Exhibit C

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DAVID SCHIED,

Plaintiff,

v.

THOMAS A. DAVIS, JR., in his official capacity as Director of Texas Department of Public Safety, JENNIFER GRANHOLM, in her official capacity as Chairperson of the State of Michigan Administrative Board, LEONARD REZMIERSKI, in his official capacity as Northville Public Schools Superintendent, SANDRA HARRIS, in her official capacity as former Lincoln Consolidated Public Schools Superintendent, and FRED J. WILLIAMS, in his official capacity as Lincoln Consolidated Public Schools Superintendent,

Defendants.

Case No. 2: 08-cv-10005
Honorable Paul D. Borman
Magistrate Judge Steven R. Whalen

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DEFENDANTS, SANDRA HARRIS AND FRED WILLIAMS', MOTION FOR SUMMARY JUDGMENT

NOW COME DEFENDANTS, Dr. Sandra Harris and Fred Williams, by and through their attorneys, Plunkett Cooney, and for their motion for summary judgment, state as follows:

1. This lawsuit involves a breach of contract action; whereby, Plaintiff, David Schied (hereafter "Plaintiff"), alleges he was wrongfully terminated from employment with Lincoln Consolidated Schools.

2. However, Plaintiff is barred from maintaining this lawsuit as Plaintiff previously filed two separate state court actions involving the same transaction or occurrence.

3. Specifically, Plaintiff filed actions in both Washtenaw County Circuit Court and Ingham County Circuit Court.

4. Plaintiff's first suit in Washtenaw County Circuit Court was dismissed by way of summary disposition pursuant to MCR 2.116(C)(10).

5. Plaintiff then appealed to the Michigan Court of Appeals which affirmed the Circuit Court's decision.

6. Next, Plaintiff filed suit in Ingham County Circuit Court, again alleging the same allegations. Again, Plaintiff's lawsuit was dismissed by the circuit court.

7. Plaintiff filed leave to the Michigan Court of Appeals, and said matter is still pending with the appellate court.

8. This Petition for Writ of Mandamus has been dismissed by the Michigan Court of Appeals.

9. Notably, Dr. Sandra Harris was a named party defendant in both the Washtenaw and Ingham Circuit Court actions as she was the acting superintendent for Lincoln Consolidated Schools at all relevant time.

10. Mr. Fred Williams was not a named Defendant in the prior state court actions. However, Mr. Williams stands in privity with Dr. Harris as Mr. Williams took

over Dr. Harris' position as superintendent subsequent to Plaintiff filing his state court lawsuits.

11. Under the doctrine of *res judicata*, a party cannot re litigate matters already decided in a prior court of equal jurisdiction. See *Sewell v. Clean Cut Management, Inc.*, 463 Mich. 569, 621 N.W. 2d 222 (2001). (*Res judicata* bars a second or subsequent action when (1) the prior action was decided on the merits, (2) both actions involve the same parties or their privies, and (3) the matter in the second case was, or could have been, resolved in the first).

12. Similarly, under the doctrine of collateral estoppel, a party cannot re litigate an issue previously decided. For the doctrine of collateral estoppel to apply the following elements must exist: "1) a question of fact essential to the judgment must have been actually litigated and determined buy a valid and final judgment; 2) the same parties must have had a full [and fair] opportunity to litigate the issue; and 3) there must be mutuality of estoppel. See *Storey v Meijer, Inc.*, 431 Mich. 368, 429 N.W. 2d 169 (1988).

13. It is clear that Plaintiff's lawsuit is barred by both the doctrines of *res judicata* and collateral estoppel.

14. Dr. Harris was a named party in the Washtenaw Circuit Court matter as well as the Ingham Circuit Court matter, and Fred Williams stands in privity with Dr. Harris.

15. Both prior state court actions were dismissed; therefore, Plaintiff is barred from maintaining the current lawsuit.

16. Concurrence was sought from Plaintiff's counsel pursuant to Local Rule 7.1, but was not received.

WHEREFORE, Defendants, Dr. Sandra Harris and Fred Williams, ask this Honorable Court to grant their Motion for Summary Judgment and dismiss Plaintiff's lawsuit with prejudice.

Respectfully submitted,

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April 7, 2008

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DAVID SCHIED,

Plaintiff,

v.

