

SETTLEMENT AGREEMENT

Comes now the State of South Dakota, by and through Chief Deputy Attorney General Mark Barnett, on behalf of the office of Attorney General and the State of South Dakota, together with Jessica Castleberry ("Castleberry") and her counsel Quentin Riggins, to settle pending claims and disputes between the parties. The terms of this Settlement are as set forth herein.

1. The parties to this Settlement have the authority to permanently and fully settle all disputes between the State of South Dakota, and Castleberry.
2. The parties know and understand that the Settlement is not confidential, it being the mutual goal of the parties to promote transparency in the Settlement of this dispute.
3. Castleberry has had sufficient time and advice of counsel, and makes this Settlement of her own free will and upon advice of that counsel.
4. This Settlement resolves any and all claims, liabilities, cross-claims, counter-claims, third party defendant claims, and joint and several claims of any kind or nature, arising out of the provision of COVID Relief Funds (CRF) and any other funds which may have been distributed to Castleberry or any of her Little Nest businesses in Rapid City, South Dakota, so long as Castleberry faithfully performs the terms of this Settlement.
5. This Settlement is the direct result of a request by the Governor that the office of Attorney General investigate whether Castleberry received funds from the Department of Social Services ("DSS"), in alleged violation of S.D. Const. Art. III, Sec. 12.
6. Upon investigation, the Office of Attorney General confirmed that Castleberry had in fact received CRF, while serving in the state legislature, in the total amount of \$603,229.79. Further investigation split this total into two distinct groups or purposes of payment. Congress intended the funds to support the daycare providers themselves (wages, operating costs, etc.) and to support the income qualified families attending those daycares, by reducing childcare payments owed by families. \$499,129.79 went directly to the benefit of Castleberry and her operational costs; the balance of \$104,100 was directly credited to the benefit of "income qualified" parents. Thus, in Castleberry's case, \$104,100 did in fact arrive where Congress intended it to arrive, in the hands of income qualified parents and their children, and was not part of the funds directly benefiting Castleberry and her costs of operation.
7. Castleberry did in fact use the portion she received, \$499,129.79 for a variety of DSS approved purposes, including wages, operating costs, rent, utilities, facility modifications, and other uses as contemplated by Congress in the stimulus package known as CRF. Castleberry's expenditures of the portion she received, were regularly reported to DSS, and in many cases expressly approved by DSS prior to the expenditure. The investigation did not reveal any abuse in expenditure of the funds, and all funds were spent for DSS approved purposes; nonetheless the State concluded Castleberry could not receive the funds under Article III Sec. 12 due to her status as a State Senator. This settlement Agreement is made solely for the purpose of avoiding the burden and expense of litigation, which would be imposed on the Parties if the disputes between them remained unsettled. This Settlement Agreement does not constitute an admission by any Parties hereto that they have engaged in any unlawful act or acts.
8. The parties jointly agree not to pursue any parents for recovery of any and all payments which passed through Castleberry's business but which were ultimately used for the direct benefit of income qualified parents and their children. Similarly, Castleberry agrees not to seek indemnification from, or joint and several liability with any other persons, including those employees of the DSS who authorized the payments, and further agrees not to seek

contribution or recovery of funds from the income qualified parents who received reduced rates from her.

