

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF BERKELEY	)	C.A. No.: 2018-CP-08-_____
	)	
Berkeley County School District,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	SUMMONS
	)	(Jury Trial Demanded)
Greene Finney, LLP f/k/a Greene, Finney &	)	
Horton, LLP, Larry J. Finney and Brantley	)	
Thomas,	)	
	)	
Defendants.	)	
_____	)	

**TO: THE ABOVE-NAMED DEFENDANTS:**

YOU ARE HEREBY SUMMONED AND REQUIRED to Answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer thereto on the subscribers at their office located at 126 Seven Farms Drive, Suite 150, Charleston, South Carolina, within thirty (30) days after the service hereof, exclusive of the day of such service; and if you fail to answer the Complaint within the time aforesaid, the plaintiff in this action will apply to the Court for the relief sought therein.

[SIGNATURE PAGE TO FOLLOW]

Respectfully Submitted,

**SMYTH WHITLEY, LLC**

*s/Joshua S. Whitley*

Joshua S. Whitley, Esquire

State Bar No.: 77824

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*Attorney for the Plaintiff*

Charleston, South Carolina  
November 28, 2018

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COUNTY OF BERKELEY	)	C.A. No.: 2018-CP-08-_____
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Berkeley County School District,	)	
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Plaintiff,	)	
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Greene Finney, LLP f/k/a Greene, Finney &	)	
Horton, LLP, Larry J. Finney and Brantley	)	
Thomas,	)	
	)	
Defendants.	)	
	)	
_____	)	

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

### INTRODUCTION

This case arises out of countless failures to provide transparent, objective, independent and truthful audit services by Defendants Greene Finney, LLP f/k/a Greene, Finney & Horton, LLP (“Green Finney”), Larry J. Finney (“Mr. Finney”) (collectively, the “Audit Defendants”) while the Audit Defendants served as auditors for the Berkeley County School District (the “School District”). The Audit Defendants, in conjunction with Defendant Brantley Thomas (“Thomas”), the School District’s former Chief Financial Officer, enriched themselves by generating exorbitant fees and generating business with other school districts; concealed deceitful financial transactions; and misappropriated School District funds. Their actions and omissions cost the children and taxpayers of Berkeley County millions of dollars.

The misrepresentations and omissions perpetuated by the Audit Defendants and Thomas did not come to light until February of 2017 when the FBI informed the School District that

Thomas was under investigation. As the School District began performing its own investigation into Thomas' conduct, it began to learn of the extensive illegal conduct Thomas had engaged in for years. Without the assistance of these negligent, if not willful, co-conspirators, Thomas could not have engaged in and concealed his illegal conduct from public scrutiny. These Audit Defendants, charged with duties of loyalty and good faith, should have served as "watchdogs" to shield the School District from Thomas' corruption. Instead, the Audit Defendants abandoned their duties in exchange for auditing millions of dollars in public funds for their personal gain, all at the expense of the School District and the children and taxpayers of Berkeley County.

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

### **PARTIES**

1. Plaintiff, Berkeley County School District ("Plaintiff," "BCSD," or "School District"), is a body politic and corporate of the State of South Carolina within the meaning of S.C. Code Ann. § 59-17-10, and in that capacity is authorized to bring this action.
2. Defendant Greene Finney, LLP f/k/a Greene, Finney & Horton, LLP ("Greene Finney") is a limited liability partnership organized and doing business in the State of South Carolina, including the County of Berkeley, which, at times material to this Complaint, was engaged by the School District to audit the School District's financial statements beginning in 1999 and continuing until 2017, when the School Board unanimously voted to terminate Greene Finney's services.
3. Defendant Larry J. Finney ("Mr. Finney") is now, and at all times material to this Complaint has been, a partner and the registered agent for Greene Finney. Upon information and belief, Mr. Finney is a resident of Greenville County and conducts business throughout the State of South Carolina, including Berkeley County.

4. Defendant Brantley Thomas (“Thomas”) was a financial officer, eventually becoming the Chief Financial Officer, of the School District from 1993 through February 7, 2017. Upon information and belief, Thomas is a resident of Berkeley County, South Carolina.

5. Defendants Greene Finney, Mr. Finney, and Thomas are directly liable, jointly and severally, for all of the torts alleged against them herein, and Greene Finney is vicariously liable for all of the torts alleged herein against Mr. Finney.

### **JURISDICTION AND VENUE**

6. This Court has subject matter and personal jurisdiction over the Defendants and venue is proper in this Court pursuant to S.C. Code Ann. § 15-7-30.

### **FACTUAL BACKGROUND**

7. As Chief Financial Officer of the School District from 1993 through February 7, 2017, Thomas oversaw all of the School District’s accounts, including its General Fund.

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

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

10. Since that time, the School District has unearthed and unraveled a multi-faceted web of fraud, corruption and conspiracy involving Thomas.

