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**IN THE DISTRICT COURT OF TULSA COUNTY
STATE OF OKLAHOMA**

JIM SISNEY,)
)
)
 Plaintiff,)
)
)
 vs.)
)
)
 MARYANNE FLIPPO,)
 SHARI WILKINS,)
 SHARON WHELPLEY, as individuals)
 and in their official capacities as)
 Members of the Broken Arrow)
 Public School Board of Education,)
 AND)
 INDEPENDENT SCHOOL DISTRICT)
 NO. 3 of TULSA COUNTY,)
)
 Defendants.)

**Case No. CJ-2008-6173
Judge Daman Cantrell**

**DISTRICT COURT
FILED
AUG 22 2012
BALLY HOWE SMITH, COURT CLERK
STATE OF OKLA. TULSA COUNTY**

**DEFENDANTS' OBJECTION TO
PLAINTIFF'S SUBPONEA DUCES TECUM
TO NON-PARTY KELLOGG AND SOVEREIGN CONSULTING, LLC
AND REQUEST FOR ENTRY OF PROTECTIVE ORDER**

Defendants Maryanne Flipppo, Sharon Whelpley, Shari Wilkins and Independent School District No. 3 of Tulsa County, Oklahoma (the "Broken Arrow School District") hereby object to the subpoena duces tecum issued by plaintiff's counsel to non-party Kellogg and Sovereign Consulting, LLC (hereinafter "Kellogg Sovereign") and move for the entry of a protective order pursuant to OKLA. STAT. tit. 12, § 3226(C)(1)(a) that such discovery not be had. The defendants object to the subpoena duces tecum because it seeks to compel discovery from a non-party regarding information and matters that are not relevant nor reasonably calculated to lead to the discovery of admissible evidence concerning any of the claims or defenses asserted by the parties. Counsel for the School

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District certifies that prior to the filing of this motion, he conferred by telephone with plaintiff's counsel Rachel Mor regarding the subpoena duces tecum. However, counsel were not able to resolve their differences.

Arguments and Authorities

The scope of discovery in an action, while broad, is not unlimited. This limitation is recognized in Section 3226(B)(1)(a) of the Oklahoma Discovery Code:

B. DISCOVERY SCOPE AND LIMITS. Unless otherwise limited by order of the court in accordance with the Oklahoma Discovery Code, the scope of discovery is as follows:

1. IN GENERAL.

a. Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition and location of any documents, electronically stored information or other tangible things and the identity and location of persons having knowledge of any discoverable matter. It is not a ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

Thus, discovery in an action is limited to that information that is either (a) relevant to, or (b) reasonably calculated to lead to the discovery of admissible evidence relating to, the parties' claim and defenses.

On August 2, 2012, plaintiff's counsel issued subpoena duces tecum to Kellogg and Sovereign Consulting, LLC, to compel the production of a myriad of documents related to the School District's participation in the E-rate program.

copying at the office of Rachel Lawrence Mor, Attorney at Law, 3037 N.W. 63rd, Suite 205, Oklahoma City, Oklahoma 73116, on **the 23rd day of August, 2012, at 10:00 a.m.**, of the following designated books, documents or tangible things in your possession, custody or control:

1. All signed copies of all e-rate program forms submitted by Broken Arrow Public School District from July 1, 2007 through July 1, 2009, including forms 470, 471, 486, Bear and item 21 with attachments.
2. All signed (when applicable) copies of all support documents pertaining to the evaluation of proposals and selection of vendors for all products and services requested on e-rate forms 470, 471, 486 from July 1, 2007 through July 1, 2009, including but not limited to bid evaluation worksheets, invoices, SPIN change requests and vendor proposals. Vendor proposals should only include executive summary information and total project costs.
3. Copies of all written and electronic communications between staff and agents of Broken Arrow Public School District and the staff and agents of Kellogg and Sovereign and the Universal Service Administrative Company from July 1, 2007 through July 1, 2009.
4. Copies of each and every District Technology Plan for Broken Arrow Public School District which supports products and services requests under e-rate form 471 filed with the Universal Services Administrative Company.

See Kellogg Sovereign Subpoena Duces Tecum, Exhibit 1. As described by the United

States Department of Education:

The E-rate program is administered by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (USAC). The program was set up in 1997 when the Federal Communications Commission (FCC) adopted a Universal Service Order implementing the Telecommunications Act of 1996. The Order was designed to ensure that all eligible schools and libraries have affordable access to modern telecommunications and information services. Up to \$2.25 billion annually is available to provide

See U.S. Dept. of Education Website Information Regarding E-rate, Exhibit 2.

On August 7, 2012, the School District's counsel wrote plaintiff's counsel inquiring as to how the documents plaintiff was seeking from Kellogg Sovereign were relevant to the parties' claims and defenses. See Letter to Rachel Mor, Exhibit 3. In subsequent telephone conversations between defendants' and plaintiff's counsel, plaintiff's counsel stated that the discovery was sought in regard to plaintiff's defamation claims against defendants Flippo, Whelpley and Wilkins, and in particular to certain alleged defamatory statements contained in a website known as "BrokenArrowForum" found at <http://www.brokenarrowforum.net> and the identity of the author of those statements, 612/Robin Reader.

The plaintiff's Petition was initially filed on September 3, 2008. Neither the plaintiff's Second Amended Petition nor the Third Amended Petition contains any allegations against any current defendants related to E-rate matters. See Plaintiff's Second Amended Petition, Exhibit 4; Plaintiff's Third Amended Petition, Exhibit 5. Furthermore, neither the Second nor Third Amended Petitions contain any allegations that any current defendant defamed the plaintiff on the BrokenArrowForum website or after plaintiff's dismissal as Superintendent on October 23, 2008. As such, the subpoenaed documents fall within matters outside the permissible scope of discovery in this action.

Accordingly, the plaintiff's subpoena duces tecum to Kellogg Sovereign is improper and the court should enter an appropriate protective order precluding this non-party from having to comply with the subpoena duces tecum.

WHEREFORE, defendants Maryanne Flippo, Sharon Whelpley, Shari Wilkins, and the Broken Arrow School District move the court for the entry of a protective order precluding the plaintiff from seeking to compel the discovery of non-relevant documents from non-party Kellogg and Sovereign Consulting, LLC.

Respectfully submitted,

WALTA & WALTA


By:

Phyllis L. Walta, OBA No. 9331
525 South Main, Suite 700
120 East Oklahoma
Hennessey, OK 73742

Attorneys for Defendants Maryanne
Flippo, Shari Wilkins, Sharon
Whelpley

ROSENSTEIN, FIST & RINGOLD

By:



Kent B. Rainey, OBA No. 14619
525 South Main, Suite 700
Tulsa, OK 74103
(918) 585-9211
(918) 583-5617 – facsimile
Email: borainey@rfrlaw.com
Attorneys for the Broken Arrow
School District

