# Exhibit C to Benjamin Affirmation

LINDSEY WILCOX,
Respondent,

v

MEMORANDUM AND ORDER

NEWARK VALLEY CENTRAL SCHOOL DISTRICT et al.,
Appellants,
et al.,
Defendants.

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Calendar Date: May 1, 2015

Before: McCarthy, J.P., Egan Jr., Lynch and Clark, JJ.

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Law Firm of Frank Miller, East Syracuse (Alan J. Pierce of Hancock Estabrook, LLP, Syracuse, of counsel), for appellants.

Law Office of Ronald R. Benjamin, Binghamton (Ronald R. Benjamin of counsel), for respondent.

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McCarthy, J.P.

Appeals (1) from an order of the Supreme Court (Tait, J.), entered December 6, 2013 in Tioga County, which, among other things, modified the proposed judgment, (2) from a judgment of said court, entered December 19, 2013 in Tioga County, upon a verdict rendered in favor of plaintiff, (3) from an order of said court, entered August 6, 2014 in Tioga County, which partially granted a motion by defendants Newark Valley Central School District, Mary Ellen Grant and Diane Arbes to set aside the verdict, and (4) from the amended judgment entered thereon.

Plaintiff was employed by defendant Newark Valley Central School District (hereinafter NVCSD) as a probationary physical education teacher and as the coach of the girls' varsity field hockey team. At that time, plaintiff lived with her boyfriend, Todd Broxmeyer – a locally known field hockey authority who, among other things, served as a volunteer coach to the NVCSD field hockey teams. In February 2008, approximately two months after Broxmeyer was arrested and charged with raping a female field hockey player from a different school district, plaintiff's employment was terminated.

Plaintiff then commenced an action against NVCSD, Diane Arbes – NVCSD's high school principal – and Mary Ellen Grant – NVCSD's superintendent, as well as the members of the Board of Education of NVCSD, alleging that defendants maliciously published defamatory statements about her and that her due process rights were violated by defendants' failure to provide her with a name-clearing hearing. Thereafter, certain of plaintiff's causes of action were dismissed upon defendants' motion to dismiss (74 AD3d 1558 [2010]), defendants were granted partial summary judgment dismissing additional causes of action and this Court converted the federal due process cause of action into a CPLR article 78 proceeding (107 AD3d 1127 [2013]). Plaintiff sought the annulment of the Board's determination denying her a name-clearing hearing – and an order granting her such a hearing – and proceeded to trial on causes of action premised on two alleged defamatory statements: (1) that Arbes had stated, during a meeting attended by female varsity and junior varsity field hockey players, the junior varsity coach and school counselors, that plaintiff was no longer employed by NVCSD and had acquiesced in or did not protest or challenge her termination and (2) that Grant had stated to one of the parents of a field hockey player that plaintiff had acquiesced in or did not protest or challenge her termination.

Supreme Court granted plaintiff's application to annul the Board's determination denying her a name-clearing hearing and ordered such hearing to be provided. After a first trial ended in a mistrial, a second trial concluded with the jury rendering a verdict in favor of plaintiff, awarding her $351,990 in lost

wages from the date of her termination to the date of the verdict, $2.1 million in future lost wages and $1 million in damages for past mental anguish, emotional distress, personal humiliation and/or damage to her reputation. NVCSD, Arbes and Grant (hereinafter collectively referred to as defendants) appeal from Supreme Court's order modifying the proposed judgment and the judgment entered upon the verdict.

Thereafter, defendants moved, pursuant to CPLR 4404 (a), to set aside the verdict. Supreme Court granted the motion to the extent of ordering a new trial on the issue of lost wages unless plaintiff stipulated to a reduction of the verdict to $294,971 for past lost wages and $1,560,000 for future lost wages and otherwise denied the motion. Plaintiff stipulated to the reduced award, and an amended judgment was entered accordingly. Defendants appeal from the order resolving their posttrial motion and the amended judgment.[1]

First addressing the due process claim (the converted CPLR article 78 proceeding), Supreme Court erred in annulling the Board's determination and granting plaintiff a name-clearing hearing. Where "a government employee is dismissed for stigmatizing reasons that seriously imperil the opportunity to acquire future employment, the employee is entitled to an opportunity to refute the charge [or charges]" at a name-clearing hearing if the employer publicly disclosed the stigmatizing reasons or if there is a likelihood of future dissemination of such reasons (Matter of VanDine v Greece Cent. School Dist., 75

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[1] We dismiss defendants' appeals from both Supreme Court's order modifying the proposed judgment and its order partially granting defendants' motion to set aside the verdict because the right to appeal from those interlocutory orders terminated upon entry of the final judgments (see Doherty v Schuyler Hills, Inc., 55 AD3d 1174, 1175 [2008]; Dubray v Pratt, 283 AD2d 869, 869 [2001]). Nonetheless, defendants' appeals from the final judgments bring the substance of those orders up for our review (see CPLR 5501 [a] [1]).

AD3d 1166, 1167 [2010] [internal quotation marks and citations omitted]; see 107 AD3d at 1131). Judicial review of an administrative determination such as this one is limited to whether the determination lacks a rational basis, "was made in violation of lawful procedure, was affected by an error of law or was arbitrary and capricious or an abuse of discretion" (CPLR 7803 [3]; see Matter of Barkan v Roslyn Union Free School Dist., 67 AD3d 61, 65 [2009]; Matter of Weill v New York City Dept. of Educ., 61 AD3d 407, 408 [2009]).

Here, plaintiff requested a name-clearing hearing by February 2008 letter. In that letter, plaintiff requested a name-clearing hearing to specifically defend against and address the assertions made by Grant in the statement of reasons for recommending termination letter (see generally Education Law § 3031) and those made by Arbes in a January 2008 letter directing her to "refrain from any one-on-one conversations with students."[2] Notably, plaintiff's allegations as to the stigmatizing content of such letters do not include any further allegations that defendants and the Board had publicly disclosed those letters or their contents. Nonetheless, plaintiff's assertion that she was seeking relief in the form of removal of the statement of reasons letter from her personnel file was sufficient to apprise the Board of an allegation that there was a likelihood that such letter or its content would be disseminated. As to that allegation, multiple Board members averred that, before deciding to deny plaintiff's request for a name-clearing hearing, the Board determined that the statement of reasons letter had been and would remain confidential. Therefore, given that plaintiff did not allege that defendants and the Board had publicly disseminated any stigmatizing materials and considering the evidence supporting the conclusion that plaintiff's allegation that the statement of reasons letter was in plaintiff's personnel file was factually incorrect, there is no basis to disturb the Board's denial of a name-clearing hearing.

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[2] This Court previously held that the statements contained in these letters were not actionable libel (107 AD3d at 1131; 74 AD3d at 1561).

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