

UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH CAROLINA  
COLUMBIA DIVISION

---

Chalmers Eugene Troutman, III, )  
)  
)  
Plaintiff, ) **D R A F T 04/28/08**  
)  
)  
v. )  
)  
)  
Leon J. Hendrix, Jr.; J.J. Britton, M.D.; Bill L. ) Case No. 3:08-cv-00449-MJP  
Amick; Thomas C. Lynch, Jr.; Louis B. Lynn; )  
Patricia H. McAbee; Leslie G. McCraw; )  
E. Smyth McKissick, III; Thomas B. McTeer, Jr.; )  
Robert L. Peeler; William C. Smith, Jr.; and )  
Joseph D. Swann, all in their individual capacities )  
and in their official capacities; the Clemson )  
University Board of Trustees; James F. Barker; )  
Doris R. Helms; and Clayton D. Steadman, all in )  
their individual capacities and in their official )  
capacities, )  
)  
Defendants. )

---

**DEFENDANTS' ANSWER  
TO THE AMENDED COMPLAINT<sup>1</sup>**

COME NOW the Defendants, by and through their counsel, Ogletree, Deakins, Nash, Smoak & Stewart, P.C., and serve their Answer to the Amended Complaint in the above-styled case as follows:

---

<sup>1</sup> The allegations contained in the Amended Complaint are asserted against each named Defendant both individually and in their official capacities as Trustees or employees of Clemson University. The Board of Trustees of Clemson University is also a named Defendant. This Answer to the Amended Complaint constitutes a collaborative effort by all of the Defendants to answer the specific allegations set forth in the Amended Complaint. Each individual Defendant may not have knowledge of each specific fact referenced in the Amended Complaint or in the Answer to the Amended Complaint.

## **FIRST DEFENSE**

As to the specific allegations contained in the Amended Complaint, Defendants would aver as follows:

## **INTRODUCTION**

Clemson University's Board of Trustees; its President, James F. Barker; its Provost, Doris R. Helms; and its General Counsel, Clayton D. Steadman, deny that Plaintiff was fired from his job as Executive Secretary to the Board of Trustees of Clemson University for any reasons other than his failure to establish and maintain effective working relationships with the Trustees and Clemson University personnel and because he reorganized and added to the Internal Auditing Division without authority or approval from the Board of Trustees, despite being instructed by the Chairman of the Board of Trustees not to add an additional layer of management between the Director of Internal Auditing and the Board of Trustees. Defendants deny that Plaintiff has stated a claim pursuant to 42 U.S.C. Sections 1983 and 1985.

## **THE PARTIES**

1. **Gene Troutman**. With respect to the allegations contained in paragraph 1 of the Amended Complaint, Defendants admit that Plaintiff is a citizen and resident of Greenville County, South Carolina; that he served as Executive Secretary to the Clemson University Board of Trustees; and that he is a 1974 graduate of Clemson University. Defendants admit that Plaintiff made a financial donation to Clemson University upon his selection as Executive Secretary. Defendants deny that Plaintiff spoke out to any Defendant as a citizen, alumnus, parent, tuition payer, donor, or supporter of Clemson University on matters of public concern. Rather, Defendants assert that at no relevant time did Plaintiff speak out about or criticize unrestricted fund balances to any Defendant, or make his now alleged opposition known to any

Defendant, including the Trustees, President Barker, and Provost Helms. Defendants further assert that the first time Plaintiff asserted his alleged opposition to unrestricted fund balances was after he had been asked to resign from his position as Executive Secretary and after he had retained legal counsel. Defendants assert that Plaintiff's comments about salary increases of University officials were made primarily in the context of his request that his own salary be increased. Defendants admit that Plaintiff served as Assistant to Clemson University President James F. Barker, but deny that the position was ceremonial. As Assistant to the University President, Plaintiff was a member of and fully participated in the University's Administrative Council, which had responsibility for certain financial affairs of the University and for the day-to-day achievement of the goals set and approved by the Board of Trustees for the advancement of the University.

2. Except for the mathematical error, Defendants admit that the individuals named in paragraph 2 of the Amended Complaint were at all times relevant herein Trustees of Clemson University and that they, along with Trustee David H. Wilkins, terminated Plaintiff for the reasons previously stated.

3. With respect to paragraph 3 of the Amended Complaint, Defendants admit that Defendant Leon J. Hendrix, Jr., is a Trustee and is currently serving a third term as the elected Chairman of the Board of Trustees of Clemson University and that Mr. Hendrix is a citizen and resident of Charleston County, South Carolina. Defendants deny that Chairman Hendrix acted in his individual capacity and assert that at all relevant times Chairman Hendrix was acting in his official capacity on behalf of Clemson University.

4. With respect to the allegations contained in paragraph 4 of the Amended Complaint, Defendants admit that Defendant J.J. Britton is a citizen and resident of Sumter

County, South Carolina, and that he was the Vice Chairman of the Board of Trustees of Clemson University. Defendants deny that Trustee Britton acted in his individual capacity and assert that at all relevant times Trustee Britton was acting in his official capacity on behalf of Clemson University.

5. With respect to the allegations contained in paragraph 5 of the Amended Complaint, Defendants admit that Defendant Bill L. Amick is a citizen and resident of Saluda County, South Carolina, and is a Trustee of Clemson University. Defendants deny that Trustee Amick acted in his individual capacity and assert that at all relevant times Trustee Amick was acting in his official capacity on behalf of Clemson University.

6. With respect to the allegations contained in paragraph 6 of the Amended Complaint, Defendants admit that Defendant Thomas C. Lynch, Jr., is a citizen and resident of Pickens County, South Carolina, and that he was a Trustee of Clemson University at the time this lawsuit was filed. Defendants deny that former Trustee Lynch acted in his individual capacity and assert that at all relevant times former Trustee Lynch was acting in his official capacity on behalf of Clemson University.

7. With respect to the allegations contained in paragraph 7 of the Amended Complaint, Defendants admit that Defendant Louis B. Lynn is a citizen and resident of Richland County, South Carolina, and is a Trustee of Clemson University. Defendants deny that Trustee Lynn acted in his individual capacity and assert that at all relevant times Trustee Lynn was acting in his official capacity on behalf of Clemson University.

8. With respect to the allegations contained in paragraph 8 of the Amended Complaint, Defendants admit that Defendant Patricia H. McAbee is a citizen and resident of Greenville County, South Carolina, and is a Trustee of Clemson University. Defendants deny

that Trustee McAbee acted in her individual capacity and assert that at all relevant times Trustee McAbee was acting in her official capacity on behalf of Clemson University.

9. With respect to the allegations contained in paragraph 9 of the Amended Complaint, Defendants admit that Defendant Leslie G. McCraw is a citizen and resident of Greenville County, South Carolina, and is a Trustee of Clemson University. Defendants deny that Trustee McCraw acted in his individual capacity and assert that at all relevant times Trustee McCraw was acting in his official capacity on behalf of Clemson University.

10. With respect to the allegations contained in paragraph 10 of the Amended Complaint, Defendants admit that Defendant E. Smyth McKissick, III, is a citizen and resident of Greenville County, South Carolina, and is a Trustee of Clemson University. Defendants deny that Trustee McKissick acted in his individual capacity and assert that at all relevant times Trustee McKissick was acting in his official capacity on behalf of Clemson University.

11. With respect to the allegations contained in paragraph 11 of the Amended Complaint, Defendants admit that Defendant Thomas B. McTeer, Jr., is a citizen and resident of Richland County, South Carolina, and is a Trustee of Clemson University. Defendants deny that Trustee McTeer acted in his individual capacity and assert that at all relevant times Trustee McTeer was acting in his official capacity on behalf of Clemson University.

12. With respect to the allegations contained in paragraph 12 of the Amended Complaint, Defendants admit that Defendant Robert L. Peeler is a citizen and resident of Lexington County, South Carolina, and is a Trustee of Clemson University. Defendants deny that Trustee Peeler acted in his individual capacity and assert that at all relevant times Trustee Peeler was acting in his official capacity on behalf of Clemson University.

13. With respect to the allegations contained in paragraph 13 of the Amended Complaint, Defendants admit that Defendant William C. Smith, Jr., is a citizen and resident of Richland County, South Carolina, and is a Trustee of Clemson University. Defendants deny that Defendant Smith acted in his individual capacity and assert that at all relevant times Trustee Smith was acting in his official capacity on behalf of Clemson University.

14. With respect to the allegations contained in paragraph 14 of the Amended Complaint, Defendants admit that Defendant Joseph D. Swann is a citizen and resident of Greenville County, South Carolina, and is a Trustee of Clemson University. Defendants deny that Defendant Swann acted in his individual capacity and assert that at all relevant times Trustee Swann was acting in his official capacity on behalf of Clemson University.

15. With respect to the allegations contained in paragraph 15 of the Amended Complaint, Defendants admit that former Speaker of the South Carolina House of Representatives and current United States Ambassador to the Commonwealth of Canada, Trustee David H. Wilkins, is not a named defendant and that he became a Trustee on or about April 1, 2007. Trustee Wilkins did, however, join in the unanimous decision of the Board of Trustees and voted in favor of terminating Plaintiff from his position as Executive Secretary for the reasons stated herein.