AUG. 22. 2012 11:49AM

ROSENSTEIN FIST RINGOLD

NO. 4090 P. 6/7

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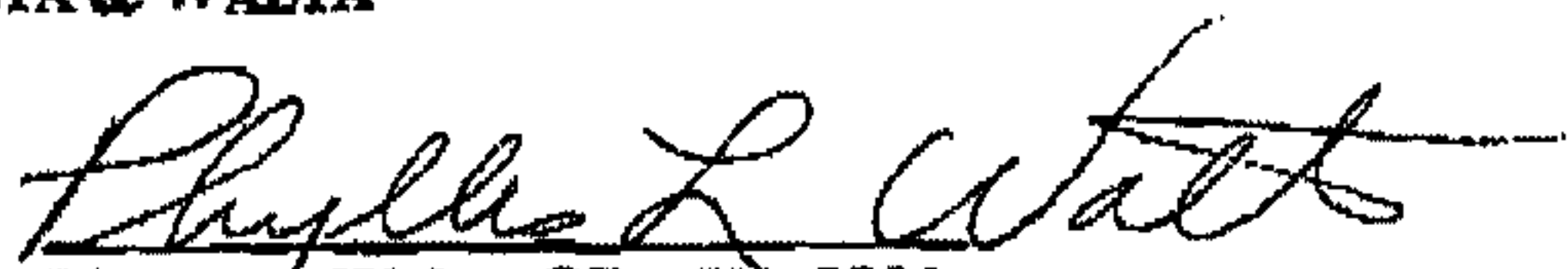
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Respectfully submitted,

WALTA & WALTA

By:



Phyllis L. Walta, OBA No. 9331
525 South Main, Suite 700
120 East Oklahoma
Hennessey, OK 73742

Attorneys for Defendants Maryanne
Flippo, Shari Wilkins, Sharon
Whelpley

ROSENSTEIN, FIST & RINGOLD


By:

Kent B. Rainey, OBA No. 14619
525 South Main, Suite 700
Tulsa, OK 74103
(918) 585-9211
(918) 583-5617 – facsimile
Email: borainey@rfrlaw.com
Attorneys for the Broken Arrow
School District

CERTIFICATE OF MAILING

I hereby certify that on the 22nd day of August, 2012, I served the attached document via email and by United States Mail, Certified-Return Receipt Requested, on the following:

- (1) Rachel Lawrence Mor, Esq.
Michael J. Blaschke, Esq.
S. Randall Sullivan, Esq.
3037 N.W. 63rd Street, Suite 205
Oklahoma City, OK 73116
(405) 562-7771
Attorneys for Plaintiff


Kent B. Rainey

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**IN THE DISTRICT COURT IN AND FOR TULSA COUNTY
STATE OF OKLAHOMA**

DR. JIM SISNEY, an individual,)
)
 Plaintiff,)
)
 v.)
)
 MARYANNE FLIPPO, SHARI)
 WILKINS, SHARON WHELPLEY,)
 as individuals and in their official)
 capacities as Members of the)
 Broken Arrow Public School Board)
 of Education; and INDEPENDENT)
 SCHOOL DISTRICT NO. 3 OF)
 TULSA COUNTY,)
)
 Defendants.)

**Case No.CJ-2008-06173
Judge Daman Cantrell**

RECORDS DEPOSITION AND SUBPOENA DUCES TECUM

THE STATE OF OKLAHOMA TO:

**Kellogg and Sovereign Consulting, LLC
1101 Stadium Drive
Ada, OK 74820**

GREETINGS:

You are hereby commanded to produce and permit inspection and copying at the office of Rachel Lawrence Mor, Attorney at Law, 3037 N.W. 63rd, Suite 205, Oklahoma City, Oklahoma 73116, on the 23rd day of August, 2012, at 10:00 a.m., of the following designated books, documents or tangible things in your possession, custody or control:

1. All signed copies of all e-rate program forms submitted by Broken Arrow Public School District from July 1, 2007 through July 1, 2009, including forms 470, 471, 486, Bear and item 21 with attachments.
2. All signed (when applicable) copies of all support documents pertaining to the evaluation of proposals and selection of vendors for all products and services requested on e-rate forms 470, 471, 486 from July 1, 2007 through July 1, 2009, including but not limited to bid evaluation worksheets, invoices, SPIN change requests and vendor proposals. Vendor proposals should only include executive summary information and total project costs.



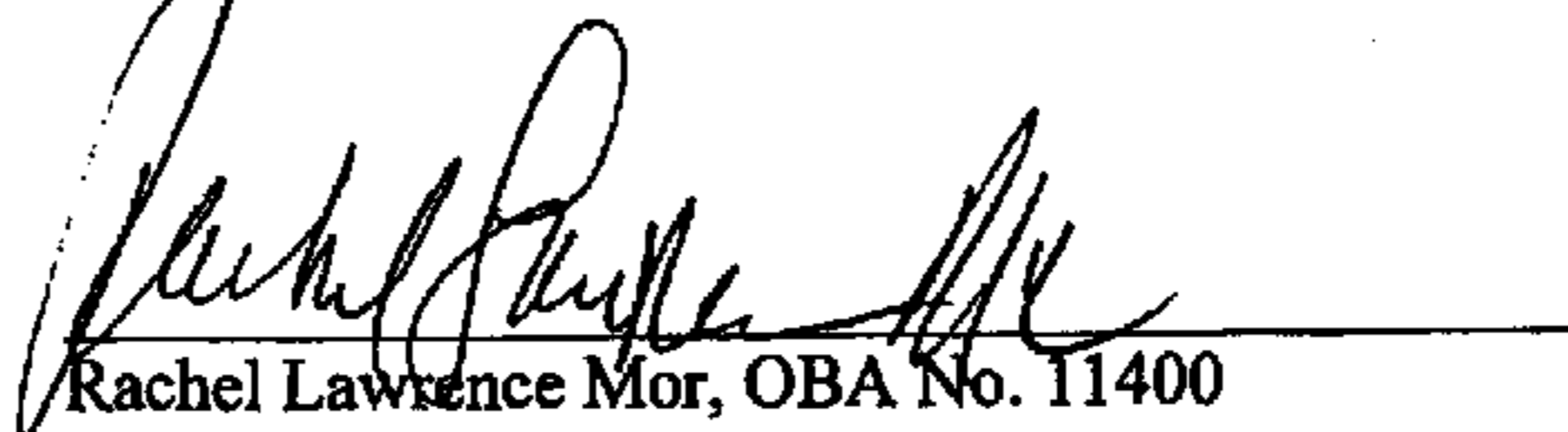
3. Copies of all written and electronic communications between staff and agents of Broken Arrow Public School District and the staff and agents of Kellogg and Sovereign and the Universal Service Administrative Company from July 1, 2007 through July 1, 2009.
4. Copies of each and every District Technology Plan for Broken Arrow Public School District which supports products and services requests under e-rate form 471 filed with the Universal Services Administrative Company.

You may comply with this subpoena *duces tecum* by mailing a copy of said documents to the issuing attorney at the address listed below on or before the above-referenced date.

IN ORDER TO ALLOW OBJECTIONS OT THE PRODUCTION OF DOCUMENTS AND THINGS TO BE FILED, YOU SOULD NOT PRODUCE THEM UNTIL THE DATE SPECIFIED IN THIS SUBPOENA, AND IF AN OBJECTION IS FILED, UNTIL THE COURT RULES ON THE OBJECTION.

FAILURE TO OBEY THIS SUBPOENA MAY BE PUNISHABLE AS PROVIDED BY LAW.

