

IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

CASE NO. 2010-CA-00338

GILDA H. DAVIS AND JOSEPH DAVIS, JR.

PLAINTIFFS/APPELLANTS

VS.

BILOXI PUBLIC SCHOOL DISTRICT, et al.

DEFENDANTS/APPELLEES

On Appeal from the Circuit Court of
Harrison County, Mississippi, Second Judicial District
Civil Action No. A2402-2009-00035

**BRIEF OF APPELLEES AND REQUEST FOR DAMAGES AND COSTS
PURSUANT TO MISS. R. APP. P. 38**

Oral Argument Not Requested

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CERTIFICATE OF INTERESTED PARTIES

The undersigned counsel of record certifies that the following listed persons have an interest in the outcome of this case:

Gilda H. Davis, Appellant

Joseph Davis, Jr., Appellant

Biloxi Public School District, Appellee

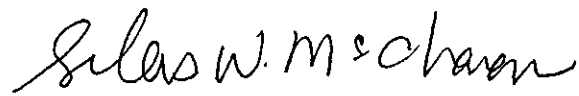
Board of Trustees of the Biloxi Public School, Appellee

Silas W. McCharen, Esq., Matthew T. Vitart, Esq., Edward F. Donovan,
Attorneys for Appellees

Honorable Lisa P. Dodson, Harrison County Circuit Court Judge

Honorable Gaston H. Hewes, Jr., Harrison County County Court Judge

This, the 16th day of December 2010.



SILAS W. McCHAREN, Attorney for Appellees

STATEMENT REGARDING ORAL ARGUMENT

Appellees (sometimes referred herein as the “School District”) submit that pursuant to Miss. R. App. P. 34, oral argument is unnecessary because the facts and legal arguments are adequately presented in the Appellees’ brief and the Appellate Record. Accordingly, this Court's decisional process will not be aided by oral argument.

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I. STATEMENT OF THE ISSUES

Appellees do not accept the nonsensical rambling of conclusory factual allegations by Appellants as the “Statement of the Issues” in this appeal. (Appellants’ Br. at 1). Pursuant to Miss. R. App. P. 28(b), Appellees provide a separate statement of issues as follows:

- 1) Whether, under Miss. R. App. P. 28, the Court should consider this appeal when Appellants’ “statement of the issues” did not identify a single issue or allege error.
- 2) Whether the Circuit Court correctly affirmed the County Court’s dismissal of Gilda H. Davis’s claims as barred under the applicable statutes of limitation and the Mississippi Workers’ Compensation Act.
- 3) Whether the Circuit Court correctly affirmed the County Court’s award of sanctions and dismissal of Joseph Davis, Jr.’s claims as barred under the doctrines of collateral estoppel, *res judicata*, and/or the applicable statutes of limitation.
- 4) Whether, under Miss. R. App. P. 38, Appellees are entitled to damages and costs based on Appellants’ frivolous appeal.

II. STATEMENT OF THE CASE

A. NATURE OF THE CASE

Appellants appeal from the Circuit Court's order below affirming the County Court's dismissal of all of Appellants' claims as a matter of law. (Appellees' R. Tab 1).¹

B. DISPOSITION IN THE COURT BELOW

On May 30, 2007, Appellants filed the underlying action in the County Court of Harrison County, Mississippi, Second Judicial District. (Appellees' R. Tab 2). Appellants' four page Complaint asserted several baseless theories of recovery, all of which revolved around the School District's April 29, 2004², decision to non-renew Gilda Davis as physical education teacher's aid. Although being named as a party Plaintiff, there were no allegations in the Complaint and are no arguments in this appeal, regarding the claims of Joseph Davis, Jr.³ The incoherent litany of "claims" referenced in the *Davis III* Complaint specifically included the following:

- (1) wrongful termination;
- (2) non-renewal of employee written letter of intent;
- (3) obstruction of justice;
- (4) intimidation;
- (5) retaliation;
- (6) discrimination in violation of seniority policy/statue [sic] and age discrimination;
- (7) violation of Title 42 U.S.C. § 1983;

¹ Citations to "Appellees' R." refers to Appellees' Record Excerpts submitted with this brief.

² As of the filing of the Complaint, May 30, 2007, **three years and 31 days had passed** since Gilda Davis was notified of her non-renewal with the School District. Appellants' argued for the first time in this appeal that they actually submitted the Complaint on May 25, 2007. (Appellants' Br. 12). Even assuming this unsubstantiated allegation as true, it does not help Appellants' position at all as that date is still **three years and 25 days** after Ms. Davis was notified of her non-renewal.

³ Mr. Davis apparently added himself as a plaintiff in order to practice law for his wife without a license.

- (8) deprivation of rights under the First (1st) Amendment of the U.S. Constitution;
- (9) deprivation of rights under the Fourth (4th) Amendment of the U.S. Constitution;
- (10) deprivation of rights under the Fifth (5th) Amendment of the U.S. Constitution;
- (11) deprivation of rights under the Sixth (6th) Amendment of the U.S. Constitution;
- (12) deprivation of rights under the Seventh (7th) Amendment of the U.S. Constitution;
- (13) deprivation of rights under the Ninth (9th) Amendment of the U.S. Constitution;
- (14) deprivation of rights under the Fourteenth (14th) Amendment of the U.S. Constitution; and
- (15) violation of Title VII of the Civil Rights Act of 1991.

Id. Although not specifically pled, the Complaint also accuses the School District of intentional wrongdoing and negligence. *Nowhere in the Appellants' Complaint* was there any reference to a May 26, 2004 "on the job" injury allegedly sustained by Gilda Davis while she was employed with the School District at Beauvoir Elementary School. *Id.* Gilda Davis raised that issue for the *first time on appeal* to the Harrison County Circuit Court. (Appellees' R. Tab 1 at 2).

On April 15, 2008, Appellees moved the County Court for dismissal or in the alternative for summary judgment, asserting that any claims of Gilda Davis were barred by Mississippi's general three year statute of limitation (MISS. CODE ANN. § 15-1-49) or by the Mississippi Tort Claims Act's (MTCA) one year statutes of limitation under the (MISS. CODE ANN. § 11-46-1) and were further barred by the exclusive remedy provision of the Mississippi Workers' Compensation Act. (Appellees' R. Tab 4).⁴ With regard Joseph Davis, Jr., Appellees moved to dismiss any

⁴ Had Appellants' Complaint referenced Gilda Davis' May 26, 2004 work related injury, Appellees would have moved to dismiss any claims relating thereto based on a) the exclusivity provision of MISS. CODE ANN. § 71-3-9 and b) either the one year statute of limitations under the Mississippi Tort Claims Act or the two year statute of limitations under the Mississippi Workers' Compensation Act.

claims asserted by him against the School District based on *res judicata*⁵. *Id.* After numerous delays and extensions, which were solely caused by Appellants, Appellees' dispositive motion came to be heard by the County Court on July 3, 2008.

After entertaining a lengthy oral argument, the County Court, on August 6, 2008, entered a written JUDGMENT OF DISMISSAL granting Appellees' motion in its entirety and awarding sanctions against Joseph Davis, Jr. (Appellees' R. Tab 5). The County Court specifically found that Gilda Davis' employment related claims accrued on April 29, 2004, the date Gilda Davis acknowledges she received notice of her non-renewal. *Id.* at 3. Because three years and 31 days had passed before the filing of Appellants' Complaint, the Trial Court ruled that her claims were time barred under both MISS. CODE ANN. §§ 11-46-1 and 15-1-49. *Id.* As to Joseph Davis, Jr., the County Court recognized that he was making a forbidden "third attempt" to sue the School District with regard for his September 2003 termination. *Id.* After analyzing Mr. Davis' duplicative meritless lawsuits and attacks against the School District, the County Court sanctioned Mr. Davis for \$5000.00 and concluded that any claims asserted by him in the instant litigation should be dismissed on the doctrines of *res judicata*, collateral estoppel and the applicable statutes of limitation. *Id.* at 4-5.

The Davises appealed the County Court's dismissal of their claims to the Circuit Court. After briefing and oral arguments, the Circuit Court affirmed the decision of the County Court on February 15, 2010. (Appellees' R. Tab 1). The Circuit Court, applying U.S. Supreme Court

⁵ Prior to filing the instant Complaint, Joseph Davis, Jr. had filed two consecutive and *identical lawsuits* against these Appellees with regard to his September 4, 2003 termination from the School District as a teacher's assistant.

precedent, found that Gilda Davis' employment related claims accrued on April 29, 2004, when she admittedly was notified that she would not be reemployed. *Id.* at 3-5. The Circuit Court held all of Gilda Davis' claims were barred by: a) the exclusivity provision and two year statute of limitation of the Mississippi Workers' Compensation Act; b) Mississippi Code Section 15-1-49's general three year statute of limitation, c) the MTCA's one year statute of limitation; d) Gilda's failure to provide pre-suit notice as required by the MTCA; and/or e) the one year statute of limitations otherwise applicable to Ms. Davis' unspecified intentional tort claims. *Id.*

As to Joseph Davis, Jr., the Circuit Court noted that, like the current appeal, "Mr. Davis makes no argument in his brief." *Id.* at 5-7. After discussing Mr. Davis' *two previous identical suits* against these Appellees, the Circuit Court affirmed the County Court's dismissal upon *res judicata* and collateral estoppel grounds finding that " he [Mr. Davis] has presented nothing new either to the County Court or this Court on this appeal in this regard." *Id.* The Court further held that any of Mr. Davis' claims not precluded were barred by the applicable statutes of limitations. *Id.*

Recognizing that "Mr. Davis offers no legal argument concerning the sanctions," the Circuit Court affirmed the County Court's order awarding sanctions against Joseph Davis, Jr. *Id.* Likewise, Mr. Davis presents no challenge to those sanctions in this appeal. After entertaining evidence from the School District and receiving no argument from Mr. Davis challenging the reasonableness of the School District's incurred attorney's fees, the County Court awarded sanctions against Mr. Davis for his harassment of Appellees noting that "this is the third time that the Biloxi Public School District has been required to expend money for attorney's fees to defend the same claim from the same Plaintiff," and holding that "this effort for a third bite from the

proverbial apple by Joseph Davis, Jr. will not be permitted . . . *this lawsuit is frivolous.*" (Appellees' R. Tab 5). Sanctions were awarded in the amount of \$5,085.36 with post judgment interest at the legal rate of 8%. *Id.* The County Court specifically noted that the sanctions award did not include costs incurred by the School District in defending the claims of Gilda Davis. *Id.*

C. STATEMENT OF THE FACTS

1. Gilda Davis

Appellant, Gilda Davis, was employed as a Physical Education Assistant with the Biloxi Public School District. On April 29, 2004 she admittedly was notified by then deputy superintendent Robert W. Bowles, Ph.D., that her contract would not be renewed for the following school year, 2004-2005. (Appellees' R. Tabs 1 and 2). Although *not referenced in the Appellants' Complaint* (and irrelevant for the purposes of this appeal), Gilda Davis allegedly sustained a work related injury on or about May 26, 2004. (Appellees' R. Tabs 1 and 2) and (Appellants' Br. at 1). Gilda Davis, however, waited until May 30, 2007, more than three years after each of these events, to file the underlying Complaint. (Appellees' R. Tab 2)

2. Joseph Davis, Jr.

As a result of Appellant, Joseph Davis Jr.'s, "repeated acts of unprofessional and disrespectful conduct," the School District decided to terminate him from his position as a teacher's aide. *Joseph Davis, Jr. v. Biloxi Public School District, et al.*, 937 So. 2d 459, 461 (Miss. Ct. App. 2005). On September 4, 2003, the School District notified Mr. Davis of his termination. *Id.* Although not entitled to a hearing before the School District's Board of Trustees (hereinafter "the Board"), the School District complied with Mr. Davis' request to have the Board

conduct a hearing to determine whether his termination should be upheld. After conducting a hearing, the Board upheld the School District's decision to terminate. *Id.*

a. Davis I Litigation

In January 2004, Joseph filed a pleading which he styled an appeal with the Circuit Court of Harrison County, Mississippi. (Addendum "A"). The allegations of that pleading nearly mirrored the allegations set forth in the current Complaint. "The circuit court judge dismissed Davis' claims, finding that he was not entitled to judicial review because he was an 'at-will employee.'" *Davis v. Biloxi Public School District, et al.*, 937 So. 2d 459, 462 (Miss Ct. App. 2005). Joseph appealed to the Mississippi Supreme Court, which referred the case to the Mississippi Court of Appeals.

The Mississippi Court of Appeals affirmed the circuit court's judgment and dismissal of Joseph's appeal. *Id.* at 462. The court specifically held that Joseph, as a teacher's aide, was not an "employee" entitled to the due process protections of the Mississippi's Education Employment Procedures Law of 2001, Mississippi Code section § 37-9-113, and that none of his legal or constitutional rights were violated because the District terminated him for "repeated acts of unprofessional and disrespectful conduct." *Id.*

Thereafter, Joseph petitioned for certiorari to the Mississippi Supreme Court, which was denied. He then petitioned the United States Supreme Court for certiorari, which was likewise denied.

b. Davis II Litigation

Joseph, unhappy with the U.S. Supreme Court's refusal to entertain these same baseless claims, filed his second unsuccessful suit in Harrison County Circuit Court one week thereafter

on February 28, 2007. (Addendum “B”). The Complaint in *Davis II* was simply a regurgitation of the *Davis I* pleading, and like the current suit, asserted the same allegations against the same defendants. On November 16, 2007, the circuit court judge dismissed *Davis II*, holding that the claims raised were essentially the same legal claims which were raised by the Plaintiff in his first legal initiative and that all claims asserted in the Mr. Davis’ complaint not otherwise barred by the doctrines of collateral estoppel and/or *res judicata* were, in fact, barred by the applicable statutes of limitation. Undeterred, Joseph Davis appealed to the Mississippi Supreme Court, which again referred the case to the Mississippi Court of Appeals.