*RETENTION OF AUDIT DEFENDANTS*

11. In order to best serve the needs of the School District, it engages, annually, the accounting and auditing services of public accountants.
12. Upon information and belief, around 1999, Thomas engaged the Audit Defendants to serve as an outside auditor for the School District.
13. From 1999 until 2016, the Audit Defendants were engaged to express an opinion as to whether the School District's financial statements were fairly presented, in all material respects, in conformity with generally accepted accounting principles (GAAP).
14. From 1999 to 2016 the Audit Defendants were responsible for conducting an annual audit in accordance with:
  - a. Generally Accepted Auditing Standards (GAAS) in the United States;
  - b. Government Auditing Standards issued by the Comptroller General of the United States (GAGAS or "Yellow Book");
  - c. Single Audit Act Amendments of 1996, Title 2 U.S. *Code of Federal Regulations* (CFR) Part 200, *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards*;
  - d. South Carolina Department of Education Single Audit Guide;
  - e. the American Institute of Certified Public Accountants (AICPA) Code of Professional Conduct; and
  - f. Other applicable guidance and resources that the Auditing Defendants considered to enable them to express their opinions.
15. The audits were to include obtaining an understanding of the entity and its environment, including internal controls, sufficient to identify and assess the risks of material misstatement of

the books and records, whether caused by error or fraud, and to design and implement appropriate responses to the assessed risks in properly planning and performing the audits.

16. The Audit Defendants were tasked with evaluating the internal controls over financial reporting to obtain reasonable assurances about whether the financial statements were free from material errors, fraudulent financial reporting, misappropriation of assets or violations of laws or government regulations. Ex. A, Engagement Letter for 2012.

17. Additionally, the Audit Defendants declared “we will inform the appropriate level of management of any material errors, any fraudulent financial reporting, or misappropriation of assets that come to our attention” and “will inform the appropriate level of management of any violations of laws or government regulations that come to our attention, unless clearly inconsequential, and of any material abuse.” Ex. A, Engagement Letter for 2012.

18. During this time the Audit Defendants’ reports were to be addressed to the Board of Trustees of the School District.

19. The Audit Defendants’ procedures were to include tests of documentary evidence supporting the transactions recorded in the accounts and tests of the physical existence of inventories, and direct confirmation of receivables and certain other assets and liabilities.

20. During all audit years, the Audit Defendants were given access to all information relevant to the School District’s accounts, books, records, supporting documentation, additional information requested by the Audit Defendants, as well as unrestricted access to persons within the entity whom the Audit Defendants determined might have audit evidence. The Audit Defendants never questioned or raised any concern that they did not receive any information necessary for conducting an audit.

21. During this time the Audit Defendants' reports were to be addressed to the Board of Trustees of the School District.

22. At all relevant times, Mr. Finney was the engagement partner who was responsible for supervising the engagement and signing the reports or authorizing another individual to sign them.

23. Upon information and belief, Thomas steered other school districts in South Carolina to the Audit Defendants for accounting services.

24. Upon information and belief, the Audit Defendants lacked sufficient independence and enjoyed a close personal relationship with Thomas that included expensive meals, gifts and other acts not appropriate between an auditor and a governmental client.

25. In fact, when the FBI began its investigation into Thomas, Mr. Finney commented to the *Post and Courier* that "we had done the audit long enough that Thomas and I had a very good professional relationship. He was a friend as well."

*AUDIT DEFENDANTS' CONCEALMENT OF THOMAS' ILLEGAL ACTS*

26. During the years the Audit Defendants were engaged to audit the School District's financial statements, they routinely informed the School District that the School District's financial statements were free from any material errors, fraudulent financial reporting, misappropriation of assets, and violations of laws and government regulations.

27. The School District relied on the representations of the Audit Defendants and reasonably believed that their financial statements were free from any material errors, fraudulent financial reporting, misappropriation of assets, and violations of law and government regulations.

28. Despite the Audit Defendants' assurances to the School District, it was later determined that the Audit Defendants negligently failed to identify countless unlawful actions taken by



Thomas and/or willfully ignored Thomas' illegal conduct resulting in significant financial harm to the School District.

29. In the wake of the Audit Defendants' termination, and at the time of Mr. Finney's February 20, 2017, comments to the *Post and Courier*, only the ten embezzled checks amounting to \$382,252.00 were made known to the public. Mr. Finney remarked that "this just couldn't be detected" through their audits. Mr. Finney further commented that this amount was akin to "if I make \$50,000, that'd be about \$20 to me." Regarding the stolen checks, Mr. Finney stated, "there's nothing in the financial system or on the bank statement that would ever reflect these transactions. That being the case, I can just tell you, any financial statement audit that any firm does is not going to catch that without a forensic audit."

30. As of the date of this filing, investigations have revealed that the amount embezzled by Thomas exceeds \$1,000,000.00. As detailed below, the Audit Defendants failed to detect millions of dollars in fraudulent or inappropriate transactions that were evidenced in the financial system and bank statements.

31. Further, the Audit Defendant's failure to properly evaluate the design and operating effectiveness of the internal controls over financial reporting allowed Thomas' nefarious actions to continue for years resulting in significant harm to the School District.