Case No. 2: 08-cv-10005
Honorable Paul D. Borman
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THOMAS A. DAVIS, JR., in his official capacity as Director of Texas Department of Public Safety, JENNIFER GRANHOLM, in her official capacity as Chairperson of the State of Michigan Administrative Board, LEONARD REZMIERSKI, in his official capacity as Northville Public Schools Superintendent, SANDRA HARRIS, in her official capacity as former Lincoln Consolidated Public Schools Superintendent, and FRED J. WILLIAMS, in his official capacity as Lincoln Consolidated Public Schools Superintendent,

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**DEFENDANTS, SANDRA HARRIS AND FRED WILLIAMS',
BRIEF IN SUPPORT OF THEIR MOTION FOR SUMMARY JUDGMENT**

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STATEMENT OF ISSUES PRESENTED

I. Is Plaintiff barred by the doctrine of res judicata?

Plaintiff says "no."

Defendants say "yes."

II. Is Plaintiff barred by the doctrine of collateral estoppel?

Plaintiffs says "no."

Defendants say "yes."

INTRODUCTION

This lawsuit involves a breach of contract action; whereby, Plaintiff, David Schied (hereafter "Plaintiff"), alleges he was wrongfully terminated from employment with Lincoln Consolidated Schools. Plaintiff has filed two prior lawsuits arising from the same transaction or occurrence in both the Washtenaw and Ingham County Circuit Courts. Both state court actions were dismissed by the respective courts.[1]

Accordingly, this lawsuit is Plaintiff's third case arising out of the same events. Thus, it is clear that Plaintiff is barred by the doctrines of res judicata and collateral estoppel, and summary judgment is mandated as a matter of law.

II. FACTUAL OVERVIEW

A. Procedural History.

The procedural history of this case involves a series of unsuccessful lawsuits filed by Plaintiff against the same parties and over the same set of facts. Plaintiff first filed suit against Lincoln Consolidated Schools and Dr. Sandra Harris, the former superintendent of Lincoln Consolidated Schools, in Washtenaw County Court alleging breach of contract and wrongful termination. (See Exhibit A, Washtenaw Complaint attached hereto). Summary disposition was granted in favor of the Defendants in this Washtenaw matter. (See Exhibit B, Order of Court attached hereto). Subsequently, Plaintiff appealed the Washtenaw Circuit Court decision to the Michigan Court of Appeals. However, the Michigan Court of Appeals affirmed the Washtenaw Circuit's grant of summary disposition.

[1] Plaintiff also filed a claim in Wayne County Circuit Court arising out of the same or similar events. That case, not surprisingly, was also dismissed by way of dispositive motion.

Subsequently, Plaintiff filed a substantially similar suit, again against Lincoln Consolidated Public Schools and Dr. Harris, in Ingham County Circuit Court. (See Exhibit C, Ingham Complaint attached hereto). Again, this lawsuit was dismissed by the state court. (See Exhibit D). Plaintiff again appealed to the Michigan Court of Appeals, and the court dismissed Plaintiff's writ of mandamus.

Before the Michigan Court of Appeals had a chance to rule on the Ingham County matter, Plaintiff filed his third lawsuit over the same events before this Honorable Court. This time, Plaintiff did not name Lincoln Consolidated Public Schools. However, Plaintiff did name, among others, Dr. Harris and Fred Williams who took over as superintendent for Lincoln Consolidated Public Schools. As fully illustrated below, it is clear that Plaintiff's lawsuit is barred by the doctrines of res judicata and collateral estoppel.

B. Factual History

Plaintiff obtained his teaching certificate while living in California in August 2000 (Exhibit A, ¶ 11). He taught in California for two years and decided to relocate his family to Michigan (*Id* at ¶¶ 12-13). In September 2003, Plaintiff applied for a teaching position with the Lincoln Consolidated Schools (Exhibit A, ¶¶ 13-14). He filled out the requisite paperwork and employment application (Exhibit E). As part of his application, there was a separate form which inquired about Plaintiff's criminal history (Exhibit F). Plaintiff was required to check one of two boxes regarding his criminal history. Mr. Schied checked the box that read:

> "I have not been convicted of, or pled guilty or nolo contendere (no contest) to any crimes."

Exhibit F.