The Mississippi Court of Appeals affirmed the dismissal of *Davis II*. *Davis v. Biloxi Public School District, et al.*, 2009 Miss. App. LEXIS 765 (Miss Ct. App. November 3, 2009).

Specifically, the court held “under the doctrine of collateral estoppel, Davis is precluded from relitigating in a second action [*Davis II*] issues already decided in the prior action [*Davis I*],” that *res judicata* applied, and that “the circuit court did not err in dismissing Davis’s remaining claims as barred under the statute of limitations.” *Id.* Joseph’s motion to reconsider was denied. Then, once again, he petitioned the Mississippi Supreme Court for certiorari, which was likewise denied.

c. *Davis III* Litigation (the current action)

Three months after filing *Davis II*, Joseph, involved his wife Gilda in his harassment of Appellees. Together, they commenced the current action, *Davis III*, on May 30, 2007 against Appellees even though *Davis II* was still working its way through the trial court. (Appellees’ R. Tab 2). The current Complaint is essentially a refile of the *Davis I and II* complaints but with Gilda added as a plaintiff. It is nearly identical to their subsequent *Davis V* complaint. The disposition of the Courts below is discussed above.

d. Davis IV Litigation

Although not essential to the outcome of this appeal, this Court should be aware that Appellants' are also vexatiously harassing these Appellees with duplicative litigation in federal court. In *Davis IV*, filed in the United States District Court for the Southern District of Mississippi on January 13, 2010, Joseph, the sole plaintiff, asserts his usual termination related allegations against these Appellees plus a vague incoherent reference to a 1999 garnishment. (Addendum "C"). The *Davis IV* Complaint asserts the same litany of claims previously or currently being litigated in *Davis I, II, and III*.

e. Davis V Litigation

Joseph and Gilda Davis filed *Davis V* against these Appellees on April 29, 2010. (Addendum "D"). That Complaint is nearly identical in all respects to the current complaint, very similar to *Davis I, II, and IV*, and equally meritless, vexatious, and incoherent. Fed up with the Davis' ongoing harassment and unprofessional conduct⁶, Appellees have moved the federal district court to sanction Appellants and to issue a permanent injunction that would prevent them from filing any further suits against Appellees without prior court approval. (Addendum "E").

In sum, for nearly seven years, Joseph and Gilda H. Davis have subjected the School District, its employees, and the court system to a continuous and abusive onslaught of frivolous, vexatious, and harassing litigation. Indeed, Appellees have been forced to expend tens of thousands of dollars defending against these same baseless claims once in an administrative hearing, once before a

⁶ As just one example: During a recent *Davis IV* teleconference with the Southern District's Chief Magistrate Judge, John Roper, Mr. Davis, in a completely unprovoked tirade, continually interrupted Judge Roper and counsel opposite, and yelled at the top of his lungs that counsel opposite "were liars" and made references to some unspecified conspiracy.

county court, three times in circuit court, twice in the Mississippi Court of Appeals with opinions issued, three times in the Mississippi Supreme Court, once in the United States Supreme Court, and twice in federal district court. The Davises have never succeeded. For the reasons below, this Court should affirm the Circuit Court's affirmance of the County Court's dismissal at Appellants' costs and Appellants should be sanctioned for this frivolous appeal.

III. SUMMARY OF THE ARGUMENT

This appeal deserves no consideration at all because Appellants' brief's "statement of the issues" violates Miss. R. App. P. 28 since it is an incoherent rambling of conclusory allegations that does not clearly identify any issue or specify any reversible error.

With regard to the appeal of Gilda Davis, her claims against the School District revolve entirely around the School District's April 29, 2004 non-renewal notice or an alleged (but not pleaded) May 26, 2004 on-the-job injury. The County and Circuit Courts were correct in holding that all her claims are barred by the applicable statutes of limitation and that her work related injury claim was preempted and barred by the Mississippi Workers' Compensation Act.

With regard to the appeal of Joseph Davis, Jr., the County and Circuit Courts were correct in holding all of his claims barred by *res judicata* and collateral estoppel since they have been fully litigated, adjudicated, and affirmed on appeal in *Davis I* and *II*. Those courts were also correct in holding that all of Mr. Davis' claims were also barred by the statutes of limitation.

Because Mr. Davis has repeatedly lost multiple prior, duplicative suits against these Appellees on the same law and facts, and because Mr. and Mrs. Davis have disregarded the personalized legal instruction they received from this Court in prior litigation, they had no reasonable hope of success when filing their Complaint or this appeal. This appeal is another

example of Appellants' malicious harassment of the Appellees and warrants sanctions under Miss. R. App. P. 38

This Court should AFFIRM the Circuit Court's order affirming the County Court's judgement of dismissal of the underlying Complaint. This Court should also sanction Appellants, especially Mr. Davis, for filing this frivolous appeal and award just damages and double costs to the Appellees for having to expend a substantial amount of money and time defending the same.

IV. ARGUMENT

A. STANDARD OF REVIEW

This Court applies a *de novo* standard when reviewing whether a circuit court properly affirmed a county court's judgment of dismissal against *pro se* plaintiffs. *Davis v. Seymour*, 868 So. 2d 1061, 1063-1064 (Miss. Ct. App. 2004) (Another case where a *pro se* Joseph and Gilda Davis sued a sixteen year old girl and unsuccessfully appealed the decision of the Harrison County Circuit Court, sitting as an appellate court, which affirmed the county court's grant of summary judgment and dismissal in favor of the defendants.); *McClain v. Clark*, 992 So. 2d 636, 637 (Miss. 2008) (citing *City of Jackson v. Perry*, 764 So. 2d 373, 375 (Miss. 2000)). The standard by which this Court reviews an appeal of summary judgment is the same standard employed by the trial court under MISS. R. CIV. P. 56 (c). *Cossitt v. Alfa Ins. Corp.*, 726 So. 2d 132, 136 (Miss. 1998).

Pursuant to MISS. R. CIV. P. 56 (c), summary judgment is appropriate, "if the pleadings, depositions and answers to interrogatories and admissions on file, together with affidavits, if any, show there is no genuine issue as to any material fact . . . the moving party is entitled to judgment as a matter of law." *Id.* The presence of a hundred contested issues of fact will not prevent summary judgment where there is no genuine dispute regarding material issues of fact. *Shaw v.*

Burchfield, 481 So.2d 247, 252 (Miss. 1985). “Factual disputes that are irrelevant or unnecessary will not be counted.” *Id.* A fact is “material” if it “tends to resolve any of the issues properly raised by the parties,” *Morgan v. City of Ruleville*, 627 So.2d 275, 277 (Miss. 1993), and a dispute over a material fact is “genuine” only if the evidence is such that “reasonable minds in a jury could differ on such an issue.” *Strantz v. Pinion*, 652 So.2d 738, 741 (Miss. 1995).

If the moving party’s evidence satisfies the initial burden, the adverse party must produce “significant probative evidence showing that there are indeed genuine issues for trial.” *Price v. Purdue Pharma Co.*, 920 So. 2d 479, 485 (Miss. 2006) (emphasis added). The party opposing the motion must be diligent and may not rest upon mere allegations or denials in the pleadings, but must set forth specific facts showing there are genuine issues for trial. *Richmond v. Benchmark Constr. Corp.*, 692 So. 2d 60, 61 (Miss. 1997). If the nonmoving party fails to set forth specific facts to rebut the showing that no genuine issues of material fact exist, summary judgment should be entered in the moving party’s favor. *Coleman Powermate, Inc. v. Rheem Mfg. Co.*, 880 So.2d 329 (Miss. 2004).

B. UNDER MISS. R. APP. P. 28, THIS COURT SHOULD NOT CONSIDER THIS APPEAL ANY FURTHER BECAUSE APPELLANTS FAILED TO CLEARLY IDENTIFY ANY ISSUES.

Pursuant to Mississippi Rule of Appellate Procedure 28, this Court is not required to and should not further consider this appeal because Appellants’ brief’s “statement of the issues” section does not clearly identify a single issue for appeal nor does it specifically allege any reversible error by the trial court. Rather, Appellants’ “statement of the issues” is an incoherent, disjointed rambling of unsubstantiated conclusory factual allegations. (Appellants’ Br. at 1). How can Appellees be expected to effectively respond when Appellants’ brief gives them no idea what

needs to be responded too? Or, perhaps the better question is, how can this Court be expected to guess why an appellant is appealing, or worse, be expected to play lawyer for and appellant and raise issues on their behalf?

When an appellant's brief's "statement of the issues" fails to clearly identify any issue, the trial court's decision should be affirmed pursuant to Miss. R. App. P. 28. *See Giles v. Stokes*, 988 So. 2d 926, 929 (Miss. Ct. App. 2008) ("[Appellant] does not list this dismissal as error *under his statement of issues*. Accordingly, the review of such claims is not proper for this appeal and is waived.") (citing *Davis v. J.C. Penney Co.*, 881 So. 2d 969, 970 (Miss. Ct. App. 2004)) (emphasis added); *Giuffria v. Concannon*, 851 So. 2d 436 (Miss. Ct. App. 2003); *King v. State*, 857 So. 2d 702 (Miss. 2003); *Jones v. Howell*, 827 So. 2d 691 (Miss. 2002).

This rule especially applies to Joseph and Gilda Davis, because this Court has provided them personalized notice of the severe consequences of failing to identify issues for appeal. This is not the first time Joseph Davis, Jr. has ignored Rule 28's mandates. In *Joseph Davis, Jr. v. J.C. Penney Company, Inc.*, Joseph Davis Jr. (*pro se*) sued J.C. Penneys after he was convicted of resisting arrest and trespassing on their Biloxi premises apparently following a ruckus he caused while returning an item. 881 So. 2d 969 (Miss. Ct. App. 2004). The circuit court granted J.C. Penney's motion for summary judgment and sanctions against Davis. *Id.* at 970. Davis appealed. *Id.* The Mississippi Court of Appeals affirmed and instructed Mr. Davis that "Pursuant to Mississippi Rule of Appellate Procedure 28, an appellant's brief *must* contain the following: (1) a certificate of interested persons, (2) tables, (3) a *statement of the issues*, (4) a statement of the case, (5) a summary of the argument, (6) an argument, and (7) a conclusion." *Id.* (emphasis added). The Court held that they were "*not required to further consider [Mr. Davis'] appeal*"

because the appellant's brief submitted by Davis did not clearly identify any issues and thus failed to comply with M.R.A.P. 28. *Id.*⁷ (emphasis added) The Court noted the well-settled rule: "In the absence of *clearly identified* issues, there is nothing for this Court to consider or address in an appeal." *Id.* (citing *Giuffria v. Concannon*, 851 So. 2d 436 (Miss. Ct. App. 2003) ("The *pro se* brief. . . does not state any *specific* issues for consideration and fails to cite to any legal authority. *On this basis alone*, the Court is not required to further consider this appeal.) (emphasis added)).

The dispositive effect of a Rule 28 violation makes sense because these Appellees have been forced to spend a significant amount of time and money in responding to this appeal without even being able to confidently identify what issues they need to respond too. Also worth noting, is the waste of judicial resources mounting even now.

Joseph and Gildas' "statement of the issues" again does not clearly identify a single issue or point of reversible error. Therefore, this Court should refuse to further consider this appeal and affirm the Circuit Court's decision for the same reason that the Court of Appeals refused to consider Mr. Davis' appeal against J.C. Penneys six years ago.

C. THE CIRCUIT COURT PROPERLY AFFIRMED THE COUNTY COURT'S DISMISSAL OF GILDA H. DAVIS' CLAIMS AS A MATTER OF LAW

1. Gilda Davis' Employment Related Claims Are Barred under the Applicable Statutes of Limitation

a. MISS. CODE ANN. § 15-1-49

⁷ The Court dismissed Davis' appeal even though he told the court "he would make the Court aware of his issues upon oral argument." *Id.*

Gilda Davis received a non-renewal of employment notice letter on April 29, 2004. (Appellees R. Tabs 1 and 2). The Complaint asserts several causes of action predicated on that non-renewal; mainly violations of 42 U.S.C. § 1983 and general deprivation constitutional rights. *Id.* Appellants' Complaint and their current brief confirm that this action was commenced *more than* three years later. (Appellants' Br. 1) Thus, Mrs. Davis' termination related claims require dismissal as they are barred by the applicable statutes of limitation.

The U.S. Supreme Court has held that the forum state's personal-injury statute of limitations should be applied to all 42 U.S.C. § 1983 claims. *Wilson v. Garcia*, 471 U.S. 261, 280 (1985). Therefore, Mississippi's general three-year statute of limitations, § 15-1-49, is applicable to the § 1983 claims herein. *Davis v. Biloxi Pub. Sch. Dist.*, 43 So. 3d 1135, 1137 (Miss. Ct. App. 2009) (The Court of Appeals giving Mr. Davis personalized instructions that "the statute limitations for section 1983 claims in Mississippi is three years."); *See also Hubbard v. Miss. Conf. of the United Methodist Church*, 138 F. Supp. 2d 780, 782 (S.D. Miss. 2001) (*citing Thomas v. City of New Albany*, 901 F.2d 476, 476 (5th Cir. 1990)). Mississippi Code Annotated § 15-1-49 provides the following:

§ 15-1-49. Limitations applicable to actions not otherwise specifically provided for.

(1) All actions for which no other period of limitation is prescribed shall be commenced within three (3) years next after the cause of such action accrued, and not after.

