

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CIVIL ACTION NO. 2025-CP-10-_____

Frances D. Austin and Marshall T. Austin,

Plaintiffs,

vs.

CHARLESTON DAY SCHOOL, INC.; Judith F.
Arnstein; Emmie G. Hershey; James B.
Hood; Ross P. Hostetter; and Lynne
Maybank,

Defendants.

SUMMONS

To: Defendant CHARLESTON DAY SCHOOL, INC.:

YOU ARE HEREBY SUMMONED and required to answer the Verified Complaint in this action, a copy of which is hereby served upon you, and to serve a copy of your Answer to said Complaint on the Plaintiffs' attorney within (30) days after the service hereof, exclusive of the day of such service, and if you fail to answer the Verified Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Verified Complaint.

/s/ Thomas A. Pendarvis
Thomas A. Pendarvis (SC Bar #64918)
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Beaufort, South Carolina

February 10, 2025

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Arnstein; Emmie G. Hershey; James B.
Hood; Ross P. Hostetter; and Lynne
Maybank,

Defendants.

To: Defendant Judith F. Arnstein:

YOU ARE HEREBY SUMMONED and required to answer the Verified Complaint in this action, a copy of which is hereby served upon you, and to serve a copy of your Answer to said Complaint on the Plaintiffs' attorney within (30) days after the service hereof, exclusive of the day of such service, and if you fail to answer the Verified Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Verified Complaint.

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Maybank,
Defendants.

SUMMONS

To: Defendant Emmie G. Hershey:

YOU ARE HEREBY SUMMONED and required to answer the Verified Complaint in this action, a copy of which is hereby served upon you, and to serve a copy of your Answer to said Complaint on the Plaintiffs' attorney within (30) days after the service hereof, exclusive of the day of such service, and if you fail to answer the Verified Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Verified Complaint.

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Hood; Ross P. Hostetter; and Lynne
Maybank,

Defendants.

SUMMONS

To: Defendant James B. Hood:

YOU ARE HEREBY SUMMONED and required to answer the Verified Complaint in this action, a copy of which is hereby served upon you, and to serve a copy of your Answer to said Complaint on the Plaintiffs' attorney within (30) days after the service hereof, exclusive of the day of such service, and if you fail to answer the Verified Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Verified Complaint.

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Beaufort, South Carolina

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Hood; Ross P. Hostetter; and Lynne
Maybank,

Defendants.

SUMMONS

To: Defendant Ross P. Hostetter:

YOU ARE HEREBY SUMMONED and required to answer the Verified Complaint in this action, a copy of which is hereby served upon you, and to serve a copy of your Answer to said Complaint on the Plaintiffs' attorney within (30) days after the service hereof, exclusive of the day of such service, and if you fail to answer the Verified Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Verified Complaint.

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Beaufort, South Carolina

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vs.

CHARLESTON DAY SCHOOL, INC.; Judith F.
Arnstein; Emmie G. Hershey; James B.
Hood; Ross P. Hostetter; and Lynne
Maybank,

Defendants.

SUMMONS

To: Defendant Lynne Maybank:

YOU ARE HEREBY SUMMONED and required to answer the Verified Complaint in this action, a copy of which is hereby served upon you, and to serve a copy of your Answer to said Complaint on the Plaintiffs' attorney within (30) days after the service hereof, exclusive of the day of such service, and if you fail to answer the Verified Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Verified Complaint.

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Beaufort, South Carolina

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Frances D. Austin and Marshall T. Austin,
 Plaintiffs,
 vs.

**VERIFIED COMPLAINT
 (Jury Trial Demanded)**

CHARLESTON DAY SCHOOL, INC.; Judith F. Arnstein; Emmie G. Hershey; James B. Hood; Ross P. Hostetter; and Lynne Maybank,
 Defendants.

