

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)
)
Chalmers Eugene Troutman, III,)
)
Plaintiff,)

vs.)

Leon J. Hendrix Jr., J.J. Britton, M.D., Bill)
L. 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., 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.)

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

Civil Action Number:

COMPLAINT
(Jury Trial Requested)

BARBARA A. SCOTT
C.C. & G.S.

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INTRODUCTION

Plaintiff, Chalmers Eugene Troutman, III, ("Troutman"), by and through his undersigned counsel, would respectfully show to this Honorable Court the following:

This is a lawsuit brought pursuant to 42 U.S.C. Section 1983 and the laws of the State of South Carolina by a former public employee who claims he was fired from his job and defamed as a result of his exercise of his Constitutional Rights of Freedom of Speech and Expression guaranteed by the First Amendment to the United States Constitution because he repeatedly spoke out within the public institution about matters of public concern in an attempt to correct abuses of discretion, inadequate safeguards, improper practices, and breaches of the duty to serve as stewards of public assets.

THE PARTIES

1. Plaintiff Troutman is a citizen and resident of Greenville County, South Carolina. He is an alumnus of Clemson University, Class of 1974. At all times relevant, Troutman served as the Executive Secretary of the Board of Trustees of Clemson University and Assistant to the President of Clemson University. At all times relevant herein, Troutman was a public employee.

2. Defendants Leon J. Hendrix, Jr., J.J. Britton, M.D., Bill L. 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., Joseph D. Swann, (collectively referred to as "Board of Trustees") at all times relevant to this Complaint were Trustees of Clemson University. Six of these Trustees were elected by the South Carolina General Assembly. Seven were self-perpetuating life Trustees, as provided by the will of Thomas Green Clemson.

3. Defendant Hendrix ("Chairman Hendrix") is and at all times relevant hereto was a Trustee and the Chair of the Board of Trustees of Clemson University. Chairman Hendrix is a citizen and resident of Charleston County, South Carolina. At all times alleged herein he was acting in his individual capacity. He is also named as a Defendant in his official capacity acting under the color of State law and the pretext of his authority as Chair of the Board of Trustees.

4. Defendant Britton, upon information and belief, is a citizen and resident of Sumter County, South Carolina and at all times relevant hereto was the Vice Chair of the Board of Trustees of Clemson University. At all times alleged herein he was acting in his individual capacity. He is also named as a Defendant in his official capacity acting under the color of State law and the pretext of his authority.

5. Defendant Amick, upon information and belief, is a citizen and resident of Lexington County, South Carolina and a Trustee of Clemson University. At all times alleged herein he was acting in his individual capacity. He is also named as a Defendant in his official capacity acting under the color of State law and the pretext of his authority.

6. Defendant Lynch, upon information and belief, is a citizen and resident of Pickens County, South Carolina and a Trustee of Clemson University. At all times alleged herein he was acting in his individual capacity. He is also named as a Defendant in his official capacity acting under the color of State law and the pretext of his authority.

7. Defendant Lynn, upon information and belief, is a citizen and resident of Richland County, South Carolina and a Trustee of Clemson University. At all times alleged herein he was acting in his individual capacity. He is also named as a Defendant in his official capacity acting under the color of State law and the pretext of his authority.

8. Defendant McAbee, upon information and belief, is a citizen and resident of Greenville County, South Carolina and a Trustee of Clemson University. At all times alleged herein she was acting in her individual capacity. She is also named as a Defendant in her official capacity acting under the color of State law and the pretext of her authority.

9. Defendant McCraw, upon information and belief, is a citizen and resident of Greenville County, South Carolina and a Trustee of Clemson University. At all times alleged herein he was acting in his individual capacity. He is also named as a Defendant in his official capacity acting under the color of State law and the pretext of his authority.

10. Defendant McKissick, upon information and belief, is a citizen and resident of Greenville County, South Carolina and a Trustee of Clemson University. At all times alleged

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herein he was acting in his individual capacity. He is also named as a Defendant in his official capacity acting under the color of State law and the pretext of his authority.

11. Defendant McTeer, upon information and belief, is a citizen and resident of Richland County, South Carolina and a Trustee of Clemson University. At all times alleged herein he was acting in his individual capacity. He is also named as a Defendant in his official capacity acting under the color of State law and the pretext of his authority.

12. Defendant Peeler, upon information and belief, is a citizen and resident of Lexington County, South Carolina and a Trustee of Clemson University. At all times alleged herein he was acting in his individual capacity. He is also named as a Defendant in his official capacity acting under the color of State law and the pretext of his authority.

13. Defendant Smith, upon information and belief, is a citizen and resident of Richland County, South Carolina and a Trustee of Clemson University. At all times alleged herein he was acting in his individual capacity. He is also named as a Defendant in his official capacity acting under the color of State law and the pretext of his authority.

14. Defendant Swann, upon information and belief, is a citizen and resident of Greenville County, South Carolina and a Trustee of Clemson University. At all times alleged herein he was acting in his individual capacity. He is also named as a Defendant in his official capacity acting under the color of State law and the pretext of his authority.


15. Trustee David H. Wilkins is not named as a Defendant. He did not become a Trustee until on or about April 1, 2007. On information and belief, he did not participate in the acts and omissions alleged herein.

16. Defendant Barker ("President Barker"), upon information and belief, is and all times relevant was the President of Clemson University. President Barker is a citizen and

resident of Pickens County, South Carolina. At all times alleged herein he was acting in his individual capacity. He is also named as a Defendant in his official capacity acting under the color of State law and the pretext of his authority.

17. Defendant Helms, upon information and belief, is and at all times relevant, was Provost of Clemson University. She is a citizen and resident of Pickens County, South Carolina. At all times alleged herein, she was acting in her individual capacity. She is also named as a Defendant in her official capacity acting under the color of State law and the pretext of her authority.

18. Defendant Steadman, upon information and belief, is and all times relevant was General Counsel and Assistant to the President of Clemson University. He is a citizen and resident of Pickens County, South Carolina and at all times alleged herein was acting in his individual capacity and official capacity under the color of State law and the pretext of his authority.

 19. The Clemson University Board of Trustees is named as a Defendant herein because, pursuant to S.C. Code Ann. § 59-119-60, it is a body politic of the State of South Carolina which may sue and be sued. The Trustees “have full authority and power to regulate all matters” pertaining to Clemson University. The Clemson University Board of Trustees administers Clemson University which has employees, offices, agencies, property and facilities within the State of South Carolina, including within Richland County, South Carolina. Clemson University is not named as a Defendant because the named Defendants were neither acting in its best interest nor on its behalf when they engaged in the acts or omissions alleged herein.

JURISDICTION AND VENUE

20. This action arises under and is based upon 42 U.S.C. §1983 and the First Amendment of the Constitution of the United States of America, as well as the common law of the State of South Carolina. The Richland County Court of Common Pleas has jurisdiction over these Defendants and the causes of action alleged in this Complaint.

21. Venue is proper within the Richland County Court of Common Pleas because Troutman was a public employee and because five Defendants, namely, Thomas B. McTeer, Jr., Bill L. Amick, Louis B. Lynn, Robert L. Peeler, and William C. Smith, Jr., reside in the Columbia area, with McTeer, Lynn and Smith residing in Richland County. Venue is also proper because Defendant Clemson University Board of Trustees meets, conducts affairs and engages in other activities in Richland County. Some of the acts and omissions alleged herein took place in Richland County.

TROUTMAN'S ROLE AS EXECUTIVE SECRETARY

22. On May 9, 2005, Troutman began his service as the Executive Secretary of the Clemson University Board of Trustees. He was selected and hired by the Board of Trustees from a field of 150 applicants. The Trustees sought an Executive Secretary with intellectual honesty, discretion and knowledge of sound business practices. Among the reasons Troutman was hired were his extensive business experience and his knowledge of sound business practices. After he was selected, he tendered his resignation to Fluor Corporation, where he had been employed for thirty years and where he held a Top Secret United States Government clearance. At Fluor's request he changed his resignation to a retirement. He agreed to a reduction in compensation in

his new position because of his dedication to Clemson University, his understanding of the challenges of his new job, and his perceived opportunity to be of service to his *alma mater*.

23. Troutman was given no written job description for the Executive Secretary's position. Some of the Trustees told him one of his challenges would be to grasp the range and full extent of his responsibilities. In a meeting on May 12, 2005, Troutman was instructed by Chairman Hendrix to be his "eyes and ears on the campus." In a meeting on January 31, 2006, he was encouraged by Chairman Hendrix to speak his mind during meetings and discussions. He was repeatedly asked to bring his business judgment, experience and perspective to the job.