16. With respect to the allegations contained in paragraph 16 of the Amended Complaint, Defendants admit that Defendant James F. Barker is the President of Clemson University and is a citizen and resident of Pickens County, South Carolina. Defendants deny that President Barker acted in his individual capacity and assert that at all relevant times President Barker was acting in his official capacity on behalf of Clemson University.

17. With respect to the allegations contained in paragraph 17 of the Amended Complaint, Defendants admit that Defendant Doris R. Helms is the Provost of Clemson University and is a citizen and resident of Pickens County, South Carolina. Defendants deny that Clemson University has a Chief Operating Officer or that Defendant Helms was ever appointed to such a position. Defendants deny that Provost Helms acted in her individual capacity and assert that at all relevant times Provost Helms was acting in her official capacity on behalf of Clemson University.

18. With respect to the allegations contained in paragraph 18 of the Amended Complaint, Defendants admit that Defendant Clayton D. Steadman is General Counsel and Assistant to the President of Clemson University and is a citizen and resident of Pickens County, South Carolina. Defendants deny that Defendant Steadman acted in his individual capacity and assert that at all relevant times General Counsel Steadman was acting in his official capacity on behalf of Clemson University.

19. With respect to the allegations contained in paragraph 19 of the Amended Complaint, Defendants admit that the Clemson University Board of Trustees is a body corporate and politic of the State of South Carolina and that the Board has the right to sue and be sued and has those powers and duties specifically set forth in the Will of Thomas Green Clemson and in the Code of Laws of South Carolina Annotated, Section 59-119-60. Defendants admit that Clemson University has employees, offices, agencies, property, and facilities within the State of South Carolina, including Richland County and other counties. Defendants admit that the Trustees have fiduciary duties to the University and assert that at all times material herein they have properly exercised that fiduciary duty to the University, including their decision to terminate Plaintiff because of his failure to establish or maintain effective working relationships

with the Trustees and University personnel and his failure to follow proper Board procedures by expanding the Internal Auditing Division after being told not to put another layer between the Director of Internal Auditing and the Board's Executive and Audit Committee.

20. With respect to the allegations contained in paragraph 20 of the Amended Complaint, Defendants admit that the Amended Complaint does not name "Clemson University" as a defendant; however, Defendants assert that as a matter of statute, Clemson University is the name by which the Board of Trustees is known and that there is no legal entity separate and apart from the Board of Trustees by the name of Clemson University. Defendants deny that they breached their duties or failed to act in the best interest of Clemson University and the State of South Carolina or acted outside of their duties as Trustees of Clemson University. Defendant Trustees further assert that they were indeed acting in the best interest of Clemson University and within their fiduciary responsibility by terminating Plaintiff, as his actions hindered Clemson University's collaborative efforts to achieve its strategic goals.

### **JURISDICTION AND VENUE**

21. With respect to the allegations contained in paragraph 21 of the Amended Complaint, Defendants deny that this action is properly based upon 42 U.S.C. Sections 1983 and 1985 or the First Amendment to the United States Constitution. Defendants deny that they waived any immunity to which they may be entitled under the Eleventh Amendment of the United States Constitution. Defendants admit the remaining allegations contained in paragraph 21 of the Amended Complaint.

22. With respect to the allegations contained in paragraph 22 of the Amended Complaint, Defendants deny that venue is proper in the Columbia Division of the United States District Court for the District of South Carolina.

## **PLAINTIFF'S ROLE AS EXECUTIVE SECRETARY**

23. With respect to the allegations contained in paragraph 23 of the Amended Complaint, Defendants admit that Plaintiff began his service as Executive Secretary to the Board of Trustees of Clemson University on May 9, 2005. Defendants admit that the Trustees sought an Executive Secretary with intellectual honesty, discretion, and knowledge of sound business practices. Defendants admit that among the reasons Plaintiff was hired as Executive Secretary was their belief, at the time, that he possessed those characteristics. Defendants deny that there were 150 applicants for the position of Executive Secretary to the Board of Trustees. Defendants are without knowledge or information sufficient to form a belief as to the remaining allegations of paragraph 23 of the Amended Complaint.

24. With respect to the allegations contained in paragraph 24 of the Amended Complaint, Defendants deny that Plaintiff was given no written job description for the position of Executive Secretary. Defendants admit that Chairman Hendrix asked Plaintiff to act as the Board's "eyes and ears on the campus" and that Chairman Hendrix encouraged Plaintiff to "speak his mind during meetings and discussions." Defendants admit that Plaintiff was expected to rely upon his business experience and to exercise sound business judgment in his job as Executive Secretary. As to the allegation that Plaintiff was not asked to evaluate the University's fiscal practices and policies, Defendants assert that Plaintiff's job duties included, among others, "bringing to the immediate attention of the Chairman of the Board and the President any audit, or parts of an audit, that reflect practices, procedures, or actions that vary substantially from normal or sound business practices." Defendants further assert that the Internal Auditing Division was required to "review and appraise policies, plans, procedures, and records" of the University. Those duties included "recommending operating improvements" and "reviewing and appraising

the soundness, adequacy and application of accounting, financial and other operating controls." Because the Internal Auditing Division reported administratively to the Executive Secretary, the Executive Secretary was expected to evaluate and report on the University's fiscal practices and policies. As to the allegation that Plaintiff was not asked to evaluate the integrity of the University's Administrative Council, Defendants would assert that the Internal Auditing Division, which the Executive Secretary was responsible for administratively, is directed to be "concerned with any phase of activity where it can be of service to management," including "going beyond the accounting and financial records to obtain a full understanding of the operations under review." Further, Chairman Hendrix's instructions to Plaintiff that he should be the "eyes and ears" of the Board on campus, along with other instructions to Plaintiff, charged Plaintiff, as Executive Secretary, to advise the Board of any improper conduct by any member of the University Administration.

25. With respect to the allegations contained in paragraph 25 of the Amended Complaint, Defendants admit that Chairman Hendrix testified at Plaintiff's grievance hearing that Plaintiff had responsibility for certain administrative duties. Defendants deny that Chairman Hendrix testified that Plaintiff's responsibilities were limited solely to "administrative duties." Defendants deny the remaining allegations contained in paragraph 25 of the Amended Complaint.

26. Defendants admit that paragraph 26 of the Amended Complaint lists some of the job responsibilities of the Executive Secretary. Defendants deny that paragraph 26 of the Amended Complaint describes all the job responsibilities of the Executive Secretary. Defendants deny the remaining allegations of paragraph 26 of the Amended Complaint.

27. With respect to the allegations contained in paragraph 27 of the Amended Complaint, Defendants admit that the Director of Internal Auditing at Clemson University reported functionally to the Board of Trustees through the Executive and Audit Committee and reported administratively to the Executive Secretary of the Board of Trustees. Defendants deny that Plaintiff was authorized to proceed with plans to create and fill the position of Executive Director for Fiscal Control/Policy Compliance or that he "understood" he was authorized to do so. Plaintiff admitted under oath at his October 10, 2007, grievance hearing that Chairman Hendrix told him that he did not want another layer of management between the Director of Internal Auditing and the Board and that he never discussed the matter with Chairman Hendrix after receiving that instruction.

28. Defendants deny the substance of the allegations contained in paragraph 28 of the Amended Complaint. Specifically, Defendants deny that Chairman Hendrix routinely acted unilaterally without conferring with the other Trustees and that the other Trustees surrendered their authority to the Chairman.

29. With respect to the allegations contained in paragraph 29 of the Amended Complaint, Defendants assert that the incidents described in subparagraphs 29(a) through 29(f) involve matters that should be and were handled by the University Administration. They are not matters that were required or expected to be handled by the Board of Trustees. However, Defendants admit that Chairman Hendrix communicates and works with the University Administration from time to time on matters that are of concern to the Administration. Defendants also admit that the Chairman exercises his judgment in deciding which matters not specifically required or expected by Board policy to have the review and/or approval of the Board may warrant the attention of the other Trustees, Board committees, or the full Board.

Defendants admit that the Administration chose to inform the Chairman about the situations described in subparagraphs (a), (d), and (e) of paragraph 29 and that Chairman Hendrix offered advice and suggestions to the Administration about how the matters should be handled, but deny that the Chairman "unilaterally handled" any of those matters. Defendants further admit that Chairman Hendrix was contacted by Dr. Jeffrey Burden and by Dr. Talmage Graham regarding certain matters as asserted in subparagraphs (b) and (c) of paragraph 29 and that Chairman Hendrix referred those matters to appropriate University administrators for investigation. Defendants deny the allegations contained in paragraph 29(f) of the Amended Complaint. Defendants deny the allegations contained in paragraph 29(g) of the Amended Complaint.

30. Defendants deny the allegations contained in paragraph 30 of the Amended Complaint, particularly the allegation that Plaintiff "understood he had the Chairman's approval to create and fill the position of EDFC/PC." Defendants assert that Chairman Hendrix specifically told Plaintiff that he did not want an extra layer of bureaucracy between the Director of Internal Auditing and the Board. Plaintiff admitted to receiving this instruction in his sworn testimony before a grievance panel on October 10, 2007, and admitted in his July 12, 2007, memorandum and on numerous other occasions that he failed to keep the Chairman informed of his actions regarding this new position.