32. After the School District was made aware of the conspiracy perpetuated by Thomas, the Audit Defendants, and others, the School District began to uncover and is still uncovering numerous illegal transactions that were concealed or should have been discovered by the Audit Defendants as follows:

- a. Thomas' conversion to his personal use of approximately \$26,743.31 of public-school funds on November 3, 2010, by obtaining a cashier's check for that amount drawn on the

Berkeley County School District General Fund and made out to the servicer of Thomas' personal credit card account, to which Thomas applied as payment on his personal credit card account;

- b. Thomas' embezzlement and conversion of approximately \$31,956.12 of public-school funds on September 24, 2008, which were withdrawn from a School District investment account, which funds Thomas converted to his personal use in the form of payment on one of Thomas' credit card accounts;
- c. Thomas' embezzlement and conversion to his personal use of approximately \$22,700.00 of public-school funds on November 29, 2007, by deliberately causing the School District to overpay a vendor (Hub Insurance), and then having Hub send a refund of the overpayment to his home address, after which the funds were converted to Thomas' personal use;
- d. Thomas' embezzlement and conversion to his personal use of approximately \$11,602.16 of public-school funds on or about November 20, 2007, by causing the School District to route money that supposedly was for payment on a school district line of credit instead to Thomas' personal checking account;
- e. Thomas' embezzlement and conversion to his personal use of approximately \$89,900.00 in public school funds allocated to special needs students on or about July 9, 2004, by causing such funds to be wired from a School District account directly into a personal bank account belonging to Thomas and another person, whereby the funds were then converted to personal use;
- f. Thomas' embezzlement and conversion to his own use of approximately \$39,452.31 of public-school funds on or about November 28, 2005, by causing such funds to be wired

from a School District account directly into a personal bank account belonging to Thomas and another person, whereby the funds were then converted to personal use;

- g. Thomas' forgery of an invoice on December 1, 2011 in the amount of \$26,743.31, making it appear to be from a legitimate school district vendor, when in fact it instead had the payment address for the servicer of Thomas' personal credit card account. Thomas then embezzled to his personal use approximately \$26,743.31 of public-school funds on December 2, 2011, by causing the School District to route a check, that was supposedly made out to pay a legitimate vendor, instead to Thomas' credit card servicer for payment on Thomas' personal account;
- h. Thomas' embezzlement and conversion to his personal use of approximately \$31,176.50 of public-school funds on or about March 10, 2012, by causing the School District to route a check that was supposedly for payment to a legitimate School District vendor instead to his credit card servicer for payment on Thomas' personal account;
- i. Thomas' embezzlement and conversion to his personal use of approximately \$21,288.23 of public-school funds on or about April 6, 2012, by causing the School District to route a check that was supposedly for payment to a legitimate School District vendor instead to his credit card servicer for payment on Thomas' personal account;
- j. Thomas' embezzlement and conversion to his personal use of approximately \$8,318.24 of public-school funds on or about September 11, 2001, by causing the School District to issue a payment that was supposedly for a "REFUND TO USC," but instead was applied for payment on Thomas' personal credit card account;
- k. Thomas' embezzlement and conversion to his personal use of approximately \$9,558.42 of public-school funds on or about July 20, 2004, by causing the School District to issue a

payment that was supposedly for Medicaid, but instead was deposited into Thomas' personal checking account;

- l. Thomas' embezzlement and conversion to his personal use of approximately \$3,771.25 of public-school funds on or about September 26, 2005, by causing the School District to issue a payment that was supposedly for an administrative fee to Wachovia, but was instead deposited into Thomas' personal checking account;
- m. Thomas' embezzlement and conversion to his personal use of approximately \$36,934.50 of public-school funds on or about December 4, 2009, by causing the School District to issue a payment that supposedly was for "Auto-Renewal," but instead was applied for payment on Thomas' personal credit card account;
- n. Thomas' embezzlement and conversion to his personal use of approximately \$98,349.00 of public-school funds on or about February 2, 2011, by causing the School District to issue "3 Chks" for \$32,783.00 each, that supposedly were for an "Additional Architect Fee" for Cane Bay Middle School, when instead he stole the entire \$98,349.00 by applying those checks as payment on his personal credit card account;
- o. Thomas' embezzlement of public-school funds in or around October 2012, wherein Thomas would cause the District to overpay vendors, wherein they would issue a refund, which Thomas then converted to his own use, or the School District would receive refunds or rebates from vendors, which Thomas would deposit into his personal credit card account. Thomas would draw money from the credit card account by writing convenience checks, and then deposit those checks into a personal account he used for living expenses, or use the convenience checks directly for personal expenses. Thomas made payments on the credit card account by applying Cashier's Checks, which were converted from School

District refund/rebate checks. Thomas would then use the stolen money to pay for personal expenses such as a membership at a private club and for foreign travel. In this manner, Thomas negotiated at least ten separate checks and converted approximately \$450,000.00 to his own use;

- p. Thomas' concealment of 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 School District's reserve fund, plus \$11.8 million from a fund intended to pay for equipment, without the knowledge or approval of district officials or board members;
- q. Thomas' improper transfer of \$1.4 million from the bond referendum construction fund to a separate investment account of the School District. The account that the funds were transferred into was unrelated to the investment accounts that held the funds for the bond referendum projects. Subsequently, the \$1.4 million was transferred from the aforementioned investment account to the School District general fund. Ultimately, this left the bond referendum construction fund \$1.4 million short, which had to be replaced from the School District's reserve fund; and
- r. The Audit Defendants' failure to quantify and estimate all known and likely misstatements resulting from accounting issues that the firm's engagement team identified, despite School District management stating that the identified issue was a misstatement and was concerned that it would be an audit finding. Related to one or more of these identified misstatements, the Audit Defendants willfully ignored statements by Thomas that he wanted to maintain a fund balance at a certain level and reassured Thomas that the misstatement would only be an oral comment despite the identified error being approximately \$1 million.

