

MICHAEL K. JEANES
Clerk of the Superior Court
By REGINA ROMERO, Deputy
Date 10/27/2010 Time 15:40:16

Description	Amount
CASE# CV2010-099964 CIVIL NEW COMPLAINT	501.00
TOTAL AMOUNT	501.00

Receipt# 20924362

1 Leonidas G. Condos, #016153
2 The Condos Law Office, P.L.C.
3 Attorneys at Law
4 1820 E. Ray Road
5 Chandler, Arizona
6 480-464-2676
7 Attorney for, the Plaintiff
8 Diane Fernichio

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IN THE SUPERIOR COURT OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA

DIANE FERNICHIO,

Plaintiff

vs.

EDKEY, INC., an Arizona non-profit
corporation operating Children First Academy,
Tempe;
CHOICE EDUCATION AND
DEVELOPMENT CORPORATION, a
Delaware non-profit corporation;
SEQUOIA CHARTER SCHOOL, INC., an
Arizona for profit corporation,

Defendants

Case No.

CV2010-099964
COMPLAINT FOR DAMAGES

COME NOW, Diane Fernichio, by and through her counsel, and for her Complaint
against the Defendants, EDKEY, INC., CHOICE EDUCATION AND DEVELOPMENT
CORPORATION, and SEQUOIA CHARTER SCHOOL, INC. and each of them alleges and
says as follows:

I. VENUE & JURISDICTION

1. The Plaintiff, Diane Fernichio, is a resident of Maricopa County, State of
Arizona.

- 1 2. The Defendant, Edkey, Inc., is an Arizona non-profit corporation which does
2 business in the County of Maricopa, State of Arizona.
- 3 3. The Defendants, Choice Education and Development Corporation. is a
4 Delaware non-profit corporation which does business in the County of
5 Maricopa, State of Arizona.
- 6 4. The Defendant, Sequoia Charter School, Inc. is a Arizona for profit
7 corporation that does business in the County of Maricopa, State of Arizona
- 8 5. All acts asserted in this Complaint occurred in Maricopa County, State of
9 Arizona.
- 10 6. This Court has jurisdiction in this matter and venue is proper in Maricopa
11 County.
12

13 **II. COUNT ONE - BREACH OF CONTRACT**

- 14 7. The Plaintiff incorporates the material allegations contained in rhetorical
15 paragraphs 1 through 6 of this Complaint as if set forth herein.
- 16 8. At all times relevant, the Defendant Edkey, Inc. ("Edkey") operated a public
17 charter school known as Sequoia Ranch School d/b/a Children First Academy
18 Tempe ("Children First Academy") pursuant to a Charter contract obtained
19 from the Arizona State Board for Charter Schools at its location at 1938 E.
20 Apache Blvd., Tempe, Arizona.
- 21 9. At all times relevant and upon information and belief "Edkey" operates either
22 under the umbrella and control of Sequoia Charter School, Inc., ("Sequoia")
23 or Edkey is managed by Sequoia and is part of the Sequoia Charter School
24 Family.
25

1 10. At all times relevant and upon information and belief Edkey is provided
2 managerial services and direction by Choice Education and Development
3 Corporation "Choice" including payroll and personal issues .

4 11. The Plaintiff, Diane Fernichio was employed by Edkey for the first year of
5 operation of Children First Academy in 2009, as the assistant principal and
6 performed additional duties at Children First Academy which included being
7 the donation coordinator and supervisor of donations, distributions, as well as
8 assisting in budget calculation and consultation.

9 12. The Plaintiff, Diane Fernichio was re-employed by Edkey as an Assistant
10 Principal for the school year 2010-2011 and executed a written employment
11 agreement on or about May 10, 2010 ("the Agreement") (a true and accurate
12 copy is attached hereto as Exhibit "A").

13 13. Prior to executing the Agreement, the Plaintiff noticed that the agreement
14 described her duties as those of a "teacher" instead of "assistant principal",
15 and raised this issue with Jerry Lewis, the Assistant Superintendent of
16 Sequoia who also serves as Principal of Children First Academy ("Lewis")
17 and was told that it did not matter since her duties would go on in accordance
18 to the prior year's activities.

19 14. The Plaintiff continued performing her duties which included a large
20 donation campaign to fill a bus with book bags to be provided to the students
21 of Children First Academy most of which were homeless in the month of
22 June, 2010.

23 15. The Plaintiff had used her skills successfully for obtaining contributions for
24 Children First Academy and its predecessor school, the Thomas J. Pappas
25 School for homeless students separated until court ordered to close by the
Maricopa County School Superintendent.