1. Breach of Fiduciary Duty
2. Civil Conspiracy
3. Libel and Libel *Per Se*
4. Tortious Interference with Contract
5. Negligent Misrepresentation
6. Unfair Trade Practices Act Violation

Plaintiffs Frances D. Austin and Marshall T. Austin, complaining of the Defendants CHARLESTON DAY SCHOOL, INC.; Judith F. Arnstein; Emmie G. Hershey; James B. Hood; Ross P. Hostetter; and Lynne Maybank respectfully state the following facts sufficient to constitute causes of action against the Defendants:

SUMMARY OF THE CASE

1. This case arises from a deliberate and coordinated scheme by Charleston Day School (CDS) leadership, including the Board of Trustees Chair, Ms. Hershey, and the Head of School, Ms. Arnstein, along with key board members, Mr. Hood and Mr. Hostetter to suppress financial oversight and to retaliate against a newly appointed Trustee, Mr. Austin, for his efforts to investigate CDS’s applications for and use of COVID-relief funding and punish his wife, Ms. Austin, for her efforts advocating on behalf of their child’s medical needs. The actions of CDS and board member defendants culminated in Mr. Austin’s removal from the board and the exclusion of the Austins’ children from CDS.

PARTIES

2. Plaintiff Frances D. Austin (“Ms. Austin”) and Plaintiff Marshall T. Austin (“Mr. Austin”) (collectively “the Austins”) are citizens and residents of Charleston County, South Carolina, and the parents of children previously enrolled at Charleston Day School.

3. Defendant CHARLESTON DAY SCHOOL, INC. (“CDS”) is a private educational institution organized and existing under the laws of South Carolina and operating in Charleston County, South Carolina.

4. Defendant Judith F. Arnstein (“Ms. Arnstein”) is, upon information and belief, a citizen and resident of Charleston County, South Carolina, who served as the Head of Schools at CDS.

5. Defendant Emmie G. Hershey (“Ms. Hershey”) is, upon information and belief, a citizen and resident of Charleston County, South Carolina, who served as the chair of the Board of Trustees at CDS.

6. Defendant James B. Hood (“Mr. Hood”) is, upon information and belief, a citizen and resident of Charleston County, South Carolina, who served as a Trustee on the Board of Trustees at CDS.

7. Defendant Ross P. Hostetter (“Mr. Hostetter”) is, upon information and belief, a citizen and resident of Charleston County, South Carolina, who served as a Trustee on the Board of Trustees at CDS.

8. Defendant Lynne Maybank (“Ms. Maybank”) is, upon information and belief, a citizen and resident of Charleston County, South Carolina, married to David Maybank, a Trustee on the Board of Trustees at CDS.

JURISDICTION

9. This Court has jurisdiction based upon Article V of the South Carolina Constitution, S.C. CODE ANN. §§ 36-2-802 and 36-2-803, and its plenary powers.

VENUE

10. Venue is proper in Charleston County because Defendant CDS maintains offices in Charleston County, and the remaining Defendants are, upon information and belief, residents of Charleston County. The acts and omissions complained of occurred in Charleston County, South Carolina.

FACTS

Background & Governance Issues

11. At the heart of this dispute is CDS’s misrepresentation of its financial condition in 2020 to obtain federal COVID-19 relief funds, including a \$570,000 Paycheck Protection Program (“PPP”) loan and Emergency Assistance to Non-Public Schools (“EANS”) grants. Evidence shows

CDS was not in financial distress, had surplus funds exceeding \$600,000, did not have 50% of its students qualify as “low-income” students, and its financial records were manipulated to justify obtaining and forgiving the federal aid.

12. Mr. Austin joined the CDS Board of Trustees (“BOT”) in June 2021 and was not involved in any controversial committees or financial applications like PPP or EANS loans and was not aware of CDS’ and BOT Defendants’ actions to obtain and forgive the federal aid.

13. As a BOT member, Mr. Austin had no meaningful input into CDS policy decisions, which the CDS Executive Committee made.

14. There was growing concern among parents that COVID funding was influencing CDS’ decisions on school operations.

15. As a Board Trustee, Mr. Austin began investigating CDS’s financial practices, including the school’s application for and use of federal funds. His inquiries were met with hostility and secrecy, including the unilateral removal of meeting minutes from the BOT’s internal portal and refusals to provide financial records.