33. Although all of these transactions were discovered in a short period of time by the School District's financial records by the new financial leaders and external auditors, the Audit Defendants failed to recognize the discrepancies despite multiple audits of the School District's financial statements over a multiyear period while the fraud was occurring.

34. Further, the Audit Defendant's failure to properly evaluate the internal controls over financial reporting with the professional judgment and professional skepticism of a licensed accountant resulted in the concealment of Thomas' illegal acts from the School District.

35. In fact, during the years while Thomas was conducting the foregoing multiple fraudulent transactions and while the Audit Defendants were conducting the audits of the School District's financial statements, the Audit Defendants continued to issue unqualified or unmodified opinions to the School District on an annual basis, offering assurance that the School District's financial statements were free of any material misstatements caused by fraud or error.

36. Between 1999 and 2016, the Audit Defendants billed the School District for the annual financial statement audits and for other attestation, tax, and consulting services during this time period, some of which was outside the scope of the services and fees approved by and reported to the Board. Further, the Audit Defendants continuously praised Thomas and held him in high esteem to the Board.

37. Upon information and belief, the Audit Defendants abandoned their professional, statutory, ethical, and moral duties to the School District by failing to audit the School District's financial statements in accordance with generally accepted auditing standards and by concealing Thomas' illegal conduct, in exchange for the School District's accounting business and other potential accounting clients that Thomas would steer to the Audit Defendants.

38. Following the Audit Defendants' termination, the District discovered multiple material problems in the School District's books and records.

**CAUSES OF ACTION  
FOR A FIRST CAUSE OF ACTION  
PROFESSIONAL NEGLIGENCE  
*Audit Defendants***

39. The School District 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.

40. At all times relevant, the Audit Defendants served as the School District's accounting firm.

41. The scope of their engagement included evaluating the internal controls over financial reporting to reveal any significant weakness in the internal control environment in conformance with the best judgment and professional skepticism of a licensed certified public accountant.

42. Additionally, the scope of their engagement included the audit of the financial statements of the School District sufficient to alert the School District of any material misstatements or reasonable assurances that fraud or errors were absent which would give rise to material misstatements within the School District's financial statements.

43. In agreeing to provide the School District with accounting and auditing services, the Audit Defendants expressly represented they possessed the requisite degree of learning, skill and ability that other accounting firms possess, that they would exercise professional judgment and professional skepticism, and that they would exercise reasonable and ordinary care and diligence in the audit of the School District's financial statements, and in any other services they provided.

44. Based on these assurances and representations, the School District and the Audit Defendants entered into a professional and contractual relationship whereby the Audit Defendants

owed duties to the School Board including the duty to protect and preserve the School District's rights and interests by exercising that degree of care, professional skepticism, skill and learning which other reasonable and competent accountants would be expected to exercise under the same or similar circumstances.

45. The Audit Defendants had a duty to audit the School District's financial statements with professional skepticism and objectivity to provide reasonable assurance that the financial statements were free from material errors, material weaknesses in internal controls over financial reporting, and violations of laws. The Audit Defendants failed in this regard.

46. The Audit Defendants' errors in failing to identify significant deficiencies in the School District's internal controls resulted in creating an environment where fraud could flourish.

47. The Audit Defendants' errors in failing to assess that the internal controls over financial reporting were designed properly and operating effectively resulted in Thomas' ability to engage in embezzlement and conversion of the School District's financial assets for his personal use.

48. The Audit Defendants' errors in failing to identify the deficient control environment was not the result of sound professional judgment but were instead errors resulting from the Audit Defendants' failure to exercise the professional judgment and skepticism as other accountants would have exercised in the same or similar circumstances.

49. Further, the Audit Defendants failed to identify and/or actively concealed the deficient control environment with blatant disregard for the School District, thereby allowing Thomas' illegal conduct to go unchecked for years.

50. The Audit Defendants failed to exercise professional judgment or maintain professional skepticism, and thereby breached their duty to render competent and prudent auditing services to the School District, when they failed to identify and notify the School District of fraudulent reports



reviewed during the annual audit of the School Board's financial statements, which would have been identified by other reasonable and competent accountants.

51. The Audit Defendants' failure to meet the minimum standard of care resulted in a breach of its duty to provide competent and thorough accounting and auditing services to the School District and constituted negligence from which the School District suffered financial harm and damages.

52. As a direct and proximate cause of the Audit Defendants' negligence and breach of their duty to the School District, the School District has suffered actual and consequential damages, in an amount to be specifically proven at trial.

**FOR A SECOND CAUSE OF ACTION  
BREACH OF CONTRACT  
*Audit Defendants***

53. 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.

54. The School District and the Audit Defendants entered into a contract for accounting and auditing services which provided, among other things, that the Audit Defendants were responsible for forming and expressing an opinion about whether the School District's financial statements were presented fairly, in all material respects, with accounting principles generally accepted in the United States.

55. The Audit Defendants held themselves out as being competent, professional and even exceptional in the field of public accounting, and the School District entered into this contractual relationship with the belief that the Audit Defendants were capable of satisfactorily performing the

services it was being contracted to perform.

56. The Audit Defendants also offered to provide reasonable assurance about whether the School District's financial statements were free of material misstatements whether caused by error or fraud.