24. The Director of Internal Auditing at Clemson University reports functionally to the Board of Trustees through the Executive and Audit Committee and reports administratively to the Executive Secretary to the Board. Based on approvals given him in numerous conversations with Chairman Hendrix, Troutman understood he was authorized to proceed with plans to improve the auditing capabilities by creating and filling the position of Executive Director of Fiscal Control/Policy Compliance ("EDFC/PC").

25. After assuming the position of Executive Secretary in 2005, Troutman met personally and privately with eleven of the Trustees and informally with two Trustees. It was his purpose to form a close and professional relationship with each Trustee and to learn from them what they expected from him. In each and every one of these meetings, Troutman was told by the other Trustees he should satisfy the needs and desires of the Chairman because the other Trustees greatly deferred to the Chairman. Trustee McTeer, during his meeting with Troutman, referred to the Chairman as a "virtual dictator." Troutman came to understand this was how the trustees regarded and deferred to the Chairman. He noted the Chairman routinely acted

unilaterally without conferring with other Trustees. The other Trustees knowing and routinely, but inappropriately, surrendered their authority to the Chairman.

26. Troutman observed the *de facto* exercise by the Chairman of all discretion and authority of the Board of Trustees. These instances included, but were not limited to, the following:

a) The Chairman unilaterally handled an incident involving alleged misuse of athletic funds by a head varsity coach employed by the University. He did not refer it to any committee. The Chairman deliberately kept and restricted this matter from the other Trustees for ten months until its conclusion which was announced at the July 2007 Quarterly meeting of the Trustees.

b) The Chairman unilaterally handled and mishandled reports of a break-in and theft of \$103,785.00 worth of University property at an off-campus physics laboratory facility in Pendleton, South Carolina. The Chairman did not refer this matter to any committee. He referred it to Defendant Steadman who attempted to cover up the matter by sending a letter with false information to Dr. Talmage Graham, the faculty member who reported the theft;

c) The Chairman unilaterally handled allegations of impropriety made by a faculty member, Dr. Jeffrey Burden, regarding the Charleston Restoration Institute. He did not refer it to any committee of the Board of Trustees;

d) The Chairman unilaterally handled and arbitrarily denied a proposal by the University Naming Committee to name the traffic circle in front of Tillman Hall "Gantt Circle" in honor of outstanding Clemson University alumnus, Harvey Gantt. The Chairman did not refer it to any committee of the Board of Trustees;

e) The Chairman, without referring it to any committee, unilaterally handled allegations that there had been an improper disposal of University computers containing confidential personal information about University employees;

f) On January 25, 2007, the Chairman unilaterally decided not to provide the report of the Huron Consulting Group to the other Trustees, prior to their Quarterly meeting, despite a recommendation that he do so. This resulted in the inability of the other Trustees to prepare for the presentation made on February 8, 2007 by Bill Jenkins of the Huron Consulting Group, and

g) The Chairman unilaterally approved Troutman's hiring of Cathy Tillett as Director of Internal Audit. He did not refer it to the Executive and Audit Committee and told Troutman the Committee need not be involved.

27. Based on these incidents and occurrences, as well as others of a similar nature, Troutman reasonably and correctly understood the Chairman had full and unencumbered authority to act for the Board of Trustees whenever he chose to do so. Chairman Hendrix regularly instructed Troutman not to bring certain matters to the attention of the other Trustees. When he had the Chairman's approval on any matter brought to his attention, Troutman reasonably understood he needed no other approval from the other Trustees. He understood he had the Chairman's approval to create and fill the position of EDFC/PC.

TROUTMAN'S OBSERVATIONS OF IMPROPRIETIES

28. After accepting the position of Executive Secretary, Troutman came to learn of and be concerned about Clemson University's lack of fiscal responsibility. He learned of this primarily from the then Budget Director, Alan Godfrey. Mr. Godfrey told Troutman that "the University is sitting on a time bomb" due to the significant unnoticed and unchecked growth of its Unrestricted Cash. Troutman conveyed his concerns about fiscal impropriety, misutilization,

non-utilization and waste of public resources to Chairman Hendrix and to others. The Chairman did not bring these matters to the attention of any committee or the full Board. Troutman's initial expressions of concern about this were essentially ignored.

29. Troutman on several occasions expressly spoke out about the concerns set forth in paragraph 30 herein below. His statements were made to the members of the Clemson University Administrative Council, to the Board of Trustees, to individual Trustees, to individual Administrative Council members and to individual administrators of the University. Troutman did not hold press conferences to express his views. He did not write newspaper articles or letters to the Editor. It was Troutman's purpose and style to speak out as a private citizen within the University systems in order to seek remedies within the University systems and to act with discretion and patience to address and correct these problems, practices, and concerns without embarrassing the University.

30. In the course of fulfilling his duties, Troutman learned Clemson University, by and through the acts and omissions of various individuals, including the individually named Defendants, did not follow normal or sound business practices. He learned the University was not conducting its affairs in a manner consistent with its legal obligations as a public institution. Although he shared the University's pride in its academic progress, the achievement of its faculty, the qualifications of its admittees and the success of its students and graduates, he became increasingly concerned about certain deficiencies. Specifically, Troutman learned of, became concerned about and expressed his views about the following:

- a) The University lacked systems and processes to ensure accountability, fiscal control and policy compliance;

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b) Representatives of the University failed to make appropriate and timely use of publicly-appropriated funds and tuition payments;

c) Representatives of the University failed to make appropriate, proper and understandable disclosures to the public and to the General Assembly regarding its Cash and Cash Equivalents held by the Office of the State Treasurer;

d) Representatives of the University made nonfactual public statements regarding the need for tuition increases. Year after year, the Defendants hoarded the cash generated by these increases.

e) Representatives of the University made misleading statements to the public regarding the impact of the reduced funds appropriated by the General Assembly in some years;

f) The University raised in-state tuition from \$3,590.00 per year in 2000 to \$9,900.00 in 2007 without making use of the additional funds accumulated by these increases. This placed unreasonable financial burdens on Clemson students and their families paying this tuition. This worked to defeat the purpose of the scholarships funded by the South Carolina Educational Lottery. This practice was criticized by the University's former Chief Business and Financial Officer, Scott Ludlow, and its Budget Director, Alan Godfrey. After learning and understanding the situation, Troutman supported their view. From 2002 to 2006, the Trustees generated an additional accumulation of \$72,850,000.00 by their decision to increase tuition and fees. Clemson University had education and general (E&G) appropriation decreases totaling \$15,187,133.00 during the same period. The tuition and fee increases, therefore, generated an additional \$57,662,867.00 during this period. Unrestricted Cash balances

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increased by \$52,812,383.00. In Troutman's opinion, which he expressed, the tuition and fee increases were not required or justified by the cuts in appropriations from the State;

g) The Defendants knowingly allowed large sums of Unrestricted Cash to accumulate in various operating areas, referred to by Troutman as "separate silos." The University lacked procedures to ensure accountability and proper utilization of these funds as observed and noted by Troutman when he spoke out to others. The accumulation of this cash hoard could not have occurred if the Trustees had exercised their responsibility to properly oversee the administration of the University;

h) In the five year period between 2001 and 2006, the Defendants allowed Unrestricted Cash to grow from \$63,626,704.00 to \$137,453,468.00, for an increase of \$75,826,764.00. During this same five year period, Restricted Cash grew from \$13,820,237.00 to \$53,299,186.00, an increase of \$39,478,949.00. At the end of fiscal year 2006, the University had total cash of \$190,752,954.00. During this period, the Defendants never adopted a policy that the accumulation of such vast sums of cash was advisable or necessary. On October 10, 2007, Chairman Hendrix stated the University was holding approximately \$80 million in Unrestricted Cash. He stated this was money being held in case of a "rainy day." He did not explain how the University, with total control over its enrollment, tuition and fees, could possibly have a rainy day;

i) The Administrative Council, despite being briefed on the climbing balance of Unrestricted Cash and the budgetary surpluses which were being carried over, adopted a deliberate plan to cover up these facts. The decision was made to purposefully avoid telling the General Assembly about these funds. Plans were made to explain it away if

these funds were ever uncovered. These facts, these plans and these decisions were attested to by Alan Godfrey on October 10, 2007.