ISSUED BY:



Rachel Lawrence Mor, OBA No. 11400

Michael J. Blaschke, OBA No. 868

S. Randall Sullivan, OBA No. 11179

Attorneys at Law

3037 NW 63rd Street, Suite 205

Oklahoma City, OK 73116

(405) 562-7771 (Telephone)

(405) 285-9350 (Facsimile)

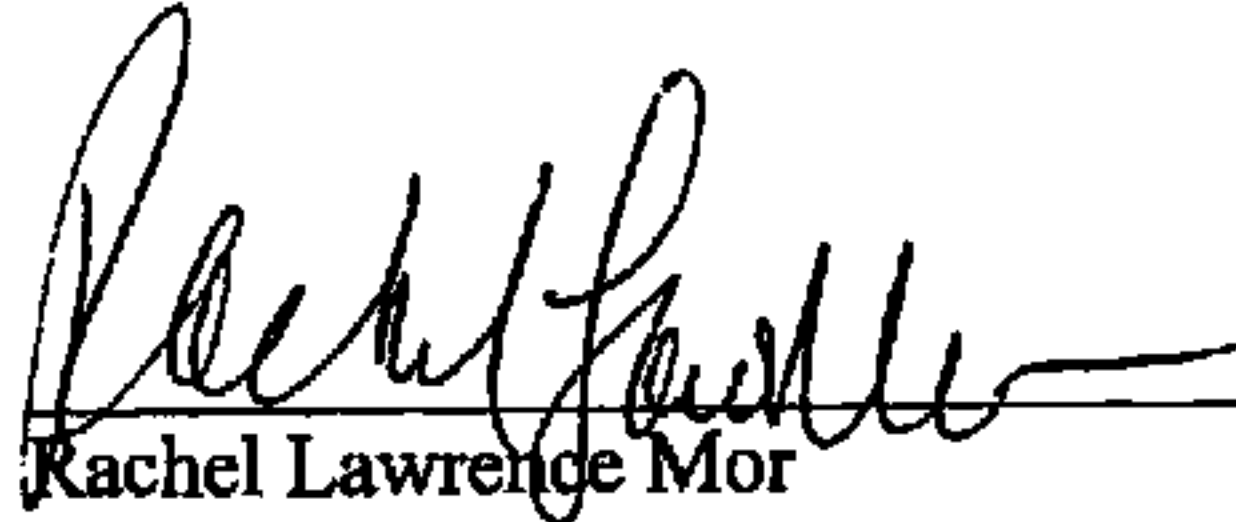
ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF SERVICE

I certify that on the 7 day of August, 2012, a true and correct copy of the above and foregoing document was delivered upon Service via U.S. Mail, postage prepaid thereon, to:

Phyllis L. Walta, Esquire
Monika Turek, Esquire
WALTA & WALTA
120 East Oklahoma
P.O. Box 398
Hennessey, OK 73742
Attorneys for Defendants Flippo, Whelpley and Wilkins

Kent B. Rainey, Esquire
ROSENSTEIN, FIST & RINGOLD
525 South Main, Suite 700
Tulsa, OK 74103
Attorney for the Broken Arrow School District


Rachel Lawrence Mor

RACHEL LAWRENCE MOR

Attorney at Law
3037 N.W. 63rd Street, Suite 205
Oklahoma City, OK 73116
Telephone (405) 562-7771 – Facsimile (405) 285-9350
rmor@thelawgroupokc.com

August 2, 2012

Via Certified Mail/Return Receipt Requested

Kellogg and Sovereign Consulting, LLC
1101 Stadium Drive
Ada, OK 74820

RE: Sisney v. Flippo, et al.
Case No. CJ-2008-06173

Dear Sir or Madam:

Please be advised that I am the attorney of record for Plaintiff James Sisney. Enclosed please find a check for \$25.00 and a Records Deposition Subpoena Duces Tecum directed to Kellogg and Sovereign Consulting, LLC.

As you will note from the Records Deposition Subpoena Duces Tecum, no representative of Kellogg and Sovereign Consulting, LLC is required to be appear at a deposition to testify with regard to the subpoena documents. Rather I am simply seeking the responsive documents at this time. Accordingly, they can be provided to me by mail at the address above or if you would rather by email at rmor@thelawgroupokc.com.

Should you have any questions regarding the documents sought by way of the subpoena duces tecum or their production, please do not hesitate to contact me. Thank you for your time and cooperation in this matter.

Sincerely,



Rachel Lawrence Mor

RLM/lvw
Enclosures

cc: Phyllis L. Walta, Counsel for Defendants Flippo, Whelpley and Wilkins (w/enclosure) ✓
Kent B. Rainey, Counsel for Defendant Broken Arrow School District (w/enclosure)

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Office of Non-Public Education (ONPE)

**E-RATE PROGRAM - DISCOUNTED TELECOMMUNICATIONS SERVICES
FEDERAL COMMUNICATIONS COMMISSION (FCC)/
UNIVERSAL SERVICE ADMINISTRATIVE COMPANY (USAC)/
SCHOOLS AND LIBRARIES DIVISION (SLD)**

Non-profit private schools -- along with public schools, and libraries -- can receive discounted telecommunications services through the E-rate program.

The E-rate program is administered by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (USAC). The program was set up in 1997 when the Federal Communications Commission (FCC) adopted a Universal Service Order implementing the Telecommunications Act of 1996. The Order was designed to ensure that all eligible schools and libraries have affordable access to modern telecommunications and information services. Up to \$2.25 billion annually is available to provide eligible schools and libraries with discounts under the E-rate program for authorized services.

Amount of Discounts

The E-rate provides discounts of 20 percent to 90 percent for eligible telecommunications services, depending on economic need and location (urban or rural). The level of discount is based on the percentage of students eligible for participation the National School Lunch Program or other federally approved alternative mechanisms. (Non-public schools and others not participating in the National School Lunch Program can use federally approved alternative mechanisms contained in the Improving America's Schools Act. Details of such mechanisms may be found in "Alternative Discount Mechanisms" on the SLD web site.

INCOME Measured by % of students eligible for the National School Lunch Program	URBAN LOCATION E-Rate Discount	Rural Location E-Rate Discount
If the percentage of students in the school qualifying for the National School Lunch Program is...	...and the school is in an URBAN area, the E-rate discount will be...	...and the school is in a RURAL area, the E-rate discount will be...
Less than 1%	20%	25%
1% to 19%	40%	50%
20% to 34%	50%	60%
35% to 49%	60%	70%
50% to 74%	80%	80%
75% to 100%	90%	90%

Eligible Services

Discounts can be applied to commercially available telecommunications services, Internet access, and internal connections. Eligible services range from basic local and long distance phone services, and Internet access services, to acquisition and installation of equipment to provide internal connections.

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ROSENSTEIN, FIST & RINGOLD

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DAVID L. FIST (1981-2008)

OF COUNSEL
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STACI L. ROBERTS

SENDER'S DIRECT EMAIL:

borainey@rfrlaw.com

SAMANTHA S. MARSHALL
CHERYL A. DIXON
BRIAN M. KESTER

August 7, 2012

Rachel Lawrence Mor, Esq.
3037 N.W. 63rd Street, Suite 205
Oklahoma City, OK 73116

Re: Sisney v. Broken Arrow School District, et al.
Case No. CJ-2008-6173, District Court of Tulsa County

Dear Rachel:

I am writing in regard to a records deposition and subpoena duces tecum that you have caused to be issued on behalf of Dr. Sisney to Kellogg & Sovereign Consulting, LLC. From reviewing the records sought, I have serious questions regarding the relevancy of the requested records to the plaintiff's claims against the school district and the three lady defendants. As a result, I am giving serious consideration to the filing of an objection to the subpoena duces tecum on that ground and that it appears that Dr. Sisney is attempting to use this litigation for some other person – a matter which you no doubt realize is not proper.