57. The School District fulfilled its obligation of the contract by paying all sums billed when due, and otherwise timely remitting payment for all invoices submitted by the Audit Defendants up until their final audit.

58. The Audit Defendant breached their contract with the School District in one or more of the following ways:

- a. By failing to properly assess and communicate the deficient design and operating effectiveness of the internal controls over financial reporting implemented by Thomas;
- b. By failing to ensure the internal controls over financial reporting were compliant with all applicable laws and regulations;
- c. By failing to ensure the internal controls over financial reporting safeguarded the School District's assets;
- d. By failing to detect, notice or communicate fraudulent activity and financial reporting involving Thomas;
- e. By failing to identify, flag or notice intentional misstatements or omissions in the School District's financial statements, by Thomas for the express purpose of defrauding the School District or concealing his embezzlement, when the exercise of professional judgment and professional skepticism would have detected same, or when a skilled and competent audit of those financial statements, over a period of fifteen years, by ordinary and reasonable certified public accountants under the same or similar circumstances would have detected

such misstatements or omissions;

- f. By failing to detect and warn the School District of the very hazards and erroneous accounting which the Audit Defendants were hired to detect;
- g. By providing false assurance to the School District, through multiple consecutive years of “clean” audits, that School District’s financial statements were free of material misstatements caused by error or fraud;
- h. By failing to conduct the audits performed for the School District in accordance with auditing standards generally accepted in the United States of America; and
- i. Any other breaches of contract to be proven at trial.

59. As a direct and proximate result of the Audit Defendants’ breach, over \$1.5 million has been paid to the Audit Defendants, to the School District’s detriment.

60. In addition to these damages, the School District has been compelled to retain attorneys, forensic accountants, consultants and to pay sums for their professional services, which it would not have had to pay if the Audit Defendants had not breached their contract with the School District.

61. The School District has suffered these damages as a direct and proximate result of the Audit Defendants’ breach of contract, and deserves to be reimbursed for all direct, consequential, and incidental damages which proximately flow from the Audit Defendants’ breach.

**FOR A THIRD CAUSE OF ACTION  
CIVIL CONSPIRACY  
*All Defendants***

62. The School District 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.

63. The Audit Defendants and Thomas conspired to allow the Audit Defendants to audit School District funds to allow Thomas to embezzle and convert School District funds for personal gain.

64. As a direct and proximate result of the civil conspiracy of the Audit Defendants, the School District suffered the following special damages:

- a. Financial losses associated Thomas' embezzlement of School District funds;
- b. Financial losses associated with the Audit Defendants' failure to ensure an adequate control environment;
- c. Financial losses associated with the Audit Defendants' failure to identify and communicate a lack of segregation of duties;
- d. Financial losses associated with the Audit Defendants' failure to identify irregularities in the School District's reserve fund;
- e. Financial losses associated with the Audit Defendants' failure to identify irregularities in the School District's bond referendum construction fund;
- f. Financial losses associated with the Audit Defendants' concealment of cost overruns on construction projects;
- g. Punitive damages because,
  - a) The School District's harm was the result of Defendants' willful, wanton and reckless conduct;
  - b) Defendants' conduct was intended to harm the School District, which conduct did in fact harm the School District;
  - c) Defendant Thomas has pled guilty to and has been convicted of felonies arising out of the same act or course of conduct complained of by the School District and

that act or course of conduct is a proximate cause of the School District's damages;

- d) Defendants' conduct was motivated primarily by unreasonable financial gain, and the unreasonably dangerous nature of the conduct, together with the high likelihood of injury resulting from the conduct, was known or approved by Finney, an officer of Greene Finney;
- e) Defendants' actions have subjected Defendant Thomas felony convictions and those acts and course of conduct are a proximate cause of the School District's damages; and
- f) All other financial losses to be determined at trial.

**FOR A FOURTH CAUSE OF ACTION  
VIOLATIONS OF THE SOUTH CAROLINA UNFAIR TRADE  
PRACTICES ACT, S.C. CODE ANN. § 39-5-10, *et seq.* ("SCUTPA")  
*All Defendants***

65. The School District 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.

66. The School District and the Defendants qualify as "persons" for purposes of the South Carolina Unfair Trade Practices Act, S.C. Code Ann. § 39-5-10(a) ("SCUTPA").

67. The Defendants, by conducting business in the State of South Carolina, are engaged in commerce within the meaning of S.C. Code. Ann. § 39-5-10(b).

68. The foregoing unfair or deceptive acts affected the public interest, in particular, the taxpayers of Berkeley County.

69. The Audit Defendants engage in audits across the State of South Carolina for numerous school boards and the actions alleged herein are capable of repetition.

70. Mr. Finney, as an officer and director of Greene Finney, is liable for Greene Finney's unfair trade practices because he personally committed, participated in, directed and/or authorized the commission of Greene Finney's violations of the SCUTPA.