j) The University had insufficient procedures to track the implementation and compliance with past decisions and announced policies;

k) The University had an understaffed auditing department and a limited ability to conduct appropriate and necessary audits. As the University budget nearly tripled, its auditing staff remained the same. Chairman Hendrix on at least one occasion in 2005 admitted this problem by saying to Troutman "Internal Audit has been asleep for years;"

l) The University had no means to ensure that funds appropriated for certain purposes were in fact timely utilized for those purposes;

m) Buildings, facilities, and other infrastructure of the campus in need of repair or upgrade were not upgraded, repaired or adequately maintained. This problem was brought to the attention of President Barker in 2004 by former CFO Scott Ludlow. In a meeting with President Barker, Ludlow stated "You are sitting on \$40,000,000.00. You should give me half of that to repair our buildings. You should also cut the proposed tuition increase from 12% to 6%." These requests and recommendations were rejected. Ludlow soon thereafter was forced to resign and leave Clemson University;

n) The salary costs of the University's administrative staff were growing at an unreasonable pace. Large salary increases were given over multiple years to certain members of the Administration. The largest of these raises were given to members of the Administration who reported directly to the President. Faculty members and others at the University were not given such raises. Certain of the administrators who received these

raises, including the Defendant Steadman, were improperly reclassified as "lecturers" in order to circumvent maximum wage limitations imposed by State law. Other University executives and administrators who were also classified as "lecturers" in order to circumvent the State law limitations included: Gail DiSabatino, Vice President of Student Affairs; Cathy Sams, Director of Public Relations; Angie Leidinger, Executive Director of Government Affairs; Brett Dalton, Chief Financial Officer; Lawrence Nichols, Director of Human Resources, and Marvin Carmichael, Director of Financial Aid. All of these individuals serve on the President's Administrative Council. Two of these (DiSabatino and Nichols) were later inappropriately and unfairly appointed to serve and did serve as members of Troutman's Grievance Panel;

o) Important positions at the University, including Chief Business and Financial Officer, were not timely filled with permanent, qualified persons capable of rendering appropriate oversight of financial and business matters. When the CFO position was finally filled after two and a half years, it was by the promotion of Brett Dalton, an internal candidate who worked for Defendant Helms in the Office of the Provost. Dalton had no degree in accounting and no experience as a chief financial officer. He had been part of the group which had in recent years obfuscated and mishandled the University's fiscal matters. This prevented the use and implementation of normal or sound business practices. Poor fiscal practices and lack of accountability had become University policy. Although both Hendrix and Barker in July of 2007 stated "the Administration does not need a watchdog," Troutman did not agree. Troutman believed and had previously spoken out about the need for fiscal checks and balances which would benefit the University, and

p) The Defendants consistently and deliberately violated the requirements of the Freedom of Information Act by frequently conducting Trustee meetings and other meetings in Executive Session, when they knew or should have known, given the subject being discussed, should have been public meetings.

31. The problems, practices, and concerns about which Troutman spoke out as a public citizen, as set forth in paragraph 30, were public in nature and not merely personal problems Mr. Troutman was having. These problems and practices of public concern were the subject of remarks made not only by Troutman, but also to Troutman by Scott Ludlow, Alan Godfrey, Dr. Talmage Graham, Dr. Jeffrey Burden, David Stalnaker and others. These concerns were also addressed in letters to certain of the Defendants written by Professors Dr. Jeffrey Burden, and Dr. Talmage Graham and by former Chief Business and Financial Officer Scott Ludlow.

TROUTMAN'S EXERCISE OF HIS FIRST AMENDMENT RIGHTS

32. The First Amendment to the United States Constitution guarantees freedom of speech and expression to American citizens. The Courts of this Nation have interpreted the First Amendment to protect employees of public institutions, such as the Executive Secretary to the Board of Trustees of a public university who speak out about observed improprieties. Penalizing or terminating public employees for speaking out about such matters is unlawful and can form the basis of a claim or lawsuit under 42 United States Code Section 1983. The protected First Amendment expressions need not be made publicly and need not be publicized. Protected speech and expression can be exercised within the institution and to officials or others employed by the institution. Such was the nature of Troutman's speaking out as a citizen on matters of

public concern. At the times he did so Troutman's First Amendment Rights were fully protected.

33. On Friday, December 1, 2006, Troutman 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 who directly reported to President Barker were excessive and unreasonable. Troutman expressed his view that these salary increases were inappropriate for a taxpayer-supported public institution. He prepared a written analysis of the salary history of these Executives, all of whom were also members of the Administrative Council. Although the setting of salaries was not part of his job, Troutman presented this written analysis to Chairman Hendrix. This is an example of Troutman's speaking out as a citizen about a matter of public concern.

34. On Wednesday, February 28, 2007, Troutman attended a meeting of the Provost Advisory Council in the President's conference room. The primary purpose of the meeting was to discuss a recent "gangsta party" thrown and attended by some students which was publicized and which reflected poorly upon racial attitudes at Clemson University. During the course of this meeting, Troutman expressed his candid view that, while there were numerous organizations and entities on campus charged with the responsibility of addressing racial diversity issues, such as the President's Council on Community and Diversity, the President's Commission on Black Faculty and Staff, the Gantt Inter-Cultural Center, and the Office of Access and Equity, the University was doing poorly on the goal of improving race relations. Troutman stated his view that, with so many organizations supposedly already committed to racial diversity, the problem would not be solved by adding another organization or office such as a "Chief Diversity Officer." During this meeting, Troutman proposed the office of Access and Equity be

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reorganized, restructured and strengthened. He also recommended that the Access and Equity office be reassigned to the Student Affairs Organization or to the Provost's organization. Following this meeting on March 2, 2007, Troutman received a letter from Byron Wylie, Director of the Office of Access and Equity, criticizing Troutman's remarks during this meeting and stating he was "absolutely stunned by your statement at the PAC meeting on Wednesday..." This incident is an example of Troutman's speaking out within the University about matters of public concern.

35. On Wednesday, April 11, 2007, Troutman initiated and held a telephone meeting with Trustee Bill Smith and Budget Director Alan Godfrey in Columbia, South Carolina. During the course of this conversation, Troutman stated to Smith that the University should make use of its substantial Unrestricted Cash. Troutman expressed his concerns that there were no current plans for the use of these funds and that the problem this money caused was not a priority of the Administration. The next day, April 12, 2007, Troutman sent Smith a memorandum summarizing his views and concerns, which included a recommendation on how over \$17 million of the Unrestricted Cash could be used in specific ways to benefit the University. This is another example of Troutman, as a citizen, speaking out within the University about a matter of public concern.

36. On April 12, 2007, Troutman presented a memorandum to Provost Helms stating his objections to the decision made on April 9, 2007 by the three Mission Vice Presidents, namely herself, Dr. John Kelly and Dr. Chris Przirmbel, to cut Troutman's budget request for his office by 100 per cent without ever consulting him. This memorandum was not welcomed by Provost Helms. It is an example of Troutman's speaking out within the University about a matter of public concern.

37. On April 19, 2007, on Troutman's suggestion and request, a memorandum prepared by Alan Godfrey was presented to Trustee Smith in Clemson, South Carolina concerning Troutman's idea of shifting assets between the University's Foundation and the University in order to more efficiently and effectively use the Unrestricted Cash. This is another example of Troutman's speaking out about a matter of public concern.

38. On April 19, 2007, Troutman presented a letter to Chairman Hendrix in which he described several critical problems and situations of public concern relating to the administration of Clemson University. At the time he presented the letter to Chairman Hendrix, Troutman also met with Hendrix for approximately an hour and a half in the office of Jeff Martin in the Madren Center on the Clemson University campus. During this meeting, Troutman told Hendrix there were no checks and balances within President Barker's governance structure and that this had resulted in poor business practices. He warned that if these poor business practices were not corrected, there could be a catastrophe for the University. Troutman told Chairman Hendrix that while President Barker was a visionary leader, he lacked executive management skills. Troutman stated there was no management reporting, lack of follow up, and no real direction given to subordinates. He told Chairman Hendrix that presentations made to the Board of Trustees by the administration were not followed up by the assignment of tasks, the adoption of plans, the setting of scheduled completion dates or by other means of achieving accountability. Also at this meeting, Troutman told Chairman Hendrix the Board of Trustees was not getting full disclosure from the administration and that lip service only was being given to the concepts of efficiency, transparency and accountability. Troutman told Chairman Hendrix an example of poor management was the growing stockpile of Unrestricted Cash which was not being utilized by the University. Troutman also expressed his view that the office of the Provost had grown to

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be larger and more redundant with less efficiency than the office of Student Affairs. The Office of Student Affairs, headed by Gail DiSabatino, had been previously cited and criticized by several Trustees as unnecessarily large and inefficient. These problems described by Troutman were matters of public concern.

39. On April 19, 2007 during his meeting with Chairman Hendrix, Troutman stated there was a need to address the University's contract with Aramark, the food catering company which had a long term business relationship with the University of over thirty years duration. Although oversight of this contract was not part of his job, Troutman explained there were no contractual provisions or business controls in place to ensure this contract was favorable to the University and fair to the students and taxpayers. He recommended this contract be reviewed and renegotiated. This was a matter of public concern.