While state law determines the limitations period for § 1983 claims, federal law determines when a § 1983 cause of action accrues. *See Hitt v. Connell*, 301 F.3d 240, 246 (5th Cir. 2002); *Piotrowski v. City of Houston*, 237 F.3d 567, 580 (5th Cir. 2001), *cert. denied*, 534 U.S. 820, 122 S. Ct. 53, 151 L. Ed. 2d 23 (2001); *Burns v. Harris County Bail Bond Bd.*, 139 F.3d 513, 518

(5th Cir. 1998); *Price v. Jefferson County*, 470 F. Supp. 2d 665, 681 (E.D. Tex. 2006). In *Chardon v. Fernandez*, the U.S. Supreme Court clearly established that a § 1983 cause of action accrues when the plaintiff *receives notice of termination*, not when the employment actually terminates. 454 U.S. 6, 7-8 (1981).

According to federal law, the statute of limitations for Ms. Davis' § 1983 and constitutional rights claims accrued/began to run on April 29, 2004 when she admittedly received the non-renewal notice. (Appellants' Br. at 2); (Appellees' R. Tab 2). Applying Mississippi's three year limitation statute, the time within which to file her § 1983 claim expired on or about **April 29, 2007**, three years from the non-renewal notice. Ms. Davis, however, admits she waited until May 30, 2007, **31 days after** the expiration of the statute to file the instant § 1983 action.⁸ Because Ms. Davis' § 1983 and constitutional claims were untimely, the Circuit Court was correct when it affirmed the County Court's dismissal of these claims as a matter of law.

b. MISS. CODE ANN. § 11-46-11

In addition to her claims for relief under § 1983, Ms. Davis alleged various Mississippi state law tort claims against these governmental entity Appellees⁹. As such, all of those claims were controlled by, and required strict compliance with, the Mississippi Tort Claims Act. MISS. CODE ANN. § 11-46-1 *et seq.*

⁸ For the first time in this litigation Appellants, in their brief, allege that "The Appellants filed the complaint on May 25, 2007, it was not put into the computer by the clerk until May 30, 2007 . . ." (Appellants' Br. at 12). Appellants provide no evidence to support this new assertion, but even if that was true the Complaint is still time barred since May 25, 2007 is 26 days too late.

⁹ School districts are included as governmental entities under this statute. Miss. Code Ann. § 11-46-1(I).

The MTCA provides that “all actions brought under the provisions of this chapter shall be commenced within one (1) year next after the date of the tortious, wrongful or otherwise actionable conduct on which the liability phase of the action is based, and not after . . .”¹⁰ MISS. CODE ANN. § 11-46-11(3). A cause of action has been held to accrue when the alleged tortious conduct causing the injury occurs. *Black v. Ansah*, 876 So. 2d 395, 398 (Miss. Ct. App. 2003) (applying MISS. CODE ANN. § 11-46-11(3) in a wrongful termination action). In *Black*, the Mississippi Court of Appeals held that the plaintiff, who was provided notice of non-renewal of her contract for employment one year before her employment was to terminate, accrued at the time of the notice, not at the time of termination. *Id.* at 400. *See also Stevens v. City of Jackson*, 2010 U.S. Dist. LEXIS 31657 (S.D. Miss. Mar. 30, 2010) (applying *Black* in federal district court to dismiss state tort claims as time barred per the MTCA statute of limitation).

Ms. Davis’ employment related state tort claims under the MTCA accrued on April 29, 2004 when she received the non-renewal notice. Pursuant to MISS. CODE ANN. § 11-46-11, the statute of limitation expired on or about April 29, 2005; *i.e.*, one year from her non-renewal notice. Ms. Davis, however, waited until May 30, 2007, over two years after the MTCA statute of limitation expired, to file the underlying action. Because Ms. Davis’ state law tort claims against the School District were untimely under MISS. CODE ANN. § 11-46-11, the Circuit Court properly affirmed the County Court’s dismissal of Ms. Davis’ state tort law claims as a matter of law.

¹⁰ The 90 day notice requirement described in § 11-46-11(1) will toll the one year limitations period for 95 days. The application of this section is of no consequence to this action given that plaintiff’s lawsuit was filed over 170 days after the running of the one-year statute. *Furthermore, plaintiff herein did not comply with said 90 day notice provision to warrant any tolling.*

2. Gilda Davis' On-the-Job Injury Claims Are Barred Under the Mississippi Workers' Compensation Act and/or the Mississippi Tort Claims Act.

Although Ms. Davis' work-site injury claims are not properly before this Court on appellate review since they were not pleaded in her Complaint, the Appellees, however, will address such claims and demonstrate that they fail as a matter of law under the Mississippi Workers' Compensation Act and Mississippi Tort Claims Act.

a. MISS. CODE ANN. § 71-3-9

It is well established that the Mississippi Workers' Compensation Act is the exclusive remedy for an employee injured while acting in the scope and course of his employment. MISS. CODE ANN. § 71-3-9 (Rev. 2000). Section 71-3-9 provides, in pertinent part, as follows:

§ 71-3-9 Exclusiveness of liability

The liability of an employer to pay compensation **shall be exclusive and in place of all other liability** of such employer to the employee, his legal representative, husband or wife, parents, dependents, next-of-kin, and anyone otherwise entitled to recover damages at common law or otherwise from such employer on account of such injury or death.

Accordingly, because Ms. Davis' brief (Appellants' Br. at 6) confirms she was acting in the course and scope of her employment when she was allegedly injured on May 26, 2004, and her injuries were not the result of an intentional tort, such injuries were compensable under the MWCA and the exclusivity provision of the MWCA bars any tort claims she may assert against the School District.

b. MISS. CODE ANN. § 71-3-35

In addition to being barred by the exclusivity provision under the MWCA, even if Ms. Davis chooses to pursue a worker's compensation through the Mississippi Workers' Compensation Commission, her claims will be time barred under the MWCA. Section 71-3-35 (1) of the MWCA provides as follows:

71-3-35 Limitation. No claim for compensation shall be maintained unless, within thirty (30) days after the occurrence of the injury, actual notice was received by the employer or by an officer, manager, or designated representative of an employer. If no representative has been designated by posters placed in one or more conspicuous places, then notice received by any superior shall be sufficient. Absence of notice shall not bar recovery if it is found that the employer had knowledge of the injury and was not prejudiced by the employee's failure to give notice. **Regardless of whether notice was received, if no payment of compensation (other than medical treatment or burial expense) is made and no application for benefits filed with the commission within two years from the date of the injury or death, the right to compensation therefor shall be barred.**

(Emphasis added). Ms. Davis' alleged work related injury occurred on May 26, 2004. (Appellants' Br. at 6). As such, she had until no later than, **May 26, 2006** to file an application for benefits with the Mississippi Worker's Compensation Commission. On information and belief, no claim for compensation benefits has ever been filed by Ms. Davis regarding her May 26, 2004 work related injury. Accordingly, her worker's compensation claim is time barred.

c. MISS. CODE ANN. § 11-46-11

Ms. Davis' non-pleaded work-site injury claims are also barred by the Mississippi Tort Claims Act. Ms. Davis' state tort claims related to her on-the-job injury, to the extent not governed by the Mississippi Workers Compensation Act, fall under the Mississippi Tort Claims Act and accrued on May 26, 2004. Pursuant to MISS. CODE ANN. § 11-46-11, the MTCA statute

of limitation expired on May 26, 2005; one year after Gilda's alleged accident. Ms. Davis, however, waited until May 30, 2007, over three years after her accident and over two years after the MTCA statute of limitation expired, to file the underlying action. Because Ms. Davis' unpleaded tort claims against the School District were untimely under MISS. CODE ANN. § 11-46-11, the Circuit Court properly affirmed the County Court's dismissal of Ms. Davis' state tort law claims as a matter of law.

D. THE CIRCUIT COURT PROPERLY AFFIRMED THE COUNTY COURT'S DISMISSAL OF JOSEPH DAVIS, JR.'S CLAIMS AS A MATTER OF LAW¹¹

1. Joseph Davis, Jr.'s Claims are Barred Under the Doctrines of *Res Judicata* and Collateral Estoppel

The doctrines of *res judicata* and collateral estoppel bar Mr. Davis' claims arising from his termination from employment. Such claims were previously raised, litigated and lost before the Board, the state County Court, state Circuit Court, the Mississippi Court of Appeals, the Mississippi Supreme Court, and the U.S. Supreme Court in *Davis I* and *II*. (Addendum "A" and "B"). Appellees incorporate by reference the two decisions of the Mississippi Court of Appeals in *Davis v. Biloxi Public School District et al.*, 937 So. 2d 459 (Miss. Ct. App. 2005) (*Davis I*) and *Davis v. Biloxi Public School District, et al.*, 2009 Miss. App. LEXIS 765 (November 3, 2009) (*Davis II*).

a. *Res Judicata*

¹¹ Even though Mr. Davis makes no arguments in his current brief nor in his brief to the Circuit Court, Appellees, having no way of knowing what grounds the Appellants base this appeal upon, will therefore, address the merits of Mr. Davis' claims and demonstrate that they fail as a matter of law.

The doctrine of *res judicata* applies in the instant case since Joseph actually raised, litigated and lost on these same exact claims and facts before the Board (Joseph), Circuit Court, the Mississippi Court of Appeals, the Mississippi Supreme Court, and the U.S. Supreme Court in *Davis I* and *II*.

“Four identities are required to establish *res judicata*: (1) identity of the subject matter; (2) identity of the cause of action; (3) identity of the parties; and (4) identity of the quality or character of persons against whom the claim is made.” *Davis v. Biloxi Pub. Sch. Dist.*, 43 So. 3d 1135, 1137 (Miss. Ct. App. 2009) (“*Davis II*”) (citing *Riley v. Moreland*, 537 So. 2d 1348, 1354 (Miss. 1989). “Where a question of fact essential to a judgment is actually litigated and determined by a valid and final judgment, that determination is conclusive between the parties in a subsequent suit on a different cause of action.” *Id.* (quoting *Garraway v. Retail Credit Co.*, 244 Miss. 376, 385, 141 So. 2d 727, 730 (1962)). It is well-established Mississippi law that a final judgment on the merits of an action by a court of proper jurisdiction precludes parties and their privies from re-litigating claims that were or could have been raised in that action. *Walton v. Bourgeois*, 512 So. 2d 698, 700 (Miss. 1987)

All of the claims raised by Mr. Davis in the current Complaint were raised or should have been raised in *Davis I* and *II*. All questions regarding his termination and the manner in which he was terminated were resolved against him in those two nearly identical prior cases. The four identities required for *res judicata* are satisfied and the doctrine applies.

b. Collateral Estoppel

The primary allegations in the current Complaint arise under 42 U.S.C § 1983. The doctrine of collateral estoppel is fully applicable to § 1983 actions. *Allen v. McCurry*, 449 U.S.

90, 104 (1980). “There is, in short, no reason to believe that Congress intended to provide a person claiming a federal right an unrestricted opportunity to relitigate an issue already decided” *Id.*

The preclusive effect of a school employee’s prior state court judgement is well established. Under Mississippi law, collateral estoppel applies when “(1) the plaintiff is seeking to relitigate a specific issue; (2) the issue was already litigated in a prior action; (3) the issue was actually determined in the prior action; and (4) the determination of the issue was essential to the judgment in the prior action.” *Raju v. Rhodes*, 809 F. Supp. 1229, 1236 (S. D. Miss. 1992); *Garraway v. Retail Credit Company*, 141 So. 2d 727, 730 (Miss. 1962) (“When a question of fact essential to a judgment is actually litigated and determined by a valid and final judgment, that determination is conclusive . . . in a subsequent suit on a different cause of action.”).

In *Raju*, a professor of surgery at the University of Mississippi Medical Center sued his supervisor under §1983 for violations of his constitutional rights. The federal district court granted summary judgment on the grounds that plaintiff’s claims were barred by litigation at the administrative level during the grievance procedure at the University. The Fifth Circuit affirmed. *Raju v. Rhodes*, 7 F.3d 1210 (5th Cir. 1993). The Fifth Circuit observed that “collateral estoppel conserves judicial resources, protects parties from multiple lawsuits, and promotes confidence in judgments and comity between state and federal courts.” *Raju*, 7 F.3d at 1214. The court determined that the administrative process utilized by the University satisfied the minimum procedural due process requirements necessary for application of collateral estoppel. *Id.*

Gates v. Walker, 865 F. Supp. 1222, 1237 (S.D. Miss. 1994) is directly on point and dispositive on the issue of collateral estoppel. *Gates*, a former teacher with the Hattiesburg

Municipal School District, brought a § 1983 action against the school district and various other school district employees, regarding the non-renewal of her employment contract. Gates claimed that the school district's non-renewal decision was based upon her alleged exercise of free speech, in violation of the First Amendment. *Id.* The district court, however, held that Gates' claims were barred by collateral estoppel and *res judicata* because the issues regarding her non-renewal were litigated and decided during her EEPL hearing which was ultimately affirmed by the Mississippi Supreme Court in *Board of Trustees of the Hattiesburg Mun. Separate School District v. Gates*, 461 So. 2d 730 (Miss. 1984).

The district court in *Gates* specifically rejected Gates' contention that, because § 1983 encompassed broader remedies than those available on the administrative and appellate levels, collateral estoppel should not apply. Instead, the district court found that both the rights she alleged to have been infringed upon and the underlying factual circumstances therein were considered and ruled on by the chancery court and the Mississippi Supreme Court, regardless of the nature of the exact remedy sought in each proceeding. *Id.* at 1240. In concluding that Gates' claims were barred by collateral estoppel, the district court specifically stated:

“The plaintiff in this case had her case reviewed by the Chancery Court on appeal from the decision of the school board and later by the Mississippi State Supreme Court. At these points, the plaintiff entered the judicial realm where issue preclusion principles are readily acknowledged. Plaintiff's core claim has been thoroughly litigated and decided against her. This court is not persuaded by any of plaintiff's arguments that another court should hear claims already previously litigated to finality in two state courts.”

Id. at 1241.