71. The Audit Defendants and Thomas engaged in unfair and deceptive acts in the conduct of their trades and commerce, in violation of the SCUTPA, including the following:

- a. By failing to properly assess and communicate the deficient design and operating effectiveness of the internal controls over financial reporting implemented by Thomas;
- b. By failing to ensure the internal controls over financial reporting were compliant with all applicable laws and regulations;
- c. By failing to ensure the internal controls over financial reporting safeguarded the School District's assets;
- d. By forming and expressing the opinion that the School District's books and records for the years 1999 – 2016 were presented fairly to the School District, in all material respects, and in conformity with accounting principles generally accepted in the United States of America, when in fact those books and records were not presented fairly and were inaccurate and incorrect in several material respects;
- e. By failing to detect, notice or communicate fraudulent activity and financial reporting involving Thomas;
- f. By failing to identify, flag or notice intentional misstatements or omissions in the School District's financial statements, by Thomas for the express purpose of defrauding the School District or concealing his embezzlement, when the exercise of professional judgment and

professional skepticism would have detected same, or when a skilled and competent audit of those financial statements, over a period of fifteen years, by ordinary and reasonable certified public accountants under the same or similar circumstances would have detected such misstatements or omissions;

- g. By failing to detect and warn the School District of the very hazards and erroneous accounting which the Audit Defendants were hired to detect;
- h. By providing false assurance to the School District, through multiple consecutive years of “clean” audits, that School District’s financial statements were free of material misstatements caused by error or fraud; and
- i. By failing to conduct the audits performed for the School District in accordance with auditing standards generally accepted in the United States of America.

72. Defendants’ actions as aforesaid were immoral, unethical, and oppressive.

73. Defendants knew or reasonably should have known that their conduct violated the SCUTPA.

74. The School District suffered ascertainable monetary and/or property loss as a direct, foreseeable and proximate result of the Defendants’ unfair or deceptive act(s) as follows:

- a. Financial losses associated with Thomas’ embezzlement of School District funds;
- b. Financial losses associated with the Audit Defendants’ failure to ensure an adequate control environment;
- c. Financial losses associated with the Audit Defendants’ failure to identify and communicate a lack of segregation of duties;
- d. Financial losses associated with the Audit Defendants’ failure to detect and identify irregularities in the School District’s reserve fund;

- e. Financial losses associated with the Audit Defendants' failure to detect and identify irregularities in the School District's bond referendum construction fund; and
- f. Financial losses associated with the Audit Defendants' concealment of cost overruns on construction projects.

75. The School District is also entitled to treble damages pursuant to S.C. Code Ann. § 39-5-140(a) because:

- a. The School District's harm was the result of Defendants' willful, wanton and reckless conduct in violation of S.C. Code Ann. § 39-5-20;
- b. Defendants' conduct was intended to harm the School District, which conduct did in fact harm the School District;
- c. Defendant Thomas has pled guilty to and has been convicted of a felony arising out of the same act or course of conduct complained of by the School District and that act or course of conduct is a proximate cause of the School District's damages;
- d. Defendants' conduct was motivated primarily by unreasonable financial gain, and the unreasonably dangerous nature of the conduct, together with the high likelihood of injury resulting from the conduct, was known or approved by Mr. Finney, an officer of Greene Finney; and
- e. Defendants' actions have subjected Defendant Thomas to felony convictions and those acts and course of conduct are a proximate cause of the School District's damages.

76. The School District is also entitled to recover reputational damages and all other financial losses to be determined at trial, as well as the payment of its attorneys' fees and costs associated with this action in accordance with S.C. Code Ann. § 39-5-140(a).



**FOR A FIFTH CAUSE OF ACTION  
UNJUST ENRICHMENT  
*All Defendants***

77. The School District 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.

78. In connection with the fraudulent scheme as aforesaid, each of the Defendants received moneys paid by the School District, purportedly for, among other things, the provision of professional services. In fact, Defendants knew that, rather than receiving valuable professional services, the School District was being charged for unnecessary services associated with Defendants' auditing efforts.

79. Consequently, Defendants were unjustly enriched at the expense of the School 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 School District.

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

**FOR A SIXTH CAUSE OF ACTION  
NEGLIGENT MISREPRESENTATION  
*All Defendants***

81. The School District 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 readopts and re-alleges each such allegation.

82. The Audit Defendants and Thomas made false representations of material fact to, and fraudulently concealed material facts from, the School District by concealing Thomas' illegal and

fraudulent financial transactions over a period of years.

83. The Audit Defendants and Thomas made false representations of material fact to, and fraudulently concealed material facts from the School District relating to the deficient control environment implemented by Thomas.

84. The Audit Defendants and Thomas also made false representations of material fact to, and fraudulently concealed facts from the School District by conspiring with one another to steer the School District and other school district's accounting business to the Audit Defendants.

85. The Audit Defendants and Thomas also made false representations of material fact to, and fraudulently concealed facts from the School District regarding the financial statements of the School District and the contents thereof.

86. Defendants had pecuniary interests in making the foregoing false representations to the School District. The Audit Defendants had a pecuniary interest in their receipt and maintenance of the School District's accounting business, and Thomas had a pecuniary interest in his receipt of embezzled School District funds and the concealment of receipt of such funds in exchange for his assistance in steering the School District's accounting business to the Audit Defendants.

87. The Audit Defendants owed a duty of care to the School District as its accountants and auditors to see that they communicated truthful information to the School District. Thomas also owed a duty of care to the School District, as its Chief Financial Officer, to communicate truthful information to the School District.

88. Defendants breached their duties to the School District in failing to provide it with prudent advice that the School District's internal controls were woefully deficient, the School District books and records contained material errors, misstatements and illegal conduct.