40. During this meeting on April 19, 2007, Troutman expressed his opinion to Chairman Hendrix that Provost Helms, Vice President Przirmbel and Vice President Kelly did not cooperate with each other as they should and as the Trustees had been led to believe. He told Hendrix all three worked in a vacuum and that each maintained separate "siloed" organizations. He told Hendrix each of them controlled large accumulations of Unrestricted Cash. Troutman told Chairman Hendrix that, in his view, these Mission Vice Presidents were unsupervised and were not held accountable. Troutman characterized and criticized this as a "free-for-all" management style. This criticism was contrary to the views of the President, the Provost and the Mission Vice Presidents. These were matters of public concern.

41. Also during this meeting with Chairman Hendrix on April 19, 2007, Troutman recommended the implementation of a system of checks and balances and recommended that the Trustees require substantial progress on the administration's need to fill the position of Chief

Business and Financial Officer, which, after the forced resignation of Scott Ludlow, had for nearly two and a half years been filled by a temporary employee. Troutman's stated position was the failure to fill this and other important positions with qualified persons contributed to the "free for all" management style and lack of accountability within the University. Without a compelling reason to do so, the position of Chief Business and Financial Officer was split into two positions with a resulting substantial increase in salary expense. These were matters of public concern.

42. On May 8, 2007, Troutman met with Provost Helms in her conference room for a working lunch. The purpose of the meeting was to discuss the critical need of providing funding for the reorganization of the Internal Audit Department. During that meeting, Troutman explained to Provost Helms that without the resources he needed, critical needs would go unaddressed and which would lead to further inefficiencies and ineffectiveness in the University's operations. Troutman stated to Provost Helms, the second highest ranking administrator on campus, that in his opinion, there was a lack of cooperation among the Mission Vice Presidents. He added that because of this lack of cooperation, no progress was being made on the utilization of the University's substantial sum of Unrestricted Cash. During this meeting with Provost Helms, Troutman explained his plan to name Alan Godfrey as the new EDFC/PC. He stated his opinion that Godfrey's unique knowledge of Clemson's finances made him the most qualified person for the job. Provost Helms at that time expressed opposition, stating to Troutman she was afraid Mr. Godfrey "knew too much." She stated she feared Godfrey was disgruntled about not being selected to be the new CFO, a position for which he applied. Provost Helms stated she did not want to "give Godfrey a badge and a gun." Troutman stated the Trustees were not being provided with the resources necessary to give them adequate disclosures

and that Clemson's business enterprise systems were in need of analysis, improvement and overhaul. Troutman recommended to Provost Helms that she support his requested budget amount of \$421,000.00 to fund restructuring the Internal Audit and the Access and Equity Departments. Although Provost Helms led Troutman to believe she supported this proposal, later at the meeting of the Administrative Council on May 14, 2007, she opposed it. These were matters of public concern.

43. On Monday, May 14, 2007, Troutman attended the meeting of the Clemson University Administrative Council where he made a presentation to all attendees. That meeting was presided over by Provost Helms. Troutman expressed his concern that the Internal Audit organization was understaffed. He explained he had previously presented a plan for improving Internal Audit and had received the approval of Chairman Hendrix, who he understood was authorized to speak for the entire Board on such matters. During this meeting and after considerable discussion, the Administrative Council, despite the opposition of Provost Helms and some other members, voted for the plan. The Council ultimately approved a budget of \$386,000.00 for its implementation. This shows how Troutman was working within the system, complying with University procedures and attempting to rectify problems of public concern.

44. On May 16, 2007, Troutman met again with Provost Helms in her office at Troutman's request, as a follow-up to the Monday, May 14, 2007, Administrative Council meeting. Troutman wanted to assure Provost Helms that the new Audit organization, including the new positions of EDFC/PC, would complement the work of the new CFO, Brett Dalton. Troutman presented Provost Helms with a typed breakdown of how the funds, which had been approved, would be utilized. During the course of this meeting, Provost Helms was critical of Troutman's comments made to the Administrative Council in the meeting on May 14, 2007. She

stated she felt Mr. Troutman had been arguing with her and that she considered giving Troutman a written reprimand for speaking out as he did during the course of the Administrative Council meeting.

THE CREATION OF THE POSITION OF EXECUTIVE DIRECTOR OF FISCAL CONTROL/POLICY COMPLIANCE ("EDFC/PC")

45. Starting with conversations at least as early as August 8, 2005, Troutman proposed to Chairman Hendrix that Alan Godfrey, with his extensive experience as Budget Director, be employed in the Internal Audit Department in order to strengthen its capabilities. Hendrix on that date and on several later occasions agreed and approved Troutman's recommendations, including the transfer of Godfrey to fill the position. On August 30, 2005, Troutman again discussed this position with Hendrix. On that occasion, Hendrix stated "Audit has been asleep for years." Troutman took the documented steps necessary to create a new position entitled "Executive Director of Fiscal Control/Policy Compliance" ("EDFC/PC"). Troutman has copies of these documented approvals. Troutman explained to Chairman Hendrix that due to Mr. Godfrey's application for and interest in the Chief Financial Officer position, success in having Mr. Godfrey accept a position in the Audit Department would have to follow completion of the search and the selection of a new CFO. With the strong backing of his boss, Provost Helms, Brett Dalton was selected as the new CFO.

46. On April 20, 2006, Troutman met with Chairman Hendrix and Vice Chair Britton at the Madren Center on the Clemson campus. He had prepared three copies of a briefing book entitled "Search Committee Report for Director of Internal Audit Finalist Recommendation." Each of these binders contained substantial information, including the new proposed organizational chart for the Clemson University Office of Internal Audit. At the top of this organizational chart was the position of EDFC/PC. This chart was shown to Chairman Hendrix,

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and he approved it. Of the three finalists selected by the search committee, Troutman recommended that CPA Cathy Y. Tillett be offered the job. Chairman Hendrix also approved that recommendation. Tillett has attested to the fact that she knew before she was hired as the Internal Audit Director that she would administratively report to the EDFC/PC and functionally to the Board of Trustees. At the end of this meeting, Troutman offered Chairman Hendrix a copy of the briefing book, but Hendrix stated he did not need it. The position of EDFC/PC reports to the Executive Secretary and assists him in fulfilling the Executive Secretary's responsibility for audits. This position was filled by Troutman to, *inter alia*, investigate, document, disclose and correct the problems, practices, and concerns set forth in paragraph 30 herein. The position remains active and in full standing despite false claims by Chairman Hendrix on October 10, 2007, that it had been abolished.

47. The EDFC/PC was also established to help the Board of Trustees become compliant with the open public meetings requirement of Section 30-4-70 of the South Carolina Code of Laws, make accurate statements regarding the need for tuition increases, verify the accuracy of statements made to the General Assembly regarding the need for additional appropriated funds, and correct misrepresentations recently discovered by the Commission on Higher Education (CHE) in an application the University had submitted to the CHE for matching funds to create an Endowed Chair or Professorship. The EDFC/PC was also created to correct a problem Troutman learned of from Mr. Godfrey and later confirmed by Mr. Scott Ludlow, the former Chief Business and Financial Officer. That problem was the practice of presenting inaccurate and incomplete information to the Trustees by the University's Administrative Council.

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48. On Thursday, April 26, 2007, Troutman met with the Chairman of the CFO Search Committee, Neil Cameron. Troutman explained to Cameron his views and plans about Alan Godfrey and explained that in his opinion, Godfrey's highest and best use as well as his potentially greatest contribution to the University would be to serve as the Executive Director of Fiscal Control/Policy Compliance. This meeting and conversation occurred at the Carroll Campbell Graduate Engineering Building on the CUICAR Campus in Greenville, South Carolina. During this conversation, Troutman explained to Cameron his concerns about the critical impasses which existed between the Mission Vice Presidents and their inability to work collaboratively and cooperatively in the utilization of Unrestricted Cash held by the University. Troutman assured Cameron that Godfrey was "on board" with the plan to name Brett Dalton as the new CFO, a position for which Godfrey had also applied. Cameron indicated his support of the new position of EDFC/PC and the reassignment of Godfrey to fill it.

49. Alan Godfrey, the former University Budget Director, was hired to fill the newly-created position as EDFC/PC. He was promoted into this position without a "job posting" because the position required special knowledge about Clemson University finances. Chairman Hendrix had previously approved Mr. Godfrey for this position. Troutman has notes of seventeen conversations with Chairman Hendrix about plans to expand and improve internal audit. Eight of these conversations dealt specifically with reorganizing and restructuring internal audit. Four of the eight were face-to-face meetings. Godfrey was specifically discussed in eight of these conversations. This new position was also discussed with President Barker and Chief Business Officer Copeland on May 30, 2006. Barker gave his approval for the creation of the position. Troutman took notes on a copy of the proposed new organization chart during the meeting which notes he retained. In addition to President Barker and the Chief Business Officer,

the Chief Financial Officer, and the Administrative Council, also by approving the budget, approved this new position in writing. The new position was funded as a full time equivalent (FTE) position. Troutman has documents reflecting these approvals.

