 103173

126 Seven Farms Drive, Suite 150

Charleston, South Carolina 29492

(843) 606-5635

(843) 654-4095

*Counsel for Plaintiff, Berkeley County
School District*

Charleston, South Carolina
March 6, 2019