9. Castleberry hereby agrees to pay the State of South Dakota the monthly sum of \$2,390.94, which includes interest at the applicable federal interest rate, each and every month until \$499,129.79, is paid in full. Each payment will be due on the first day of each month, commencing 45 days after the Settlement is signed by all parties.
10. Castleberry may continue running daycare businesses, but may not seek or receive any State of South Dakota funds that are a direct or indirect benefit to her or her businesses, until she has been out of the Legislature for a period of one year. When she has been out of the Legislature for one full year, she may apply for future funds as may be permitted by Congress and various agencies of state government, and her application shall be treated as with any other application by other daycare providers.
11. Castleberry shall execute a Confession of Judgment, upon the signing of this Settlement. Said Confession of Judgment shall be captioned in Pennington County, S.D. The Confession of Judgment shall not be filed at this time, but shall be held in the care of the office of Attorney General, until one of two events take place. In the event the Settlement is paid in full and on time, the Confession of Judgment shall be discarded and of no effect. In the event of default, the Confession of Judgment may be filed in Pennington County, and the state is then authorized to take all statutory and common law remedies to collect upon that Judgment.
12. If Castleberry fails or refuses to make any monthly payment in full and on time, it shall be deemed a default of this Settlement. Payments not received, partial payments, or payments returned for insufficient funds shall equally be deemed a default. Late payments also may be deemed a default in the sole judgment of the State. A default of this Settlement also waives any and all statutory and common law defenses Castleberry may have, in opposing the entry and satisfaction (collection) of said Judgment.
13. Payment shall be made payable to the State of South Dakota, deliverable to the State Auditor in Pierre, South Dakota, 500 East Capitol, Pierre, South Dakota.
14. Castleberry agrees that the provisions of this Settlement are severable; if any one or more of the provisions are held ineffective by the courts, the remainder of the Settlement shall remain in full force and effect.
15. This Settlement is to be liberally construed in favor of the State of South Dakota, in order to facilitate the recovery of \$499,129.79 together with applicable interest. Disputes regarding the language and meaning of this Settlement shall be resolved, wherever possible, in favor of the State of South Dakota with a view towards repayment in full.
16. Interest shall run at the federal rate of interest in effect as of the date of this Settlement, and run on the full outstanding balance; each payment shall be credited against the then outstanding balance of the principal and interest.
17. Statutes of Limitations are waived now and in the future. Castleberry understands that state statutes ordinarily place limits upon the time frame in which a lawsuit must be filed against her; she waives the protection of any such statutes. Should the duration of time necessary to pay this Settlement in full, take the claim out beyond statutes of limitations, those limitations are hereby waived upon a default by Castleberry, and the State may proceed to enforce the Judgment.
18. Castleberry further agrees to waive any other statutory or common law defenses to the taking of a Judgment under default, including but not limited to the defenses of laches, estoppel, waiver, or any other procedural or substantive bar to the entry of a Judgment upon her default.

19. This Settlement shall be interpreted and enforced under the applicable law of the State of South Dakota.
20. This Settlement fully and completely expresses the entire agreement between the parties, with respect to the subject matter hereof. There are no writings, conversations, understandings, representations, warranties, or agreements which the parties intend to be a part hereof except as expressly set forth in this Settlement. This Settlement supersedes and all previous written or oral agreements or discussions between the parties and any other person or legal entity concerning the transactions contemplated herein.
21. No change in, amendment to, waiver or termination of this Settlement or any part hereof shall be valid unless in writing and executed by or on behalf of all parties hereto.
22. Time is hereby expressly made of the essence with respect to the performance and / or satisfaction of each of the provisions and conditions of this Settlement.
23. Notice of default shall be mailed by first class mail to the last known address of Quentin Riggins, or his successor, of the Gunderson Palmer law firm of Rapid City, South Dakota. Upon notice of default, Castleberry shall have five working days in which to cure the default in full, or have the Judgment entered at the Clerk of Courts for Pennington County, South Dakota.
24. This Settlement may be executed in one or more counterparts, all of which together shall constitute one original document. This Settlement may be executed by a party's signature transmitted by facsimile ("fax") or by electronic mail in DocuSign or pdf format "(pdf)" and copies of this Settlement executed and delivered by means of faxed, DocuSign, or pdf signatures shall have the same force and effect as copies hereof executed and delivered with original signatures. The parties may rely upon electronic and pdf signatures as if such signatures were manually executed originals and agree that an electronic or pdf signature may be introduced into evidence in any proceeding arising out of or related to this Settlement as if it were an original manually executed signature page.
25. The obligation of repayment to the State of South Dakota shall be valid as against the estate of Castleberry, and in any probate, intestacy, and against any successors in interest, creditors, and other claimants against Castleberry.

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Dated this 17 day of August, 2023.

Jessica Castleberry

Jessica Castleberry

Quentin R. Riggins

Quentin Riggins, Counsel for Castleberry

Dated this 17 day of August, 2023.

Mark Barnett, Chief Deputy Attorney General, on behalf of the State of South Dakota

Mark Barnett