50. During this time, Troutman continued expressing his concerns about the lack of fiscal accountability at Clemson University.

51. The Huron Group recommended that Clemson University substantially utilize and thereby reduce its hoard of Unrestricted Cash. It stated that Clemson's cash balances per student were well above the peer group median. In its written report, the Huron Group recommended that Clemson University proceed to utilize \$25 million of its Unrestricted Cash. However, in the oral presentation given to the Board of Trustees by Bill Jenkins, Huron recommended that Clemson University proceed to utilize at least \$50 million of its Unrestricted Cash. This recommendation was never acted upon and thus was rejected.

52. At the Trustees meeting when the Huron Report was presented, Chairman Hendrix stated to Troutman that "if the General Assembly ever finds out about this (the Unrestricted Cash), we will not get another dime." On October 10, 2007, Chairman Hendrix admitted under oath the substance of this statement. He claimed, however, he was referring to the Governor instead of the General Assembly. In either event, Chairman Hendrix, had the duty of reporting to the Legislature, admitted he has concealed information and has misled the government of the State of South Carolina.

AWARENESS OF OTHER TRUSTEES OF THE PLANNED RESTRUCTURE

53. On Wednesday, May 23, 2007, Troutman met with Trustee Smith in Smith's office prior to the planned meeting of the Asset Stewardship Task Force. During the course of this meeting, Troutman explained there was no executive oversight and no sound project

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management principles exercised or followed by the administration. He stated there had been no progress made on seven major initiatives which had been previously defined by the Task Force. Troutman explained to Smith that the University had accumulated over \$70 million in Unrestricted Cash and that there were no plans for the utilization of those funds. Troutman advised Smith that effective July 1, 2007, both Brett Dalton and Alan Godfrey would be in new job assignments and that he would seek to have them work together to address the problems within the University and to help it better utilize and account for its financial resources. Later that same day, there was a meeting of the Asset Stewardship Task Force. Trustees who attended this meeting included Bill Smith, Tom McTeer and Bill Amick. Trustee Smith asked "Why don't we use these funds, these reserve funds, these slush funds or whatever it is you call it, to work with the Foundation and take down the CUICAR options" or words to that effect. Troutman told those present that Alan Godfrey would be assuming a new role in internal audit, namely, the position of EDFC/PC and that Godfrey would also be able to monitor policy compliance for the benefit of the Trustees.

54. On February 7, 2007, during the Winter Quarterly meeting of the Trustees, a presentation was made about the University's redundant information technology systems. Trustee Swann passed a note to the Chairman, which was then passed to Troutman, stating "What else is like IT? In the past we have been given data about student connection to the network that would make us believe we were IT leaders. Joe" In response to this note, Troutman advised Trustee Swann he was working to restructure internal audit to include dedicated compliance oversight. Trustee Swann expressed his approval.

55. On Tuesday, June 5, 2007, Troutman attended a meeting of the Long Range Strategic Planning Committee in the offices of Trustee McCraw in Greenville, South Carolina.

Following the meeting, Troutman requested and received the opportunity to speak privately with McCraw. Troutman told McCraw that he wished to comment on the earlier expressions of concern by Trustees McKissick, Swann and McCraw himself about the absence of suitable financial analyses and business plans by the Administration. Troutman told McCraw that financial pro-formas and analyses were not being used as management tools by the Administration as they should. Troutman advised McCraw that he and the other Trustees could expect to see changes and improvements in the future after his reorganization of the Internal Audit Department and the establishment of the new position of EDFC/PC. McCraw stated he was glad to hear about the new position. Previously, at the Fall 2005 Quarterly meeting of the Trustees, McCraw had expressed concerns about the weakness of the Internal Audit Department.

THE ADMINISTRATION AND THE UNRESTRICTED CASH PROBLEM

56. Ranking members of the Administration routinely attended all the Board of Trustees meetings. Troutman suggested a discussion of the Unrestricted Cash balances be added to the agenda for the 2005 summer quarterly Board of Trustees meeting and retreat. The Administrative Council, including President Barker, discussed the risk of disclosing to the Trustees "too much information" about these funds as they prepared for this meeting. Some members of the Administration favored limited discussion in front of the Trustees about the Unrestricted Cash. They agreed that full disclosure could cause the Trustees to oppose future budget increase requests and future proposed tuition increases. The Administration decided to refer to these Unrestricted Cash funds as "performance credits." "Performance credits," a term coined by a Clemson employee, was not an accurate description of these funds because the money was not obtained by "performance" and the money was not mere "credits." The term was therefore a misleading euphemism. Both President Barker and Provost Helms expressed the

McCraw

view that the Board of Trustees could regard these funds as inappropriate surplus cash if the matter was “overexplained.”

57. Budget Director Alan Godfrey was given the responsibility of drafting and making a presentation to the Board of Trustees about the Unrestricted Cash. It was titled “Strategic Earmarked Balances.” Following the presentation, Troutman learned from Defendant Steadman, a member of the Administrative Council, and Brett Dalton, a regular Administrative Council attendee, that Mr. Godfrey’s presentation was regarded by them as a success because they perceived that “the Trustees really *don’t get it*,” meaning that the Trustees did not understand the significance of and the problems caused by the large sum of Unrestricted Cash.

58. The Board of Trustees later decided that an outside third-party should conduct a financial study of Clemson University and make recommendations. Clemson University, without a request for proposals or any competitive bidding as required by procurement regulations, hired Huron Consulting Group to conduct this study. Their study and report ultimately cost Clemson University in excess of \$1 million. Without disclosure to the Trustees, the scope of the review by Huron excluded any review of the academic business offices. The study focused only on administrative business offices. By excluding the academic business activities from the Huron study’s scope, approximately fifty percent of the overall Education & General (E&G) budget was exempted and therefore not reviewed despite the need for its review and reform. This limitation of scope devalued the Huron study.

59. Upon information and belief, Huron Consulting Group was alerted to the Unrestricted Cash balances by Alan Godfrey. Godfrey had followed closely the growth of the Unrestricted Cash and knew where it was documented and how it could be found. Godfrey stated the Unrestricted Cash was “hidden from the public in plain view.”

60. In violation of the Freedom of Information Act, the final report of the Huron Group was marked "draft." It was received and discussed by the Trustees in an improperly convened "Executive Session." This kept the report from being disclosed to the public and the press.

61. After the 2005 summer quarterly meeting presentation to the Board of Trustees about the "Strategic Earmarked Balances," i.e., Unrestricted Cash, Brett Dalton, then a subordinate of Provost Helms, later to be chosen as the University's new Chief Financial Officer despite his lack of qualifications, stated that the "only remaining risk" was to make sure the South Carolina General Assembly did not learn about Clemson University's Unrestricted Cash balances because it could have a negative impact on decisions by the General Assembly regarding future appropriations of State funds to the University. As attested to by Alan Godfrey on October 10, 2007, the Legislature likely did not know about the University's Unrestricted Cash.

62. On December 15, 2006, Angie Leidinger, Executive Director of Governmental Affairs at Clemson University, and a member of the Administrative Council, at an Administrative Council retreat, stated that her reputation "would be ruined" if the General Assembly learned about Clemson University's significant Unrestricted Cash. A similar statement was made by Chairman Hendrix (see paragraph 62). By that time, the Unrestricted Cash had grown to approximately \$80 million.

THE ANNOUNCEMENT OF THE PROMOTION OF ALAN GODFREY

63. On July 12, 2007, The Greenville News published a story, pursuant to a press release of the Clemson University Public Affairs Office Director, Cathy Sams, announcing that Alan Godfrey had been promoted to be Clemson's new Executive Director for Fiscal

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Control/Policy Compliance. Because Hendrix had been in Germany and in Africa for several weeks prior to this time and thus out of reach, especially while on safari in Africa, Troutman had not been able to keep Hendrix fully apprised of all events, including the timing of the release of this story. When Chairman Hendrix was out of town, his instructions to Troutman were to call him only in case of an emergency.