Like the claims of Gates, Joseph's core claims herein have been thoroughly litigated and decided against him. And like the district court in *Gates*, our state courts should refuse to entertain

a Complaint which asserts claims that have been litigated to finality in *Davis I* and *II* before four Mississippi state courts and the U.S. Supreme Court. Therefore, the Circuit Court properly affirmed the County Court's dismissal of Mr. Davis claims as a matter of law.

Because the doctrines of *res judicata* and collateral estoppel preclude Mr. Davis from having a proverbial "third-bite at the apple", the Circuit Court correctly affirmed the County Court's dismissal of his claims as a matter of law.

C. APPELLEES ARE ENTITLED TO DAMAGES AND DOUBLE COSTS PURSUANT TO MISS. R. APP. P. 38

Rule 38 of the Mississippi Rules of Appellate Procedure provides, "[i]n a civil case if the Supreme Court or Court of Appeals shall determine that an appeal is frivolous, *it shall* award just damages and single or double costs to the appellee." *Id.* (emphasis added). Since the instant appeal concerns Joseph Davis, Jr.'s improper attempts to re-litigate issues already ruled upon by multiple courts, and both Gilda and Joseph Davis' efforts to inappropriately burden the court system with non-meritorious litigation, their litigious propensities as a whole are relevant.

The Davis' can be best described as a "professional litigants." In addition to *Davis I*, *Davis II*, *Davis III* (the instant case), *Davis IV*, and *Davis V* which all arise from Gilda and/or Joseph's termination from employment, Appellees are aware of at least eight other lawsuits and/or appeals filed by Gilda H. Davis and/or Joseph Davis, Jr.:

- (1) In 1991 Joseph Davis, Jr. filed a lawsuit against Edna R. Wollard in the Harrison County Circuit Court, Second Judicial District, styled *Joseph Davis, Jr. v. Edna R. Wollard, et al.*, Civil Action No. A2402-9103424.
- (2) In 1997 Joseph Davis, Jr. filed a lawsuit against New York Life Insurance in Harrison County Circuit Court, Second Judicial District, styled *Joseph Davis, Jr. v. New York Life Insurance Company et al.*, Civil Action No. A2402-9700054;

- (3) In 1998, Joseph Davis, Jr. appealed a Municipal Court judgment for trespassing to the Harrison County Court, Second Judicial District, styled *Joseph Davis, Jr. v. City of Biloxi*, Civil Action No. E24029800057.
- (4) In 1998, Joseph Davis, Jr. appealed a Municipal Court judgment for resisting and obstructing arrest to the Harrison County Court, Second Judicial District, styled *Joseph Davis, Jr. v. City of Biloxi*, Civil Action No. E24029800058.
- (5) In 1999, Joseph Davis Jr. appealed a debt collection action judgment rendered in the Harrison County Court to the Harrison County Circuit Court, Second Judicial District, styled *Joseph Davis, Jr. v. Nationwide Recovery Service, Inc.*, Civil Action No. A2402-9900192. Mr. Davis thereafter appealed the Circuit Court's Decision to the Mississippi Supreme Court, Case No. 2000-CP-00036-SCT.
- (6) In 1999, both Joseph Davis and Gilda Davis filed a lawsuit against Mary Patricia Seymour and Jimmie Dale Ziegler in Harrison County Court, Second Judicial District, styled *Joseph Davis et al. v. Mary Patricia Seymour, et al*, Civil Action No. D2402-99-288. The Davises appealed the County Court's judgment to the Harrison County Circuit Court, Second Judicial District, Civil Action No. A2402-0100247. In 2002, the Davises appealed the Circuit Court's judgment to the Mississippi Supreme Court, Case No. 2002-CP-01647-COA. Said appeal was heard and decided by the Mississippi Court of Appeals.
- (7) In 1999, Joseph Davis, Jr. filed a lawsuit against J.C. Penny in the Circuit Court of Harrison County, Second Judicial District, styled *Joseph Davis, Jr. v. J.C. Penney Company, Inc.*, Civil Action No. A2402-9900030. In 2003, Mr. Davis appealed the Circuit Court's judgment to the Mississippi Supreme Court, Case No. 2003-CP-00381-COA. Said appeal was heard and decided by the Mississippi Court of Appeals.
- (8) In 2007 Joseph Davis, Jr. filed a lawsuit against McRae's stores in the Harrison County Court, Second Judicial District, styled *Joseph Davis, Jr. v. McRaes Store, Inc. et al.*, Civil Action No. D24020700148.

The Mississippi Supreme Court has equated a Rule 38 frivolous appeal to that of a frivolous motion under Miss. R. Civ. P. 11. *Harris v. Harris*, 988 So. 2d 376, 380 (Miss. 2008) (citing *Roussel v. Hutton*, 638 So. 2d 1305, 1318 (Miss. 1994)). The question therefore is whether a reasonable person would have any hope for success. *Id.*

Even though various courts in past *Davis* litigation have instructed them on certain points of law, the nature of Appellants' underlying arguments indicates the Davises totally disregarded

such instruction. Would a reasonable person have hope for success if, shortly after they lost an appeal to this Court, they filed a nearly identical lawsuit premised on legal and factual arguments that were explicitly rejected by this Court? Of course not, but that is exactly what Joseph and Gilda Davis are doing in this case as illustrated by the following:

- Appellants did not clearly identify any issue for this appeal even though they were personally warned of the fatal consequences of such a failure in *Joseph Davis, Jr. v. J.C. Penney Company, Inc.*, 881 So. 2d 969 (Miss. Ct. App. 2004).
- Ms. Davis commenced this action even though her husband had recently lost *Davis I* based on identical law and nearly undistinguishable facts. In *Davis I* they were instructed that teacher's aides (such as both of them) are not entitled to judicial review of these exact types of claims because they are "at-will employees." *Davis v. Biloxi Public School District, et al.*, 937 So. 2d 459, 462 (Miss Ct. App. 2005). A reasonable person would not have hope for success when their spouse had recently lost an identical law suit.
- Just over a year ago, the Court of Appeals gave Appellants personalized instructions that "the statute limitations for section 1983 claims in Mississippi is three years." *Davis v. Biloxi Pub. Sch. Dist.*, 43 So. 3d 1135, 1137 (Miss. Ct. App. 2009). Here, Appellants' incoherent brief relies on outdated precedent to improperly assert that the limitations period for § 1983 claims is six years. (Appellants' Br. at 14-16). Further, Mr. Davis does not even attempt to argue that his § 1983 claims are not time barred; obviously because he knew this at the time of filing.

Further, given that Mr. Davis is 0-9 (counting every tribunal he has sought relief from) in challenging his termination by the School District, it is clear no reasonable person would believe there could be any hope of success on appeal. With regard to Ms. Davis, her claims are clearly time barred or barred by the exclusivity provision of the MWCA and no reasonable person would believe there could be any hope of success on appeal, especially when she was on notice of such legal bars to recovery via her husbands past litigation.

The Appellees have been forced to expend tens of thousands of dollars in attorneys' fees and expenses to defend *Davis I* (and the multiple appeals therefrom), *Davis II* (and the subsequent

appeal before the Mississippi Court of Appeals), *Davis III* (the instant appeal), *Davis IV* (a similar ongoing federal action), and *Davis V* (an essentially identical ongoing federal action). The Appellees have also been forced to expend time and money in responding to Appellants' claims which are clearly time barred. Furthermore, the Appellees have been forced to respond to Ms. Davis' work related injury claims in this appeal which were *never asserted in the underlying Complaint*. The Davises undoubtedly believe they have nothing to lose by filing multiple lawsuits and appeals against these Appellees. Their vexatious, duplicative, and perpetual litigious conduct, however, should not be tolerated, but sanctioned.

Pursuant to MISS. R. APP. P. 38, the Appellees request this Court grant them damages and double costs in defending this appeal.

V. CONCLUSION

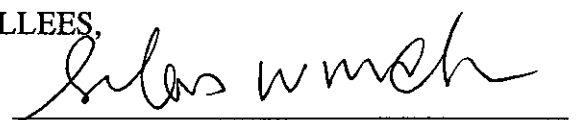
Based on the record evidence and the above arguments, Appellees respectfully request this Court to :

- (1) AFFIRM the Circuit Court's affirmance of the County Court dismissal of all of Appellants' claims as a matter of law; and
- (2) AWARD Appellees costs and damages pursuant to MISS. R. APP. P. 38.

Respectfully submitted,

APPELLEES,

BY:


OF COUNSEL

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CERTIFICATE OF SERVICE

I, Silas W. McCharen, of counsel for Biloxi Public School District and Biloxi Public School District Board of Trustees, do hereby certify that I have this day served by U.S. Mail a true and correct copy of the above and foregoing pleading to:

Gilda H. Davis and Joseph Davis, Jr.
Pro Se Appellants
346 Franks Drive
Biloxi, MS 39531

Honorable Gaston H. Hewes, Jr.
Harrison County Court Judge
P.O. Box 973
Gulfport, MS 39502

Honorable Lisa P. Dodson
Harrison Circuit Court Judge
P. O. Box 1461
Gulfport, MS 39502

THIS, the 16th day of December 2010



SILAS W. McCHAREN

Addendum to Appellees' Brief

<i>Davis I</i> Complaint	A
<i>Davis II</i> Complaint	B
<i>Davis III</i> Complaint	(See Appellee R. Tab 2)
<i>Davis IV</i> Complaint	C
<i>Davis V</i> Complaint	D
<i>Davis V</i> Memorandum of Authorities in Support of Defendants' Motion for Sanctions and Injunctive Relief	E

Addendum A

IN THE CIRCUIT COURT OF HARRISON, COUNTY
SECOND JUDICIAL DISTRICT

JOSEPH DAVIS, JR.,

PLAINTIFF

VERSES

A-2402-2004-11

BILOXI PUBLIC SCHOOL DISTRICT AND BILOXI PUBLIC SCHOOL BOARD,
BOARD OF TRUSTEES, AND DR. ROBERT W. BOWLES, an individual, AND
JOHN DOE, & JOHN DOE, individuals

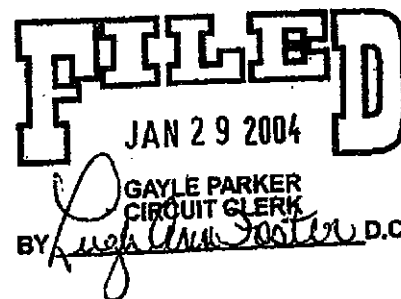
DEFENDANTS

MOTION OF APPEAL

By this Motion of Appeal, Joseph Davis, Jr., Pro Se, Plaintiff, appeals to the Circuit Court of Harrison County Mississippi, Second Judicial District, against the Biloxi Public School District and the Biloxi Public School Board, Biloxi Board of Trustees, and Dr. Robert W. Bowles, an individual, and John Doe, & John Doe, individuals.

The Plaintiff, Joseph Davis, Jr., Pro Se files this Motion of Appeal, under M.R.C.P. Rule 60(a) and Rule 60(b) there are numerous errors in the Grievance Process and the Grievance Procedure thereby depriving the Plaintiff, Joseph Davis, Jr., of a fair and just hearing and depriving the Plaintiff, Joseph Davis, Jr., of his constitutional rights under 42 U.S.C.A. § 1983, and have been denied his Constitutional Rights by the negating of the truth by the Administrators of the Biloxi Public School District and the Biloxi Board of Trustees and Dr. Robert W. Bowles, an individual, and John Doe, & John Doe, individuals. The Plaintiff/Appellant, Joseph Davis, Jr., is being denied Due Process of the Law under the 14th (Fourteenth) Amendment to the Constitution of the United States of America. The Plaintiff/Appellant, Joseph Davis, Jr., Pro Se, has been deprived of his Civil Rights secured by the Constitution of the United States of America and under Title VII of the Civil Rights Act of 1991. The Plaintiff/Appellant, Joseph Davis, Jr. Pro Se, individual God-given and Human Rights as a human being and citizen of the United States of America under the 9th (Ninth) Amendment to the Constitution of the United States of America also have been violated, by the Appellees/Defendants. The Defendants/Appellees under "Color of Law" violate 42 U.S.C.A. section 1983, and the actions of Defendants under "Color of Law" have deprived the Plaintiff/Appellant, Joseph Davis, Jr., Pro Se of his Constitutional Rights under the 1st, 4th, 5th, 6th, 7th, and the 14th Amendments all made obligatory upon the states through the Equal Protection Laws of the 14th Amendment pursuant to the rulings of the United States Supreme Court and the "Civil Rights Law" of the United States of America.

There are genuine issue(s) of material fact and Law the Biloxi Public School Board, Biloxi Board of Trustees did not consider or was omitted in the proceedings/hearing conducted on January 13, 2004.



I reported to Popps Ferry Elementary School at 7:15 a.m., Friday, September 5, 2003, and was met in the School's parking lot by Dr. Robert W. Bowles, Deputy Superintendent, Biloxi Public Schools, accompanied by Officer P. Bowen, Badge #102, of the Biloxi Police Department. Dr. Bowles gave me the letter dated September 4, 2003 informing me that I had been recommended for termination effectively immediately. The letter went on to state, "as of this date you are strictly prohibited from being present on any of the District's school premises for any reason. If you are found to be on the premises you will be charged with trespassing. Please understand that this action is deemed necessary by the district due to the comments you made in the last meeting with school officials." I accepted the letter from Dr. Bowles and confirmed the time with Officer P. Bowen. He stated the time to be 7:20 a.m. I got into my car to drive off but realized that I had the snacks for the students. I stopped the car and walked back to Dr. Bowles and Officer Bowen and asked if Dr. Bowles would give the snacks to my kindergarten class in Mrs. McCarthy's room. He accepted the snacks for the children and said he would give them to the class for me. I departed the premises.

In our telephone conversation, September 11, 2003, Dr. Tisdale, we discussed why I felt intimidated by your asking me to come to your office located in the Biloxi Public Schools Administration Building, on September 12, 2003. Even with your verbal permission as you so well granted, I still feel and felt quite uncomfortable and intimidated coming on the premises for fear of being arrested for trespassing, based on the directions and statements cited above in Dr. Robert W. Bowles' September 4, 2003 letter.