### **PLAINTIFF'S ALLEGED OBSERVATIONS**

31. With respect to the allegations contained in paragraph 31 of the Amended Complaint, Defendants deny that Clemson University lacked fiscal responsibility or that there was an unnoticed and unchecked growth of "Unrestricted Cash" at the University. Defendants submit that the University's published annual financial reports specifically identify and describe the amounts and changes in unrestricted fund balances each year. Those annual financial reports

were and are available to the public on Clemson's website and are provided to governmental agencies and auditors. In addition, those funds are held by the State Treasurer in Columbia, South Carolina. Defendants further deny that there was any fiscal impropriety, misutilization, nonutilization, and waste of public resources by Clemson University. Defendants admit that Plaintiff discussed certain financial matters with Chairman Hendrix but deny that Plaintiff discussed fiscal improprieties or waste of public resources with Chairman Hendrix or with other Defendants. Defendants deny the remaining allegations contained in paragraph 31 of the Amended Complaint.

32. With respect to the allegations contained in paragraph 32 of the Amended Complaint, Defendants admit that Plaintiff, on occasion, and in his role as Executive Secretary, spoke to some of the Trustees and others about various financial and other matters at Clemson University. However, Defendants deny that Plaintiff spoke to the Trustees or other Defendants regarding allegedly inappropriate or improper disclosures to the public or General Assembly regarding its "cash equivalents," allegedly nonfactual public statements concerning the need for tuition increases, allegedly misleading statements to the public regarding the impact of reduced funding, allegedly excessive increases in tuition, alleged growth of "Unrestricted Cash," an alleged plan by the Administrative Council to "cover up" or hide facts from the Trustees or the General Assembly, alleged violations of the Freedom of Information Act, or any alleged concern or opposition to increases in tuition. Defendants admit that Plaintiff did not hold press conferences or write newspaper articles or letters to the editor concerning financial and other matters at Clemson University. Defendants deny that Plaintiff "spoke out" to any of the Defendants about financial or other matters "as a private citizen." Rather, any of Plaintiff's alleged discussions, to the extent they occurred as described in the Amended Complaint, were

made while he was acting in his role as Executive Secretary. Defendants deny the remaining allegations contained in paragraph 32 of the Amended Complaint.

33. With respect to the allegations contained in paragraph 33 of the Amended Complaint, Defendants deny that Clemson University failed to follow normal or sound business practices or that it failed to conduct its affairs in a manner consistent with its legal obligations.

34. With respect to the allegations contained in paragraph 34 of the Amended Complaint, Defendants deny that Plaintiff ever spoke to any of the Trustees or other Defendants about the matters set forth in paragraphs 34(b), (c), (d), (e), (f), (h), (i), (m), (n), (o), and (p). To the extent that Plaintiff ever spoke about the matters set forth in paragraphs 34(a), (g), (j), (k), and (l), he raised those issues, if at all, in his capacity as Executive Secretary to the Board of Trustees.

35. With respect to the allegations contained in paragraph 35 of the Amended Complaint, Defendants deny that Plaintiff spoke out as a public citizen about matters set forth in paragraph 34 of the Amended Complaint. Defendants are without knowledge or information sufficient to form a belief as to the remaining allegations contained in paragraph 35 of the Amended Complaint.

**PLAINTIFF'S ALLEGED EXERCISE  
OF FIRST AMENDMENT RIGHTS**

36. Paragraph 36 of the Amended Complaint asserts conclusions of law. As such, no response is needed in this Answer. Defendants deny that Plaintiff was "speaking out as a citizen on matters of public concern." Defendants further deny that Plaintiff exercised any First Amendment rights that are relevant to this lawsuit.

37. With respect to the allegations contained in paragraph 37 of the Amended Complaint, Defendants deny that Plaintiff had a "substantial telephone conversation with

Chairman Hendrix wherein he stated his opinion that annual salary increases which had been given in each of the last three years to certain University executives . . . were excessive and unreasonable." Defendants deny that Plaintiff expressed his views that the salary increases were inappropriate for a taxpayer-supported public institution. Defendants admit that Plaintiff prepared a "written analysis of the salary history" of various members of the Administrative Council. However, Plaintiff's memorandum, dated April 30, 2007, contained no criticism of the salary increases of those executives but was a plea for the Plaintiff's salary to be increased in an amount similar to the increases of the other members of the Administrative Council. Defendants deny that Plaintiff was "speaking as a tax paying citizen and tuition paying parent" when he asked for an increase in his own salary comparable to the increases of certain other University employees.

38. With respect to the allegations contained in paragraph 38 of the Amended Complaint, Defendants admit that Plaintiff, in his position as Executive Secretary, attended a meeting of the Provost Advisory Council in the President's conference room to discuss an off-campus party thrown and attended by Clemson students. Because of the nature of the off-campus party, members of the Office of Access and Equity were required to attend that meeting. Plaintiff attended that meeting because the Office of Access and Equity reported to the Executive Secretary. Defendants deny that Plaintiff proposed a reorganization of the Office of Access and Equity and further deny that Plaintiff recommended that the Office of Access and Equity be reassigned from the Office of the Executive Secretary to the Student Affairs Organization or the Provost's organization. Defendants assert that any comments and observations made by Plaintiff during this meeting were made pursuant to his role as Executive Secretary. Defendants are

without knowledge or information sufficient to admit or deny the remaining allegations contained in paragraph 38 of the Amended Complaint.

39. With respect to the allegations contained in paragraph 39 of the Amended Complaint, Defendants admit that in April 2007 Plaintiff, in his role as Executive Secretary, participated in a telephone conference with Trustee Bill Smith and Budget Director Alan Godfrey. Defendants deny that Plaintiff stated to Trustee Smith that the University should make use of its "Unrestricted Cash" and deny that Plaintiff expressed concerns about the lack of plans for the use of such funds. Defendants admit that in April 2007 Plaintiff and Trustee Smith had discussions about how the proceeds from the sale of real property in Myrtle Beach could potentially be used by the University or its Foundation. Defendants assert that these discussions and recommendations were part of Plaintiff's job duties as Executive Secretary. Defendants deny that this is an example of Plaintiff speaking out as a citizen. Rather, Plaintiff was acting in his role as Executive Secretary to assist the Board's Asset Stewardship Task Force and would not have participated in the call with Trustee Smith and Clemson's Budget Director but for his position as Executive Secretary.

40. With respect to the allegations contained in paragraph 40 of the Amended Complaint, Defendants admit that in April or May 2007, Plaintiff presented a memorandum to Provost Helms stating his objections to a decision by Provost Helms, Dr. John Kelly, and Dr. Chris Przirmbel to cut the Executive Secretary's request for an increase of \$421,000 in his budget. Defendants deny that this is an example of Plaintiff "speaking out within the University about a matter of public concern." Rather, Plaintiff was dealing specifically with the duties of the office of Executive Secretary concerning the budget for his own department.

41. With respect to the allegations contained in paragraph 41 of the Amended Complaint, Defendants admit that in April 2007, the Board's Asset Stewardship Task Force and Plaintiff discussed shifting assets between the University's Foundation and the University. Defendants affirmatively assert that these discussions were a part of the Executive Secretary's duties to work with Trustee Smith and other members of the Asset Stewardship Task Force.

42. With respect to the allegations contained in paragraph 42 of the Amended Complaint, Defendants admit that on April 19, 2007, Plaintiff presented a memorandum to Chairman Hendrix in which Plaintiff expressed his admiration and respect for Chairman Hendrix and described why he believed Chairman Hendrix should run for a third term as Chairman of the Board of Trustees. Defendants deny that the April 19, 2007, memorandum "described several critical problems." To the contrary, the memorandum itself states, "Nothing [in the memo] should be construed as critical" and "No real recommendations are made, but I believe that every situation noted is a case for improvement or even better success." That memorandum also states that "serious breeches [sic] in . . . control are not evident, . . . ." Plaintiff's April 19 memorandum does not allege any misconduct, wrongdoing, or deception. Defendants also admit that at the time Plaintiff presented the memorandum to Chairman Hendrix, Plaintiff met with Chairman Hendrix in the Madren Center. However, Defendants deny that Plaintiff met with Chairman Hendrix for an hour and a half or that he discussed any of the matters alleged as subjects of discussion in paragraph 42 of the Amended Complaint. Specifically, Defendants deny that Plaintiff ever told Chairman Hendrix that the Board was not getting full disclosure from the Administration or that he was concerned about "the growing stockpile of Unrestricted Cash." At the April 19 meeting, Chairman Hendrix advised Plaintiff that he would not discuss any issues addressed in the April 19, 2007, memorandum until he had an opportunity to carefully review

and consider the memorandum. Defendants deny the remaining allegations contained in paragraph 42 of the Amended Complaint. Plaintiff prepared and presented the April 19, 2007, memorandum to Chairman Hendrix as part of his job duties as Executive Secretary. The April 19, 2007, memorandum itself states: "I wish to offer these observations and professional opinions I have been privileged to develop **as your executive secretary. I believe it is my responsibility to provide you as chairman with insights from the University.**" (Emphasis added.) These sentences, prepared by Plaintiff, are his admission that the April 19 memorandum to the Chairman of the Board was prepared by Plaintiff in his role as Executive Secretary.