64. At the July 2007 summer quarterly meeting of Board of Trustees in Charleston, South Carolina, there was discussion about the hiring of Alan Godfrey to fill the position of EDFC/PC. At the "Breakfast with the President" meeting on July 13, 2007, Chairman Hendrix acknowledged he had discussed with Troutman the proposed new position of EDFC/PC. Chairman Hendrix told those present "We can do away with it or we can keep it" referring to the new position. He never said he was "dismayed." He never said the new position required approval by the Executive and Audit Committee. He made no reference to that Committee. What he said and did not say at this breakfast meeting contradicts his testimony given on October 10, 2007 (see paragraph 89). In that breakfast meeting, President Barker denied knowledge of this position. In fact, Barker had approved the position on May 30, 2006, during his meeting with Troutman and Steve Copeland. Additionally, based on information and belief, Barker knew of Troutman's prior meetings and discussions about Alan Godfrey with Provost Helms, General Counsel Steadman, Vice President Cameron and the new CFO Brett Dalton, as set forth elsewhere in this Complaint (see paragraphs 42 and 58), during which it was disclosed that Mr. Godfrey would be promoted to the new position. The work to be done by the EDFC/PC was needed at Clemson University.

65. After Troutman's communications and conduct about the need for fiscal responsibility and the problems created by stockpiling public funds, President Barker and

Provost Helms expressed their objection that the new position of EDFC/PC would be a “watchdog on the Administration.” They expressed opposition to Mr. Godfrey who “may know too much” being empowered “with a gun and a badge.” On information and belief, their objections were expressed to Chairman Hendrix. None of the Defendant Trustees acknowledged that part of their responsibility was to oversee the Administration. None of them admitted that a system of checks and balances was needed or that efficient, well-run organizations routinely have such a system. None of the Defendants admitted their prior knowledge of Troutman’s plans to improve resources to aid them in their duty to oversee the Administration despite the fact several of them had met and discussed these plans with Troutman. On July 12, 2007, in an attempt to explain the situation, explain recent events and help Chairman Hendrix handle the objections of others about Mr. Godfrey’s promotion to the new position, Troutman sent Chairman Hendrix a personal letter. Chairman Hendrix had earlier stated he did not have time to discuss the matter further. This deferential and apologetic letter was intended by Troutman to accept responsibility for any misunderstanding. Its purpose was to magnanimously help Chairman Hendrix feel better about the matter. It was an effort to help Chairman Hendrix save face. It was not an admission by Troutman that he had violated any requirement or policy.

THE REQUEST FOR TROUTMAN’S RESIGNATION

66. On the morning of Monday, July 16, 2007, the day after the summer quarterly meeting of the Trustees, Troutman received a telephone call from Chairman Hendrix asking for his resignation as Executive Secretary. This call and extreme request was made without the knowledge of the other Trustees. The only stated reasons for this request was the statement by Chairman Hendrix that the “Administration does not need a watchdog” and “you are doing too much.” No other reason was stated. This request to resign was caused by Troutman’s speaking

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out in exercise of his First Amendment Rights. It was in retaliation for Troutman's speaking out about matters of public concern. It was an attempt to placate Defendants Barker and Helms who did not want a "watchdog." It was also an unfair rebuff to Troutman's efforts to establish the new position of EDFC/PC and to correct the University's fiscal accountability problems and deficiencies. Hendrix made no claim that Troutman had allegedly exceeded his authority by hiring Alan Godfrey as EDFC/PC. Hendrix made no statement or inference during this telephone conversation about alleged poor relationships between Troutman and the Administration. These reasons were advanced later to disguise the true motive for the requested resignation and to make it appear that Troutman's firing was not a retaliation. These reasons were needed to explain away statements made by Chairman Hendrix and President Barker that the "Administration does not need a watchdog." Upon information and belief, Defendants Barker and Helms pressured the Trustees to take adverse action against Troutman.

67. Also on the morning of July 16, 2007, Hendrix and Barker arranged to have and did have a telephone conversation with Alan Godfrey while he was on a camping trip at Cape Romaine with his son. During this telephone call, these two Defendants instructed Mr. Godfrey that his new position of EDFC/PC would not include any auditing duties or responsibilities. They also told Godfrey, as they had earlier told Troutman, "the administration does not need a watchdog."

68. Two telephone calls to Troutman and Godfrey were made at nearly the same time on the same morning of the same day after the Quarterly meeting. Both calls contained the same statements that the "Administration does not need a watchdog." These Defendants decided to take away all meaningful duties from Godfrey and to silence and punish Troutman by firing him. The Defendants knew Godfrey's views were similar to those of Troutman about many of the

problems and concerns as set forth in paragraph 30. It was the purpose of the Defendants to reverse the efforts Troutman had made to both create a system of checks and balances and to achieve fiscal accountability and policy compliance at Clemson University. Rather than merely reversing the decisions to create the new position and to hire Godfrey, the Defendants, instead, collaborated in bad faith to get rid of Troutman in retaliation for his outspoken criticism on matters of public concern. In this manner and by this action, later endorsed and ratified by all of the individually named Defendants, the individual Defendants knowingly, understandingly and deliberately violated Troutman's rights of freedom of speech and expression guaranteed to him by the First Amendment of the Constitution of the United States. They acted in this regard as individuals because their actions were not taken in the best interest of Clemson University.

69. During their telephone conference with Mr. Godfrey on the morning of Monday, July 16, 2007, Chairman Hendrix and President Barker instructed Mr. Godfrey to keep the substance of this telephone conversation strictly confidential. The purpose of this instruction was to cover up the true purposes of their actions. Their purposes included the desire to continue to conduct the affairs of the University as they pleased, without regard to the requirements of the law and without being accountable to the students and faculty, the Legislature, the Governor and the taxpaying citizens of the State of South Carolina.

70. When asked by Troutman on July 16, 2007, why his resignation was being sought, Hendrix stated "You embarrassed me." Troutman had never intended to embarrass the Chairman. He in fact took steps to help the Chairman save face, including the preparation of his personal letter to Chairman Hendrix of July 12, 2007 (see paragraph 65).

71. After Troutman refused to resign, Chairman Hendrix instructed Troutman not to return to this office at Clemson University, and instructed him to be "out of the office" from July

23 through August 28, 2007. Troutman was instructed "to be available by telephone" until his status was resolved. Letters memorializing these instructions were sent to Troutman. Defendants requested that Troutman consent to the release of a proposed public statement or press release by the University that Troutman was on "medical leave." Troutman did not consent because this was not true. Troutman had, in fact, been wrongfully, illegally and unfairly suspended. There was nothing "medical" about the situation.

72. On July 23, 2007, Troutman's counsel arranged a meeting in Clinton, South Carolina with Defendant Steadman. Steadman deceitfully claimed the request for Troutman's resignation had nothing to do with the appointment of Mr. Godfrey as EDFC/PC or Troutman's attempts to correct the problems Troutman had spoken out about as summarized in paragraph 30 of this Complaint. During this meeting, Defendant Steadman made false and slanderous statements about Troutman to Troutman's counsel, as confirmed by correspondence.

73. In this meeting, Defendant Steadman stated there was a "list of projects" for the planned utilization of the "performance credit" funds, i.e., the Unrestricted Cash. By letter dated August 15, 2007, attorneys for Defendants confirmed this statement by Steadman was untrue. It was acknowledged that "There is no such list."

74. Also in this meeting on July 23, 2007, Defendant Steadman stated he had received a "basket full of emails" from people at Clemson University expressing their "pent-up anger and frustration" toward Troutman. After Troutman's counsel requested copies and proof of these allegations, attorneys for Defendants admitted, "We are not aware of any unprivileged emails which express 'pent-up frustration' with Mr. Troutman." Troutman requested a privilege log listing the emails claimed to be privileged. On August 23, 2007, attorneys for Defendants confirmed in writing that no such emails "privileged or otherwise" existed. This exchange of

correspondence proves Defendant Steadman maliciously fabricated false and slanderous claims about Troutman in an attempt to humiliate and discredit him professionally and to mask the true reason why his resignation was being sought.

TROUTMAN'S INITIAL GRIEVANCE

75. On August 11, 2007, Troutman timely filed a Grievance against the suspension and/or termination of his employment in accordance with Clemson University Policy and Procedures, Grievance Procedures I, claiming he had been improperly suspended or reassigned and that his employment was adversely affected. This Grievance was hand delivered to *RW* Clemson's Human Resources Officer, Lawrence Nichols, who later ruled upon it.

76. On August 15, 2007, Defendants presented Troutman with a proposed "Employment Agreement." It was, in fact, not an employment agreement at all. The terms of this agreement, if accepted by Troutman, would have allowed Troutman to continue receiving compensation for a period of time, so long as he agreed to keep all related matters confidential, so long as he agreed not to criticize the University, and so long as he released the University and all its representatives from all claims and all civil liability. The proposed "Employment Agreement," a copy of which Troutman retained, would also require Troutman to agree to "confidentiality" and "non-disparagement" clauses designed to suppress and withhold important and material information about which the public was entitled to know. These proposed clauses would, if agreed upon, mislead the public.