However, before doing so, I wanted to give you an opportunity to explain to me how this information is relevant to the claims or how it reasonably calculated to lead to discovery of admissible evidence with regard to the claims between the parties.

I look forward from hearing from you in this matter.

Very truly yours,



Kent B. Rainey
for Rosenstein, Fist & Ringold

KBR:pm



Rachel Lawrence Mor, Esq

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August 7, 2012

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Page 2

cc: Ms. Phyllis L. Walta (via email)

<http://www.chiefpdf.com>

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**IN THE DISTRICT COURT IN AND FOR TULSA COUNTY
STATE OF OKLAHOMA**

DR. JIM SISNEY, an individual,)
)
Plaintiff,)
)
vs.)
)
MIKE RAMPEY, an individual;)
DOUGLAS J. HUDKINS, an individual;)
MARYANNE FLIPPO, an individual;)
SHARI WILKINS, an individual;)
SHARON WHELPLEY, an individual;)
INDEPENDENT SCHOOL DISTRICT)
NO. 3 OF TULSA COUNTY, a Political)
Subdivision; and AIR ASSURANCE)
CO., a Domestic For Profit Business)
Corporation,)
)
Defendants.)

**Case No. CJ-2008-06173
Honorable Daman Cantrell**

**DISTRICT COURT
FILED**

JUL 23 2010

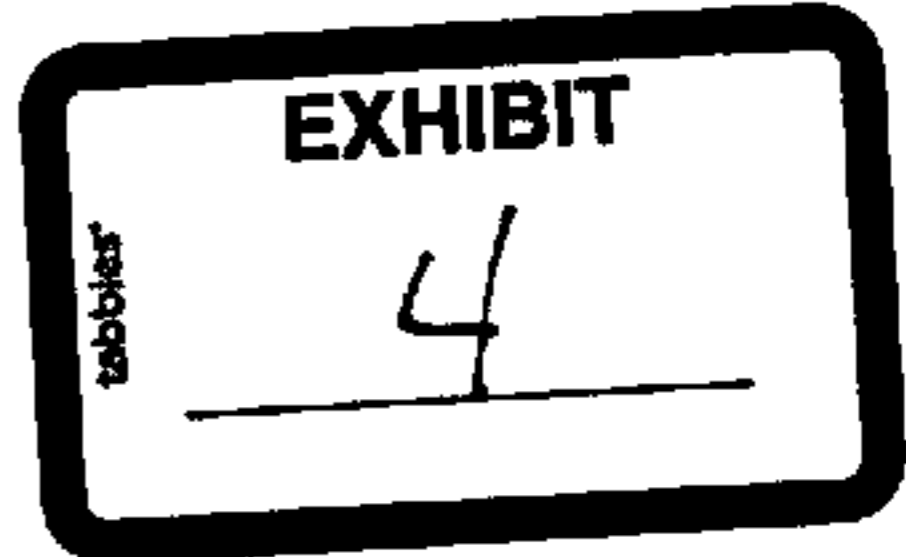
**SALLY HOWE SMITH, COURT CLERK
STATE OF OKLA. TULSA COUNTY**

SECOND AMENDED PETITION

COMES NOW, Plaintiff Dr. Jim Sisney, individually, by and through his attorneys of record, Richardson Richardson Boudreaux, and hereby submits his Second Amended Petition against Defendants Mike Rampey, Douglas Hudkins, Maryanne Flippo, Shari Wilkins, Sharon Whelpley, Independent School District No. 3 of Tulsa County, and Air Assurance Co.. In support hereof, Plaintiff states as follows:

PARTIES, JURISDICTION AND VENUE

1. Plaintiff Dr. Jim Sisney ("Plaintiff" or "Dr. Sisney") currently is and was, at all times relevant to the claims asserted herein, domiciled in the County of Tulsa, State of Oklahoma.



JUL 27 2010

SCANNED
Date _____

2. Upon information and belief, Defendant Mike Rampey ("Rampey") currently is and was, at all times relevant to the claims asserted herein, domiciled in the County of Tulsa, State of Oklahoma.

3. Upon information and belief, Rampey is a co-owner and President of Air Assurance Co., a heating and air company in the County of Tulsa, State of Oklahoma.

4. Upon information and belief, Defendant Douglas J. Hudkins, O.D. ("Hudkins") currently is and was, at all times relevant to the claims asserted herein, domiciled in the County of Tulsa, State of Oklahoma.

5. Upon information and belief, Hudkins is an optometrist doing business in the County of Tulsa, State of Oklahoma.

6. Upon information and belief, Defendant Maryanne Flippo ("Flippo") currently is and was, at all times relevant to the claims asserted herein, domiciled in the County of Tulsa, State of Oklahoma.

7. Flippo currently is and was, at all times relevant to the claims asserted herein, a member of the Broken Arrow School Board.

8. Upon information and belief, Defendant Shari Wilkins ("Wilkins") currently is and was, at all times relevant to the claims asserted herein, domiciled in the County of Tulsa, State of Oklahoma.

9. Wilkins currently is and was, at all times relevant to the claims asserted herein, a member of the Broken Arrow School Board.

10. Upon information and belief, Defendant Sharon Whelpley ("Whelpley") currently is and was, at all times relevant to the claims asserted herein, domiciled in the County of Wagoner, State of Oklahoma.

11. Whelpley currently is and was, at all times relevant to the claims asserted herein, a member of the Broken Arrow School Board.

12. Upon information and belief, Defendant Independent School District No. 3 of Tulsa County ("Broken Arrow School District" or "BASD"), currently is and was, at all times relevant to the claims asserted herein, a political subdivision and an educational institution located in the State of Oklahoma.

13. At all times relevant to the claims asserted herein, BASD was an employer of Plaintiff.

14. Upon information and belief, Defendant Air Assurance Co. ("Air Assurance") currently is and was, at all times relevant to the claims asserted herein, a Domestic For Profit Business Corporation in the State of Oklahoma, with its primary place of business in Tulsa County, State of Oklahoma.

15. Jurisdiction is proper in the Tulsa County District Court because the amount in controversy exceeds \$10,000, all Defendants are either domiciled in or have do business in Tulsa County, State of Oklahoma, and the causes of action and damages claimed by Plaintiff, in whole or in part, arose in Tulsa County, State of Oklahoma.

16. Pursuant to 12 *Okla. Stat.* § 141, venue is proper in this Court.

FACTUAL ALLEGATIONS

17. Paragraphs 1 through 16 are hereby incorporated by reference.

18. In the Spring of 2003, Dr. Sisney entered into a contract for employment as Superintendent with the Broken Arrow School District.

19. On or about April 1, 2008, Mark Bilby, the BASD Procurement Director, informed Dr. Sisney that approximately \$77,000.00 work had been done by vendor Air Assurance without a properly obtaining a Purchase Order ("P.O.") for the project.

20. According to policies of the BASD and to the Oklahoma Statutes, monies for projects must be requested and approved using a P.O. prior to any work being performed for the BASD.

21. The general procedures require five steps in the following order: 1) work order, 2) P.O., 3) approval, 4) labor/work, and 5) invoice.

22. Dr. Sisney noticed the error and subsequently informed the BASD School Board (the "Board") of the discovery.

23. Upon further investigation and inquiry, Dr. Sisney discovered the use of a blanket P.O. issued for work performed by Air Assurance.

24. According to Dr. Sisney's investigation, it appeared Air Assurance was performing labor/work, submitting an invoice and from there a work order would be created.

25. Because the required five-step process was not being followed, the \$77,000.00 invoice showed work that was performed without a work order, a P.O. or approval.