Since I have done nothing which warrants termination, the current situation appears to be retaliation by the administration for my questioning of the District's policies and the check for over \$5,000.00 a copy of which is in my personnel file with a transmittal letter. The Plaintiff, Joseph Davis, Jr. Pro Se, have a property interest in continued employment in the Biloxi Public School District base upon the over \$5000. 00 check that is being held by the Biloxi Public School District that it unlawfully garnished from my wages and the Biloxi Public School District still to this date refuse to acknowledge that it is and was an illegal and unlawful taking of my wages. The check still is being in the possession of the School District (Dr. Larry Drawdy, Dr. Robert Bowles, Mr. Jude McDonnel, and Biloxi Public School Board, Attorney Patti Golden are all involved in the scheme and cover-up of this action). I, Joseph Davis, Jr. have suffered grave retaliation and intimidation from this matter.

I was given 15 (fifteen) minutes to state my case at the Hearing held on January 13, 2004, by the unfair and unjust and bias Biloxi Public School Board, Biloxi Board of Trustees, who did not ask any questions at the end of the 15 Minutes Hearing nor did the Biloxi Board of Trustees review any, of the Relevant Evidence that was given to them at the hearing. The Biloxi Public School District, Biloxi Board of Trustees arbitrary and capriciously denied my appeal of my unlawful termination without any justifiable substantial reason or basis of fact or law, contrary to all evidence presented at the hearing and testimony by the Plaintiff. The Biloxi Public School District, Biloxi Board of Trustees have clearly violated the constitutional and statutory laws of the state by the unlawful termination of the Plaintiff, Joseph Davis, Jr., Pro Se.

Some of the statutory laws violated by the Defendants, Administrators of the Biloxi Public School District, Biloxi Board of Trustees are:

§ 37-9-14

§ 37-9-15

§ 37-9-16

§ 37-9-17

§ 37-9-18


§ 37-9-21

§ 37-9-59

Deprivation of Unites States Constitutional Rights 42 U.S.C.A. § 1983 and Title VII of the Civil Rights Act of 1991

The Biloxi Public School District, Biloxi Board of Trustees have no vested authority and no right under the law to terminate lawfully terminate, Joseph Davis, Jr., Pro Se, Plaintiff, Teacher Assistant, without just cause, violating and depriving the Plaintiff/Appellant under his Constitutional Rights under 42 U.S.C.A. § 1983 and Title VII of the Civil Rights Act of 1991.

Respectfully Submitted This 29th Day of January 2004.



Joseph Davis, Jr., Pro Se
346 Franks Drive
Biloxi, Mississippi 39531
228(388-6985)



Joseph Davis, Jr., Pro Se
Plaintiff/Appellant

CERTIFICATE OF SERVICE

I, Joseph Davis, Jr., Plaintiff/Appellant, Pro Se, certify that this day filed this Notice of Appeal and Motion of Appeal with the clerk of the Circuit Court together with the filing fee to be received by the Clerk on behalf of the Court, and have served a copy of this Notice of Appeal and Motion of Appeal by Certified United States Mail with postage prepaid return receipt requested on the following persons at these addresses, on January 29, 2004.

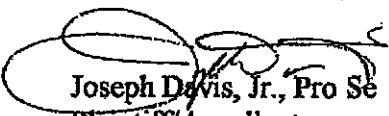
Lawyer Patti Golden
Biloxi Public School Board Attorney
P. O. Box 725
Biloxi, Ms 39533

Dr. Robert W. Bowles, Deputy Superintendent
Biloxi Public School District
160 St Peters Avenue
P.O. Box 168
Biloxi, Ms 39533

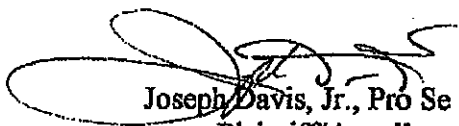
Dr. Larry A. Drawdy, Superintendent
Biloxi Public School District
160 St Peters Avenue
P.O. Box 168
Biloxi, Ms 39533

Richard Stewart, President
Biloxi Public School Board of Trustees
160 St Peters Avenue
P.O. Box 168
Biloxi, Ms 39533

This the 29th Day of January 2004.



Joseph Davis, Jr., Pro Se
Plaintiff/Appellant
346 Franks Drive
Biloxi, Ms 39531
(228)388-6985



Joseph Davis, Jr., Pro Se
Plaintiff/Appellant

Addendum B

COPY**FILED**
FEB 28 2007**IN THE CIRCUIT COURT OF HARRISON, COUNTY
SECOND JUDICIAL DISTRICT**GAYLE PARKER
CIRCUIT CLERKBy *Lisa Sandberg*

JOSEPH DAVIS, JR.

PLAINTIFF

VERSES

CAUSE NUMBER A2402-07-36

~~BILOXI PUBLIC SCHOOL DISTRICT, BILOXI PUBLIC SCHOOL BOARD, BOARD OF~~
~~TRUSTEES~~, AND DR. PAUL A. TISDALE, SUPERINTENDENT, BILOXI PUBLIC
 SCHOOL DISTRICT, DR. ROBERT W. BOWLES, DEPUTY SUPERINTENDENT, BILOXI
 PUBLIC SCHOOL DISTRICT, ~~LAWYER PATTE GOLDEN~~ (PAST SCHOOL BOARD
 ATTORNEY) BILOXI PUBLIC SCHOOL DISTRICT, DR. LARRY DRAWDY, (PAST
 SUPERINTENDENT) BILOXI PUBLIC SCHOOL DISTRICT, ~~LAWYER GERALD BLESSEY~~
 (PAST BILOXI PUBLIC SCHOOL BOARD ATTORNEY), BILOXI PUBLIC SCHOOL
 DISTRICT, DAVID BLAINE (PAST VICE PRESIDENT/PRESIDENT) BILOXI PUBLIC
 SCHOOL DISTRICT, ~~MAYOR A. J. HOLLOMAN~~, ~~CHIEF OF BILOXI~~, JUDE MCDONNELL,
 (PAST COMPTROLLER/DIRECTOR OF BUSINESS MANAGEMENT) BILOXI PUBLIC
 SCHOOL DISTRICT, BONNIE GRANGER, COMPTROLLER, AND SHANE SWITZER,
 COMPTROLLER, BILOXI PUBLIC SCHOOL DISTRICT, RICHARD F. STEWART (PAST
 PRESIDENT) BILOXI PUBLIC SCHOOL BOARD, ANDREA PETRO, (PAST PRINCIPAL
 POPPS FERRY ELEMENTARY SCHOOL) PRINCIPAL, LOPEZ ELEMENTARY SCHOOL,
 BILOXI PUBLIC SCHOOL DISTRICT, DR. JANICE WILSON, (PAST ASSISTANT
 PRINCIPAL) POPPS FERRY ELEMENTARY SCHOOL AND SUSAN BRAND, PRINCIPAL,
 BEAUVOIR ELEMENTARY SCHOOL, BILOXI PUBLIC SCHOOL DISTRICT,
 INDIVIDUALLY, AND JOHN DOE, & JOHN DOE, INDIVIDUALS DEFENDANTS

COMPLAINT

COMES NOW PLAINTIFF, Joseph Davis, Jr., Pro Se, who files this his Complaint
 against the aforesaid Defendants and individuals as aforesaid alleging wrongful termination,
 obstruction of justice, intimidation, retaliation, libel, slander, evincing intentional acts
 individually, and under "Color of Law" violating 42 U. S. C. A. Section 1983 depriving the
 Plaintiff of his Constitutional Rights under the 1st, 4th, 5th, 6th, 7th, 9th and 14th Amendments and
 violated the Plaintiffs' civil rights under the "Civil Rights Law" to include the Civil Rights Law
 under Title VII of the Civil Rights Act of 1991 of which Plaintiff, Joseph Davis, Jr., is a class
 minority secured by the Constitution of the United States of America.



The Plaintiff has been denied due process of the law under the 14th (Fourteenth) Amendment to the Constitution of the United States of America. The Plaintiff, Joseph Davis, Jr., Pro Se has been Denied Freedom of Speech under the First Amendment to the Constitution of the United States and Deprived of his Human Rights under the 9th (Ninth) Amendment to the Constitution of the United States of America, who would say as follows, to wit:

(1)

That the Plaintiff is an adult resident citizen of Biloxi, Mississippi residing in said City at all times pertinent hereto.

(2)

That the Defendant is a public entity organized and doing existing under the laws of the State of Mississippi and that the Defendants are adult citizens of the State of Mississippi employed by said entity who may be served with the process pursuant to Rule 4 by having them served with personal service pursuant to rule four (4), M. R. C. P.

(3)

On September 4, 2003, the Plaintiff, Joseph Davis, Jr., was wrongfully and unlawfully terminated by the Dr. Robert W. Bowles, Deputy Superintendent, Biloxi Public School District who came to my home with the unlawful letter of termination signed by him. The Plaintiff was in receipt of a Certified letter from Andrea Petro, Principal, Popps Ferry Elementary School, Biloxi Public School District stating that I will be allowed to return to work on Friday, September 5, 2003.

The Plaintiff Joseph Davis, Jr., will show that the Defendants and individuals as aforesaid did wrongfully and unlawfully terminate the Plaintiff, obstructed justice through intimidation and retaliation to libel and slander evincing intentional acts individually, and under "Color of Law" violating 42 U.S.C.A. Section 1983 depriving the Plaintiff of his Constitutional Rights under the 1st, 4th, 5th, 6th, 7th, 9th, and 14th Amendments, violated numerous state statutes, and violated the Plaintiff's Civil Rights under the "Civil Rights Law" to include violating the Civil Rights Law under Title VII of the Civil Rights Act of 1991 of which Plaintiff, Joseph Davis, Jr., is a class minority secured by the Constitution of the United States of America.

(4)

COUNT TWO

AS FOR THE SECOND CAUSE OF ACTION

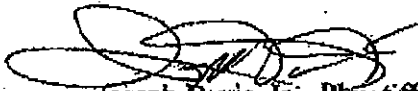
VIOLATION OF CIVIL RIGHTS

That as a proximate result of the aforesaid actions of the Defendants the Plaintiff was caused to suffer severe personal stress and mental injury past present and future, and to incur loss of wages by unlawful and wrongful termination and loss of income due to future employability and to suffer public humiliation and embarrassment due to the Defendants intimidation and retaliation proximately causing him anguish to a marked degree, and all of the same was proximately caused or contributed to by the negligence and intentional actions of the Defendants as the aforesaid jointly and severely in their actions, indicating a wilful and reckless disregard for the rights of the Plaintiff, evincing intentional acts individual, and under "Color of Law".

WHEREFORE PREMISES CONSIDERED, the actions of the Defendants under "Color of Law" violate 42 U. S. C. A. Section 1983, and the grossly negligent acts of the Defendants under "Color of Law" have deprived the Plaintiff of his Constitutional Rights under the 1st, 4th, 5th, 6th, 7th, 9th, and 14th (Fourteenth) Amendments all made obligatory upon the states through the Equal Protections Laws of the 14th Amendment pursuant to the rulings of the United States Supreme Court, and the Plaintiff hereby states the 2nd cause of action under the "civil Rights Law" of the United States of America, pursuant to that said law and demands damages in accordance with the SECOND cause of action.

Plaintiff further prays for Judgment against the Defendants jointly and severally in the sum of \$250,000.00, for negligence, and the sum of an undetermined amount in punitive damages under the theory of State law of gross negligence, wilful disregard for rights of Plaintiff, and an undetermined amount under 42 U. S. C. A. Section 1983, for wilful violation of Plaintiff's Constitutional Rights, all as aforesaid, all costs, pre-judgement interest, and attorney fees under the Lodestar Rule.

RESPECTFULLY SUBMITTED, this 27th day of February, 2007.

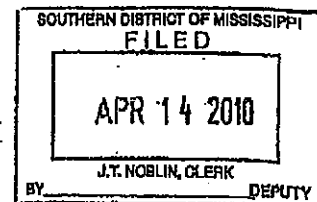


Joseph Davis, Jr., Plaintiff, Pro Se
346 Franks Drive
Biloxi, Mississippi 39531
(228)388-6985

Addendum C

111778

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DISTRICT



JOSEPH DAVIS, JR.

PLAINTIFF

VERSES

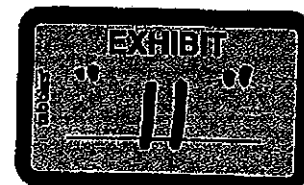
CIVIL ACTION NO. 1:10cv23HSO-JMR

BANK OF AMERICA CORPORATION, AND BAC HOME LOANS SERVICING, LP, A
SUBSIDIARY OF BANK OF AMERICA, N.A., NATIONWIDE RECOVERY SERVICE,
INC., LAWYER RANDALL SCOTT WELLS, LAWYER MARIA M. COBB, COLDATA,
INC., BILOXI PUBLIC SCHOOL DISTRICT, BILOXI PUBLIC SCHOOL BOARD,
BOARD OF TRUSTEES, AND DR. PAUL A. TISDALE, SUPERINTENDENT, BILOXI
PUBLIC SCHOOL DISTRICT, DR. ROBERT W. BOWLES, DEPUTY
SUPERINTENDENT, BILOXI PUBLIC SCHOOL DISTRICT, JUDE MCDONNELL,
(PAST, COMPTROLLER/DIRECTOR OF BUSINESS MANAGEMENT) BILOXI
PUBLIC SCHOOL DISTRICT, BONNIE GRANGER, COMPTROLLER, AND SHANE
SWITZER, COMPTROLLER, BILOXI PUBLIC SCHOOL DISTRICT,
INDIVIDUALLY, AND JOHN DOE, & JOHN DOE, INDIVIDUALS

DEFENDANTS

AMENDED COMPLAINT

COMES NOW, Plaintiff, Joseph Davis, Jr., Pro Se, and for cause of action against the
defendant(s), Bank of America Corporation, and BAC Home Loans Servicing, LP, a subsidiary
of Bank of America, N.A., Nationwide Recovery Service, Inc., Lawyer Randall Scott Wells,
Lawyer Maria M. Cobb, Coldata, Inc., Biloxi Public School District, Biloxi Public School Board,
Board of Trustees, and Dr. Paul A. Tisdale, Superintendent, Biloxi Public School District, Dr.
Robert W. Bowles, Deputy Superintendent, Biloxi Public School District, Jude McDonnell,
(Past, Comptroller/Director of Business Management), Biloxi Public School District, Bonnie
Granger, Comptroller, and Shane Switzer, Comptroller, Biloxi Public School District and
individuals as aforesaid, would state.