77. On August 16, 2007, Troutman was advised by Nichols his initial Grievance submitted on August 11, 2007, would not be considered because his "employment status [was] unchanged other than the fact that [he was] working from home." In fact, on August 7, 2007, Troutman was asked to surrender his State procurement credit card and his keys. He was also

advised he should not attend the upcoming graduation ceremony. On information and belief, Nichols made his decision after consulting and collaborating with the Defendants' attorneys. Nichols knew Troutman would be fired the next day, August 17, 2007. From July 16, 2007, through August 16, 2007, Troutman was, in fact, as the Defendants and Nichols all knew, not working for the University "from home." This proposed representation was untrue. It was designed to mislead the public and disguise the true nature of what had been done and what would be done. It was valid grounds to disqualify Nichols from being a member of Troutman's Grievance Panel.

78. On August 17, 2007, after Troutman refused to sign the "Employment Agreement," the Board of Trustees, terminated Troutman as Executive Secretary. After this decision, the Board of Trustees released statements or made statements to The Greenville News that Troutman had been terminated because he "failed to establish and maintain an effective working relationship" and because he violated the "rules and bylaws in creating and announcing [the EDFC/PC] position without giving notice or receiving approval from the Board of Trustees to do so." In particular, Hendrix falsely and maliciously told the newspaper that Troutman was terminated because he "violated the rules and bylaws" and made "threats and unfounded claims." These statements were malicious and untrue. They were carefully designed to create unfair adverse public opinion about Troutman and to damage his professional reputation.

79. There was a nexus between Troutman's speaking out about matters of public concern, as set forth elsewhere in this Complaint (see paragraphs 32 through 47) and his termination of employment. The individually named Defendants knew Troutman had the right to express his concerns and that his concerns were valid. These Defendants all knowingly violated

Troutman's Constitutionally protected rights. The Defendants' stated reasons to terminate Troutman were pretextual, false and designed to mask the unlawful motives for their actions.

TROUTMAN'S JOB PERFORMANCE

80. During his two years and two months of service, Troutman never received any reprimand, warning, criticism, adverse performance rating, or other indication he was not performing his duties as required and expected. He was never advised he was failing to establish and maintain effective working relationships with the Administration. He was never advised he needed formal committee approval and Board approval in order to create and fill the position of EDFC/PC. To the contrary, he had discussed his plans for this new position several times with Chairman Hendrix as documented by Troutman's calendar and Troutman's personal notebooks. He understood he had the support and approval of Chairman Hendrix (see paragraph 59).

81. During the entire two years and two months period Troutman served as Executive Secretary, the Trustee Policy Manual was never referenced, recognized, cited or invoked to invalidate any action by any Trustee or by Troutman. No copy of this manual was ever present or requested to be present during meetings of the Trustees or any committee of Trustees. Because he knew it was not being used and believed the manual needed to be updated, Troutman ordered 50 copies of the manual to be printed in the Summer of 2007. He distributed them to the Trustees and members of the Administrative Council on July 14, 2007 during the summer quarterly meeting of the Trustees.

82. Trustee McTeer, upon receiving the printed Policy Manual, stated to Troutman and the assembled Trustees in Executive Session that he believed the Trustee Policy Manual should be marked "Draft" so that it need not be made available to the public. McTeer apparently

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was not aware, until he was told by Troutman, that the manual had been posted on the internet in 2001 and therefore already available to the public.

83. Troutman was never instructed he must refer the matter of creating the new position, Executive Director of Fiscal Control/Policy Compliance, to the Executive and Audit Committee of the Board of Trustees. The Trustee Policy Manual places no such duty on the Executive Secretary. The Executive and Audit Committee met infrequently during the entire time Troutman served as Executive Secretary. Virtually all listed Executive and Audit Committee meetings scheduled during these two years were, in fact, for the purpose of full Board Executive Session meetings addressing agenda items not related to Internal Audit. Chairman Hendrix acted unilaterally as the Executive and Audit Committee. He routinely made decisions without consulting the other Trustees on that Committee (see paragraph 25).

84. After Troutman made the decision to recommend hiring Cathy Tillett as the new Director of Internal Audit, Hendrix told Troutman a decision on that hire did not need to be referred to the Executive and Audit Committee and that he, Hendrix, approved or ratified the hiring. The handling of this hiring decision is further proof of Hendrix's unilateral exercise of authority. The later claim by the Defendants that Troutman violated the Trustee Policy Manual by circumventing the Executive and Audit Committee was false, concocted and wholly inconsistent with the way the Board of Trustees actually functioned. It was concocted to create a plausible reason to fire Troutman and thereby cover up the real reason, namely, to get rid of him for speaking out about problems and inadequacies.

85. Troutman received favorable and exceptional job performance evaluations from the Trustees. He was frequently verbally commended for the good job he was doing. He was never told that his relationships with the Administration were a problem. Troutman repeatedly

asked for formal evaluations of his performance. He received none. He prepared a proposed form for an evaluation of his performance. The Trustees never used it. Troutman's repeated requests to the Trustees, especially the Chairman, for a formal job performance evaluation were ignored. The Defendants later fabricated the claim that Troutman's termination was warranted by his job performance. This fabricated claim was designed to disguise the fact he was terminated in violation of his First Amendment Rights.

TROUTMAN'S AMENDED GRIEVANCE

86. On August 29, 2007, Troutman timely submitted his Amended Grievance in accordance with Clemson University Policy and Procedures, Grievance Procedures I. Troutman's decision to file his Grievance was consistent with his desire and goal of having the problems and concerns he spoke out about corrected by the Administration or the Trustees and without public embarrassment. On October 10, 2007, Chairman Hendrix admitted he never bothered to read Troutman's Amended Grievance or its substantial exhibits. Upon information and belief, Hendrix also did not distribute this Grievance to the other Trustees despite the fact it contained important data, information and allegations they should have considered.

87. On October 10, 2007, a hearing was held on Troutman's Grievance. Over his objection, the three panel members were members of the Administrative Council, the organization about which he had complained and to which he had exercised his First Amendment rights. The Administrative Council had disregarded Troutman's concerns. The members of the Administrative Council were themselves substantial parts of the problems about which Troutman spoke out. (See paragraphs 28, 29 (m), 30 (i) 32, 33, 37, 38, 47, 48, 53, 56, 57, and 59). Each of the panel members was a member of the Administrative Council. Each of them was an interested party as that term has been defined by the law. Each of them was subordinant to the

Defendants named herein. Each of them was conflicted. Each of them had their personal reasons not to cross the Administration or the Trustees. The past acts and omissions of these panel members were part of Troutman's Grievance. These panel members were not proper and unbiased. Lawrence Nichols should not have been named to the panel because he was the person who administered the grievance process and who personally handled and denied Troutman's first Grievance (see paragraphs 30(m), 75, and 77).

88. There was no full and fair adjudication of this matter by the panel. The final findings by the Grievance Panel reported the next day, October 11, 2007, did not address Troutman's claim that his First Amendment Rights of Free Speech and Expression had been violated. Troutman's case presentation time was limited to three hours. A presentation of his entire case required substantially more time. He had no full and fair opportunity to present all his evidence. The members of the panel were biased, conflicted, and not disinterested. Any ruling or decision by them was unfair, flawed, and unlawful. Although Troutman is not required by the law to exhaust his administrative remedies before bringing this lawsuit, Troutman, consistent with his policy and plans, sought to have the matter resolved within the University so that a lawsuit need not be brought.

89. At the hearing on October 10, 2007, Chairman Hendrix misled the panel. He testified that when he learned Troutman had hired Alan Godfrey for a position called the Executive Director of Fiscal Control and Policy Compliance, he was "dismayed" and added "because I didn't know anything about it." He went on to testify that "...if I had been in favor of it and wanted to do it, I could not have done it." He also stated a presentation to the Executive and Audit Committee would be required and the full Board of Trustees would have to approve it. Chairman Hendrix knew this testimony was not true.

90. After July 16, 2007, when Chairman Hendrix asked for his resignation and up to August 17, 2007, the date on which he was terminated by the Trustees, Troutman requested he be allowed to stay on as Executive Secretary because of his strong belief he was acting in the best interest of both the University and the State of South Carolina and because he was uniquely well suited to serve as Executive Secretary given his experience, his judgment, his capability, his work ethic, and his knowledge of the problems and concerns gathered during the twenty-six months he had served as Executive Secretary. Although he repeatedly offered to meet with the Trustees any time and any place and under any circumstances, these offers were neither responded to nor accepted.

91. Since July 16, 2007, the day he received the telephone call from Chairman Hendrix, Alan Godfrey has remained in the position of "EDFC/PC" at the substantial salary of \$145,000.00 per year, despite the fact Defendants Hendrix and Barker stripped him of all meaningful duties, thus minimizing his usefulness and value to the University. Godfrey remained in his position as of the date of filing of this Complaint despite Chairman Hendrix's false claim that the position had been abolished. Another person, Virginia Bowman, was hired to fill his former position of Budget Director.