16. Meanwhile, Ms. Austin, a CDS parent, began advocating for accommodations for one of their children, who suffered from respiratory health issues. Ms. Austin requested clarity and transparency regarding CDS’s mask policies and sought reasonable accommodations for her son’s medical needs. Instead of engaging in good faith, CDS and the BOT Defendants stonewalled her requests, falsely characterized her advocacy as harassment, and secretly strategized ways to retaliate against the Austin family.

17. Internal emails, meeting minutes, and board member communications reveal that the BOT Defendants deliberately linked Mr. Austin’s financial oversight efforts with Ms. Austin’s advocacy to justify a coordinated plan to remove Mr. Austin from the Board and refuse to allow their children to return for the next school year.

18. The CDS Executive Committee convened secretly and decided not to renew the Austins’ children’s enrollment contracts for the next school year. Two days later, the BOT removed Mr. Austin from his position as a Trustee, citing vague and unfounded misconduct allegations.

19. The BOT Defendants then sought to conceal their retaliatory actions by altering BOT meeting minutes, issuing misleading statements to parents, and presenting false claims about the Austins’ conduct. A letter to CDS parents, signed by the BOT Chair, Ms. Hershey, falsely

accused Mr. Austin of breaching fiduciary duties and attempted to justify the retaliatory removal of his children.

20. The CDS Executive Committee, led by Ms. Hershey (BOT Chair) and Ms. Arnstein (Head of School), made key financial and governance decisions without full board transparency.

21. Multiple BOT members raised concerns about financial mismanagement, lack of oversight, and misleading financial reports, including inflated low-income student figures in EANS applications.

Financial Misconduct & Federal Loan Issues

22. In 2020, CDS applied for and received a \$570,000 PPP loan despite evidence showing it was not financially distressed and did not need the funds for payroll.

23. CDS had a strong financial position during and after the pandemic, with surplus funds exceeding \$600,000, contradicting claims of financial distress used to justify PPP and EANS loan applications.

24. CDS misrepresented financial need and manipulated budget reports to justify PPP loan forgiveness and EANS grants.

25. BOT members questioned the ethics of taking PPP funds, and some resigned in protest.

Retaliation against the Austins and their Children

26. Mr. Austin requested board records related to PPP and EANS funding, prompting a defensive reaction from CDS leadership.

27. Ms. Austin raised concerns about CDS' mask policies, advocating for clearer governance and accountability.

28. CDS and the BOT Defendants targeted the Austins, falsely accusing them of breaching confidentiality and disrupting school operations.

29. Emails and meeting minutes reveal CDS' and BOT Defendants' coordinated efforts to remove Mr. Austin from the BOT and exclude the Austins' children in retaliation for Mr. Austin's financial inquiries and Ms. Austins' advocacy for her children concerning the COVID mask issues.

30. The CDS' Executive Committee secretly decided not to renew the Austins' children's enrollment, citing vague claims of parent behavior problems.

31. The CDS' Executive Committee removed Mr. Austin from the BOT.

Cover-Up & Public Fallout

32. CDS and the BOT Defendants misrepresented the reasons for Mr. Austin's removal, issuing a misleading letter to parents falsely claiming Mr. Austin had breached his fiduciary duties.

33. Emails between BOT Members show internal disagreements over the "justification" for Mr. Austin's removal.

34. CDS and the BOT Defendants manipulated meeting minutes after the fact to justify governance decisions.

35. Media reports, including FITSNEWS articles, exposed financial irregularities and governance misconduct at CDS.

Defamatory Statements about the Austins

36. Mr. Austin recently obtained a text thread containing false statements by Ms. Maybank.

37. Ms. Maybank falsely stated in a text conversation that Lauren Phillips, a nurse at CDS, left her position because of actions taken by the Austins. The text message states, "*The Austin family led a group saying no more masking. Very aggressive! Little Lauren Phillips ended up leaving CDS as the nurse.*" This statement was entirely false, as Lauren Phillips informed Mr. Austin that these allegations were untrue. Despite having no factual basis, Ms. Maybank publicly disseminated this misinformation, recklessly disregarding the truth and causing harm to the Austins' reputation within the CDS community.