- 1 16. The Plaintiff on numerous occasions questioned the actions of Jerry Lewis,
2 the Principal, of Sequoia Charter Schools, Inc. with respect to the usage of
3 donated funds not being properly used for the students and for the intended
4 purposes of the donations.
- 5 17. The Plaintiff specifically objected to the gift by Jerry Lewis, of certain
6 donated items to a recently employed teacher/friend of Mr. Lewis which was
7 to be used at a garage sale for her personal use.
- 8 18. The Plaintiff on one occasion corrected a representation made by Jerry Lewis,
9 to Pappas Kids Schoolhouse Foundation that Children First Academy did not
10 have donation funds necessitating request from the Production for additional
11 funds.
- 12 19. The Plaintiff raised questions about the Children First Academy budget and
13 on a number of occasions about expenditures from donation funds.
- 14 20. On or about July 23, 2010, after returning from her vacation, the Plaintiff was
15 terminated without prior notice "due to budgetary issues" as illustrated by the
16 letter from Mary Anne Gibson the Human Resources Coordinator for Sequoia
17 Charter Schools attached hereto as Exhibit "B" and incorporated herein by
18 reference.
- 19 21. The Agreement provided that the term of employment was for the period
20 starting July 1, 2010 to June 30, 2011 subject to termination as set forth in
21 paragraph 10 of the Agreement.
- 22 22. Paragraph 10 of the Agreement provides that *"School or Employee may*
23 *terminate this Agreement and the employment of Employee at any time*
24 *without cause upon fourteen calendar days notice.*
- 25 23. The Plaintiff was not provided fourteen days notice prior to her termination
and was not terminated for cause.

1 24. The Defendant materially breached the Agreement.

2 25. The Agreement provided for a salary of \$60,000 of which approximately
3 \$15,000 has been paid.

4 26. The Plaintiff has only been paid to August 15, 2010 and has received no bi-
5 monthly compensation since the breach of her contract as was requested by
6 the contract.

7 27. The Plaintiff is entitled to her bi-monthly pay as a result of the material
8 breach by the Defendants, and each of them.

9 28. ARS § 12-341.01 provides for the recovery of attorney fees in an action
10 arising out of contract.

11 WHEREFORE, the Plaintiff, Diane Fernichio, prays for the Court to enter
12 judgment against the Defendants', Edkey, Inc., Sequoia Charter School, Inc., and Choice
13 Educational and Development Corporation as follows:

- 14 a. Judgment in the Plaintiff's favor and against the Defendants, Edkey,
15 Inc., Sequoia Charter School, Inc., and Choice Education and
16 Development Corporation in the amount of \$ 45,000 for actual
17 contractual damages;
- 18 b. Judgment for statutory interest on the amounts unpaid;
- 19 c. For the Plaintiff to be awarded her attorney fees incurred in
20 prosecution of this action;
- 21 d. For any and all other relief just and proper in the premises.

22 **III. COUNT TWO – WRONGFUL TERMINATION**

23 29. The Plaintiff hereby incorporates the material allegations set forth in
24 paragraphs 1 through 28 of the Complaint herein as if fully set forth.
25

1 30. The Plaintiff on numerous occasion raised issues with respect to the
2 questionable donation, distribution, and expenditure, practice of Children
3 First Academy which she felt were contrary to the law.

4 31. The Defendants' termination of the Plaintiff was caused by her continuous
5 questioning of conduct of the Principal of Children's First Schools who was
6 also the Assistant Superintendant of Sequoia, regarding spending practices
7 and questioning donation usage.

8 32. The Defendants' termination was caused by the Plaintiff's constant attempts
9 to make the school compliant with all applicable laws especially non-profit
10 tax laws.

11 33. The Defendants' termination of the Plaintiff was wrongful.

12 34. The Defendants' actions were willful, intentional, and contrary to public
13 policy of the State of Arizona and should be punished.

14 WHEREFORE, the Plaintiff, Diane Fernichio, prays that the Court enter judgment in her
15 favor against Edkey, Inc., Sequoia Charter School, Inc., and Choice Education and Development
16 Corporation, as follows:

- 17 a. Judgment in the Plaintiff's favor for an amount to be proper at trial;
18 b. For punitive damages for the Defendants' actions;
19 c. For reasonable attorney fees incurred by the Plaintiff;
20 d. For any and all other relief just and proper in the premises.