The bottom half of the page contained an explanation as to the requirement of a school district to perform a criminal background check on applicants pursuant to 1993 Public Act 68 and Public Act 83 of 1995. The form also notified Mr. Schied that:

> (2) until that report is received and reviewed by the School, *I am regarded as a conditional employee*; and
>
> (3) *if the report received from the Department of State Police is not the same as my representation(s) above* respecting either the absence of any conviction(s) or any crimes of which I have been convicted, *my employment contract is voidable at the option of the School.*

Exhibit F (emphasis supplied).

These last two paragraphs appeared just above Plaintiff's signature. This language served to put Plaintiff on notice that he was a conditional employee until the criminal background check has been performed and, that if he misrepresented his criminal background on his application, he could be terminated at the option of the school (*Id*).

As part of the application process for Lincoln Consolidated Schools, a criminal background check is performed on all applicants. Pending the results of that background check, Mr. Schied was offered a temporary probationary employment contract (Exhibit G, Probationary Teacher Contract of Employment). The contract was for the period September 11, 2003 through June 14, 2004. Plaintiff signed the page of his application indicating that he understood his employment was "conditional" pending the results of his criminal background check (Exhibit F).

On October 10, 2003, Defendants received Plaintiff's criminal history results from the State of Michigan and the FBI. The Michigan report did not reveal any criminal history for Plaintiff (Exhibit H, Michigan criminal history report). However,

the FBI report revealed Plaintiff had a conviction for [redacted] in 1977 (Exhibit I). Plaintiff had been placed on 10 years probation as a result of the conviction (*Id*). There was no further information contained in the FBI report regarding the status of Plaintiff's conviction.

This newly acquired information prompted the scheduling of a pre-termination hearing, scheduled for November 3, 2003, held with Plaintiff and various members of the school board. During that meeting, Plaintiff was questioned regarding the discrepancy in his employment application and the criminal background results. Plaintiff refused to allow Dr. Harris and others to review documents Plaintiff had brought with him - documents that Plaintiff alleged said confirmed the dismissal of his indictment. Plaintiff was placed on suspension without pay until the next meeting scheduled for November 10, 2003 (Exhibit J, 11/5/03 letter from Dr. Harris to Plaintiff).

The letter, attached as Exhibit J, confirmed that after the school had conducted a criminal background check, the results revealed a 1977 conviction in Texas for [redacted] (*Id*). A second meeting was then held on November 6, 2003 and a letter was sent to Plaintiff from Dr. Harris (Exhibit K, 11/6/03 letter from Dr. Harris to Plaintiff). The letter confirmed that the school board was still of the opinion that Plaintiff had misrepresented his criminal history on his employment application and that the school board was exercising its option to terminate his employment (*Id*).

Based on the above stated facts, Plaintiff has been unsuccessful in two separate state court actions and now seeks relief from this honorable court.

III. STANDARD OF REVIEW

Summary judgment under F.R.C.P. 56 is authorized only where the moving party is entitled to judgment as a matter of law, where it is clear what the truth is, and where no general issue remains for trial. *Poller v. Columbia Broadcasting System, Inc*, 368 U.S. 464, 82 S.Ct. 486, 7 L.Ed.2d 458 (1962).

Entry of summary judgment is mandated, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish that existence of an element essential to that party's case and on which that party will bear the burden of proof at trial. *Celotex Corp. v. Catrett*, 477 U.S. 317, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986).

When ruling on a defendant's motion for summary judgment, the mere existence of a scintilla of evidence in support of the plaintiff's position will not be sufficient; there must be evidence on which the jury could reasonably find for the plaintiff. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986).

IV. LEGAL ARGUMENT

A. Plaintiffs' Claims Against The Defendants Are Barred By The Doctrine Of *Res Judicata*.

The doctrine of *res judicata* was judicially created in order to relieve parties of the cost and vexation of multiple lawsuits, conserve judicial resources, and, by preventing inconsistent decisions, encourage reliance on adjudication. *Hackley v. Hackley*, 426 Mich. 582, 395 N.W.2d 906 (1986), quoting *Allen v. McCurry*, 449 U.S. 90, 101 S.Ct. 411, 66 L.Ed.2d 308 (1980). The Sixth Circuit has held that the application of *res judicata* and the preclusive effects of a valid judgment is to be

determined by the law of the system which rendered the judgment. *Federal Deposit Ins. Corp. v. Eckhardt*, 691 F.2d 245 (6th Cir. 1982). Therefore, Michigan law regarding res judicata applies in the present case.