38. In the same text thread conversation, Ms. Maybank further defamed Mr. Austin by falsely claiming that he made it his "*mission to defame CDS.*" This assertion was not only untrue but also designed to portray Mr. Austin as someone engaged in a deliberate and malicious effort to harm the school's reputation. There is no evidence that Mr. Austin engaged in any conduct aimed at defaming CDS, and Ms. Maybank's statement was made with reckless disregard for its truth or falsity, knowing it could cause substantial damage to his credibility and professional standing.

39. Ms. Maybank's text message also falsely accused Mr. Austin of "*creating misleading media information.*" This was not a mere expression of opinion but rather a statement of fact, suggesting that Mr. Austin intentionally spread deceptive or unethical narratives. Such an

assertion was not supported by any factual basis and was intended to cast doubt on Mr. Austin's integrity. The dissemination of this false statement to third parties further exacerbated the harm to Mr. Austin's reputation.

40. Ms. Maybank also falsely stated in the same text conversation, "*Matt Austin's wife went into the classrooms to tell the children they did not have to wear masks like the teachers asked.*" This statement was entirely false and lacked any factual basis. Ms. Austin never engaged in such conduct, and Maybank's assertion misrepresented her actions in a way that was damaging to her character and reputation.

41. This false statement portrayed Ms. Austin as someone who deliberately undermined school policies and disregarded the authority of teachers, painting her as disruptive and irresponsible. By making this assertion, Ms. Maybank sought to cast Ms. Austin in a negative light within the school community, falsely suggesting that she engaged in inappropriate behavior that could lead to confusion, disruption, and potential health risks among students.

42. Ms. Maybank's statements were widely shared with third parties in a manner likely to cause reputational damage to the Austins. These false assertions subjected the Austins to undue scrutiny, criticism, and reputational damage within the CDS community and beyond. As a direct result, the Austins have suffered reputational harm, emotional distress, and potential economic loss due to the falsehoods spread by Ms. Maybank.

43. Although Ms. Maybank attempted to mitigate her statements by including the phrase, "*Of course, everything I have heard is hearsay,*" this disclaimer does not shield her from liability. By repeating and amplifying these unfounded allegations, Ms. Maybank engaged in a clear act of defamation. Her statements, even if prefaced with a vague acknowledgment of hearsay, carried an implicit assertion of truth, further fueling the damage to Austin's reputation.

44. Ms. Maybank made these statements with reckless disregard for the truth, as she either knew they were false or had no reasonable basis to believe they were true. Her dissemination of baseless allegations demonstrates a pattern of reckless and malicious behavior intended to damage the Austins' reputations. The cumulative effect of these false statements has significantly harmed their credibility, professional standing, and relationships within their community.

FOR A FIRST CAUSE OF ACTION
(Breach of Fiduciary Duty)
(Against Ms. Arnstein, Ms. Hershey, Mr. Hood, and Mr. Hostetter)

45. The Austins reallege and incorporate the foregoing factual and jurisdictional statements by reference as if they were set forth verbatim.

Fiduciary Duties

46. As a trustee, Mr. Austin had a fiduciary duty to act in the best interest of CDS. As BOT members and administrators, Ms. Arnstein, Ms. Hershey, Mr. Hood, and Mr. Hostetter had corresponding fiduciary duties to act in the best interests of CDS and its students to ensure compliance with legal and ethical standards and avoid conflicts of interest.

47. Ms. Arnstein, Ms. Hershey, Mr. Hood, and Mr. Hostetter owed fiduciary duties of a very delicate, exacting, and confidential nature. These duties require a high degree of fidelity and good faith, undivided loyalty, and competence, as well as the duty to act single-mindedly in preserving, protecting, and advancing CDS's rights and interests.