21 **IV. COUNT III – UNAUTHORIZED USE OF NAME & LIKENESS**

22 35. The Plaintiff incorporates the material allegations setforth in paragraph 1
23 though 34 of this Complaint as if fully set forth herein.

24 36. The Plaintiff has been actively involved in obtaining donations for homeless
25 children since her tenure at Thomas J. Pappas School operated by the
Maricopa County School Superintendant.

1 37. The Plaintiff and her likeness possesses a strong commercial value in the
2 charitable field of educating underprivileged children and homeless children.

3 38. The Plaintiff has raised millions of dollars from the public and corporate
4 organizations as well as grants and funds from non-profit organizations.

5 39. The Plaintiffs' home and her likeness are her private property.

6 40. The Plaintiff utilized her name and likeness in her employment as the
7 Defendants' school in Tempe.

8 41. The Defendants' since Plaintiffs' termination are continuing to use her
9 likeness and name in promoting their schools without Plaintiffs' permission.

10 42. The Defendants' have appropriated the Plaintiffs' name and likeness for their
11 own commercial purposes.

12 43. The Defendants' have violated the Plaintiffs' right to privacy.

13 44. The Plaintiff is entitled to compensation for the use of her likeness and name
14 being used by Defendants.

15 WHEREFORE, the Plaintiff, Diane Fernichio, prays that the Court enter
16 judgment in her favor and against the Defendants' Edkey, Inc., Sequoia Charter School, Inc.,
17 and Choice Education and Development Corporation as follows:

18 a. For Damages as determined by the Court;

19 b. For any other relief just and proper in the Premises.

20 **V. COUNT IV – BREACH OF COVENANT OF GOODFAITH AND FAIR DEALING**

21 45. Plaintiff hereby incorporates the material allegations set forth in paragraphs 1
22 thru 44 of the Complaint as if setforth herein.

23 46. The Agreement possesses an implied covenant of good faith and fair dealing.

24 47. The Defendants improper termination of the Plaintiff violates the covenant of
25 good faith and fair dealing contained in this Agreement,

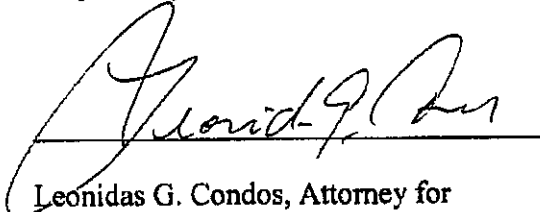
1 WHEREFORE, the Plaintiff, Diane Fernichio, prays that the Court enter
2 Judgment in her favor and against the Defendants' Edkey, Inc., Sequoia Charter School, Inc.,
3 and Choice Education and Development Corporation as follows:

4 a. For Damages as determined by the Court;

5 b. For any other relief just and proper in the Premises.

6 Dated this 26th day of October, 2010.

7 Respectfully submitted,

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10 
11 Leonidas G. Condos, Attorney for
12 The Plaintiff, Diane Fernichio.

Heather Glass *Our Yard Sale* went amazing!! We made close to \$1000!!
Thank you so much to everyone that donated, helped, and bought things! You helped two families bring
children into their homes !:)
[July 10 at 2:29 pm](#) Comment

MICHAEL K. JEANES, CLERK
BY *M. De La Cruz* DEP
FILED
10 DEC 22 PM 4:42

1 Leonidas G. Condos, #016153
2 The Condos Law Office, P.L.C.
3 Attorneys at Law
4 1820 E. Ray Road
5 Chandler, Arizona
6 480-464-2676
7 Attorney for the Plaintiff

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**IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA**

DIANE FERNICHIO
PLAINTIFF,

vs.

EDKEY, INC., an Arizona non-profit
corporation operating Children First Tempe;
CHOICE EDUCATION AND
DEVELOPMENT CORPORATION, a
Delaware non-profit corporation; SEQUOIA
CHARTER SCHOOL, INC., an Arizona for
profit corporation

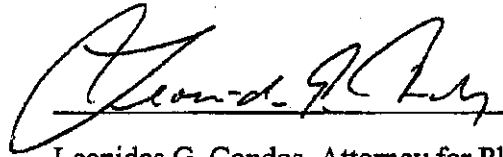
DEFENDANT (s).

Case No. CV2010-099964

**SUBMISSION OF EXHIBITS A AND B
INADVERTENTLY NOT ATTACHED
TO PLAINTIFF'S COMPLAINT**

Comes now the Plaintiff, Diane Fernichio, by her undersigned counsel, and hereby submits her written employment contract (Exhibit "A") and the letter of termination (Exhibit "B") which was not attached to the Plaintiff's complaint which should be incorporated into the Complaint as referenced therein.