JURISDICTION

I, Joseph Davis, Jr., Plaintiff, Pro Se am a tenured employee in the Biloxi Public School System, did pay Bank of America Card Account Number 4024-0807-3003-1081 on March 3, 1993, in full by, accepting the settlement offer, of the collection agency, Coldata, Inc. and mailing a money order in the amount of \$860.02, to the collection agency, Coldata, Inc., 500 Rockaway Ave., Box 2998, Valley Stream, N.Y. 11582. The debt is paid in full.

Bank of America Corporation, Nationwide Recovery Service, Inc, (Lawyer Randall Scott Wells and Lawyer Maria M. Cobb), Biloxi Public School District, Biloxi Public School Board, Board of Trustees, Jude McDonnell(past)Comptroller/Director of Business Management, Biloxi Public School District), did cause overpayment of account, wrongful incarceration, unjustly garnishment and taking of earned monies, emotional stress, fraud, wrongful termination, obstruction of justice, intimidation, retaliation, libel, slander, evincing intentional acts individually, and under "Color of Law" violating 42 U. S. C. A. Section 1983 depriving the Plaintiff of his Constitutional Rights under the 1st, 4th, 5th, 6th, 7th, 9th and 14th Amendments and violated the Plaintiffs' civil rights under the "Civil Rights Law" to include the Civil Rights Law under Title VII of the Civil Rights Act of 1991 of which Plaintiff, Joseph Davis, Jr., is a class minority secured by the Constitution of the United States of America..

I, Joseph Davis, Jr., Plaintiff, Pro Se, am seeking relief, pursuant to 28 U.S.C. 1331, under the Constitution of the United States Fifth (5th) Amendment, Due Process of Law, therefore, I, Joseph Davis, Jr., Plaintiff, Pro Se., do hereby respectfully:

REQUEST A TRIAL BY JURY

That is why this matter is being brought in Federal Court.

I.

Plaintiff, Joseph Davis, Jr., Pro Se., is an adult resident citizen of the County of Harrison, State of Mississippi. The Defendant, Bank of America Corporation, et al and John Doe, & John Doe, Individuals, is an adult citizen(s) of the County of Harrison, State of Mississippi.

II. FACTS

I, Joseph Davis, Jr., Plaintiff, Pro Se, am filing this complaint for delay and denial of my claims against Bank of America Corporation and BAC Home Loans Servicing, LP, a Subsidiary of Bank of America, N.A., Nationwide Recovery Service, Inc., Lawyer Randall Scott Wells, Lawyer Maria M. Cobb, Coldata, Inc., Biloxi Public School District, Biloxi Public School Board, Board of Trustees, and Dr. Paul A. Tisdale, Superintendent, Biloxi Public School District, Dr. Robert W. Bowles, Deputy Superintendent, Biloxi Public School District, Jude McDonnell, (Past, Comptroller/Director of Business Management), Biloxi Public School District, Bonnie Granger, Comptroller, and Shane Switzer, Comptroller, Biloxi Public School District and individuals as aforesaid. The claims are due to Recovery of full overpayment of inappropriate and unjustly garnished monies from the Plaintiff, **Joseph Davis, Jr., tenured employee of the Biloxi Public School District** by the Lawyers for the Defendant, Nationwide Recovery Service, Inc., Lawyer Randall Scott Wells and Lawyer Maria M. Cobb, individually and severally, and Jude McDonnell (past) Comptroller/Director of Business Management, Biloxi Public School District, Biloxi, Mississippi by fraud and under "Color of Law".

The Plaintiff, Joseph Davis, Jr., is entitled to relief.

III. RELIEF

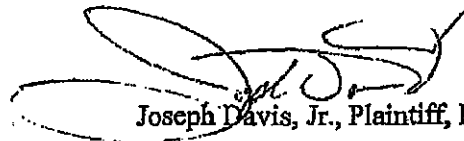
That as a result of the above actions of the Defendants the Plaintiff was caused to suffer severe personal stress and loss of use of personal property by unlawfully and inappropriately garnishing the earned wages of tenured employee Joseph Davis, Jr., Plaintiff, Pro Se, (and family) and by the Defendants intentionally delaying and denying just relief and due compensation for injury and damages as required under the law and by the court.

That as a proximate result of the aforesaid actions of the Defendants the Plaintiff was caused to incur loss of wages by unlawful and wrongful termination and loss of income due to future employability and to suffer public humiliation and embarrassment to the Defendants intimidation and retaliation proximately causing anguish to a marked degree, and all of the same was proximately caused or contributed to by the negligence and intentional actions of the Defendants as the aforesaid jointly and severely in their actions, indicating a wilful and reckless disregard for the rights of the Plaintiff, Joseph Davis, Jr., evincing intentional acts individually, and under "Color of Law" violate 42 U.S.C.A. Section 1983.


The grossly negligent acts of the Defendants under "Color of Law" have deprived the Plaintiff of his Constitutional Rights under the 1st, 4th, 5th, 6th, 7th, 9th, 13th, and 14th (Fourteenth) Amendments all made obligatory upon the states through the Equal Protections Laws of the 14th Amendment pursuant to the rulings of the United States Supreme Court.

Plaintiff, Joseph Davis, Jr., further prays for Judgment against the Defendants jointly and severally in the sum of \$350,000.00, for negligence and damages, and the sum of an undetermined amount in punitive damages under theory of State law of gross negligence, wilful disregard for the rights of Plaintiff, and an undetermined amount under 42 U.S.C.A. Section 1983, for wilful violation of Plaintiff's Constitutional Rights, all as aforesaid, to include all costs, pre-judgment interest, and attorney fees.

Respectfully Submitted, this the 14th Day of April 2010.



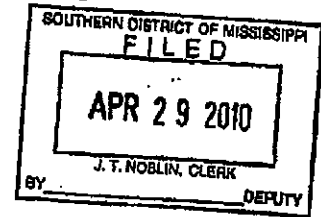
Joseph Davis, Jr., Plaintiff, Pro



Joseph Davis, Jr., Plaintiff, Pro Se
346 Franks Drive
Biloxi, Mississippi 39531
(228)388-6985

Addendum D

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DISTRICT**



GILDA H. DAVIS AND JOSEPH DAVIS, JR.

PLAINTIFFS

VERSES

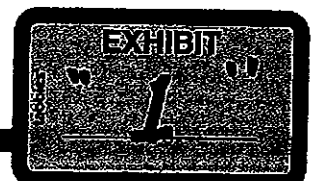
CIVIL ACTION NO. 1:10cv172 LG-RHW

BILOXI PUBLIC SCHOOL DISTRICT, BILOXI PUBLIC SCHOOL BOARD, BOARD OF TRUSTEES, AND DR. PAUL A. TISDALE, SUPERINTENDENT, BILOXI PUBLIC SCHOOL DISTRICT, DR. ROBERT W. BOWLES, DEPUTY SUPERINTENDENT, BILOXI PUBLIC SCHOOL DISTRICT, DR. LARRY DRAWDY, (PAST SUPERINTENDENT) BILOXI PUBLIC SCHOOL DISTRICT, LAWYER GERALD BLESSEY (PAST BILOXI PUBLIC SCHOOL BOARD ATTORNEY), BILOXI PUBLIC SCHOOL DISTRICT, BONNIE GRANGER, COMPTROLLER/DIRECTOR OF BUSINESS MANAGEMENT AND SUSAN BRAND, PRINCIPAL, BEAUVOIR ELEMENTARY SCHOOL, BILOXI PUBLIC SCHOOL DISTRICT, INDIVIDUALLY, AND JOHN DOE, & JOHN DOE, INDIVIDUALS

DEFENDANTS

COMPLAINT

COMES NOW PLAINTIFF(S), Gilda H. Davis and Joseph Davis, Jr., Pro Se, who files this their cause of action against the aforesaid Defendants, Biloxi Public School District, Biloxi Public School Board, Board of Trustees, and Dr. Paul A. Tisdale, Superintendent, Biloxi Public School District, Dr. Robert W. Bowles, Deputy Superintendent, Biloxi Public School District, Dr. Larry Drawdy, (Past Superintendent), Biloxi Public School District, Lawyer Gerald Blessey (Past Biloxi Public School Board Attorney), Biloxi Public School District, Bonnie Granger, Comptroller/Director of Business Management, and Susan Brand, Principal, Beauvoir Elementary School, Biloxi Public School District, Individually, and John Doe, & John Doe, Individuals and individuals as aforesaid causing personal injury, wrongful termination, non-renewal of employee written letter of intent, obstruction of justice, intimidation, retaliation,



discrimination in violation of seniority policy/statute and age discrimination, evincing intentional acts individually, and under "Color of Law" violating 42 U. S. C. A. Section 1983 depriving the Plaintiffs of their Constitutional Rights under the 1st, 4th, 5th, 6th, 7th, 9th, 13th and 14th Amendments and violated the Plaintiffs' civil rights under the "Civil Rights Law" to include the Civil Rights Law under Title VII of the Civil Rights Act of 1991 of which Plaintiffs, Gilda H. Davis and Joseph Davis, Jr., are a class minority secured by the Constitution of the United States of America.

I. JURISDICTION

(1)

That the Plaintiffs are adult resident citizens of Biloxi, Mississippi residing in said City at all times pertinent hereto.

(2)

That the Defendant is a public entity organized and doing existing under the laws of the State of Mississippi and that the Defendants are adult citizens of the State of Mississippi employed by said entity who may be served with the process pursuant to Rule 12, as described in Fed. R. Civ. P. 12 (a)(2) or (3).

REQUEST A TRIAL BY JURY

That is why this matter is being brought in Federal Court.

II. FACTS

Gilda H. Davis, Plaintiff, employee of Beauvoir Elementary School, Biloxi Public School District, Biloxi, Mississippi suffered personal injury on, May 26, 2004, in the school gymnasium while on the job, requiring hospitalization, rehabilitation and extended physical therapy.

On April 29, 2004, prior to the personal injury of Plaintiff, employee Gilda H. Davis her employer, the Biloxi Public School District unlawfully denied re-employment for the upcoming next year 2004-2005 school year. Mrs. Susan Brand, Principal, Beauvoir Elementary School, Biloxi Public School District and Dr. Robert W. Bowles, Deputy Superintendent, Biloxi Public School District signed the unlawful letter denying re-employment in violation of the Biloxi Public School District and violation of the state statute seniority policy and the policy governing Assistant Teachers outlined in § 37-21-7. Assistant teachers. The Plaintiff, Gilda H. Davis was also discriminated against by Age Discrimination violating 42 U.S.C.A. Section 1983, depriving the Plaintiff of her Constitutional Rights under the 1st, 4th, 5th, 6th, 7th, 9th, 13th and 14th Amendments and violated the Plaintiffs civil rights under the "Civil Rights Law" to include the Civil Rights Law under Title VII of the Civil Rights Act of 1991 of which Plaintiff, Gilda H. Davis is a class minority secured by the Constitution of the United States of America.

The Plaintiffs Gilda H. Davis and Joseph Davis, Jr., will show that Gilda H. Davis was injured on the job at Beauvoir Elementary School, Biloxi Public School District, Biloxi, Mississippi, on May 26, 2004 the Defendants and individuals as aforesaid did wrongfully and unlawfully denied re-employment in the Biloxi Public School District to Gilda H. Davis. The Plaintiff will show that the Defendants, obstructed justice through age discrimination, intimidation and retaliation evincing intentional acts individually, and under "Color of Law" violating 42 U.S.C.A. Section 1983 depriving the Plaintiff of her Constitutional Rights under the 1st, 4th, 5th, 6th, 7th, 9th, 13th and 14th Amendments, violated numerous state statutes, and violated the Plaintiff's Civil Rights under the "Civil Rights Law" to include violating the Civil Rights Law under Title VII of the Civil Rights Act of 1991 of which Plaintiff(s), Gilda H. Davis and Joseph Davis, Jr., is a class minority secured by the Constitution of the United States of America.

COUNT TWO

AS FOR THE SECOND CAUSE OF ACTION

VIOLATION OF CIVIL RIGHTS

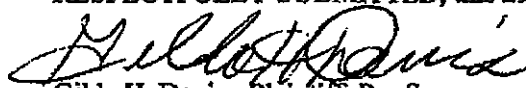
That as a proximate result of the aforesaid actions of the Defendants the Plaintiff(s) was caused to suffer severe personal stress and mental injury past present and future, and to incur loss of wages by unlawful and wrongful termination and loss of income due to future employability and to suffer public humiliation and embarrassment due to the Defendants intimidation and retaliation proximately causing them anguish to a marked degree, and all of the same was proximately caused or contributed to by the negligence and intentional actions of the Defendants as the aforesaid jointly and severely in their actions, indicating a wilful and reckless disregard for the rights of the Plaintiff(s), evincing intentional acts individual, and under "Color of Law".