26. At the time, Bill Miller, Director of Maintenance, and Gary Gerber, Assistant Superintendent of Operations had been charged with "oversight" of Air Assurance.

27. However, it became clear that a secretary in Bill Miller's office was the only employee accounting for and corresponding with Air Assurance.

28. Bill Miller stated, in the presence of Dr. Sisney and Mark Bilby, that he "gave no oversight," and that "you have to trust somebody."

29. Consequently, Dr. Sisney recognized the need an infrastructure change for the handling of money and purchasing for a monitored, more appropriate reporting and bidding process.

30. On April 14, 2008 Dr. Sisney advised the Board in an executive session of the infrastructure changes, namely placing a single individual, Mark Bilby, as the one to handle money and purchasing.

31. At the time of the \$77,000.00 invoice, Gary Gerber and Bill Miller were separately handling Air Assurance requests.

32. On May 6, 2008, Dr. Sisney discovered that board member Wilkins had personal business relations outside the BASD with the Rampey and Air Assurance, whereby she was creating a new benefits package for Air Assurance.

33. On May 8, 2008, Dr. Sisney received an e-mail from Rampey detailing what Rampey believed to be 15 years of quality service and unexpectedly terminating any future service to the BASD by Air Assurance, effective immediately.

34. Thereafter, Rampey forwarded a copy of his May 8, 2008 e-mail to board member Whelpley which stated:

"This is the letter that I sent to Bill Miller, Dr. Sisney and Mark Bilby. When you have time, I would love to show you our new place to discuss this with you if you would like. You are a very valued and respected board member and are the only one I am sharing this with. Thank you, Mike Rampey, President, Air Assurance Co." (Copy of previous e-mail attached).

35. A relationship existed between Rampey, Rampey's wife Narissa (collectively "Rampeys"), and Whelpley stemming from a January 19, 2007 campaign contribution made by the Rampeys to Whelpley, as reported on Whelpley's Campaign Contributions and Expenditures Report.

36. Between May 5, 2008 and May 10, 2008, Rampey made several attempts to set up a meeting with Dr. Sisney.

37. On or about May 10, 2008, Flippo, Wilkins and Whelpley began pressuring Dr. Sisney to continue the BASD's relationship with the Rampeys because the Rampeys were "politically important" and that a continued relationship would be beneficial.

38. On or about May 13, 2008, Mark Bilby reported to Dr. Sisney that Air Assurance and the Rampeys had been given unauthorized Master Keys and security codes to Broken Arrow Public School buildings, all of which had not been returned.

39. On May 20, 2008, Dr. Sisney received an e-mail from the BASD Director of Accounting detailing specific inquiries in regards to work done by AA and/or paid for by the BASD.

40. On May 20, 2008, Dr. Sisney received a copy of an Air Assurance invoice for repairs and labor done at the optometry office of Rampey's friend Hudkins that was approved for payment by Bill Miller on behalf of BASD.

41. On May 22, 2008, a meeting was held between Rampey, Dr. Sisney, Wilkins and board member Stephanie Updike ("Ms. Updike") to discuss the issues as discovered by Dr. Sisney.

42. Dr. Sisney discussed his concerns and informed everyone present of the serious errors, audit exceptions and statutory violations that had taken place in regards to the Rampeys and Air Assurance.

43. Rampey said he would look into the issues and also noted that he was terminating service with the BASD mostly because Air Assurance was "losing money with the district."

44. As of May 22, 2008, Air Assurance and Rampey as co-owner had been paid approximately \$613,000.00 by the BASD for the current fiscal year.

45. In total from July 2002 to present, Air Assurance and Rampey have been paid approximately \$3,100,000.00 by the BASD without being held accountable to oversight by the BASD.

46. Following the May 22, 2008 meeting, Rampey sent e-mails to Dr. Sisney, Ms. Updike and Wilkins stating that he could explain all of the discrepancies that were brought to light and inquiries that remained unanswered.

47. Dr. Sisney forwarded Rampey's e-mail to the remaining board members.

48. On May 27, 2008, Dr. Sisney responded to Rampey, notifying him that the BASD's "fiduciary duty to the taxpayer is paramount" and that he would address the issues again with the Rampeys and Air Assurance once he had a complete picture of the issues, rather than addressing them early on a one-by-one basis.

49. Upon information and belief, between May 27, 2008 and June 27, 2008, Wilkins, Flippo and Whelpley surreptitiously met with the Rampeys and Air Assurance.

50. To avoid a quorum (three board members present out of five), the Board met with the Rampeys two, by two, by one (2/2/1) in three (3) separate meetings.

51. Board President Terry Stover reported to Dr. Sisney that at one of the meetings, Rampey told Stover, "I want him gone," meaning Dr. Sisney.

52. Dr. Sisney continued receiving pressure from Wilkins, Flippo and Whelpley regarding the BASD relationship with the Rampeys.

53. On June 27, 2008, Rampey sent a letter on Air Assurance letterhead to the Board and Dr. Sisney claiming to address the discrepancies voiced by Dr. Sisney and accusing Dr. Sisney of going on a "witch hunt."

54. The June 27, 2008 letter demanded redaction of the inquiries into their business dealings with the BASD and a personal apology from Dr. Sisney.

55. Further, the letter states that the Rampeys presented their explanations to all the board members of the BASD, in individual meetings, to their "unquestionable approval."

56. On or about the end of June 2008, Dr. Sisney made the decision to eliminate Bill Miller and Gary Gerber as a result of the handling of the Air Assurance invoices, budget reductions and changes to the reporting infrastructure.

57. Once presented with the comprehensive picture of the Air Assurance inconsistencies and questions that had been raised by Dr. Sisney, Bill Miller and Gary Gerber retired without incident.

58. As Wilkins, Whelpley and Flippo continued calling and sending messages to Dr. Sisney trying to pressure him to rebuild the relationship with Air Assurance, Wilkins insisted Dr. Sisney apologize to the Rampeys for inquiring into their business practices.

59. On July 14, 2008, as a result of the continuing pressure to rebuild the relationship with Air Assurance and the Rampeys, Dr. Sisney wrote a letter to Wilkins, Flippo and Whelpley. (Attached hereto as Exhibit "B").

60. On July 15, 2008, an executive session Board meeting was held to discuss the June 27, 2008 Rampey letter and Dr. Sisney again presented his concerns regarding the apparent conflict of interest between certain Board members and the handling of the Air Assurance issues.

61. At the Board meeting, the Board was also notified of potential Competitive Bidding Act problems for the BASD.

62. Shortly thereafter, Mike Lester, City Council Member and friend of the Rampeys, contacted Flippo to report that Dr. Sisney had not been attending Economic Development Corporation ("EDC") meetings.

63. The EDC was an entity created by Dr. Sisney which held meetings that Dr. Sisney was not required to attend.

64. Subsequently, three (3) executive Board sessions were held in relation to Dr. Sisney's yearly evaluation and contract with the BASD.

65. The final executive Board session lasted six (6) hours and was attended by the Ramseys.

66. Dr. Sisney received a good evaluation and/or review; however rumors began circulating that Dr. Sisney's contract was going to be cancelled.

67. On August 12, 2008, the Board held a special meeting regarding the hiring of an attorney for the BASD, without consulting the Superintendent, Dr. Sisney, which was a violation of BASD Policy 15.1.