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2
3 Respectfully submitted,

4
5 

6 Leonidas G. Condos, Attorney for Plaintiff

7
8 A copy of the foregoing pleading
9 has been sent on the 22nd day of
10 December, 2010 by first class mail and

11 Fax to:

12 Mark G. Worischeck

13 Mona M. Stone

14 Sanders & Parks, P.C.

15 1300 SCF Tower

16 3030 North Third Street

17 Phoenix, Arizona 85012-3099

18 And delivered to:

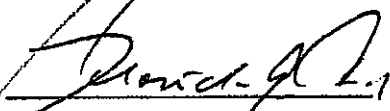
19 Hon. John Ditsworth

20 Maricopa County Superior Court

21 Southeast Facility

22 222 E. Javelina Avenue

23 Mesa, Arizona

24 

11:00 Tuesday

Edkey, Inc.

School: Sequoia Ranch School dba Children First Academy Tempe

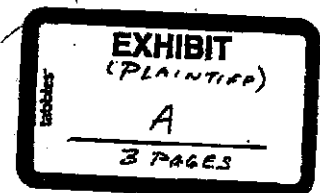
Employment Agreement

Name: Fernichio, Diane			
Job Title:	Subject:	School:	
Assistant Principal	Position	Sequoia Ranch School dba Children First Academy Tempe	
Start Date:	Expiration Date, if not sooner terminated:	Days to be worked per year:	
7/1/2010	6/30/2011	280	
Annual Salary:	Base Salary	Prop. 301 Base:	Grants/Other Monies:
60,000.00	FY10/11 60,000.00	FY10/11	

This Employment Agreement ("Agreement") is entered into on the 27th day of May, 2010 by and between Employee and School. In consideration of School's agreement to employ Employee under the compensation terms set forth above and in the attached pay policy, Employee agrees that Employee will perform the duties and services described herein subject to all of the terms and conditions set forth in this Agreement, and Employee accepts the following terms and conditions:

- 1. Employment.** This Agreement shall commence on the Start Date set forth above, and shall continue until the Expiration Date set forth above, subject to termination by School or Employee as set forth in paragraph 10 below.
- 2. Compensation.** During the term of employment, School shall pay Employee the installments of the Annual Salary set forth above in the manner described in the Employee Pay Policy attached hereto as Addendum A and made a part hereof.
- 3. Duties.** Employee shall perform all duties and services of a teacher faithfully and satisfactorily at the time, place, and for the duration prescribed by School, and as directed by the Principal of School. It is understood that Employee may be subject to assignment, reassignment, or transfer by School. Employee agrees to devote such time as may be reasonably required by School to such teaching duties, and shall attend meetings and assist in School functions that may be reasonably necessary for the proper and adequate operation of School. Employee also agrees to comply with all rules and regulations promulgated by School and Edkey, Inc. and all pertinent statutes of the State of Arizona. All such rules, regulations and statutes are incorporated in this Agreement by this reference and are made a part of this Agreement as though fully set forth. By signing this Agreement, Employee acknowledges that Employee has received and read the Governing Board Policy Manual of Edkey, Inc. (the "Policy Manual"), and Employee accepts and agrees to comply with such Policy Manual and the revisions and additions made to it from time to time. In performing duties under this Agreement, Employee shall:

- (a) Maintain and promote excellence in School's learning and working environments.



- (b) Improve effectiveness and enhance professional growth both for Employee and for rest of the School staff, students and parents.
- (c) Carry out assignments, supervisory directives, and fulfill areas of responsibility in a professional, competent, and responsible manner.
- (d) Edify School's students, parents and staff.
- (e) Be an influence for good in the community.
- (f) Promote the interest, mission, goals and objectives of School as set forth by School's Governing Board.

4. Conditions to Effectiveness. If this Agreement is not signed by the Employee and returned to School on or before , School reserves the right to withdraw this offer. This Agreement shall not become effective until Employee provides to School a valid teaching certificate, a valid health certificate, and any other credential required by School or Edkey, Inc..

5. Curriculum Map Requirement. Employee will create and utilize a curriculum map to guide Employee's instruction in accordance with the requirements of the Policy Manual. Failure to create the curriculum map or to provide instruction in accordance with the curriculum map may be just cause for termination at the sole discretion of School.

