

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

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, the
Clemson University Board of Trustees,
Clemson University, James F. Barker, Doris
R. Helms and Clayton D. Steadman,

Defendants.

CIVIL ACTION NUMBER: 3:08-cv-449-MJP

**PLAINTIFF'S REPLY TO
COUNTERCLAIMS**

Plaintiff Chalmers Eugene Troutman, III, replying to the counterclaims of Defendant
Clemson University, replies and answers as follows:

FOR A FIRST DEFENSE AND BY WAY OF REPLY

1. Except as is expressly admitted herein, each and every allegation of the
counterclaims is denied.

2. Admits the allegations of paragraphs 1 and 2 regarding this Court's jurisdiction.

3. Denies the allegations of paragraph 3 alleging that Plaintiff invoked this Court's
jurisdiction. Plaintiff would show that it was the Defendants who invoked this Court's jurisdiction.

This case is before this Court because it was removed from the Richland County Court of Common
Pleas by the Defendants.

4. Admits so much of paragraph 4 as alleges this Court has venue. The remaining allegations of paragraphs 4 are denied.

5. Denies the allegations of paragraph 5.

6. Paragraph 6 of the counterclaims requires no response. To the extent that any response is required, the allegations of paragraph 6 are denied.

7. Admits the allegations of paragraph 7 and 8.

8. Denies the allegations of paragraphs 9,10,11,12,13,14,15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28 and 29 and demands strict proof thereof.

9. The allegations of paragraph 30 require no response. To the extent that any response is required, the allegations of paragraph 30 are denied.

10. Admits only so much of paragraph 31 as alleges that Clemson University is engaged in interstate commerce and that Plaintiff was furnished a laptop computer while employed by Clemson University. The remaining allegations of paragraph 31 are denied.

11. Denies the allegations of paragraphs 32, 33, 34, 35 and 36 and demands strict proof thereof.

12. The allegations of paragraph 37 require no response. To the extent that any response is required, the allegations of paragraph 37 are denied.

13. Admits so much of paragraph 38 as alleges or which may be construed to allege that the laptop computer supplied to Plaintiff while he was employed by Clemson University belonged to Clemson University. The remaining allegations of paragraph 38 are denied.

14. Denies the allegations of paragraph 39. Further answering paragraph 39, Plaintiff would show that some of the data contained on the said computer were personal. Plaintiff would show he has a property interest in this data.

15. Denies the allegations of paragraph 40. Further answering paragraph 40, Plaintiff would show that both his use or control of the computer were lawful and consistent with the practices and policies of Clemson University.

16. Denies the allegations of paragraphs 41, 42, 43 and 44 and demands strict proof thereof.

17. Paragraph 45 requires no response. To the extent that paragraph 45 requires any response, the allegations of paragraph 45 are denied.

18. Admits only so much of paragraph 46 as alleges that Plaintiff, from May, 2005 to August, 2007 was an employee of Clemson University. The remaining allegations of paragraph 46 are denied. Further answering paragraph 46, Plaintiff would show that at all times he was and remains loyal to Clemson University.

19. Denies the allegations of paragraphs 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61 and 62 and demands strict proof thereof.

20. Denies Defendant is entitled to relief sought in the WHEREFORE paragraph or prayer of the counterclaims.

FOR A SECOND DEFENSE

21. The Counterclaims fail to set forth sufficient facts to constitute a cause of action and, therefore, should be dismissed pursuant to Rule 12(b)(6), SCRPC.

FOR A THIRD DEFENSE

22. Plaintiff would show that he acted consistent with written computer policies of Clemson University.

FOR A FOURTH DEFENSE

23. Plaintiff would further show that on August 6, 2007, while he was still employed by Clemson University and working at home, as instructed by Defendant Hendrix, Plaintiff had the contents of his laptop computer downloaded onto a disk. This was done by Plaintiff's son, Peter Troutman, who was at the time an employee of Clemson University's CCIT Office. Consistent with that office's normal practices and established procedures relating to used computers turned in by Clemson University employees, the computer was reimaged after the data was placed on a disk. Plaintiff would show, to the best of his knowledge, the original disk which was created contained all data and all files on the computer. Plaintiff would further show, contrary to Defendant's allegations, nothing was lost or destroyed. Plaintiff would further show this original disk, as well as a copy of it, was returned to counsel for the Defendant promptly after being requested to do so. Plaintiff pleads good faith compliance with and reliance on the written policies of Clemson University as a complete defense to all counterclaims.