43. Defendants deny the allegations contained in paragraph 43 of the Amended Complaint. Chairman Hendrix has no recollection of ever discussing the Aramark contract with Plaintiff.

44. With respect to the allegations contained in paragraph 44 of the Amended Complaint, Defendants deny that Plaintiff made the alleged statements during his meeting with Chairman Hendrix on April 19, 2007. Defendants admit that some of the topics described in paragraph 44 of the Amended Complaint were addressed in the April 19, 2007, memorandum from Plaintiff to Chairman Hendrix. Defendants assert that the April 19, 2007, memorandum prepared by Plaintiff and given to Chairman Hendrix was prepared by Plaintiff in the course of conducting his job duties as Executive Secretary.

45. Defendants deny that Plaintiff discussed the topics described in paragraph 45 of the Amended Complaint with Chairman Hendrix. Defendants admit that certain of the topics described in paragraph 45 of the Amended Complaint were addressed in Plaintiff's April 19, 2007, memorandum to Chairman Hendrix. Defendants assert that the April 19, 2007, memorandum was prepared by Plaintiff in his role as Executive Secretary.

46. With respect to the allegations contained in paragraph 46 of the Amended Complaint, Defendants admit that Plaintiff met with Provost Helms in her conference room on or about May 8, 2007. Defendants admit that the purpose of the meeting was to discuss funding for Plaintiff's planned but unapproved reorganization of the Internal Auditing Division, a department that reported administratively to Plaintiff. Defendants further admit that during that meeting, Plaintiff, in his role as Executive Secretary, explained to Provost Helms that he needed additional resources for the Internal Auditing Division. Defendants deny that Plaintiff expressed to Provost Helms that there was a lack of cooperation among the Mission Vice Presidents and that no progress was being made with respect to the utilization of "Unrestricted Cash" or that there was any mention or discussion of Alan Godfrey. Defendants admit that Plaintiff recommended to Provost Helms that she support his requested budget increase of \$421,000 to fund the unapproved restructuring of the Internal Auditing Division and the Access and Equity Department. Defendants deny that Provost Helms led Plaintiff to believe that she supported this proposal. All of Plaintiff's discussions and requests at this meeting with Provost Helms were made in his role as Executive Secretary.

47. With respect to the allegations contained in paragraph 47 of the Amended Complaint, Defendants admit that Plaintiff, in his role as Executive Secretary, attended a meeting of the Administrative Council on May 14, 2007. Defendants admit that Plaintiff expressed his opinion that the Internal Auditing Division, which reported administratively to Plaintiff, was understaffed. Defendants admit that Plaintiff falsely claimed he had received approval from Chairman Hendrix to reorganize Internal Auditing. Defendants admit that based on Plaintiff's false statements and misrepresentations to the effect that Chairman Hendrix and the Board of Trustees had approved the reorganization, the Administrative Council approved a budget

increase of approximately \$386,000. Plaintiff's attendance at and participation in the May 14, 2007, meeting of the Administrative Council was strictly in his role as Executive Secretary. During the May 14 meeting, Plaintiff shouted at Provost Helms, slammed his hands on the conference table, and otherwise acted in a rude, unprofessional, and offensive manner.

48. With respect to the allegations contained in paragraph 48 of the Amended Complaint, Defendants admit that Plaintiff met with Provost Helms in her office on or about May 16, 2007, as a follow-up to the May 14, 2007, meeting of the Administrative Council. Defendants admit that the purpose of the meeting was to discuss the reorganization of the Internal Auditing Division, which reported administratively to Plaintiff. Defendants admit that Provost Helms was critical of Plaintiff's rude, unprofessional, inappropriate, and offensive conduct during the Administrative Council meeting on May 14, 2007. Defendants deny that Provost Helms told Plaintiff that she had considered giving him a written reprimand for his conduct. Other members of the Administrative Council who attended the May 14, 2007, meeting expressed dismay at the rude, unprofessional, inappropriate, and offensive conduct of Plaintiff at the May 14 meeting and encouraged Plaintiff to apologize to Provost Helms for his conduct.

**PLAINTIFF'S UNAUTHORIZED CREATION  
OF THE POSITION OF EXECUTIVE DIRECTOR  
OF FISCAL CONTROL/POLICY COMPLIANCE**

49. With respect to the allegations contained in paragraph 49 of the Amended Complaint, Defendants admit that Plaintiff proposed to Chairman Hendrix that Alan Godfrey be considered as a replacement for the former Director of Internal Auditing, Michael Hughey. Defendants admit that Chairman Hendrix expressed his preliminary belief that Mr. Godfrey would be a good candidate to consider as a replacement for Mr. Hughey. Defendants deny that Chairman Hendrix ever approved of selecting Alan Godfrey as the new Director of Internal

Auditing or any other position within the Internal Auditing Division. Defendants deny that Chairman Hendrix ever stated that "Audit has been asleep for years." Defendants deny that Plaintiff took all steps necessary to create a new position entitled "Executive Director of Fiscal Control/Policy Compliance." Specifically, a major reorganization of the Internal Auditing Division and the creation of a new Executive Director's position within Internal Auditing require the approval of the Board's Executive and Audit Committee, and Plaintiff never sought nor obtained the approval of the Board's Executive and Audit Committee to reorganize the Internal Auditing Division or to create a new Executive Director position within Internal Auditing. Moreover, Chairman Hendrix specifically told Plaintiff that he did not want a new position created that would impose a layer of bureaucracy between the Director of Internal Auditing and the Board of Trustees. Chairman Hendrix never approved the creation of a new position within the Internal Auditing Division, nor did he approve transferring Alan Godfrey into any position within the Internal Auditing Division. Moreover, Plaintiff admitted in his October 10 grievance hearing that Chairman Hendrix told him he did not want another layer of management between the Director of Internal Auditing and the Board of Trustees. Defendants admit that Plaintiff took certain steps to create the new position of Executive Director for Fiscal Control/Policy Compliance, but he did so only by making false statements and misrepresentations to various executives of Clemson University to the effect that he had the approval of the Board of Trustees to do so. Defendants admit that Brett Dalton was selected as the new Chief Financial Officer.

50. With respect to the allegations contained in paragraph 50 of the Amended Complaint, Defendants admit that Plaintiff met with Defendants Hendrix and Britton at the Madren Center on the Clemson University campus in spring 2006 to discuss the selection of a new Director of Internal Auditing. Defendants admit that Plaintiff recommended that Cathy

Tillett be offered the job. Plaintiff had been asked by Chairman Hendrix to create and head a committee to search for a new Director of Internal Auditing and make a recommendation to the Board. Defendants deny that a new organizational chart showing the position of "EDFC/PC" was shown to Chairman Hendrix or Vice Chairman Britton at that meeting. Defendants also deny that Chairman Hendrix or Vice Chairman Britton approved of the new organizational chart at that meeting or at any other time. Defendants deny that Chairman Hendrix approved the hiring of Cathy Tillett at that meeting. Chairman Hendrix approved the hiring of Cathy Tillett as Director of Internal Auditing only after he and Vice Chairman Britton interviewed Ms. Tillett and obtained the approval of the Executive and Audit Committee. Defendants deny that the position of EDFC/PC "remains active and in full standing."

51. With respect to the allegations contained in paragraph 51 of the Amended Complaint, Defendants are without knowledge or information sufficient to form a belief as to why Plaintiff improperly created the position of EDFC/PC, especially after receiving specific instruction from the Chairman not to create an additional layer between the Director of Internal Auditing and the Board.

52. With respect to the allegations contained in paragraph 52 of the Amended Complaint, Defendants admit that Plaintiff met with Vice President Neill Cameron in or about late April 2007 to discuss Alan Godfrey's disappointment at not being selected as Chief Financial Officer for Clemson University. Defendants deny that Plaintiff discussed his "concerns about the critical impasses which existed between the Mission Vice Presidents" or about utilization of "Unrestricted Cash." Defendants deny that Vice President Cameron indicated his support of the new position of Executive Director for Fiscal Control/Policy Compliance or that he expressed

support for reassigning Alan Godfrey to fill that position. Defendants deny the remaining allegations contained in paragraph 52 of the Amended Complaint.