The doctrine of res judicata in Michigan, precludes multiple lawsuits litigating the same cause of action. *Sewell v. Clean Cut Management, Inc.*, 463 Mich. 569, 621 N.W. 2d 222 (2001). *Res Judicata* bars a second or subsequent action when (1) the prior action was decided on the merits, (2) both actions involve the same parties or their privies, and (3) the matter in the second case was, or could have been, resolved in the first. *Id.*

Accordingly, litigants are obligated to advance, in a single proceeding, every alternative basis for recovery arising out of the same transaction or occurrence that is the subject matter of the action, and their failure to do so bars re-litigation of the claim. *Energy Resources v. Consumer Power Co.*, 221 Mich. App. 210, 561 N.W. 2d 854 (1997). Notably, the doctrine of res judicata bars both claims that were actually brought by the parties in their earlier action and those that the parties could have brought forward at that time. *Pierson Sand & Gravel, Inc. v. Keeler Brass Co.*, 460 Mich. 372, 596 N.W.2d 153 (1999). In other words, a Plaintiff cannot file multiple lawsuits in multiple courts over same events. *Id.* Further, this honorable court should note that res judicata extends to all named parties in a prior lawsuit as well as parties in privity with all named parties in prior lawsuits. See, *Sewell, supra.*

It is clear that Plaintiff is barred by the doctrine of res judicata. Plaintiff's current suit names Dr. Sandra Harris as a party defendant. Dr. Harris was a named party in the Washtenaw Circuit Court matter as well as the Ingham Circuit Court

matter. Accordingly, Ms. Harris is an individual that has been sued in two separate lawsuits over the same set of facts and was dismissed from both lawsuits with prejudice. Accordingly, this lawsuit against Dr. Harris is barred by the doctrine of res judicata.

Next, Fred Williams replaced Sandra Harris as superintendent of Lincoln Consolidated Public Schools. Accordingly, although Mr. Williams was not a named party to the prior lawsuits because he was not the acting superintendent at that time, he stands in privity with Ms. Harris and Lincoln Consolidated Schools and is also entitled to dismissal based on the res judicata doctrine. Therefore, Plaintiff's lawsuit must be dismissed with prejudice.

B. Plaintiff's Lawsuit Is Also Barred By The Doctrine Of Collateral Estoppel.

Plaintiff's lawsuit is also barred by the doctrine of collateral estoppel. Generally, for collateral estoppel to apply, three elements must be satisfied: 1) a question of fact essential to the judgment must have been actually litigated and determined buy a valid and final judgment; 2) the same parties must have had a full [and fair] opportunity to litigate the issue; and 3) there must be mutuality of estoppel. See *Storey v Meijer, Inc.*, 431 Mich. 368, 429 N.W. 2d 169 (1988).

"Mutually of estoppel requires that in order for a party to estop an adverse party from re-litigating an issue, the party must have been a party, *or in privity to a party*, in the previous action." *Monat v State Farm*, 469 Mich 679, 677 NW 2d 843 (2004) [emphasis added]. In other words, the "estoppel is mutual if the one taking advantage of the earlier adjudication would have been bound by it, had it gone against him." *Id.*

Again, it is clear that Plaintiff has had a full and fair opportunity to litigate his lawsuit in two separate state court actions. In both of these state court actions, a final judgment was obtained. *Furthermore, Plaintiff appealed both decisions*. Dr. Harris was a named party in these prior lawsuits and Fred Williams stands in privity with Dr. Harris as he took over her position prior to the filing of this lawsuit. Obviously, had Plaintiff obtained a verdict against the Defendants in the state court actions, said individuals would have been bound by the verdict. Therefore, there is clearly mutually in this matter. All the elements of collateral estoppel are met, and Plaintiff is barred from re-litigating issues that have already been decided in the state courts. Accordingly, not only is Plaintiff barred by the doctrine of *res judicata*, but he is also barred by the doctrine of collateral estoppel.

WHEREFORE, Defendants, Dr. Sandra Harris and Fred Williams, ask this Honorable Court to grant their Motion for Summary Judgment.

Respectfully submitted,

/s/Marc D. McDonald

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