FOR A FIFTH DEFENSE

24. Plaintiff would show, in addition to the written policies of Clemson University, there were customs and practices followed at Clemson University by departing employees relating to computers used by those employees during their time of employment at Clemson University. Plaintiff would show his actions were consistent with those customs and practices. Plaintiff would show his predecessor in office, Thornton Kirby, Esquire, downloaded and prepared a disk of his personal computer's contents and data and took it with him when he left the office of Executive Secretary to the Clemson University Board of Trustees. Plaintiff would show that Mr. Kirby left a copy of this disk in the lap drawer of the Executive Secretary's desk. Between January, 2005 and May, 2005, Defendant Steadman was the Interim Executive Secretary and therefore had access and

possession of Mr. Kirby's disk. Plaintiff would further show that about September of 2005, Plaintiff learned about the Kirby disk during a conversation with Mr. Kirby. Upon advising Mr. Kirby he had never seen it, Mr. Kirby volunteered to send another copy of this disk to Plaintiff and did so. Plaintiff thereafter downloaded the data and files of Mr. Kirby's disk onto Plaintiff's laptop computer. Plaintiff understands and believes the contents of Mr. Kirby's computer are on the original disk prepared on August 6, 2007. Plaintiff pleads compliance with customs and practices of Clemson University as a complete defense to all counterclaims.

FOR A SIXTH DEFENSE

25. Plaintiff would show since Clemson University is a public institution, the data contained on the disk of August 6, 2007 are subject to public disclosure and scrutiny under the laws of the State of South Carolina, including the Freedom of Information Act.

FOR A SEVENTH DEFENSE

26. Plaintiff would show he acted with authorization or did not exceed any authorized access in causing his electronically stored data to be downloaded, transferred, or stored on a disk and reimaging said computer's hard drive.

FOR AN EIGHTH DEFENSE

27. Plaintiff would show he did not act with the requisite *mens rea*, with the intent to defraud, that he did not act to further an intended fraud, or to obtain anything of value required before Defendant Clemson University can maintain a cause of action pursuant to 18 U.S.C.A § 1030.

FOR A NINTH DEFENSE

28. Plaintiff would show he did not intentionally cause damage without authorization to said computer because his laptop computer was reimaged pursuant to Clemson computer use policies and procedures.

FOR A TENTH DEFENSE

29. Plaintiff would show it is the policy and practice for employees of Clemson University to make copies of and store files, information, code, or data contained on computers. Plaintiff pleads consent and waiver as a defense to all counterclaims.

FOR AN ELEVENTH DEFENSE

30. Plaintiff would show he did not cause a "transmission" of a program, information, code, or command to a protected computer pursuant to 18 U.S.C.A § 1030.

FOR A TWELFTH DEFENSE

31. Plaintiff would show Defendant has suffered no damages.

FOR A THIRTEENTH DEFENSE

32. Plaintiff would show he caused his computer hard drive to be reimaged in an effort to prevent and protect against the disclosure of personal, sensitive, and/or private information. Plaintiff had prior knowledge of Clemson University selling or otherwise transferring used computers or other electronic devices to vendors or third parties which contained personal, sensitive, and/or private information of its employees. Even though Clemson University and members of its Board of Trustees had actual and constructive knowledge of selling or otherwise transferring used computers or other electronic devices to vendors or third parties which contained personal, sensitive, and/or private information of its employees, Clemson University has failed to

take necessary and reasonable steps necessary to protect against the disclosure of this information.

FOR A FOURTEENTH DEFENSE

33. Plaintiff would show Defendant has failed to mitigate its damages.

FOR A FIFTEENTH DEFENSE

34. Plaintiff would show that the hasty, precipitous and unwarranted of counterclaims brought against him by the Defendant Clemson University are further evidence of the unlawful retaliation by all the Defendants against Plaintiff after his exercise of his First Amendment rights. Plaintiff would show that statements made in open court and in front of the press by counsel for the Defendants were designed to humiliate, intimidate and discredit Plaintiff in the eyes of the Court, in the eyes of a prospective employer, and in the eyes of the public. Counsel for the Defendants made the following statements and representations or words to the effect that:

- (a) Plaintiff had engaged in spoliation of evidence;
- (b) Plaintiff had accessed over 18,000 computer files and that all these had been "wiped clean" or destroyed;
- (c) The documents on Plaintiff's laptop computer "cannot be recovered;"
- (d) 18,000 files or documents were "intentionally destroyed" by Plaintiff;
- (e) Plaintiff had engaged in "bad faith," and
- (f) Plaintiff had violated federal computer fraud and abuse statutes.

All of which Defendant Clemson University knew or should have known were unfair and untrue.

WHEREFORE, having fully replied, Plaintiff prays that these counterclaims be dismissed, for his costs, for his reasonable attorneys' fees and for such other and further relief as this Honorable Court deems just and proper.

Respectfully submitted,

COLLINS & LACY, P.C.

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October 14, 2008

ATTORNEYS FOR PLAINTIFF

PLAINTIFF REQUESTS A JURY TRIAL

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R. Helms and Clayton D. Steadman,)	
)	
Defendants.)	

CERTIFICATE OF SERVICE

This is to certify that on this 14th day of October, 2008, a true and correct copy of the Plaintiff's Reply to Counterclaims is being electronically transmitted to the Clerk of Court using the ECF System for filing and transmittal of a Notice of Electronic Filing to the following ECF registrants:

COUNSEL SERVED:

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s/ Joel W. Collins, Jr.