53. With respect to the allegations contained in paragraph 53 of the Amended Complaint, Defendants admit that Alan Godfrey was hired by Plaintiff without proper authority to fill the improperly created position of Executive Director for Fiscal Control/Policy Compliance and that he was promoted into that position without a job posting. Defendants deny that Chairman Hendrix, or any other Trustee, or the entire Board, or any committee thereof ever approved Mr. Godfrey for that position. Defendants deny that Plaintiff had 17 conversations with Chairman Hendrix concerning plans to expand or reorganize Internal Auditing. Defendants admit that Plaintiff had a discussion with President Barker and Chief Business Officer Copeland in or about May 2006 to discuss the possibility of a reorganization of the Internal Auditing Division and how such a position could be funded if, in fact, a reorganization were ever implemented. Defendants deny that President Barker gave approval for the creation of the new position. Defendants deny that President Barker, the Chief Business Officer, the Chief Financial Officer, or the Administrative Council had authority to approve changes to the Internal Auditing Division. Defendants admit that the new position was funded as a full-time equivalent position, but only because Plaintiff had made false statements and misrepresentations to University administrators about the Board's alleged approval of the reorganization.

54. Defendants deny the allegations contained in paragraph 54 of the Amended Complaint.

55. With respect to the allegations contained in paragraph 55 of the Amended Complaint, Defendants admit that the University employed the Huron Group to review certain economic and fiscal policies at the University and that the Huron Group recommended that

Clemson University consider taking a more risky fiscal approach by utilizing approximately \$20 to \$25 million of the "Unrestricted Cash" balances for nonrecurring expenses. Defendants deny the remaining allegations contained in paragraph 55 of the Amended Complaint and further assert that various recommendations of the Huron Group have been implemented and have provided substantial positive cash flow and substantial financial savings to Clemson University that annually exceed the one-time cost of the study.

56. With respect to the allegations contained in paragraph 56 of the Amended Complaint, Defendants deny that Chairman Hendrix ever stated to Plaintiff that "if the General Assembly ever finds out about this (the Unrestricted Cash), we will not get another dime." Defendants deny that Chairman Hendrix admitted under oath the substance of that statement. Defendants admit that the Board of Trustees has a duty to report financial matters to the General Assembly. Defendants deny that Chairman Hendrix admitted that he concealed information or deliberately misled the government of the State of South Carolina about the "Unrestricted Cash" balances. The Board of Trustees and Clemson University publish annual financial reports that accurately and fully describe the amounts of cash balances held on its behalf by the State Treasurer. Clemson University's financial reports are prepared according to specified financial reporting requirements for colleges and universities; have been approved by Clemson University's Director of Internal Auditing, the State Auditor, and external independent auditors; and have been and are fully available for review on the Clemson University website.

**ALLEGATIONS THAT TRUSTEES KNEW OF  
PLAINTIFF'S PLANNED BUT UNAPPROVED RESTRUCTURE**

57. With respect to the allegations contained in paragraph 57 of the Amended Complaint, Defendants admit that Plaintiff met with Defendant Bill Smith on or about May 23, 2007, to discuss an Asset Stewardship Task Force meeting that was to take place later that

afternoon. Plaintiff met with Defendant Smith, who chaired the Asset Stewardship Task Force, in his role as Executive Secretary. Defendants admit that later that same day, Plaintiff attended a meeting of the Asset Stewardship Task Force. Plaintiff attended that meeting in his role as Executive Secretary. Defendants admit that Trustees Smith, McTeer, Amick, and others also attended this meeting. Defendants admit that those in attendance discussed, among other things, the financing of CU/ICAR options, including the possibility of using funds from the University's fund balances. Defendants deny that during that meeting Plaintiff told the Trustees that Alan Godfrey would be assuming the new position of Executive Director for Fiscal Control/Policy Compliance. Rather, Plaintiff told Trustees Smith, McTeer, and Amick that Alan Godfrey would assume the role of "Champion" of Clemson's real estate holdings, but the Trustees advised Plaintiff that Stassen Thompson<sup>2</sup> already handled those duties and there was no need for Mr. Godfrey to be involved in those duties. Defendants deny the remaining allegations contained in paragraph 57 of the Amended Complaint.

58. With respect to the allegations contained in paragraph 58 of the Amended Complaint, Defendants admit that a presentation was made at the 2007 Winter Quarterly meeting concerning the status of Clemson's information technology systems. Defendants deny that Plaintiff told Trustee Swann he was working to restructure Internal Auditing to include compliance oversight or that Trustee Swann expressed his approval.

59. With respect to the allegations contained in paragraph 59 of the Amended Complaint, Defendants admit that Plaintiff, as Executive Secretary, attended a meeting of the Long Range Planning Committee in June 2007. Defendants admit that Plaintiff may have met privately with Trustee McCraw after that meeting, but deny that Plaintiff commented with regard

---

<sup>2</sup> Prior to this meeting of the Asset Stewardship Task Force, Plaintiff had falsely stated to Vice President John Kelly that the Board of Trustees wanted to transfer Stassen Thompson, Director of Land Management, from Mr. Kelly's department to the Office of Executive Secretary.

to "the absence of suitable financial analyses and business plans by the Administration."

Defendants deny that Plaintiff told Trustee McCraw that the Administration was not using financial pro-formas and analyses as they should. Defendants deny that Plaintiff told Trustee McCraw that there would be a reorganization of the Internal Auditing Division or that there would be a new position of Executive Director for Fiscal Control/Policy Compliance.

### **CLEMSON'S CASH BALANCES**

60. With respect to the allegations contained in paragraph 60 of the Amended Complaint, Defendants admit that members of the Administration routinely attended meetings of the Board of Trustees. Defendants deny the remaining allegations contained in paragraph 60 of the Amended Complaint. Specifically, Defendants deny that Plaintiff suggested that a discussion of Unrestricted Cash balances be added to the agenda for the 2005 summer quarterly meeting of the Board of Trustees. Defendants further deny that President Barker or the Administrative Council ever improperly withheld information from the Board of Trustees.

61. With respect to the allegations contained in paragraph 61 of the Amended Complaint, Defendants admit that Budget Director Alan Godfrey made a presentation to the Board of Trustees concerning the Unrestricted Cash balances. Defendants deny the remaining allegations contained in paragraph 61 of the Amended Complaint.

62. With respect to the allegations contained in paragraph 62 of the Amended Complaint, Defendants admit that the University decided to retain a consultant to conduct an independent review of Clemson University's financial practices. Defendants admit that the University hired the Huron Consulting Group to conduct this study. Defendants assert that the Huron Group was hired pursuant to a request for a proposal and competitive bidding. Defendants admit that the scope of review to be conducted by the Huron Group excluded review

of the Academic business offices. Defendants admit that the Huron study and report cost approximately \$1 million and assert that recommendations implemented from the Huron study are currently providing substantial cash savings which exceed the cost of the report.

63. With respect to the allegations contained in paragraph 63 of the Amended Complaint, Defendants admit that the Huron Consulting Group was aware of the "Unrestricted Cash" balances maintained by Clemson University. Defendants assert that the University's "Unrestricted Cash" balances were publicly documented and could be plainly viewed by anyone wishing to review Clemson's financial reports, either in hard copy or on the Clemson website, and further assert that the "Unrestricted Cash" balances were audited by the University, its outside auditors and state auditors, all without noting any problems with the University's "Unrestricted Cash" balances. Defendants are without knowledge or information sufficient to form a belief as to the remaining allegations contained in paragraph 63 of the Amended Complaint.

64. Defendants deny the allegations contained in paragraph 64 of the Amended Complaint. Defendants admit that the Huron Report initially was discussed in executive session because, *inter alia*, it contained recommendations about matters that are exempt from public discussion under the terms of South Carolina's Freedom of Information Act, including personnel matters. After consideration by the Board, the complete Huron Report was made available to the public.

65. Defendants deny the allegations contained in paragraph 65 of the Amended Complaint. Specifically, Defendants deny that Brett Dalton lacked qualifications to be Chief Financial Officer at Clemson University.

66. Defendants deny the allegations contained in paragraph 66 of the Amended Complaint.

67. Defendants are without knowledge or information sufficient to form a belief as to the allegations contained in paragraph 67 of the Amended Complaint.

### **THE UNAUTHORIZED PROMOTION OF ALAN GODFREY**

68. With respect to the allegations contained in paragraph 68 of the Amended Complaint, Defendants admit that on July 12, 2007, *The Greenville News* published a story, pursuant to a press release from Clemson University, announcing that Alan Godfrey had been promoted to be Clemson's new Executive Director for Fiscal Control/Policy Compliance. Defendants deny that Chairman Hendrix's absence from the country in 2007 prevented Plaintiff from advising him of the proposed reorganization of the Internal Auditing Division. Chairman Hendrix was in this country for all but seven days in May 2007 and was in this country for the entire two weeks prior to the July 12 announcement.

69. With respect to the allegations contained in paragraph 69 of the Amended Complaint, Defendants admit that Chairman Hendrix addressed the full Board of Trustees in a meeting in Charleston, South Carolina, in July 2007. At that time, Chairman Hendrix advised the Board of Trustees that prior to July 11 he was not aware that Plaintiff was implementing a reorganization of the Internal Auditing Division or that Alan Godfrey had been hired to fill the position of Executive Director for Fiscal Control/Policy Compliance, nor had he authorized Plaintiff to implement the reorganization or to hire Mr. Godfrey. Defendants deny the remaining allegations contained in paragraph 69 of the Amended Complaint.