Breach of Fiduciary Duties

48. Ms. Arnstein, Ms. Hershey, Mr. Hood, and Mr. Hostetter, as board members and administrators, violated their fiduciary duties to Mr. Austin by engaging in financial mismanagement and retaliatory conduct, including:

- a. Misrepresenting financial conditions to obtain and justify federal PPP and EANS funds.
- b. Manipulating governance procedures to remove Mr. Austin and retaliate against the Austins.
- c. Withholding financial information, including discrepancies in PPP and EANS fund applications.
- d. Withholding access to critical financial records and BOT materials, including removing access to the Board Portal
- e. Secretly planning the non-renewal of the Austins' children's enrollment without a transparent process.
- f. Falsifying BOT minutes and misrepresenting governance decisions.
- g. Taking retaliatory actions against Mr. Austin after he inquired about financial discrepancies.

49. As BOT members and administrators, Ms. Arnstein, Ms. Hershey, Mr. Hood, and Mr. Hostetter took action against the Austins based on Mr. Austin's actions as Trustee to investigate potential financial improprieties rather than for legitimate governance reasons.

50. Ms. Arnstein, Ms. Hershey, Mr. Hood, and Mr. Hostetter coordinated Mr. Austin's removal to eliminate scrutiny over financial matters and coordinated CDS' decision not to renew the Austins' children's enrollment contracts for the next school year.

Causation and Damages

51. As a direct and proximate result of Ms. Arnstein's, Ms. Hershey's, Mr. Hood's, and Mr. Hostetter's breach of their fiduciary duties, the Austins are entitled to recover actual damages, consequential damages, incidental damages, and pre-judgment interest, all in an amount to be determined by the jury at the trial of this case.

52. As a direct and proximate result of Ms. Arnstein's, Ms. Hershey's, Mr. Hood's, and Mr. Hostetter's conduct constituting breaches of their fiduciary duties, the Austins are entitled to recover punitive damages.

53. WHEREFORE, Plaintiffs Frances D. Austin and Marshall T. Austin pray for judgment on this cause of action against Defendants Judith F. Arnstein; Emmie G. Hershey; James B. Hood; and Ross P. Hostetter, jointly and severally, for actual, consequential, and incidental damages suffered, pre-judgment interest, for punitive damages, such other relief as the Court may deem reasonable and proper.

FOR A SECOND CAUSE OF ACTION

(Civil Conspiracy)

(Against CDS, Ms. Arnstein, Ms. Hershey, Mr. Hood, and Mr. Hostetter)

54. The Austins reallege and incorporate the foregoing factual and jurisdictional statements by reference as if they were set forth verbatim.

Concerted Action

55. Ms. Hershey, Ms. Arnstein, and Mr. Hostetter, along with members of the Executive Committee, acted jointly and in concert with others when they conspired to remove Mr. Austin from the BOT and retaliate against his family.

56. The secret Executive Committee meetings that orchestrated Mr. Austin's removal and retaliation against his family confirm the existence of the civil conspiracy.

57. If there had been no civil conspiracy, Ms. Hershey, Ms. Arnstein, and Mr. Hostetter, along with members of the Executive Committee, would have held open Executive Committee meetings to address the circumstances surrounding Mr. Austin's financial inquiries and Ms. Austin's efforts concerning the health of their child.

58. Internal emails, meeting minutes, and communications by the Defendants show their intent to suppress dissent and punish Austin.

59. These acts by CDS and the BOT Defendants were performed overtly, and they all contributed to furthering this conspiracy.

60. These acts and omissions by the BOT Defendants were outside the scope of their employment and positions with CDS.

Unlawful Purpose

61. CDS' and the BOT Defendants' acts and omissions were designed to prevent Mr. Austin from exposing financial misconduct (PPP and EANS funds).

62. These acts and omissions by CDS and the BOT Defendants were designed and intended to retaliate against the Austins and their family by refusing to renew the Austins' children's enrollment at CDS.

63. These acts and omissions by CDS and the BOT Defendants were designed and intended to shield CDS and the BOT Defendants from scrutiny.

Damages

64. These acts and omissions by CDS and the BOT Defendants deprived Mr. Austin from continuing to serve as Trustee on the BOT.