89. The School District justifiably relied on the Defendants' representations that the audits

properly evaluated the internal controls on financial reporting to obtain reasonable assurances about whether the financial statements were free from errors, fraudulent financial reporting, misappropriation of assets or violations of laws.

90. The School District suffered pecuniary losses as the proximate result of its reliance upon Defendants' misrepresentations, as follows:

- a. Financial losses associated Thomas' embezzlement of School District funds;
- b. Financial losses associated with the Audit Defendants' failure to ensure an adequate control environment;
- c. Financial losses associated with the Audit Defendants' failure to ensure segregation of duties;
- d. Financial losses associated with the Audit Defendants' failure to identify irregularities in the School District's reserve fund;
- e. Financial losses associated with the Audit Defendants' failure to identify irregularities in the School District's bond referendum construction fund;
- f. Financial losses associated with the Audit Defendants' concealment of cost overruns on construction projects;

91. The School District is entitled to punitive damages because,

- a. The School District's harm was the result of Defendants' willful, wanton and reckless conduct;
- b. Defendants' conduct was intended to harm the School District, which conduct did in fact harm the School District;
- c. Defendant Thomas has pled guilty to and has been convicted of felonies arising out of the same act or course of conduct complained of by the School District and that act or course

of conduct is a proximate cause of the School District's damages;

- d. Defendants' conduct was motivated primarily by unreasonable financial gain, and the unreasonably dangerous nature of the conduct, together with the high likelihood of injury resulting from the conduct, was known or approved by Mr. Finney, an officer of Greene Finney;
- e. Defendants' actions have subjected Defendant Thomas to felony convictions and those acts and course of conduct are a proximate cause of the School District's damages; and

92. The School District is also entitled to reputational damages and all other financial losses to be determined at trial.

93. Each Defendant is jointly and severally liable to the School District for their negligent misrepresentations to the School District.

**FOR AN SEVENTH CAUSE OF ACTION  
COMMON LAW FRAUD  
*All Defendants***

94. The School District 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.

95. Defendants made false representations of material fact to, and fraudulently concealed material facts from, the School District as follows:

- a. By failing to detect, notice or communicate the internal controls over financial reporting implemented by Thomas;
- b. By failing to properly evaluate the internal controls over financial reporting implemented by Thomas;

- c. By failing to determine if the internal controls over financial reporting achieved the School District's strategic objectives;
- d. By failing to ensure the internal controls over financial reporting were compliant with all applicable laws and regulations;
- e. By failing to ensure the internal controls over financial reporting safeguarded the School District's assets;
- f. By forming and expressing the opinion that the School District's books and records for the years 1999 – 2016 were presented fairly to the School District, in all material respects, and in conformity with accounting principles generally accepted in the United States of America, when in fact those books and records were not presented fairly and were inaccurate and incorrect in several material respects;
- g. By failing to detect, notice or communicate fraudulent activity and financial reporting involving Thomas and fraud that caused a material misstatement of the books and records;
- h. By failing to identify, flag or notice material misstatements or omissions in the School District's financial documents, placed there by Thomas for the express purpose of defrauding the School District or concealing his embezzlement, when the exercise of due diligence would have detected same, or when a skilled and competent review of those same records by ordinary and reasonable certified public accountants under the same or similar circumstances would have detected such misstatements or omissions;
- i. By failing to detect and warn the School District of the very hazards and erroneous accounting which the Audit Defendants was hired to detect;
- j. By providing false assurance to the School District, through multiple years of "clean" audits, that School District's books and records were free of material misstatements caused

by error or fraud, when in fact they were riddled with errors and misstatements; and

- k. By failing to conduct the audits performed for the School District in accordance with auditing standards generally accepted in the United States of America.

96. Defendants knew that the foregoing material facts were false, or recklessly disregarded their truth or falsity, or fraudulently concealed the truth from the School District, with the intent that their representations and/or concealments be acted upon.

97. The School 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.

98. The actual damages sustained by the School District as a result of fraud perpetrated by Defendants are as follows:

- a. Financial losses associated Thomas' embezzlement of School District funds;
- b. Financial losses associated with the Audit Defendants' failure to ensure an adequate control environment;
- c. Financial losses associated with the Audit Defendants' failure to identify and communicate a lack of segregation of duties;
- d. Financial losses associated with the Audit Defendants' failure to identify irregularities in the School District's reserve fund;
- e. Financial losses associated with the Audit Defendants' failure to identify irregularities in the School District's bond referendum construction fund;
- f. Financial losses associated with the Audit Defendants' concealment of cost overruns on construction projects;

99. The School District is entitled to punitive damages because,

- a. The School District's harm was the result of Defendants' willful, wanton and reckless conduct;
- b. Defendants' conduct was intended to harm the School District, which conduct did in fact harm the School District;
- c. Defendant Thomas has pled guilty to and has been convicted of a felony arising out of the same act or course of conduct complained of by the School District and that act or course of conduct is a proximate cause of the School District's damages;
- d. Defendants' conduct was motivated primarily by unreasonable financial gain, and the unreasonably dangerous nature of the conduct, together with the high likelihood of injury resulting from the conduct, was known or approved by Mr. Finney, an officer of Greene Finney; and
- e. Defendants' actions could subject Defendants to conviction of a felony and those acts and course of conduct are a proximate cause of the School District's damages.