70. With respect to the allegations contained in paragraph 70 of the Amended Complaint, Defendants deny that Plaintiff communicated to any Trustee "the need for fiscal

responsibility" or "problems created by stockpiling public funds." Defendants deny that President Barker or Provost Helms ever expressed to the Board or to any individual Trustee any objection to the new position of Executive Director for Fiscal Control/Policy Compliance or that they ever objected to or referred to that position as a "watchdog" position. Defendants deny that President Barker or Provost Helms ever expressed to Chairman Hendrix or the Board of Trustees any opposition to Mr. Godfrey becoming the Executive Director for Fiscal Control/Policy Compliance. Defendants assert that their responsibilities to oversee the Administration are clearly spelled out in the Board's Policy Manual and are recognized by each Defendant Trustee as well as President Barker and Provost Helms. Defendants further assert that a system of checks and balances exists through the Director of Internal Auditing, who reports to the Board's Executive and Audit Committee. Defendants assert that additional checks and balances exist as different organizations than those which spend money are charged with recording and reporting those University expenditures and further that President Barker and Provost Helms report quarterly to the Board on the University's progress or lack of progress against the University's stated goals and objectives. Defendants acknowledge that in response to a severe reprimand of Plaintiff by Chairman Hendrix on July 11, 2007, Plaintiff prepared a memorandum dated July 12, 2007, in which Plaintiff **admitted** that he had not timely informed Chairman Hendrix of the reorganization of the Internal Auditing Division or the appointment of Alan Godfrey as Executive Director for Fiscal Control/Policy Compliance. Defendants deny the remaining allegations contained in paragraph 70 of the Amended Complaint.

### **THE REQUEST FOR PLAINTIFF'S RESIGNATION**

71. With respect to the allegations contained in paragraph 71 of the Amended Complaint, Defendants admit that on Monday, July 16, 2007, Chairman Hendrix telephoned

Plaintiff and suggested that the Plaintiff resign from his position as Executive Secretary.

Defendants deny that this telephone call was made without the knowledge and approval of the other Trustees. Defendants deny that Chairman Hendrix told Plaintiff that the "Administration does not need a watchdog" or that "he was doing too much." Defendants admit that Chairman Hendrix did not give Plaintiff a full explanation of why the Board wanted him to resign.

Defendants deny that the Chairman's request that Plaintiff resign was caused by or related to Plaintiff allegedly speaking out on any topic. Instead, the request for Plaintiff's resignation was based on Plaintiff's unauthorized and unapproved reorganization of the Internal Auditing Division and Plaintiff's failure to establish and maintain effective working relationships with members of the Board of Trustees, faculty representatives, and members of the University Administration. Defendants deny the remaining allegations contained in paragraph 71 of the Amended Complaint. Specifically, Defendants deny that President Barker, Provost Helms, or General Counsel Steadman in any way pressured, urged, or otherwise asked or suggested to the Trustees that they take any adverse employment action against Plaintiff or that President Barker or Provost Helms ever described Plaintiff as a "watchdog" who "was doing too much" to any Trustee.

72. With respect to the allegations contained in paragraph 72 of the Amended Complaint, Defendants admit that Chairman Hendrix and President Barker had a telephone conversation with Alan Godfrey on the morning of July 16, 2007, during which they advised Mr. Godfrey that the expansion of the Internal Auditing Division and the creation of the position of Executive Director for Fiscal Control/Policy Compliance had not been approved by the Board and, therefore, his new job would not include auditing duties or responsibilities. The primary purpose of the call to Mr. Godfrey was to assure him that he was a valued employee and that he

would continue to be employed by Clemson University. Defendants deny that Mr. Godfrey was told that "the administration does not need a watchdog."

73. Defendants deny the allegations contained in paragraph 73 of the Amended Complaint.

74. With respect to the allegations contained in paragraph 74 of the Amended Complaint, Defendants admit that Chairman Hendrix and President Barker asked Mr. Godfrey to keep the substance of their conversation confidential since it concerned personnel matters that had not yet been decided upon or publicly announced. Defendants deny the remaining allegations contained in paragraph 74 of the Amended Complaint.

75. Defendants deny the allegations contained in paragraph 75 of the Amended Complaint.

76. With respect to the allegations contained in paragraph 76 of the Amended Complaint, Defendants admit that after Plaintiff failed to resign, Chairman Hendrix approved Plaintiff's request for a one-week vacation leave and further instructed Plaintiff not to return to his office but to be available by telephone until his permanent status was resolved. Defendants deny that they proposed a press release stating that Plaintiff was on medical leave. Defendants deny the remaining allegations contained in paragraph 76 of the Amended Complaint.

77. The allegations contained in paragraph 77 of the Amended Complaint are inadmissible pursuant to Rule 408 of the Federal Rules of Evidence. As such, they should not be included in the Amended Complaint. To the extent an answer is required, Defendants admit that Plaintiff's counsel and General Counsel Steadman agreed to meet in Clinton, South Carolina, on July 23, 2007. Defendants deny the remaining allegations contained in paragraph 77 of the Amended Complaint.

78. The allegations contained in paragraph 78 of the Amended Complaint are inadmissible pursuant to Rule 408 of the Federal Rules of Evidence. As such, they should not be included in the Amended Complaint. To the extent an answer is required, Defendants deny the allegations contained in paragraph 78 of the Amended Complaint.

79. The allegations contained in paragraph 79 of the Amended Complaint are inadmissible pursuant to Rule 408 of the Federal Rules of Evidence. As such, they should not be included in the Amended Complaint. To the extent an answer is required, Defendants deny the allegations contained in paragraph 79 of the Amended Complaint.

### **PLAINTIFF'S INITIAL GRIEVANCE**

80. Defendants admit the allegations contained in paragraph 80 of the Amended Complaint but deny that the grievance filed by Plaintiff was timely or appropriate as he had not been suspended or reassigned to a new job position.

81. The allegations contained in paragraph 81 of the Amended Complaint are inadmissible pursuant to Rule 408 of the Federal Rules of Evidence. As such, any inclusion of or reference to those matters in the Amended Complaint is improper. To the extent a response is required, Defendants admit that on August 15, 2007, counsel for Defendants presented counsel for Plaintiff with a proposed agreement.

82. With respect to the allegations contained in paragraph 82 of the Amended Complaint, Defendants admit that on August 16, 2007, Plaintiff was advised by Clemson Director of Human Resources Lawrence Nichols that Plaintiff's August 11, 2007, grievance was premature. Defendants admit that in August 2007 Plaintiff was asked to surrender his state credit card and his keys and that Plaintiff was advised not to attend the upcoming graduation ceremony.

Defendants deny the remaining allegations contained in paragraph 82 of the Amended Complaint.

83. With respect to the allegations contained in paragraph 83 of the Amended Complaint, Defendants admit that the Board of Trustees unanimously voted to terminate Plaintiff from his employment on August 17, 2007. Defendants admit that the reasons for the termination were stated during the Board's open meeting to be Plaintiff's failure to establish and maintain effective working relationships with members of the Board, faculty representatives, and members of the University Administration, including the President; and improperly circumventing the Clemson University Board of Trustees Policy Manual by reorganizing and adding to the Internal Auditing Division without the knowledge or approval of the Board or the Executive and Audit Committee. Defendants deny that Chairman Hendrix made statements to *The Greenville News*, *The State*, or any other newspaper or "media outlet" concerning the termination on that date other than to reiterate the reasons for Plaintiff's termination as stated in the open meeting. Some statements made by Chairman Hendrix during the open meeting of the Board were quoted by *The Greenville News* and *The State*. Defendants deny the remaining allegations contained in paragraph 83 of the Amended Complaint.

84. Defendants deny the allegations contained in paragraph 84 of the Amended Complaint.

## PLAINTIFF'S JOB PERFORMANCE

85. With respect to the allegations contained in paragraph 85 of the Amended Complaint, Defendants deny that Plaintiff never received any reprimands, warnings, criticisms, or other indications that he was not performing his job as required or expected. Defendants also deny that Plaintiff was never advised that he was failing to establish and maintain effective working relationships with members of the Board of Trustees and the University Administration. In fact, Plaintiff was advised of at least the following problems:

a. Dispute with Marvin Carmichael. During his first weeks as Executive Secretary, Plaintiff initiated a personal dispute with Marvin Carmichael, Assistant to the President, concerning Mr. Carmichael's longstanding and historical contacts with the Board of Trustees and the Board of Visitors at Clemson University. The dispute between Plaintiff and Mr. Carmichael escalated to the point that President Barker, the General Counsel, and the University's Ombudsman had to get involved to help resolve the dispute. Plaintiff was told if the dispute were not resolved, he would not be allowed to continue in his position as Executive Secretary. This is an example of Plaintiff being told that his relationship with a University official was not satisfactory.

b. Publicly shouting at Trustee Louis Lynn. At a post-graduation luncheon, Plaintiff shouted at Trustee Louis Lynn, referring to him disrespectfully as "you people." This incident occurred in public and was overheard by guests and visitors of the Board of Trustees. Afterwards, Plaintiff admitted to Vice Chairman Britton that his conduct had been improper. Vice Chairman Britton advised Plaintiff that he could not act in such a manner toward Trustees. Chairman Hendrix also advised Plaintiff that his conduct was not acceptable and instructed Plaintiff to go to Columbia to apologize in person to