WHEREFORE PREMISES CONSIDERED, the actions of the Defendants under "Color of Law" violate 42 U. S. C. A. Section 1983, and the grossly negligent acts of the Defendants under "Color of Law" have deprived the Plaintiff of his Constitutional Rights under the 1st, 4th, 5th, 6th, 7th, 9th, 13th (Thirteenth) and 14th (Fourteenth) Amendments all made obligatory upon the states through the Equal Protections Laws of the 14th Amendment pursuant to the rulings of the United States Supreme Court, and the Plaintiff hereby states the 2nd cause of action under the "civil Rights Law" of the United States of America, pursuant to that said law and demands damages in accordance with the SECOND cause of action.

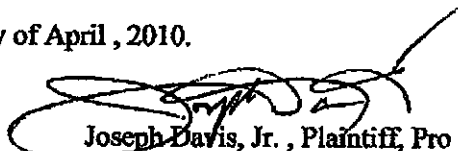
III. RELIEF

Plaintiff, Gilda H. Davis and Joseph Davis, Jr., further prays for Judgment against the Defendants jointly and severally in the sum of \$75,000, for negligence, and the sum of an undetermined amount in punitive damages (to be determined by the Court for the principle and intent of the matter to prevent the reoccurrence of this injustice to other Tutor's/Teacher Assistant's in the employ and the utmost profession of teaching in the Biloxi Public School District) under the theory of State law of gross negligence, wilful disregard for rights of Plaintiff, and an undetermined amount under 42 U. S. C. A. Section 1983, for wilful violation of Plaintiff's Constitutional Rights, all as aforesaid, all costs, pre-judgement interest, and attorney fees under the Lodestar Rule.

RESPECTFULLY SUBMITTED, this 29th day of April, 2010.



Gilda H. Davis, Plaintiff, Pro Se
346 Franks Drive
Biloxi, Mississippi 39531
(228)388-6985



Joseph Davis, Jr., Plaintiff, Pro Se
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Biloxi, Mississippi 39531
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Addendum E

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION

GILDA H. DAVIS AND JOSEPH DAVIS, JR.

PLAINTIFF

VS.

CIVIL ACTION NO. 1:10cv172LG-RHW

BILOXI PUBLIC SCHOOL DISTRICT, BILOXI PUBLIC SCHOOL BOARD, BOARD OF TRUSTEES, DR. PAUL A. TISDALE, SUPERINTENDENT, BILOXI PUBLIC SCHOOL DISTRICT, DR. ROBERT W. BOWLES (FORMER DEPUTY SUPERINTENDENT OF THE BILOXI PUBLIC SCHOOL DISTRICT), DR. LARRY DRAWDY (FORMER SUPERINTENDENT OF BILOXI PUBLIC SCHOOLS), GERALD BLESSEY (FORMER BOARD ATTORNEY), BONNIE GRANGER (FORMER BUSINESS MANAGER OF BILOXI SCHOOLS), AND SUSAN BRAND (FORMER PRINCIPAL OF BEAUVOIR ELEMENTARY SCHOOL)

DEFENDANTS

MEMORANDUM OF AUTHORITIES IN SUPPORT OF
DEFENDANTS' MOTION FOR INJUNCTIVE RELIEF AND SANCTIONS

I. Introduction

The Biloxi Public School District formerly employed Joseph Davis, Jr. ("Joseph") and Gilda Davis ("Gilda") as teacher aides. Both Plaintiffs allege, as they previously did in multiple state suits, violations of 42 U.S.C. § 1983 and state tort law, and contend that they were deprived of their constitutional or other civil rights arising out of and in connection with their separation from employment with the school district. As fully addressed in Defendants' previously filed Motion to Dismiss or in the Alternative for Summary Judgment, both Plaintiffs' claims are barred by *res judicata*, collateral estoppel, the applicable statutes of limitation, a lack of subject matter jurisdiction, failure to provide sufficient process and service of process, and/or other grounds. (Docket entry no. "11" and "12").

Although, Defendants are confident that they are entitled to judgment as a matter of law, Defendants have good reason to doubt that such a judgment, by itself, will compel Joseph and Gilda Davis to cease their frivolous and vexatious seven-year crusade against these Defendants. Therefore, Defendants respectfully seek the protection of this Court in the form of a permanent injunction against the Plaintiffs, enjoining and restraining the Plaintiffs from filing any further state or federal actions against these Defendants without first obtaining the approval of this Court. Defendants further request an award of costs and attorney's fees as sanctions against the Plaintiffs.

II. Procedural and Factual Background

The present lawsuit is Joseph's fifth lawsuit arising out of his termination as a teacher's aide with the Biloxi Public School District. It is Gilda's second lawsuit arising out of her termination as a teacher's aide with the School District. A more accurate description of this suit is that it is Joseph's fourth regurgitation of essentially the same complaint first filed in 2004. Ex. "9." A quick side-by-side comparison of the multiple complaints, attached exhibits "1," "3," "6," "9," and "11," reveals that the Plaintiffs are tweaking the same boilerplate pleading by adding legalese here and there, slightly rephrasing their allegations, adjusting the amount of money they seek, and then frivolously refile what is essentially the same suit against the same Defendants in different venues. A review of the *pro se* Plaintiffs' litigation history is necessary to an understanding the of frivolous, vexatious, and harassing nature of the present action.

"Davis I": After being terminated from employment in September 4, 2003 for repeated acts of unprofessional and disrespectful conduct, Joseph, although as a teacher's aide not entitled to an administrative hearing under Mississippi law, was granted an opportunity to address the School Board of Trustees, which, after the listening to his grievance, declined to reinstate him.

In January 2004, Joseph filed a pleading which he styled an appeal with the Circuit Court of Harrison County, Mississippi. Ex. "9." The allegations of that pleading nearly mirror the allegations set forth in the current Complaint, asserting a 42 U.S.C. § 1983 claim and alleging various constitutional and civil rights violations. Compare Ex. "9" and "1". "The circuit court judge dismissed Davis' claims, finding that Davis was not entitled to judicial review because he was an "at-will employee." *Davis v. Biloxi Public School District, et al.*, 937 So. 2d 459, 462 (Miss Ct. App. 2005). Ex. "10." Joseph appealed to the Mississippi Supreme Court, which referred the case to the Mississippi Court of Appeals.

The Mississippi Court of Appeals affirmed the circuit court's judgment and dismissal of Joseph's appeal. *Id.* at 462. Ex. "10." The court specifically held that Joseph, as a teacher's aide, was not an "employee" entitled to the due process protections of the Mississippi's Education Employment Procedures Law of 2001, Mississippi Code section § 37-9-113, and that none of his legal or constitutional rights were violated when the District terminated him for "repeated acts of unprofessional and disrespectful conduct." *Id.* Ex. "10."

Thereafter, Joseph petitioned for certiorari to the Mississippi Supreme Court, which was denied. He then petitioned the United States Supreme Court for certiorari, which was likewise denied.

"Davis II": Joseph, unhappy with the U.S. Supreme Court's refusal to entertain his baseless claims, filed his second unsuccessful suit in Harrison County Circuit Court one week thereafter on February 28, 2007. Ex. "6." The Complaint in *Davis II* was simply a regurgitation of the *Davis I* pleading, asserting the same allegations against the same defendants. Compare Ex. "9" and "6." On November 16, 2007, the circuit court judge dismissed *Davis II*, holding that the

claims raised were “essentially the same legal claims which were raised by the Plaintiff in his first legal initiative” and that “all claims asserted in the Plaintiff’s Complaint not otherwise barred by the doctrines of collateral estoppel and/or *res judicata* are, in fact, barred by the applicable statutes of limitation.” Ex. “7.” Undeterred, Joseph Davis appealed to the Mississippi Supreme Court, which again referred the case to the Mississippi Court of Appeals.

The Mississippi Court of Appeals affirmed the dismissal of *Davis II*. *Davis v. Biloxi Public School District, et al.*, 2009 Miss. App. LEXIS 765 (Miss Ct. App. November 3, 2009). Ex. “8.” Specifically, the court held “under the doctrine of collateral estoppel, Davis is precluded from relitigating in a second action [*Davis II*] issues already decided in the prior action [*Davis I*],” that *res judicata* applied, and that “the circuit court did not err in dismissing Davis’s remaining claims as barred under the statute of limitations.” *Id.* Ex. “8.” Joseph filed a motion to reconsider, which was denied and then, once again, petitioned the Mississippi Supreme Court for certiorari, which recently denied certiorari. Ex. “14.”

“*Davis III*” : Three months after filing *Davis II*, Joseph, involved his wife Gilda in this harassing scheme; together, they filed *Davis III* against the same defendants in Harrison County Court even though *Davis II* was still working its way through the trial court. Ex. “3.” *Davis III*, which is almost identical to the current Complaint, was basically a refile of the *Davis I and II* complaint with Gilda added as a plaintiff. Compare Ex. “3,” “6” and “9.”

The county court judge dismissed *Davis III*. Ex. “4.” Regarding Gilda’s claims, the judge held “Gilda’s lawsuit, at best, was filed thirty-one days after the expiration of her right to file a claims premised on her assertedly wrongful termination from employment.” Ex. “4.” Regarding Joseph’s claims, the county court judge, like the circuit court judge in *Davis II*, determined that

each of his claims was “barred by the doctrine of *res judicata*, collateral estoppel, and the passage of time.” Ex. “4.” Insightfully, the judge also *levied sanctions* against Joseph Davis for his harassment of the current Defendants noting that “this is the third time that the Biloxi Public School District has been required to expend money for attorney’s fees to defend the same claim from the same Plaintiff,” and holding that “this effort for a third bite from the proverbial apple by Joseph Davis, Jr. will not be permitted . . . *this lawsuit is frivolous.*” Ex. “4.” (Emphasis added).

Again, the Davises appealed *Davis III* to the Circuit Court of Harrison County, and after losing in that venue, to the Mississippi Supreme Court. Ex. “5.” *Davis III* is currently pending before the Mississippi Supreme Court. Ex. “15.”

“Davis IV”: In *Davis IV*, filed in the United States District Court for the Southern District of Mississippi on January 13, 2010 (Amended Complaint on April 14, 2010), Joseph, the sole plaintiff, asserts his usual allegations against the current Defendants plus a years old claim relating to a 1999 garnishment. Compare Ex. “1” and “11.” The key difference is that, while the *Davis IV* Complaint asserts the same litany of claims previously litigated in *Davis I, II, and III*, it also contains a vague reference to some “inappropriate” and “unjust” garnishment of his monies by the current Defendants in an alleged dispute dating back to the 1990’s. Ex. “11.” All applicable statutes of limitation have run on any of his claims against these Defendants in *Davis IV*.

“Davis V” : Joseph and Gilda Davis filed the current Complaint on April 29, 2010. Ex. “1”. This Complaint is nearly identical to the *Davis III* complaint and very similar to *Davis I, II, and IV*. Compare Ex. “1,” “3,” “6,” “9,” and “11.”

In sum, for nearly seven years, the Plaintiffs have subjected these Defendants and the court system to a continuous and abusive onslaught of frivolous, vexatious, and harassing litigation.

Indeed the Defendants have been forced to defend against these same baseless claims once in an administrative hearing, once before a county court, three times in circuit court, twice in the Mississippi Court of Appeals with opinions issued.

III. Legal Argument

A. THE COURT SHOULD ENJOIN THE PLAINTIFFS FROM FILING FUTURE FEDERAL COURT ACTIONS WITHOUT OBTAINING THIS COURT'S PERMISSION.

Pursuant to the All Writs Act and its inherent authority, this Court should enjoin Joseph and Gilda Davis from filing any future suits against these Defendants without first obtaining the permission of this Court. Such an injunction is proper because for nearly seven years the Plaintiffs have subjected the Defendants and the court system to an endless onslaught of duplicative, frivolous, and vexatious litigation predicated on the same underlying facts.

The All Writs Act, 28 U.S.C. § 1651, authorizes this Court to issue an injunction restricting future suits by litigants, like Joseph and Gilda, whose manifold complaints raise claims identical or similar to those that have already been adjudicated. *Newby v. Enron Corp.*, 302 F.3d 295, 302 (5th Cir. 2002); *Harrelson v. United States*, 613 F.2d 114, 116 (5th Cir. 1980). *See also Blakely v. Miss. Workers' Comp. Comm'n*, 2006 U.S. Dist. LEXIS 49807 (S.D. Miss. 2006) (stating that the court would grant sanctions and an injunction against plaintiff's future filings "if the present action had been the result of multiple litigation over these claims with these defendants and the allegedly previous frivolous litigiousness of the plaintiff had been documented."); *In Re Moody*, 105 B.R. 368, 370 (S.D. Tex. 1989), *aff'd*, 693 F.2d 1196 (5th Cir. 1982) ("Under 28 U.S.C. § 1651, if a party has demonstrated a pattern of frivolous, repetitious, and harassing litigation, a District Court is authorized to enjoin, *sua sponte*, the party from filing further papers

in support of a frivolous claim”); *Hill v. Estelle*, 423 F. Supp. 690, 695 (S.D. Tex.1976), *aff’d* without opinion, 543 F.2d 754 (5th Cir. 1976) (“it is further ordered that plaintiffs . . . be hereinafter enjoined from filing any action in federal court in an attempt to relitigate any question of law or fact raised in the District Court.”).

Legal scholars have best stated this power:

It is fairly well accepted that where a plaintiff has demonstrated a pattern of frivolous, repetitious, malicious, vexatious, or harassing litigation, *especially in derogation of the doctrine of res judicata*, and where such litigation is likely to continue in the absence of equitable intervention, a District Court, upon the motion of the defendant, has the authority, pursuant to 28 U.S.C.A. § 1651(a), in order to protect and effectuate the judgments of the court, to enjoin the plaintiff from filing further papers in support of, or otherwise litigating, his frivolous claims.