68. Thereafter, Flippo, Wilkins and Whelpley began boycotting Board meetings.

69. On August 18, 2008, Flippo, Wilkins and Whelpley hold a press conference and rally in downtown Broken Arrow regarding the BASD budget and Dr. Sisney's alleged actions to prevent discussions of fund balance in public meetings.

70. Dr. Sisney was then informed that on more than one occasion, Defendant Hudkins had been openly making accusations that Dr. Sisney was "stealing from the schools and trying to blame it on the Rampey" and that Dr. Sisney should be fired.

71. Defendant Hudkins has also stated that the accusations against Dr. Sisney came directly from Defendant Rampey.

72. On August 14, 2008 and August 19, 2008, Dr. Sisney is informed that Dr. Kyle Wood, Superintendent of the Bixby Public Schools had been approached by a Board member regarding his interest in Dr. Sisney's position as Superintendent of BASD.

73. Attorney Douglass Mann ("Mann") with Rosenstein, Fist & Ringold was hired to represent the interests of the Board as a whole, however Mann has failed to fulfill his legal obligations to the Board by consistently and overtly representing only the interests of Flippo, Wilkins and Whelpley.

74. Throughout Mann's "representation" he has advised Flippo, Wilkins and Whelpley to the detriment of the Board, the BASD and the Superintendent.

75. Mann has refused, even at the written request of Dr. Sisney, to meet with the Superintendent regarding issues which the Superintendent felt needed to be addressed, because the resolution of said issues would be contrary to Mann, Flippo, Wilkins and Whelpley's designed course of action.

76. On October 6, 2008, Dr. Sisney was suspended as Superintendent of the BASD without conversation or notice to the Board President Stover or Board Member Updike.

77. On October 23, 2008, Dr. Sisney was terminated as Superintendent of the BASD by a vote of 3-2: Flippo, Wilkins and Whelpley in favor of termination and Stover and Updike against termination.

78. The actions of Defendants Flippo, Wilkins, Whelpley and Mann, both individually and in concert are in violation of the rights of Dr. Sisney and contrary to the laws of the State of Oklahoma and the rules governing the BASD and the Board.

79. As a result of the aforementioned conduct, Dr. Sisney has suffered and continues to suffer injuries in an amount greater than \$10,000.

CAUSES OF ACTION

I. DEFAMATION

80. Paragraphs 1 through 79 are hereby incorporated by reference.

81. Defendants did knowingly, recklessly and/or negligently make false and malicious statements that Dr. Sisney, as Superintendent of Schools, stole monies from the BASD.

82. Defendants did knowingly, recklessly and/or negligently make false and malicious statements that Dr. Sisney was stealing, thus deeming Dr. Sisney a thief.

83. Defendants did knowingly, recklessly and/or negligently make false allegations against Dr. Sisney regarding his professional impropriety and misconduct.

84. Upon information and belief, Defendants disseminated such injurious statements described above to third parties.

85. At the time such injurious statements were published and disseminated, Defendants knew they were false.

86. The false statements regarding Dr. Sisney were designed and calculated to injure, or otherwise leave an impression upon the listener that Dr. Sisney was guilty of some type of fraudulent, criminal or other egregious behavior.

87. The false information published to third parties by Defendants as described above harm the character, personal and professional reputation of Dr. Sisney so as to lower him in the esteem of the community and particularly his profession.

88. The false information published fall outside any absolute or conditional privilege exceptions regarding liability for such.

89. As a result of Defendants' statements and actions, Dr. Sisney has sustained damages in an amount in excess of \$10,000.00.

II. BREACH OF CONTRACT

90. Paragraphs 1 through 89 are hereby incorporated by reference.

91. Defendant BASD and Dr. Sisney formed a contract for his employment as Superintendent of BASD.

92. Defendant BASD breached its employment agreement with Dr. Sisney by failing to perform all the contractual obligations associated with the contract, specifically the constructive termination of Dr. Sisney and engaging the conduct described above.

93. As a direct result of Defendant BASD's conduct and breach of contract, Dr. Sisney has sustained damages in an amount in excess of \$10,000.00.

III. CONSTRUCTIVE DISCHARGE

94. Paragraphs 1 through 93 are hereby incorporated by reference.

95. Defendant BASD allowed Dr. Sisney's working conditions to become so intolerable that a reasonable person in Dr. Sisney's position would reasonably believe that his employment had been effectively terminated.

96. As a direct result of Defendant BASD's actions, Dr. Sisney has sustained damages in an amount in excess of \$10,000.00.

IV. BREACH OF IMPLIED CONVENANT OF GOOD FAITH AND FAIR DEALING

97. Paragraphs 1 through 96 are hereby incorporated by reference.

98. Defendant BASD breached its employment agreement with Dr. Sisney by failing to perform all the contractual obligations associated with the contract, specifically by the constructive termination of Dr. Sisney and by engaging in the conduct described above.

99. Defendant BASD acted with the intent to wrongfully deprive Dr. Sisney of the fruits of his contract by allowing employees and BASD representatives to engage in the egregious conduct described above, ultimately culminating in the constructive discharge of Dr. Sisney.

100. Defendant BASD has breached the implied covenant of good faith and fair dealing in relation to the employment contract formed with Dr. Sisney.

101. As a direct result of Defendant BASD's actions, Dr. Sisney has sustained damages in an amount in excess of \$10,000.00.

V. TORTIOUS INTERFERENCE WITH BUSINESS CONTACT

102. Paragraphs 1 through 101 are hereby incorporated by reference.

103. Defendants intentionally and improperly interfered with the contract of employment between Dr. Sisney and BASD.

104. Defendants enticed and induced BASD to not omit performing and affirmatively act contrary to Dr. Sisney's contract, thereby breaching their obligations under the contract.

105. As a result of the Defendant's interference, Dr. Sisney has sustained damages in an amount in excess of \$10,000.00.

VI. INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

106. Paragraphs 1 through 105 are hereby incorporated by reference.

107. Defendants' actions constitute an intentional, wanton and reckless disregard for the safety, health and well-being of Dr. Sisney.

108. Defendants' actions were so extreme and outrageous as to go beyond all possible bounds of decency and would be considered atrocious and utterly intolerable in an civilized society.

109. Defendants' actions intentionally and recklessly caused severe emotional distress to Dr. Sisney beyond that which a reasonable person should be expected to endure.

110. As a direct result of Defendants' actions, Dr. Sisney has suffered damages in an amount in excess of \$10,000.00.

VII. PUNITIVE AND EXEMPLARY DAMAGES

111. Paragraphs 1 through 110 are hereby incorporated by reference.

112. Defendants Rampey, Hudkins, Flippo, Wilkins, Whelpley and Air Assurance's acts and omissions, as set forth above, were oppressive and in wanton and/or reckless disregard of Dr. Sisney's rights.

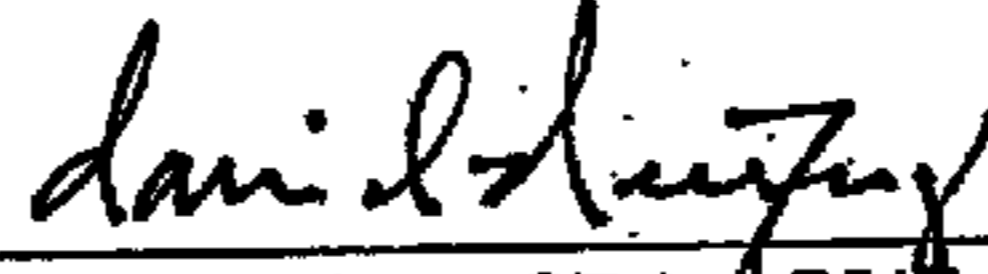
113. As a direct result of Defendants Rampey, Hudkins, Flippo, Wilkins, Whelpley and Air Assurance's oppression and wanton and/or reckless disregard, Dr. Sisney requests exemplary and punitive damages in an amount to be determined by a jury commensurate with the financial resources available to the Defendants Rampey, Hudkins, Flippo, Wilkins, Whelpley and Air Assurance and sufficient to deter others similarly situated from like behavior.