Trustee Lynn. Plaintiff did, in fact, go to Columbia and offered his apology. This is an example of Plaintiff being told that his relationship with a Trustee was not satisfactory.

c. Improper conduct at Administrative Council meeting. On May 14, 2007, Plaintiff attended a meeting of the Clemson University Administrative Council wherein he made a proposal to increase his department's budget by \$421,000 per year. Provost Helms chaired that meeting. During the meeting, Plaintiff shouted at Provost Helms, slammed his hands on the conference table, and otherwise acted in a rude, unprofessional, inappropriate, and offensive manner. Plaintiff's behavior was shocking and offensive to members of the Administrative Council who were present and even to those who attended by telephone. After the meeting, several members of the Administrative Council advised Plaintiff that his conduct was offensive and that he should apologize to Provost Helms. On May 16, 2007, Provost Helms advised Plaintiff that his conduct was inappropriate and unprofessional and that she believed it was typical of his lack of respect and professionalism toward women. This is another example of Plaintiff being advised that his relationship with University officials was not satisfactory.

d. Disrespect to Faculty Representative. Shortly before the July 2007 Board retreat in Charleston, Faculty Representative Dr. John Ballato made inquiry of Plaintiff about his attendance at the retreat. Plaintiff instructed a member of his staff to tell Dr. Ballato that it was not necessary for him to attend the retreat, despite the fact that it had become customary for the Faculty Representative to attend and participate. This response understandably offended Dr. Ballato, who complained to both Chairman Hendrix and President Barker in writing, expressing his disappointment at no longer being welcome at the Board retreat. Chairman Hendrix immediately counseled Plaintiff

about his mishandling of the matter and instructed Plaintiff to invite Dr. Ballato to attend all events of the Board retreat. This is another example of Plaintiff being advised that his conduct as the Board's Executive Secretary toward a representative of the University faculty was unacceptable.

e. Oral and written comments concerning performance. Sometime after July 2006, Plaintiff received oral and written comments concerning his performance from Chairman Hendrix and the Board of Trustees. The oral and written comments advised Plaintiff of several areas of his job performance that needed to be improved, including the need to be "more collaborative."

Defendants deny that Plaintiff was never advised that he needed Committee approval or Board approval to create and fill the position of Executive Director for Fiscal Control/Policy Compliance. The Board of Trustees Policy Manual explains that changes in the Internal Auditing Division, such as creating a new position, require approval of the Executive and Audit Committee. It also provides that the budgets for Internal Auditing must be reviewed and approved by the Executive and Audit Committee. At the October 10, 2007, grievance hearing, Plaintiff admitted that he was fully familiar with the Board of Trustees Policy Manual, including the provisions related to the Executive and Audit Committee. Moreover, Plaintiff's actions in seeking approval from Chairman Hendrix indicate he was aware that he needed approval from the Board of Trustees before such changes could be implemented.

Defendants deny that Plaintiff thought he had approval to implement the reorganization plan for the Internal Auditing Division. When Plaintiff presented his proposed reorganization plan to Chairman Hendrix, Chairman Hendrix specifically advised Plaintiff that he did not approve of the reorganization and that he did not want an extra layer of management within the

Internal Auditing Division. On October 10, 2007, Plaintiff acknowledged under oath that Chairman Hendrix told him not to add another layer of management above the Director of Internal Auditing. In a July 12, 2007, memorandum from Plaintiff to Chairman Hendrix, Plaintiff admits that he did not keep the Chairman informed about the reorganization and/or the appointment of Alan Godfrey to the new position. Further, prior to the July 12, 2007, memorandum of admission, Plaintiff admitted to several Clemson employees that he had not informed Chairman Hendrix or President Barker of the implementation of the reorganization or the selection of longtime Clemson University Budget Director Alan Godfrey to be Executive Director for Fiscal Control/Policy Compliance. Plaintiff was advised by these Clemson employees that he should apologize to both the Chairman and the President. Plaintiff's belated claim that he "understood" he had the support and approval of Chairman Hendrix is simply not true and is now advanced only as an attempt to bolster his legal claims.

86. With respect to the allegations contained in paragraph 86 of the Amended Complaint, Defendants assert that the Board of Trustees conducted its meetings and committee meetings in compliance with the Board of Trustees Policy Manual. Defendants further assert that every Trustee was provided with a copy of the Policy Manual upon becoming a Trustee and attended an orientation during which the Policy Manual was fully explained. Trustees also received updates to the Policy Manual as changes were made. Defendants admit that Plaintiff distributed copies of the most recent revision of the Policy Manual to the Trustees and members of the Administrative Council during the July 2007 Board meeting.

87. Defendants deny the allegations contained in paragraph 87 of the Amended Complaint.

88. With respect to the allegations contained in paragraph 88 of the Amended Complaint, Defendants deny that Plaintiff was never instructed that he must refer the matter of creating the new position of Executive Director for Fiscal Control/Policy Compliance to the Executive and Audit Committee of the Board of Trustees. The Board of Trustees Policy Manual, which Plaintiff admitted to being thoroughly familiar with, clearly states that the Executive and Audit Committee shall have responsibility for monitoring the University's system of internal control, accounting policies, and financial reporting procedures. The Policy Manual also states that the Executive and Audit Committee has responsibility for approving the appointment or removal of the Director of Internal Auditing and for annually reviewing and approving Internal Audit's charter, the annual Internal Auditing plan, staffing needs, and budget requirements of the Internal Auditing Division. Plaintiff has admitted that he was aware of and understood these provisions. Defendants deny that the Executive and Audit Committee met infrequently during the period in which Plaintiff served as Executive Secretary. The Executive and Audit Committee routinely met as a part of the meetings of the full Board of Trustees, which occurred at least four times per year. Defendants deny that Chairman Hendrix acted unilaterally as the Executive and Audit Committee or that he routinely made decisions without consulting the other Trustees on that Committee.

89. With respect to the allegations contained in paragraph 89 of the Amended Complaint, Defendants deny that Chairman Hendrix told Plaintiff that a decision concerning hiring Cathy Tillett as Director of Internal Auditing would not need to be referred to the Executive and Audit Committee. Defendants deny that Chairman Hendrix approved or ratified the hiring of Cathy Tillett without the approval of the Executive and Audit Committee. Defendants assert that the Executive and Audit Committee discussed hiring Kathy Tillett and

authorized the hiring of Kathy Tillett as Director of Internal Auditing. Defendants deny the remaining allegations contained in paragraph 89 of the Amended Complaint.

90. With respect to the allegations contained in paragraph 90 of the Amended Complaint, Defendants deny those allegations and refer to their answer to paragraph 85 above.

### **PLAINTIFF'S AMENDED GRIEVANCE**

91. With respect to the allegations contained in paragraph 91 of the Amended Complaint, Defendants admit that Plaintiff timely submitted an Amended Grievance on August 29, 2007. Defendants admit that Chairman Hendrix testified at Plaintiff's grievance hearing that he had not read the entire Amended Grievance or the substantial exhibits attached thereto. However, Defendants assert that General Counsel Steadman provided to Chairman Hendrix information concerning the allegations sufficient to allow Chairman Hendrix to understand the nature of the grievance. Defendants admit that Chairman Hendrix did not distribute the Amended Grievance and other exhibits to all Trustees. Defendants deny the remaining allegations contained in paragraph 91 of the Amended Complaint.

92. With respect to the allegations contained in paragraph 92 of the Amended Complaint, Defendants admit that a hearing was held on Plaintiff's Amended Grievance on October 10, 2007. Defendants admit that the three panel members selected by Clemson University to hear the grievance were members of the Administrative Council. Defendants deny the remaining allegations contained in paragraph 92 of the Amended Complaint.

93. Defendants deny the allegations contained in paragraph 93 of the Amended Complaint. Moreover, Plaintiff, after filing his grievance pursuant to the Clemson University grievance procedure, withdrew his grievance before the impartial State Grievance Committee.

94. Defendants deny the allegations contained in paragraph 94 of the Amended Complaint.

95. With respect to the allegations contained in paragraph 95 of the Amended Complaint, Defendants admit that Plaintiff, himself and through his legal counsel, requested that he be allowed to continue in the position of Executive Secretary. Defendants deny that Plaintiff was well suited to continue serving as Executive Secretary.

96. With respect to the allegations contained in paragraph 96 of the Amended Complaint, Defendants deny that Alan Godfrey has ever functioned or acted as the Executive Director for Fiscal Control/Policy Compliance. Defendants deny that Chairman Hendrix and President Barker have "stripped" Godfrey of all meaningful duties. Defendants admit that Virginia Bowman was hired as Interim Budget Director.