100. The School District is also entitled to reputational damages, and all other financial losses to be determined at trial.

101. Each Defendant is jointly and severally liable to the School District for all of the acts of common law fraud alleged herein.

**FOR AN EIGHTH CAUSE OF ACTION  
AIDING AND ABETTING BREACH OF FIDUCIARY DUTY  
*Audit Defendants***

102. The School District 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.

103. The School District imposed a special confidence in Thomas, so that these Defendants, in equity and good conscience, were bound to act in good faith and with due regard to the interests of the District, thereby giving rise to fiduciary relationship with the School District.

104. As the fiduciary of the School District, Thomas owed a clear duty to the School District of undivided loyalty, absolute faithfulness, and a duty to exercise due care and diligence with respect to their financial audits of the School District's financial records.

105. Thomas breached his fiduciary duties to the School District through a myriad of fraudulent schemes resulting in the embezzlement in over a million dollars, concealment of construction cost overruns and improper transfer of bond referendum funds.

106. Audit Defendants aided and abetted Thomas' breach of his fiduciary duties by:

- a. By failing to detect, notice or communicate the improper and deficient internal controls over financial reporting implemented by Thomas;
- b. By failing to properly evaluate the internal controls over financial reporting implemented by Thomas;
- c. By failing to determine if the internal controls over financial reporting achieved the School District's strategic objectives;
- d. By failing to ensure the internal controls over financial reporting were compliant with all applicable laws and regulations;
- e. By failing to ensure the internal controls over financial reporting safeguarded the School District's assets;
- f. By forming and expressing the opinion that the School District's books and records for the years 2001 – 2016 were presented fairly to the School District, in all material respects, and in conformity with accounting principles generally accepted in the United States of



America, when in fact those books and records were not presented fairly and were inaccurate and incorrect in several material respects;

- g. By failing to detect, notice or communicate fraudulent activity and financial reporting involving Thomas and fraud that caused a material misstatement of the books and records;
- h. By failing to identify, flag or notice material misstatements or omissions in the School District's financial documents, placed there by Thomas for the express purpose of defrauding the School District or concealing his embezzlement, when the exercise of due diligence would have detected same, or when a skilled and competent review of those same records by ordinary and reasonable certified public accountants under the same or similar circumstances would have detected such misstatements or omissions;
- i. By failing to detect and warn the School District of the very hazards and erroneous accounting which the Audit Defendants was hired to detect;
- j. By providing false assurance to the School District, through multiple years of "clean" audits, that School District's books and records were free of material misstatements caused by error or fraud, when in fact they were riddled with errors and misstatements; and
- k. By failing to conduct the audits performed for the School District in accordance with auditing standards generally accepted in the United States of America.

107. The Audit Defendants knew that Thomas was in breach of his fiduciary duties to the School District, and participated in his breach of duty, by concealing Thomas' illegal activities in exchange for his assistance in steering the School District's accounting business to the Audit Defendants.

108. Thomas knew that the Audit Defendants were in breach of their fiduciary duties to the School District, and participated in their breaches of duty, by accepting kickbacks and perpetuating

illegal financial transaction in exchange for his assistance in steering the School District's and other school districts' accounting business to the Audit Defendants.

109. As a direct and proximate result of Defendants' aiding and abetting breaches of fiduciary duty, the District suffered the following damages:

- a. Financial losses associated Thomas' embezzlement of School District funds;
- b. Financial losses associated with the Audit Defendants' failure to ensure an adequate control environment;
- c. Financial losses associated with the Audit Defendants' failure to identify and communicate a lack of segregation of duties;
- d. Financial losses associated with the Audit Defendants' failure to identify irregularities in the School District's reserve fund;
- e. Financial losses associated with the Audit Defendants' failure to identify irregularities in the School District's bond referendum construction fund;
- f. Financial losses associated with the Audit Defendants' concealment of cost overruns on construction projects;
- g. Punitive damages because,
  - a) The School District's harm was the result of Defendants' willful, wanton and reckless conduct;
  - b) Defendants' conduct was intended to harm the School District, which conduct did in fact harm the School District;
  - c) Defendant Thomas has pled guilty to and has been convicted of a felony arising out of the same act or course of conduct complained of by the School District and that act or course of conduct is a proximate cause of the School District's

damages;

- d) Defendants' conduct was motivated primarily by unreasonable financial gain, and the unreasonably dangerous nature of the conduct, together with the high likelihood of injury resulting from the conduct, was known or approved by Finney, an officer of Greene Finney;
- e) Defendants' actions subjected Defendants to conviction of felonies and those acts and course of conduct are a proximate cause of the School District's damages;
- h. Reputational damages; and
- i. All other financial losses to be determined at trial.

110. Each Defendant is jointly and severally liable to the District for aiding and abetting breaches of fiduciary duty.

### **JURY DEMAND**

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

WHEREFORE, Plaintiff, the Berkeley County School District, by counsel, respectfully requests this Court to enter a judgment in its favor against Defendants, with treble damages, in excess of \$10 million 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 attorney's fees, court costs, and such further relief as the Court deems just.

Respectfully Submitted,

**SMYTH WHITLEY, LLC**

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Charleston, South Carolina  
November 28, 2018