CONCLUSION

WHEREFORE, Plaintiff Dr. Jim Sisney prays that this Court grant judgment against Defendants Mike Rampey, Douglas J. Hudkins, Maryanne Flippo, Shari Wilkins, Sharon Whelpley, Independent School District No. 3 of Tulsa County, and Air Assurance Co. in an amount in excess of Ten Thousand Dollars (\$10,000.00) plus attorneys fees, costs, interest and such further relief as this Court deems just and proper.

Respectfully submitted,

RICHARDSON RICHARDSON BOUDREAUX



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Attorneys for Plaintiff Dr. Jim Sisney

CERTIFICATE OF SERVICE

Copies of the foregoing Second Amended Petition have been sent this ____ day of July, 2010 via U.S. mail, postage paid, to the following counsel of record:

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Attorney for Plaintiff Dr. Jim Sisney

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**IN THE DISTRICT COURT IN AND FOR TULSA COUNTY
STATE OF OKLAHOMA**

DR. JIM SISNEY, an individual)	
Plaintiff,)	
v.)	Case No.CJ-2008-06173
)	Judge Daman Cantrell
MARYANNE FLIPPO, SHARI WILKINS,)	
SHARON WHELPLEY, as individuals)	
and in their official capacities)	
as Members of the Broken Arrow)	
Public School Board of Education,)	
And)	
INDEPENDENT SCHOOL DISTRICT)	
NO. 3 OF TULSA COUNTY)	
Defendants.)	

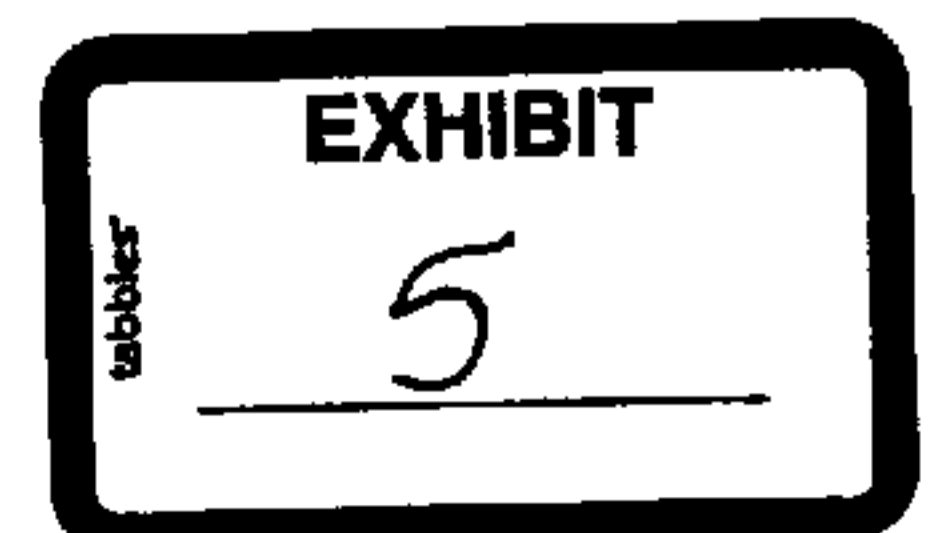
THIRD AMENDED PETITION

Plaintiff, Jim Sisney, presents his Third Amended Petition against Defendants Maryanne Flippo, Shari Wilkins, Sharon Whelpley, as individuals and in their official capacities as Members of the Broken Arrow Public School Board of Education ("Board Members") and against the Defendant Independent School District No. 3 of Tulsa County ("District").

This Petition is amended pursuant to the Scheduling Order entered by this Court on December 9, 2010.

PARTIES

1. Plaintiff Sisney is an individual residing in Tulsa County, Oklahoma and was Superintendent of the Broken Arrow Public Schools, Independent School District No.3, Tulsa County, Oklahoma until October 23, 2008.



2. Defendant MaryAnn Flippo, is a resident of Tulsa County, Oklahoma and at all times relevant was a member of the Broken Arrow Public School Board of Education and has served as President of the Broken Arrow Board of Education.

3. Defendant Shari Wilkins is a resident of Tulsa County, Oklahoma and at all times relevant was a member of the Broken Arrow Public School Board of Education.

4. Defendant Sharon Whelpley is a resident of Wagoner County, Oklahoma and at all times relevant was a member of the Broken Arrow Public School Board of Education.

5. Defendant Independent School District No. 3, Tulsa County, Oklahoma, ("District") a political subdivision of the State of Oklahoma.

6. Plaintiff was employed as Superintendent for the Broken Arrow School System by Defendant District and the Board of Education from 2003 until he was terminated on October 23, 2008.

7. At the time of his termination, all parties were bound by an Employment Contract for a four (4) year contract period from July 1, 2007 to June 30, 2011.

8. The Employment Contract was executed by the President of the Board of Education, Defendant Flippo, attested to by Defendant Whelpley, approved and agreed to by the Members of the Board of Education, including Defendant Wilkins.

9. On July 1, 2010, District Judge Daman Cantrell granted the Plaintiff leave to amend his petition. The Second Amended Petition was filed on July 23, 2010

and set forth allegations of tort and contract against the District. The causes of action sounding in tort have since been dismissed as against the District.

10. The July 23, 2010, Second Amended Petition also set forth two causes of action sounding in contract: Breach of Employment Contract and Breach of Implied Covenant of Good Faith and Fair Dealing. These causes of action against the District are re-alleged, adopted and made more specific in this pleading.

11. In previous pleadings the Plaintiff has presented his claims against the Board Members for defamation, intentional infliction of emotional distress, tortious interference with business contract. These tort claims and damages sought against the Board Members are re-alleged and adopted in this pleading.

12. The Plaintiff also sets forth below, causes of action against the Defendant Board Members, for Breach of Contract and Breach of Implied Covenant of Good Faith and Fair Dealing.

FIRST CAUSE OF ACTION
BREACH OF CONTRACT AGAINST DEFENDANT BOARD
MEMBERS AND THE DISTRICT

13. The Defendant's entered into an Employment Contract with Plaintiff for his services as Superintendent for the Broken Arrow Public School System. Plaintiff had been under contract with the Defendants since 2003. The most recent Employment Contract executed and approved by all named Defendants was for a four (4) year term, effective from July 1, 2007 through June 30, 2011.

14. In April 2008, Plaintiff became aware of a potential violation of the Oklahoma Complete Bidding laws involving the District, several District employees and a heating and air conditioning vendor, Air Assurance. These concerns included split

bidding, a blanket procurement practice, padded invoices, failure to verify work performed and charging for unnecessary repairs.

15. Plaintiff began an investigation of the District's bidding, billing and payment practice with regard to the vendor. As a result of his initial findings, Plaintiff removed two District employees, Gary Gerber and Mike Miller, who were responsible for oversight of the bidding and purchase process.