65. These acts and omissions by CDS and the BOT Defendants deprived Mr. Austin and Ms. Austin of having their children continue their education at CDS.

66. These acts and omissions by CDS and the BOT Defendants caused the Austins substantial emotional distress and financial losses.

67. CDS' and the BOT Defendants' conduct constituting a civil conspiracy entitles the Austins to recover punitive damages.

68. As a direct and proximate result of CDS' and the BOT Defendants' civil conspiracy, the Austins have been damaged, suffering emotional distress and financial harm from Mr. Austin being removed as a Trustee from the BOT and the forced withdrawal of their children

from CDS. The amount of the actual, special, and consequential damages will be determined by a jury at the trial of this case. The Austins are entitled to and request an award of punitive damages.

69. WHEREFORE, Plaintiffs Frances D. Austin and Marshall T. Austin pray for judgment on this cause of action against Defendants CHARLESTON DAY SCHOOL, INC.; Judith F. Arnstein; Emmie G. Hershey; James B. Hood; and Ross P. Hostetter, jointly and severally, for actual, consequential, and incidental damages suffered, pre-judgment interest, for punitive damages, and such other relief as the Court may deem reasonable and proper.

FOR A THIRD CAUSE OF ACTION
(Libel and Libel *Per Se*)
(Against Ms. Maybank)

70. The Austins reallege and incorporate the foregoing factual and jurisdictional statements by reference as if they were set forth verbatim.

False Statements

71. Ms. Maybank made, sent, caused to be sent, delivered, or caused to be delivered false, defamatory, and injurious statements by way of text messages about the Austins published to numerous individuals.

72. In communications with third parties, including a text conversation with Lizzie Holt and Melissa Brown, Ms. Maybank falsely accused the Austins of the following:

a. Falsely claiming that Lauren Phillips, a nurse at CDS, left her position because of actions taken by Mr. Austin, despite Ms. Phillips directly informing Mr. Austin that such claims were untrue.

b. Falsely stating that Mr. Austin made it his “*mission to defame CDS,*” suggesting that he was engaged in a deliberate and malicious effort to damage the school’s reputation.

c. Falsely asserting that Mr. Austin was “*creating misleading media information,*” implying that he engaged in deceptive or unethical conduct.

d. Falsely claiming that Ms. Austin entered CDS classrooms and told children that they did not have to wear masks as instructed by their teachers, despite this never occurring. This falsehood misrepresented Ms. Austin’s conduct and suggested she was disruptive and undermining school policies.

Publication

73. The defamatory statements were published in text messages and communicated to third parties, including Lizzie Holt and Melissa Brown, and subsequently disseminated within the CDS community.

74. These statements were made with actual or implied malice, as Ms. Maybank either knew they were false or acted with reckless disregard for the truth.

Causation & Damages

75. The publication of these false statements has caused significant reputational harm to the Austins within the CDS community and the broader Charleston community.

76. These statements have subjected the Austins to severe social and professional consequences, including harm to their standing within their professional and personal networks.

77. Ms. Maybank's false and defamatory statements against Mr. Austin falsely accused him of engaging in conduct that, if true, would lead any reasonable person to believe he was unfit for his profession as a South Carolina lawyer, thereby constituting defamation *per se*.

78. The false allegations against Mr. Austin impeached his honesty, integrity, and professional reputation by falsely suggesting that he engaged in defamatory behavior, intentionally spread misleading information, and was responsible for the departure of a CDS employee. These statements directly impact his profession, causing financial and reputational harm.

79. Ms. Maybank's false statements also defamed Ms. Austin by falsely portraying her as someone who disrupted school operations, interfered with teachers' authority, and spread misinformation to students. These statements harmed Ms. Austin's reputation among the school community, parents, and broader social and professional circles.

80. The false allegations against Ms. Austin caused her emotional distress and embarrassment, as they portrayed her in a misleading and damaging light that subjected her to undue scrutiny, criticism, and reputational harm.