97. With respect to the allegations contained in paragraph 97 of the Amended Complaint, Defendants admit that Plaintiff performed certain of his duties and responsibilities as Executive Secretary in a satisfactory manner. However, Defendants deny that Plaintiff performed all aspects of his job in a satisfactory manner. Defendants again deny that Plaintiff had the approval and support of Chairman Hendrix to create and fill the position of Executive Director for Financial Control/Policy Compliance. Defendants deny that the Trustees "capitulated" to President Barker and Provost Helms with respect to Plaintiff's employment or termination or that the President or Provost ever suggested that Plaintiff should be terminated. Defendants deny the remaining allegations contained in paragraph 97 of the Amended Complaint.

98. With respect to the allegations contained in paragraph 98 of the Amended Complaint, Defendants admit that on February 7, 2008, the Board of Trustees hired Angela

Leidinger as the new Executive Secretary to the Board. Defendants admit that Ms. Leidinger is a registered lobbyist for Clemson University and the Board of Trustees. Defendants deny that Ms. Leidinger is a member of the Board of Trustees.

99. Defendants deny the allegations contained in paragraph 99 of the Amended Complaint.

100. With respect to the allegations contained in paragraph 100 of the Amended Complaint, Defendants reassert and incorporate their answers to paragraphs 1 through 99 above.

101. Defendants deny the allegations contained in paragraph 101 of the Amended Complaint.

102. Defendants deny the allegations contained in paragraph 102 of the Amended Complaint.

103. Defendants deny the allegations contained in paragraph 103 of the Amended Complaint.

104. Defendants deny the allegations contained in paragraph 104 of the Amended Complaint.

105. Defendants deny the allegations contained in paragraph 105 of the Amended Complaint.

106. Defendants deny the allegations contained in paragraph 106 of the Amended Complaint.

107. Defendants deny the allegations contained in paragraph 107 of the Amended Complaint.

108. Defendants deny the allegations contained in paragraph 108 of the Amended Complaint.

109. Defendants deny the allegations contained in paragraph 109 of the Amended Complaint.

110. Defendants deny the allegations contained in paragraph 110 of the Amended Complaint.

111. Defendants deny the allegations contained in paragraph 111 of the Amended Complaint.

112. With respect to the allegations contained in paragraph 112 of the Amended Complaint, Defendants reassert and incorporate their answers to paragraphs 1 through 111 above.

113. Defendants deny the allegations contained in paragraph 113 of the Amended Complaint.

114. Defendants deny the allegations contained in paragraph 114 of the Amended Complaint.

115. Defendants deny the allegations contained in paragraph 115 of the Amended Complaint.

116. Defendants deny the allegations contained in paragraph 116 of the Amended Complaint.

117. Defendants deny the allegations contained in paragraph 117 of the Amended Complaint.

118. Defendants deny the allegations contained in paragraph 118 of the Amended Complaint.

119. Defendants deny the allegations contained in paragraph 119 of the Amended Complaint.

120. With respect to the allegations contained in paragraph 120 of the Amended Complaint, Defendants reassert and incorporate their answers to paragraphs 1 through 119 above.

121. Defendants deny the allegations contained in paragraph 121 of the Amended Complaint.

122. Defendants deny the allegations contained in paragraph 122 of the Amended Complaint.

123. Defendants deny the allegations contained in paragraph 123 of the Amended Complaint.

124. Defendants deny the allegations contained in paragraph 124 of the Amended Complaint.

125. Defendants deny the allegations contained in paragraph 125 of the Amended Complaint.

126. Defendants deny the allegations contained in paragraph 126 of the Amended Complaint.

127. Defendants deny that Plaintiff is entitled to any of the remedies set forth in the Prayer for Relief in the Amended Complaint, including subparagraphs (a) through (l) inclusive.

128. Any allegations not specifically admitted herein is hereby denied.

### **SECOND DEFENSE**

Plaintiff's asserted claims under Section 1983 and Section 1985 fail to state causes of action upon which relief may be granted against the Clemson University Board of Trustees, each Trustee named in his/her official capacity, or Defendants Barker, Helms, and Steadman in their

official capacities, as the State of South Carolina has sovereign immunity under the Eleventh Amendment of the United States Constitution.

**THIRD DEFENSE**

Plaintiff's claims under Section 1983 and Section 1985 fail to state causes of action upon which relief may be granted against the named Defendants in their individual capacities in that they are immune from suit pursuant to the doctrine of qualified immunity.

**FOURTH DEFENSE**

Punitive damages cannot be awarded against the State of South Carolina pursuant to Plaintiff's Section 1983 or Section 1985 claims.

**FIFTH DEFENSE**

Plaintiff's claim under Section 1985(a)(3) fails to state a claim against Defendants upon which relief may be granted in that such a cause of action is reserved for allegations of class-based, invidiously discriminatory animus, and Plaintiff's Amended Complaint does not assert class-wide discrimination against a recognized minority group of which Plaintiff is a member.

**SIXTH DEFENSE**

Plaintiff's claim under Section 1985(a)(3) fails to state a claim against Defendants upon which relief may be granted in that, as a body corporate, such as the Board of Trustees, its members cannot conspire among one another.

**SEVENTH DEFENSE**

As to Plaintiff's defamation claim against Defendant Hendrix, said claim fails to state a cause of action against him for which relief may be granted in that all of his alleged statements were made, if at all, under the protection of a qualified privilege.

**EIGHTH DEFENSE**

As to Plaintiff's third cause of action for defamation against Defendant Hendrix, should the Court determine as a matter of law that Plaintiff does not have the burden of proving the falsity of an alleged defamatory statement, Defendant Hendrix pleads truth as an absolute defense.

#### **NINTH DEFENSE**

To the extent that this Court determines that "opinion" is a matter that must be plead as an affirmative defense (and not Plaintiff's burden), Defendant Hendrix hereby preserves the defense that any alleged defamatory statements are not actionable as they were merely statements of opinion.

#### **TENTH DEFENSE**

Plaintiff's claims for emotional distress and embarrassment as set forth in paragraph 126 of the Amended Complaint are South Carolina Workers' Compensation Statute claims.

#### **ELEVENTH DEFENSE**

Defendants reserve the right to argue that Plaintiff failed to mitigate his alleged damages to the extent the facts may support that argument.

#### **TWELFTH DEFENSE**

To the extent that Plaintiff seeks an overlapping or duplicative recovery pursuant to his various claims for any alleged single wrong, Plaintiff must elect his remedies at the appropriate time.

#### **THIRTEENTH DEFENSE**

Defendants hereby preserve any and all state and constitutional defenses to punitive damages not set forth specifically herein, including those based on the due process clauses of the United States and South Carolina Constitutions.

WHEREFORE, having fully answered Plaintiff's Amended Complaint, Defendants ask that the Amended Complaint be dismissed in its entirety and that all costs, including reasonable attorneys' fees, be awarded to the Defendants.

Dated this the 28th day of April, 2008.

Respectfully submitted,

OGLETREE, DEAKINS, NASH,  
SMOAK & STEWART, P.C.

By: /s/ Joseph A. Rhodes, Jr.  
Joseph A. Rhodes, Jr. (Fed. Bar No. 3438)  
Thomas A. Bright (Fed. Bar No. 1476)  
Lewis T. Smoak (Fed. Bar No. 4220)  
PO Box 2757  
Greenville, SC 29602-2757  
Phone: 864.271.1300  
Fax: 864.242.0037  
E-mail: drew.rhodes@ogletreedeakins.com

*Attorneys for Defendants*

UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH CAROLINA  
COLUMBIA DIVISION

---

Chalmers Eugene Troutman, III, )  
 )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 Leon J. Hendrix Jr.; J.J. Britton, M.D.; Bill L. ) Case No. 3:08-cv-00449-MJP  
 Amick; Thomas C. Lynch Jr.; Louis B. Lynn; )  
 Patricia H. McAbee; Leslie G. McCraw; E. Smyth )  
 McKissick III; Thomas B. McTeer Jr.; Robert L. )  
 Peeler; William C. Smith Jr.; and Joseph D. Swann, )  
 all in their individual capacities and in their official )  
 capacities; Clemson University Board of Trustees; )  
 James F. Barker; Doris R. Helms; and Clayton D. )  
 Steadman, all in their individual capacities and in )  
 their official capacities, )  
 )  
 Defendants. )

---

**CERTIFICATE OF SERVICE**

I, Joseph A. Rhodes, Jr., hereby certify that I have this day electronically filed the foregoing **DEFENDANTS' ANSWER TO AMENDED COMPLAINT** with the Clerk of Court using the CM/ECF system, which will send notification of such filing to the following persons:

Joel W. Collins, Jr., Esq.  
Collins & Lacy, P.C.  
1330 Lady Street, Sixth Floor  
Columbia, SC 29201

D. Reece Williams, III, Esq.  
Callison Tighe & Robinson, LLC  
1812 Lincoln Street, Suite 200  
Columbia, SC 29201

Dated this 28th day of April, 2008.

Respectfully submitted,

OGLETREE, DEAKINS, NASH,  
SMOAK & STEWART, P.C.

By: /s/ Joseph A. Rhodes, Jr.  
Fed. Ct. ID No. 3438  
PO Box 2757  
Greenville, SC 29602-2757  
Phone: 864.271.1300  
Fax: 864.242.0037  
E-mail: drew.rhodes@ogletreedekins.com

6254048.1