16. Immediately after the Plaintiff informed the Broken Arrow Board of Education ("Board") of the possible violations and investigation, Defendant Board Members began to try to stop the investigation and directed Plaintiff to apologize to the vendor for initiating the investigation and questioning his business practices.

17. The Defendant Board Members met with the vendor privately to discuss the vendors concerns and then the Board Members continued to demand that Plaintiff apologize for the insult to the vendor's integrity.

18. Plaintiff discovered that Board Member Wilkins had a business relationship with the vendor that might be jeopardized by the investigation. Wilkins pressed hard to send a letter of apology to the vendor.

19. The Board of Education met on July 15, 2008, with their legal counsel, Laura Holmes from the Education Law Center. Ms. Holmes told the Board that the bidding violations were serious and that they could be held liable for violation of state law. Their legal counsel also told the Board that the issue could result in a taxpayer lawsuit holding them individually liable for misappropriation of public funds.

20. From May through August 2008, Defendant Board Members continued to pressure Plaintiff to apologize to the vendor for the investigation of the

competitive bidding problems. The Board Members began to make personal attacks against the Plaintiff.

21. August 18, 2008, the Defendant Board Members “boycotted” the regular school board meeting and held a meeting in a town park to publically state complaints against the Plaintiff.

22. August 25, 2008, Defendant Board Members voted to prohibit Plaintiff from using District resources directly or indirectly to disseminate any information or opinions regarding the Board, its individual members or his relationship with the Board.

23. October 6, 2008, the Board held a “special” meeting. The Board took several actions in this meeting: 1) First the Defendant Board Members voted that they would not receive any public comments regarding the items on the agenda, 2) Defendants fired their lawyer with the Education Law Center who had informed them of the violations of competitive bidding laws and their potential liability, 3) Defendant Board Members voted to proceed to termination of the Plaintiff, 4) Defendants immediately suspended the Plaintiff and appointed Gary Gerber as Superintendent. Gerber had been Assistant Superintendent of Operations, fired by Plaintiff for his involvement in the competitive bidding practices regarding Air Assurance.

24. October 7, 2008, Plaintiff received the Board’s notice of possible termination. The notice was vague as to the substance of the accusations and did not provide the names of the witnesses against him. The notice contained five pretextual allegations that did not give rise to cause for dismissal. Remarkably, one of the allegations was, “Witnesses have indicated that you have made false and public

allegations against a District vendor as to that vendor's billing practices to the District". This accusation was included as a reason for termination even after the Board's legal counsel had advised them of violations of law regarding this vendor. *(The State Auditor and Inspector has conducted an investigatory and special audit of the District's bidding and procurement practice and determined that Broken Arrow Public School District violated the Competitive Bidding Act with respect to Air Assurance).*

25. The Notice advised Plaintiff of his right to a due process hearing which he declined because in the months since he disclosed to the Board the competitive bidding problems, the Defendant Board Members had exhibited overt hostility, bias, conflicts of interest and the intent to cover up the competitive bidding problems and their potential liability. Plaintiff knew that the Board Members had been actively orchestrating his termination for months and that he would not be heard by an impartial majority of the Board in a due process hearing.

26. October 23, 2008, Defendant Board Members citing the pretextual allegations, voted to terminate the Plaintiff. Their decision was based upon accusations which did not give rise to cause for termination, was arbitrary, capricious and intended to cover up the violations of Oklahoma law.

27. Defendant Board Members were acting in their official capacity as members of the Board of Education and acting on behalf of the District.

28. Defendant Board Members and District breached the Employment Contract for an *unlawful* purpose in violation Plaintiff's contractual rights.

Wherefore, as a result of Defendant Board Members Flippo, Wilkins, Whelpley and District's Breach of Plaintiff's Employment Contract, the Plaintiff has suffered damages in excess of \$10,000, together with attorney fees and the cost of litigation.

SECOND CAUSE OF ACTION
BREACH OF IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING

29. Implicit in his Employment Contract with the Board and District was the Covenant of Good Faith and Fair Dealing.

30. Plaintiff had always received good evaluations on his performance from the Board. Plaintiff's expectation was that if he continued to perform his job and adhere to his fiduciary duties in compliance with state and federal laws, as well as district policy, he would remain employed.

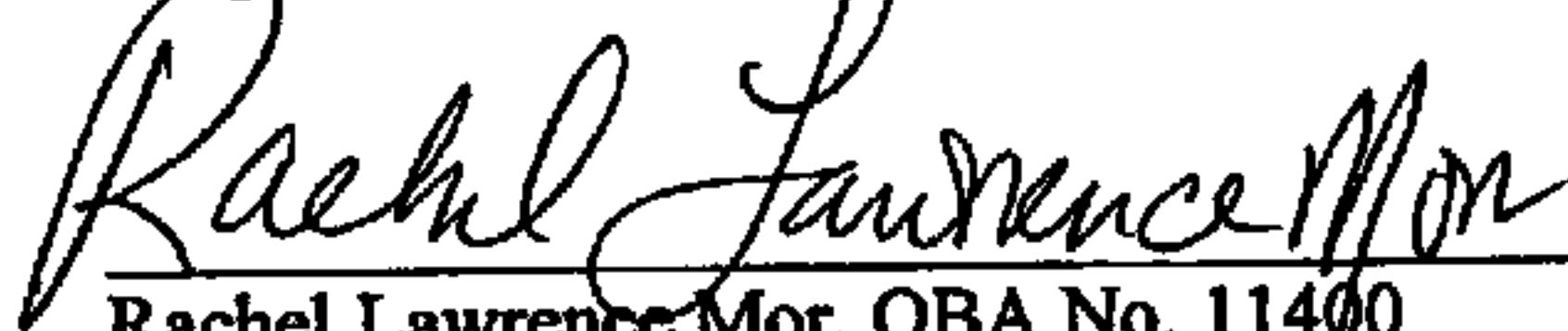
31. The actions of the Board Members were biased in favor of the local vendor and against the Plaintiff. The Boards actions were meant to silence the Plaintiff with respect to the competitive bidding violations, to conceal and cover their potential liability and to inhibit Plaintiff from performing his duties and stop the investigation and audit of bidding improprieties. Defendant Board Members undermined compliance with Oklahoma law and ultimately fired Plaintiff for his efforts to conduct an investigation, obtain an audit and correct the procurement and bidding violations.

32. Defendants Board Members, breached the covenant of good faith and fair dealing in the months prior to the official termination date by, *inter alia*, directing him to apologize to the vendor, by ignoring legal counsel and becoming hostile towards Plaintiff for his investigation of the bidding practices, by making unfounded personal

attacks against him, by telling other Board members they wanted him fired, by permitting the vendor to influence them to fire Plaintiff, by using pretextual reasons which did not rise to just cause to fire him.

Wherefore, as a result of Defendant Board Members Flipppo, Wilkins, Whelpley and District's Breach of the Implied Covenant of Good Faith and Fair Dealing, Plaintiff's contractual rights have been violated and he has suffered damages in excess of \$10,000, together with attorney fees and the cost of litigation.

Respectfully submitted,



Rachel Lawrence Mor, OBA No. 11400

Michael J. Blaschke, OBA No. 868

S. Randall Sullivan, OBA No. 11179

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ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF SERVICE

I certify that on the *24* day of December, 2010, a true and correct copy of the above and foregoing document was delivered upon Service via U.S. Mail, postage prepaid thereon, to:

Kent B. Rainey, Esquire
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Rachel Lawrence Mor