6. Highly Qualified Requirement. Teachers and aides, where required, must submit proper documentation to prove they are Highly Qualified for their positions at time of hire or when any change of assignment occurs as outlined in the No Child Left Behind Act. Failure to provide required documentation may be just cause for termination at the sole discretion of School.

7. Proposition 301 Merit Pay. Proposition 301 Base identified above in this Agreement is the money paid to Employee for base salary enhancement and does NOT include Proposition 301 Merit Pay. The Proposition 301 Merit Pay is decided between the Principal and the Employee and is based on the Employee's development of a 301 plan, the Superintendent's acceptance, and Employee's completion and submission of Employee's Proposition 301 Plan Agreement.

8. Personal and Vacation Days. Employee is entitled to six (6) personal days for sickness or other personal matters during the school year and in addition to that, Employee is entitled to take time off for bereavement and jury duty. If Employee takes more than six (6) personal days, Employee will not be paid for those excess days. The Superintendent may grant exceptions under extraordinary circumstances. If the Employee's days to be worked per year, specified above, are 260 days, the Employee is entitled to 10 days of vacation during the year. Vacation days are for used during the current fiscal year (July 1 to June 30 of the following year) and do not carryover to the next fiscal year.

9. At Will Employment. Employee's employment with School is "at will" of both School and Employee. Nothing in this Agreement or in the Policy Manual or any other publication or document of School or Edkey, Inc. shall be interpreted or understood to create anything except employment at

will. This Agreement does not give Employee the right to continuing employment with School or to the receipt of any benefits related thereto, or to a renewal or extension of this Agreement, nor does it obligate School to provide Employee such continuing employment or benefits.

10. Termination. School or Employee may terminate this Agreement and the employment of Employee at any time without cause upon fourteen calendar days' notice. School may also terminate this Agreement and Employee's employment for just cause immediately and without advance notice. Just cause shall include, but not be limited to, violation of this Agreement or the Policy Manual, excessive absenteeism, inadequacy of teaching, incompetency, immorality, intemperance, insubordination, physical or mental incapacity, violation of a law involving moral turpitude, or unprofessional conduct reflecting discredit on Employee or School or impairing seriously the continued usefulness or ability of Employee to teach. Employee benefits will be discontinued at the end of the month in which the Employee ceases to work. If for any reason the employment of Employee is terminated prior to the end of an academic year, appropriate adjustments shall be made to the payments due under the Employee Pay Policy for the balance of salary due to the date of termination.

11. Miscellaneous Provisions. This Agreement constitutes the entire agreement and understanding with respect to the employment of Employee by School and supersedes any and all prior agreements and understandings, whether oral or written, relating thereto. This Agreement shall not be modified or amended except by written agreement signed by Employee and by a representative of School. This Agreement shall be governed by, and construed and enforced in accordance with the laws of the State of Arizona. This Agreement shall be binding upon and shall inure to the benefit of the successors and assigns of School, but shall not be assignable by Employee. If either party brings an action to enforce the terms of this Agreement or to declare rights hereunder, the prevailing party in any such action, on trial or appeal, shall be entitled to its expenses, including but not limited to reasonable attorneys' fees and court costs, to be paid by the losing party as fixed by the court.

IN WITNESS WHEREOF, Employee and School have executed this Employment Agreement as of the dates set forth below.

Employee Signature: <i>Atase Fenrich</i>	Date: 5/27/10
Principal Signature: <i>[Signature]</i>	Date: 5/27/10
Finance Director's Signature: <i>[Signature]</i>	Date:
Superintendent's Signature	Date:

After Employee and Principal sign 3 copies of the Agreement, one signed copy is retained by the employee and two signed copies are returned to the Administration office. After signature by the Superintendent, the Employee will receive an official copy back.



Learning is life's greatest adventure.

To: Diane Fernichio
From: Mary Anne Gipson
Human Resources Coordinator
Date: July 23, 2010
Re: Termination of Employment

Dear Diane:

Regretfully, your position at Children First Academy – Tempe will be eliminated effective today, July 23, 2010, due to the budgetary issues. You will be eligible for rehire in other positions that may become available in the future if your skills are a good fit. Please feel free to apply.

Your final paycheck issued to you today includes pay through August 15, 2010. Your insurance coverage will end of August 31, 2010. You will receive correspondence from our COBRA administrator, Discovery, with information about continuing you insurance.

We would like to thank you for your dedication and hard work and we wish you success in all your future endeavors.

Kindest Regards,

A handwritten signature in black ink that reads "Mary Anne Gipson".

Mary Anne Gipson
Human Resources Coordinator