81. Ms. Maybank knowingly and purposefully published these written defamatory statements or published them to harm the Austins' reputations or with reckless disregard for the harm they would cause.

82. The written statements were false, concerned the Austins, and were not privileged.

83. Ms. Maybank acted recklessly, willfully, and grossly negligently, or with reckless disregard for the Austins' reputations as respected members of their community.

84. As a direct and proximate result of the libelous statements made by Ms. Maybank, the Austins have suffered and continue to suffer emotional distress, reputational harm, and professional damage. They have sustained actual, special, and consequential damages in an amount to be proven to a jury at trial.

85. WHEREFORE, Plaintiffs Frances D. Austin and Marshall T. Austin pray for judgment on this cause of action against Defendant Lynne Maybank for actual, consequential, and incidental damages suffered, pre-judgment interest, for punitive damages, such other relief as the Court may deem reasonable and proper.

FOR A FOURTH CAUSE OF ACTION
(Tortious Interference with Contract)
(Against Ms. Arnstein, Ms. Hershey, Mr. Hood, and Mr. Hostetter)

86. The Austins reallege and incorporate the foregoing factual and jurisdictional statements by reference as if they were set forth verbatim.

Existing Contracts

87. The Austin's children were enrolled at CDS under valid education contracts and were under contract to enroll for the next school year.

Intentional Interference

88. The CDS Executive Committee meeting minutes show the board strategically planned to deny the next school year's enrollment contract to Austin's children.

89. Ms. Arnstein, Ms. Hershey, Mr. Hood, and Mr. Hostetter employed pretextual justifications to justify these retaliatory acts.

Causation and Damages

90. As a direct and proximate result of Ms. Arnstein's, Ms. Hershey's, Mr. Hood's, and Mr. Hostetter's tortious interference with the contract, the Austins have been damaged, suffering emotional distress and financial harm from the forced withdrawal of their children from CDS, and having to enroll their children in a different school. The amount of the actual, special, and consequential damages will be determined by a jury at the trial of this case. The Austins are entitled to and request an award of punitive damages.

91. WHEREFORE, Plaintiffs Frances D. Austin and Marshall T. Austin pray for judgment on this cause of action against Defendants Judith F. Arnstein; Emmie G. Hershey; James B. Hood; and Ross P. Hostetter, jointly and severally, for actual, consequential, and incidental

damages suffered, pre-judgment interest, for punitive damages, such other relief as the Court may deem reasonable and proper.

FOR A FIFTH CAUSE OF ACTION

(Negligent Misrepresentation)

(Against CDS, Ms. Arnstein, Ms. Hershey, Mr. Hood, and Mr. Hostetter)

92. The Austins reallege and incorporate the foregoing factual and jurisdictional statements by reference as if they were set forth verbatim.

False Representations

93. CDS, Ms. Arnstein, Ms. Hershey, Mr. Hood, and Mr. Hostetter made false representations to the Austins.

94. CDS, Ms. Arnstein, Ms. Hershey, Mr. Hood, and Mr. Hostetter had a pecuniary interest in making the statements to the Austins.

95. CDS, Ms. Arnstein, Ms. Hershey, Mr. Hood, and Mr. Hostetter owed duties to communicate truthful information to the Austins.

96. CDS, Ms. Arnstein, Ms. Hershey, Mr. Hood, and Mr. Hostetter breached their duties to communicate truthful information to the Austins.

Reliance

97. The Austins justifiably relied on the representations made by CDS, Ms. Arnstein, Ms. Hershey, Mr. Hood, and Mr. Hostetter.

Causation & Damages

98. As a direct and proximate result of the negligent misrepresentations made by CDS, Ms. Arnstein, Ms. Hershey, Mr. Hood, and Mr. Hostetter, the Austins have been damaged, suffering emotional distress and financial harm from Mr. Austin being removed as a Trustee from the BOT and the forced withdrawal of their children from CDS, and having to enroll their children in a different school. The amount of the actual, special, and consequential damages will be determined by a jury at the trial of this case.