53 A.L.R. Fed. 651 § 2(a) (emphasis added).

In *Harrelson v United States*, 613 F.2d 114 (5th Cir. 1980), the Fifth Circuit affirmed an order of the district court dismissing a complaint and enjoining the plaintiff from any future litigation on any cause of action arising from the fact situation at issue in the case. *Id.* The court held that the All Writs Act, 28 U.S.C.A. § 1651(a), empowered the district court to enjoin litigants who were abusing the court system by harassing their opponents with duplicative suits. *Id.* The court insightfully noted, that the injunction was necessary because the plaintiff had forced various defendants in and out of court with his conspiracy complaint for almost five years and thus had ample opportunity to present and litigate his claims. Especially relevant to this case is the court’s comment and that “a litigious plaintiff pressing a frivolous claim, though rarely succeeding on the merits, can be extremely costly to the defendant and can waste an inordinate amount of court time.” *Id.* at 116.

If an injunction against future filings was warranted in *Harrelson*, it is even more necessary in this case. The plaintiff in *Harrelson* had only filed three suits against varying defendants. Joseph and Gilda Davis, on the other hand, have filed five nearly identical complaints against the same exact Defendants. In *Harrelson*, litigation went on for five years; in this case Plaintiffs have been harassing the Defendants for nearly seven years. Additionally, the number of forums and extent of appeals the Defendants have been subjected to is greater in this case. It is also worth noting, that these Defendants are asking for a less severe injunction than the one imposed in *Harrelson*. The *Harrelson* injunction was an outright bar on future filings, whereas these Defendants only request that the Plaintiffs be required to obtain permission of this Court before filing.

In determining whether to enjoin a plaintiff from further litigation, courts should consider the litigant's history of litigation, particularly vexatious, harassing or duplicative lawsuits, motive in pursuing the lawsuit, whether the litigation imposes an unnecessary burden on the courts and their personnel, whether the litigant is represented by counsel, and whether the litigant has a good faith expectation of prevailing. *Safir v. U.S. Lines, Inc.*, 792 F.2d 19 (2nd Cir. 1986), cert. denied 479 U.S. 1099 (1987). Joseph and Gilda have a long history of frivolous lawsuits, their motive is harassment, the litigation imposes an unnecessary burden on this Court, the litigants are *pro se*, and they have no reasonable expectation of success. As such, an injunction is proper.

This very district has issued such injunctions against frivolous *pro se* litigants. In *Slone v. Jackson Housing Authority*, 2009 U.S. Dist. LEXIS 7271 (S.D. Miss. 2009), Chief Judge Wingate dismissed a *pro se* plaintiff's duplicate lawsuit because the plaintiff failed to comply with a prior court Order, which, after first granting defendants summary judgment, mandated:

“the Plaintiff may not file any further actions against AmSouth Bank without first obtaining the approval of this Court. Mr. Slone is instructed to submit any potential claims against AmSouth Bank to the Honorable Henry T. Wingate prior to filing any further actions. Upon such an occurrence, the Court will review the sufficiency of said allegation to determine whether a Complaint is warranted.”

Order and Judgment entered February 27, 2004 in Walter Slone v. The People of the State of Mississippi, et al.; Civil Action No. 3:02CV439WS.

In issuing the above Order, Judge Wingate found that the defendant had presented credible evidence that the plaintiff had engaged in numerous, harassing law suits against it, which likewise were without merit. *Id.* Like Walter Slone, Joseph and Gilda Davis (particularly Joseph), have harassed the Defendants with a continuous seven year onslaught of meritless litigation. It is time that the Plaintiffs’ abuse of the court and the Defendants be stopped once and for all.

Therefore, Defendants request that this Court, pursuant to its inherent authority and statutory authority under the All Writs Act, issue an injunction, similar to those in *Harrelson* and *Slone*, enjoining the Plaintiffs from filing further actions against these Defendants without first obtaining approval of this Court. Such an order is a reasonable method of preserving judicial resources and protecting the Defendants.

B. THE COURT SHOULD ENJOIN THE PLAINTIFFS FROM FILING FUTURE STATE COURT ACTIONS WITHOUT OBTAINING THIS COURT’S PERMISSION

Pursuant to the All Writs Act, the relitigation exception to the Anti-Injunction Act, and its inherent authority, this Court should enjoin Joseph and Gilda Davis from filing any future suits in state court against these Defendants without first obtaining the permission of this Court. Such an injunction is necessary to “protect and effectuate” the judgment of this Court.

The All Writs Act, 28 U.S.C. § 1651(a), provides federal district courts with broad authority to "issue all writs necessary or appropriate in aid of their respective jurisdictions." *Id.* It is well-settled that a federal court may enjoin plaintiffs from prosecuting state court actions pursuant to the All Writs Act under the doctrine of collateral estoppel as well as *res judicata*. See *Liberty Mut. Ins. Co. v. Gunderson*, 305 Fed. Appx. 170, 174 (5th Cir. 2008); *Newby v. Enron Corp.*, 302 F.3d 295, 301 (5th Cir. 2002) (stating that 'federal courts possess power under the All Writs Act to issue narrowly tailored orders enjoining repeatedly vexatious litigants from filing future state court actions without permission from the court'); and *Next Level Communications LP v. DSC Communications Corp.*, 179 F.3d 244 (5th Cir. 1999) (affirming the district court's grant of an injunction against state court litigation because the underlying issue involved was already litigated and because defendants were collaterally estopped from arguing a matter in state court that was conclusively determined in federal court).

This type of injunction falls squarely within an exception to the Anti-Injunction Act, 28 U.S.C. § 2283, which states:

A court of the United States may not grant an injunction to stay proceedings in a State Court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to *protect or effectuate its judgments*.

Id. (Emphasis added).

The exception allowing an injunction to "protect or effectuate" a federal court judgment is commonly referred to as the "relitigation exception." *Liberty Mut. Ins. Co. v. Gunderson*, 305 Fed. Appx. 170, 174 (5th Cir. 2008) (citing *Duffy & McGovern Accommodation Servs. v. QCI Marine Offshore, Inc.*, 448 F.3d 825, 828 (5th Cir. 2006) (stating that "a federal court can enjoin state proceedings threatening to ignore an earlier, preclusive federal court order")) The United

States Supreme Court has explained that “The relitigation exception was designed to permit a federal court to prevent state litigation of an issue that previously was presented to and decided by the federal court. It is founded in the well-recognized concepts of *res judicata* and collateral estoppel.” *Chick Kam Choo v. Exxon Corp.*, 486 U.S. 140, 147 (1988). As one Circuit Court panel succinctly stated, “The exception rests on the idea that federal courts should not be forced to rely on state court application of *res judicata* or estoppel principles to protect federal court judgments and decrees.” *Thomas v. Powell*, 247 F.3d 260, 262 (D.C. Cir. 2001). This exception permits federal courts to permanently enjoin future duplicative state court proceedings. *Blanchard 1986, Ltd. v. Park Plantation, LLC*, 553 F.3d 405, 407 (5th Cir. 2008) (citing *Chick Kam Choo v. Exxon Corp.*, 486 U.S. 140, 151 (1988)).

“Generally, to win a permanent injunction, a petitioner must show a clear threat of continuing illegality portending immediate harmful consequences irreparable in any other manner.” *Posada v. Lamb County*, 716 F.2d 1066, 1070 (5th Cir. 1983). In the Fifth Circuit, however, no independent demonstration of irreparable harm or a lack of alternative remedies is necessary to win an injunction under the relitigation exception to the Anti-Injunction Act. Rather, demonstrating that subsequent state litigation concerns an issue actually decided by the federal courts is sufficient to demonstrate both the harm of continuing state litigation and the lack of an adequate remedy at law. *See, e.g., Ballenger v. Mobil Oil Corp.*, 138 Fed. Appx. 615, 622 (5th Cir. 2005) (“because the district court correctly concluded that the plaintiffs are attempting to relitigate matters in the Texas courts that have been decided by the federal courts, it did not abuse its discretion by granting the injunction [enjoining the plaintiffs from pursuing claims against the defendants in state court].”); *Vasquez v. Bridgestone/Firestone, Inc.*, 325 F.3d 665, 667 (5th Cir.

2003); *Quintero v. Klaveness Ship Lines*, 914 F.2d 717, 721 (5th Cir. 1990).

The relitigation exception is applicable where *res judicata* or collateral estoppel would bar a subsequent state court action, and courts apply the tests used for those doctrines to determine whether an injunction is warranted. *Vasquez*, 325 F.3d at 675-76. Here, If this Court grants the Defendants' previously filed Motion to Dismiss or in the Alternative for Summary Judgment, this Court will have decided the issues presented in this case. At that point, Defendants will be entitled to a permanent injunction against Joseph and Gilda since a subsequent state action would be barred by both *res judicata* and collateral estoppel.

Therefore, if this Court grants summary judgment in favor of the Defendants, it should also "protect and effectuate" its judgment by enjoining Joseph and Gilda from filing future state actions against these Defendants without first obtaining this Court's approval.

C. THE COURT SHOULD IMPOSE SANCTIONS TO DETER ANY ADDITIONAL FRIVOLOUS FILINGS BY JOSEPH AND GILDA DAVIS.

Over the course of nearly seven years, multiple trial and appellate courts have decided and disposed of the Plaintiffs' claims now regurgitated in the current action. In no uncertain terms, those courts repeatedly and clearly communicated to Joseph and Gilda that their claims lack any factual or legal merit and are barred by *res judicata*, collateral estoppel, and other grounds. Ex. "4," "7," "8," and "10". In fact, the Harrison County Court directly told Joseph that he would not be allowed a "third bite at the proverbial apple." Ex. "4".

Undeterred, however, Joseph and Gilda have flagrantly disregarded the instructions of the courts and are now attempting Joseph's fifth bite and Gilda's second bite at the "proverbial apple." This has resulted in a waste of judicial resources and time as well as substantial expense to the

Defendants. Therefore, it is clear that nothing less than an award of sanctions will deter Joseph and Gilda's continuous harassment of the Defendants and courts.

This Court has the inherent authority to impose monetary sanctions against vexatious litigants who repeatedly file the same claims over and over again. *Newby v. Enron Corp*, 302 F.3d 295, 301-302 (5th Cir. 2002) (citing *Chambers v. Nasco, Inc.*, 501 U.S. 32 (1991))(federal courts may use their inherent power to sanction parties when they have "acted in bad faith, vexatiously, wantonly, or for oppressive reasons"). In *Chambers*, the U.S. Supreme Court upheld an award of defense costs and attorney's fees as a sanction against a vexatious litigant who had repeatedly engaged in bad-faith conduct, noting that such a sanction was within the inherent authority of the court. *Id.* at 46. Even *in forma pauperis* plaintiffs, who are often "immune" from costs because of their poverty, may be sanctioned to pay a defendant's attorney's fees when the "action [is] frivolous, unreasonable, or without foundation." *Christiansburg Garment Co. v. EEOC*, 434 U.S. 412, 421 (1978). Clearly, the Davises are not paupers since they can afford to engage in seven years of ongoing litigation. Just as clear, is the fact that the Davises' action is "frivolous, unreasonable, [and] without foundation." *Id.*

"Repeatedly suing the same parties over and over, asserting the same factual claims and legal causes of action, after and in spite of the entry of multiple adverse final judgments . . . is harassment and a gross abuse of the judicial process" and warrants the imposition of sanctions. *Bryant v. Plains Nat'l Bank of Lubbock*, 2005 U.S. Dist. LEXIS 14593 (N.D. Tex. 2005). The current Complaint is frivolous because these same facts and legal issues have been repeatedly adjudicated on the merits. Ex. "3,""4,""5,""6,""7,""8,""9,""10". This suit is an abuse of process and was instituted by the Plaintiffs against the Defendants for the purpose of harassment

because Plaintiffs have been put on notice by multiple adverse judgments that their claims can not be relitigated under *res judicata* and collateral estoppel. Ex. "4," "7," "8". Therefore, the Defendants are entitled to reasonable expenses, costs, and attorney's fees incurred in their defense, as sanctions against Plaintiffs.

Specifically, Defendants request: (1) that they be awarded their attorney's fees, expenses, and costs incurred responding to Plaintiffs' vexatious litigation; and (2) a punitive sanction in an amount sufficient to deter Joseph and Gilda from filing any additional frivolous actions.

IV. Conclusion

Based upon the foregoing arguments and authorities, Defendants respectfully request that this Court enter a permanent injunction against Plaintiffs, enjoining and restraining the Plaintiffs from filing any further state or federal actions against these Defendants without first obtaining the approval of this Court. Defendants also respectfully request an award of costs and attorney's fees as sanctions against the Plaintiffs.

THIS, the 24th day of September, 2010.

Respectfully submitted,

BILOXI PUBLIC SCHOOL DISTRICT, BILOXI PUBLIC SCHOOL BOARD, BOARD OF TRUSTEES, DR. PAUL A. TISDALE, SUPERINTENDENT, BILOXI PUBLIC SCHOOL DISTRICT, DR. ROBERT W. BOWLES (FORMER DEPUTY SUPERINTENDENT OF THE BILOXI PUBLIC SCHOOL DISTRICT), DR. LARRY DRAWDY (FORMER SUPERINTENDENT OF BILOXI SCHOOLS), GERALD BLESSEY (FORMER BOARD ATTORNEY), BONNIE GRANGER (FORMER BUSINESS MANAGER OF BILOXI SCHOOLS), AND SUSAN BRAND (FORMER PRINCIPAL OF BEAUVOIR ELEMENTARY SCHOOL)

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CERTIFICATE OF SERVICE

I hereby certify that on September 24, 2010, I electronically filed the foregoing with the Clerk of the Court using the ECF system, and I hereby certify that I have mailed by United States Postal Service the document to the following non-ECF participants:

Joseph Davis, Jr., Plaintiff, *Pro Se* and Gilda Davis, Plaintiff, *Pro Se*
346 Franks Drive, Biloxi, Mississippi 39531.

s/Silas W. McCharen

4217-111778stc