92. During the time Troutman served as Executive Secretary to the Board of Trustees, he worked assiduously and dedicated himself to fulfilling the expectations of the Trustees. He took no vacation time and routinely worked nights, weekends and holidays. His wife and children helped him as unpaid volunteers. He undertook projects and tasks he believed to be in the best interest of Clemson University and the citizens of the State of South Carolina, including an effort to obtain a Veterans Administration rehabilitation facility at the University. He reasonably believed he had the support of the President and the Trustees. He regarded the

creation of and the filling of the position of EDFC/PC as a logical, necessary and beneficial step to address the serious problems he had identified. He had the approval and support of Chairman Hendrix. He worked to fill that position with Alan Godfrey, the person at Clemson University most knowledgeable about its finances, its budget, its Unrestricted Cash, the problem caused by the accumulation of those funds and the obligation to utilize and account for those funds. His knowledge and experience made Alan Godfrey the logical, best choice for this position. Fearing Alan Godfrey would be a "watchdog on the Administration," or a "man with a badge and a gun," there was expressed opposition to him being promoted into this position. Rather than stand up to President Barker, Provost Helms and other members of the Administration who feared and did not want Godfrey in that role, Chairman Hendrix and the other Trustees capitulated. Instead of filling their duty as Trustees of a public institution, they decided to rid themselves of Troutman and his outspoken criticisms, opinions and recommendations about important matters of public concern.

FOR A FIRST CAUSE OF ACTION
(42 United States Code Section 1983)

93. The allegations set forth in paragraphs 1 through 92 are realleged and incorporated herein by reference.

94. This action is timely filed. The actions taken against Troutman by the Defendants, while acting under color of state law and in their individual capacities, as set forth herein, violated Troutman's Rights of Freedom of Speech and Expression guaranteed to him by the First Amendment of the United States Constitution.

95. Troutman's rights were arbitrarily, unfairly, wrongfully, and unlawfully violated because of his communications, expressions and conduct as described elsewhere in this Complaint. Said expressions related to matters of public concern. He was retaliated against and

terminated for his attempts to expose to the Board of Trustees, to the General Assembly, to the taxpayers, and to the citizens of South Carolina the fact that Clemson University was holding approximately \$80 million of Unrestricted Cash, deceitfully referred to as "performance credits." These funds were generated by State-appropriated and tuition increases.

96. While these funds were being deliberately accumulated, despite warnings and objections by Scott Ludlow, Alan Godfrey, Troutman and others, representatives of the University publicly stated there was pressure to raise tuition and no alternative to do so given the lack of funding by the Legislature. This was not factual (see paragraph 30(f) and (h)).

97. Troutman was arbitrarily, unfairly, wrongfully, and unlawfully terminated from his employment as an unlawful retaliation against him for (a) speaking out about matters of public concern, (b) filing his initial Grievance on August 11, 2007; (c) refusing to resign from his position as requested by the Board of Trustees Chairman; (d) establishing and filling the position of EDFC/PC and (e) otherwise exercising his Constitutional rights to free speech and expression.

RW
98. Troutman was arbitrarily, unfairly, wrongfully, and unlawfully terminated from his employment because he refused to sign an "Employment Agreement" presented to him by the Board of Trustees which would have required him to contractually agree to "confidentiality" and "non-disparagement" clauses designed to withhold important and material information and circumstances to which the public and the General Assembly are entitled to know. These actions were in violation of public policy.

99. Troutman was arbitrarily, unfairly, wrongfully, and unlawfully terminated from his employment for his speaking out, his conduct and his efforts to:

- (a) investigate, document, disclose and correct the problems and concerns set forth in paragraph 30;

- (b) ensure that Clemson University was fiscally responsible in its handling of its funds;
- (c) ensure that Clemson University was fully compliant with the open public meetings requirement of Section 30-4-70 of the South Carolina Code of Laws;
- (d) correct and prevent misrepresentations in applications the University submitted to the CHE for matching funds to create or fund an Endowed Chairs or Professorships;
- (e) verify the accuracy of statements regarding the “pressure” to raise tuition, and
- (f) verify the accuracy of statements made to the General Assembly regarding appropriation of State funds.

These aforementioned speech and expressions to detect and correct these irregularities, were not required by his employment.

100. Troutman’s conduct and communication on these aforesaid matters of public concern were the motivating factor in his termination by the Defendants.

101. Troutman’s right to express these matters of public concerns without fear of retaliatory dismissal outweighs the Defendants’ interest or claimed justification in operating the University’s affairs by suppressing Troutman’s views thus enabling the Defendants to avoid public scrutiny.

102. Defendants would not have reached the same employment decision and taken the same action if Troutman had not exercised his rights to free speech. Defendants after the fact contrived justifications for dismissing Troutman. These were pretextual and offered in an attempt to disguise the true reason for Troutman’s termination. Defendants also caused deceitful statements to be made to The Greenville News by the University’s Chief Financial Officer, Brett

Dalton, about Clemson's Unrestricted Cash, and its Restricted Cash deliberately confusing and blurring the difference between the two.

103. As a proximate and direct result of Defendants' actions, Troutman's First Amendment rights were violated. He lost both his job and his stature within the Clemson University community. This adversely affected his income, his benefits, his future income, his retirement prospects, his employment opportunities and his reputation. Troutman has further sustained other damages including mental and emotional suffering.

104. Defendants Hendrix, Britton, Amick, Lynch, Lynn, McAbee, McCraw, McKissick, McTeer, Peeler, Smith, Swann, Barker, Steadman and Helms knew or should have known this termination violated Troutman's established statutory and Constitutional rights of which a reasonable person would have known.

FOR A SECOND CAUSE OF ACTION
(Defamation *per se* Against Defendants Hendrix and Steadman)

RW
105. The allegations set forth in paragraphs 1 through 92 are realleged and incorporated herein by reference.

106. Prior to being terminated, Troutman enjoyed an excellent reputation as a professional manager and businessman.

107. In a pretextual attempt to create justifications for the termination of Troutman's employment, Hendrix and Steadman made published and caused to be published false and slanderous allegations against Troutman.

108. Chairman Hendrix stated to The Greenville News which published his statements on August 18, 2007 that "Troutman was terminated because he violated the rules and the bylaws in creating and announcing this position (EDFC/PC) without giving notice or receiving approval from the Board of Trustees to do so." Hendrix also stated that Troutman's "management and

work style and the unauthorized expansion and change in the Internal Audit Department without proper approvals led to loss of confidence.” Hendrix also stated that attempts to resolve the issue without formal action or embarrassment were “met with threats and unfounded claims” about Clemson’s business practices. Said statements were made with actual or presumed malice. These statements were defamatory *per se* because they were false, designed to impugn the integrity and damage Troutman’s professional reputation. They were intended to make him appear rash, violent and foolish, and to make him appear to be unstable. They were an effort to make it appear that he lacked self control, thereby exposing him to public contempt and ridicule. This violated Troutman’s rights and damaged his opportunities for gainful employment.

109. Defendant Steadman stated he had received a “basket full of emails” from employees of Clemson University, all stating their “pent-up anger and frustration” toward Troutman. This statement was false and malicious. This statement was defamatory *per se* because it was designed to damage, and did damage, Troutman’s professional reputation. It exposed him to public contempt and ridicule and harmed his right to retain or obtain suitable gainful employment.

110. These statements were published to third parties with malicious intent and with knowledge of their falsity or with reckless disregard for their truth. The subject of the defamation is a matter of public concern.

111. As a direct and proximate result of these statements, Troutman has suffered and will continue to suffer economic damages and damages for embarrassment, humiliation, and mental suffering. Under the law of defamation *per se*, his damages are presumed.

WHEREFORE, Troutman prays for judgment against all the Defendants for the following:

RW

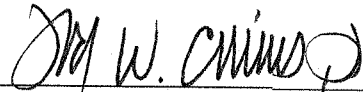
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- a) for reasonable compensatory and actual damages, including but not limited to, back pay and front pay;
- b) for punitive damages;
- c) for his attorneys' fees and costs;
- d) for pre-judgment interest;
- e) for injunctive relief, including reinstatement to his former position;
- f) for an injunction against future violations of his Constitutional rights, including his right against retaliatory discharge;
- g) for actual damages against the individual Defendants named in the second cause of action;
- h) for punitive damages against the individual Defendants named in the second cause of action;
- i) for his taxable costs, and
- j) for such other and further relief as this Honorable Court deems just and proper.

Respectfully submitted,

COLLINS & LACY, P.C.

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January 9, 2008

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PLAINTIFF REQUESTS A JURY TRIAL