99. WHEREFORE, Plaintiffs Frances D. Austin and Marshall T. Austin pray for judgment on this cause of action against Defendants CHARLESTON DAY SCHOOL, INC.; Judith F. Arnstein; Emmie G. Hershey; James B. Hood; and Ross P. Hostetter, jointly and severally, for actual, consequential, and incidental damages suffered, pre-judgment interest, and such other relief as the Court may deem reasonable and proper.

FOR A SIXTH CAUSE OF ACTION
(Violation of the South Carolina Unfair Trade Practices Act)
(Against CDS, Ms. Arnstein, Ms. Hershey, Mr. Hood, and Mr. Hostetter)

100. The Austins reallege and incorporate the foregoing factual and jurisdictional statements by reference as if they were set forth verbatim.

101. This is a cause of action under the South Carolina Unfair Trade Practice Act, S.C. CODE ANN. §39-5-10, *et seq.*

102. CDS is a private educational institution engaged in trade or commerce in South Carolina.

Unfair or Deceptive Acts

103. As alleged throughout this Complaint, CDS, Ms. Arnstein, Ms. Hershey, Mr. Hood, and Mr. Hostetter engaged in unfair or deceptive acts or practices of trade or commerce in so far as is shown by their actions a) to remove Mr. Austin from the BOT and b) not renew the Austins' children's enrollment contracts for the next school year.

104. CDS', Ms. Arnstein's, Ms. Hershey's, Mr. Hood's, and Mr. Hostetter's use of such unfair and/or deceptive acts and omissions was willful.

Impact on the Public Interest

105. CDS', Ms. Arnstein's, Ms. Hershey's, Mr. Hood's, and Mr. Hostetter's conduct is capable of repetition.

Causation and Damages

106. As a direct and proximate result of CDS', Ms. Arnstein's, Ms. Hershey's, Mr. Hood's, and Mr. Hostetter's acts and omissions in violation of the South Carolina Unfair Trade Practices Act, the Austins suffered an ascertainable amount of loss of money or property.

107. WHEREFORE, Plaintiffs Frances D. Austin and Marshall T. Austin pray for judgment on this cause of action against Defendants CHARLESTON DAY SCHOOL, INC.; Judith F. Arnstein; Emmie G. Hershey; James B. Hood; and Ross P. Hostetter, jointly and severally, for actual, special, consequential, and incidental damages suffered plus pre-judgment interest. Further, Plaintiffs are also entitled to and request an award of treble damages, legal fees, and costs for these Defendants' willful conduct and statutory violation.

PRAYER FOR RELIEF

WHEREFORE, the Austins pray for judgment against the Defendants as stated in each of the causes of action asserted in this Verified Complaint for actual, special, consequential, and incidental damages, including harm to their reputations and financial losses related to seeking alternative schooling for the Austins children. The Austins are entitled to an award of punitive damages; and an award of treble damages, legal fees, and costs available under the SCUTPA; and for pre-judgment interest and the costs of this action and for such other and further relief as this Court deems just and proper.

Respectfully submitted,

/s/ Thomas A. Pendarvis

Thomas A. Pendarvis (SC Bar #64918)

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Marshall T. Austin

Beaufort, South Carolina

February 10, 2025

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CIVIL ACTION NO. 2025-CP-10-_____

Frances D. Austin and Marshall T. Austin,

Plaintiffs,

vs.

VERIFICATION

CHARLESTON DAY SCHOOL, INC.; Judith F.
Arnstein; Emmie G. Hershey; James B.
Hood; Ross P. Hostetter; and Lynne
Maybank,

Defendants.

PERSONALLY appeared before me, Frances D. Austin and Marshall T. Austin, who, first being duly sworn, say that they have read the foregoing Verified Complaint, and that the statements contained therein are true to the best of their knowledge except as to those stated to be based upon information and belief, as to which they believe such matters to be true.

Frances D. Austin
Frances D. Austin

Marshall T. Austin
Marshall T. Austin

Sworn to before me this 10th day of February, 2025
Margaret A. Marks
NOTARY PUBLIC FOR State of South Carolina
My commission expires: 5/9/34

