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THIS IS NOT ARBITRATION CASE
AN ASSESSMENT OF DAMAGES
HEARING IS REQUIRED

Filed and Attested by the
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30 OCT 2025 03:58 pm
G. IMPERATO

Attorneys for Plaintiff

BARRY FENCHAK,

Plaintiff,

v

PENNSYLVANIA STATE UNIVERSITY, et al.

Defendants,

IN THE COURT OF COMMON PLEAS
PHILADELPHIA COUNTY -
CIVIL ACTION - AT LAW

No. 250801859

## NOTICE TO DEFEND

**NOTICE**

You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this complaint and notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you.

You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the complaint of for any other claim or relief requested by the plaintiff. You may lose money or property or other rights important to you

*You should take this paper to your lawyer at once. If you do not have a lawyer or cannot afford one, go to or telephone the office set forth below to find out where you can get legal help.*

PHILADELPHIA BAR ASSOCIATION
Lawyer Referral and Information Service
1101 Market Street, 11th Floor
Philadelphia, Pennsylvania 19107
(215) 238-17011

**AVISO**

Le han demandado a usted en la corte. Si usted quiere defenderse de estas demandas expuestas en las paginas siguientes, usted tiene veinte (20) dias de plazo al partir de la fecha de la demanda y la notificacion. Hace falta ascentar una comparencia escrita o en persona o con un abogado y entregar a la corte en forma escrita sus defensas o sus objeciones a las demandas en contra de su persona. Sea avisado que si usted no se defiende, la corte tomara medidas y puede continuar la demanda en contra suya sin previo aviso o notificacion.

Ademas, la corte puede decider a favor del demandante y requiere que usted cumpla con todas las provisiones de esta demanda. Usted puede perder dinero o sus propiedades u otros derechos importantes para usted.

*Lleve esta demanda a un abogado immediatamente. Si no tiene abogado o si no tiene el dinero suficiente de pagar tal servicio. Vaya en persona o llame por telefono a la oficina cuya direccion se encuentra escrita abajo para averiguar donde se puede conseguir asistencia legal.*

ASOCIACIÓN DE LICENCIADOS DE FILADELFIA
Servicio De Referencia E Información Legal
1101 Market Street, 11th Floor
Filadelfia, Pennsylvania 19107
(215) 238-1701

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Attorneys for Plaintiff

THIS IS NOT ARBITRATION CASE.
AN ASSESSMENT OF DAMAGES
HEARING IS REQUIRED.

BARRY FENCHAK,
c/o Marino Associates
301 Wharton Street
Philadelphia, PA 19147

Plaintiff,

v

PENNSYLVANIA STATE UNIVERSITY
201 Old Main
University Park, PA 16802

and

MATTHEW SCHUYLER
201 Old Main
University Park, PA 16802

and

DAVID KLEPPINGER
201 Old Main
University Park, PA 16802

Defendants

IN THE COURT OF COMMON PLEAS
PHILADELPHIA COUNTY -
CIVIL ACTION - AT LAW

No. 250801859

**COMPLAINT - CIVIL ACTION**
**2O – OTHER PERSONAL INJURY**

AND NOW comes the plaintiff, by and through counsel, and demands of the defendants, jointly and severally, sums for damages and loss sustained in excess of the statutory compulsory arbitration threshold, within the meaning of 42 Pa.C.S.A. § 7361, plus interest, costs and prejudgment delay upon the causes of action set forth in the following:

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## THE PARTIES AND RELATED ENTITIES

1. Plaintiff Barry J. Fenchak is an adult individual residing within the Commonwealth of Pennsylvania. Plaintiff may be contacted by through counsel, Steven F. Marino, Esquire or Joseph Auddino, Esquire of Marino Associates at 301 Wharton Street, Philadelphia, PA 19147.

2. Defendant Pennsylvania State University ("*Penn State*" or "*the University*") is a state related, land-grant institution of higher education with campuses and facilities throughout Pennsylvania having a principal office located 201 Old Main, University Park, PA 16802. Defendant Pennsylvania State University exists as a multi-campus public research university that educates students from Pennsylvania, the nation and the world, inclusive of operating in Philadelphia County, Pennsylvania. At all relevant times material hereto, defendant Pennsylvania State University acted by and through its duly authorized employees, agents, workers and/or representatives acting within the scope of their employment, authority or apparent authority.

3. Defendant Matthew Schuyler is an adult individual with an address for the service of process located 201 Old Main, University Park, PA 16802. At all relevant times material hereto, defendant Matthew Schuyler was the agent, servant, and employee of defendant Pennsylvania State University serving as a member of the Pennsylvania State University's Board of Trustees. At all relevant times material hereto defendant Matthew Schuyler was an agent, ostensible agent, servant, workman and/or employee of defendant Pennsylvania State University. At all relevant times material hereto defendant Matthew Schuyler acted under the control or right of control of the defendant Pennsylvania State University within and during the course and scope of his employment, authority or apparent authority.

4. Defendant David Kleppinger is an adult individual with an address for the service of process located 201 Old Main, University Park, PA 16802. At all relevant times material hereto, defendant David Kleppinger was the agent, servant, and employee of defendant



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Pennsylvania State University serving as a member of the Pennsylvania State University's Board of Trustees. At all relevant times material hereto defendant Matthew Schuyler was an agent, ostensible agent, servant, workman and/or employee of defendant Pennsylvania State University. At all relevant times material hereto defendant David Kleppinger acted under the control or right of control of the defendant Pennsylvania State University within and during the course and scope of his employment, authority or apparent authority.

## JURISDICTION AND VENUE

5. Plaintiff incorporates by reference the previous paragraphs of the Complaint as if set forth fully herein.

6. This Court maintains original subject matter jurisdiction over the instant claims pursuant to Pennsylvania Constitution Article I, § 11, 42 Pa.C.S.A. § 931, and 42 Pa.C.S.A. § 7361 as a result of the amount in controversy exceeding mandatory arbitration amounts.

7. This Court maintains general in personam jurisdiction over defendant Pennsylvania State University pursuant to 42 Pa.C.S.A. §5301(a) upon a basis it is domiciled in the Commonwealth of Pennsylvania, or its contacts with the Commonwealth of Pennsylvania are so continuous, substantial, and systematic as to render them essentially at home in the Commonwealth of Pennsylvania.

8. This Court maintains specific in personam jurisdiction over the defendants pursuant 42 Pa.C.S.A. § 5322 upon a basis a tortious act giving rise to a tortious injury occurred in the Commonwealth of Pennsylvania.

9. Venue of this matter is properly laid in this judicial district pursuant to Pa.R.Civ.P. 2179 as result of a corporate defendant regularly conducting business within this judicial district.



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**PLAINTIFF'S SPECIALIZED KNOWLEDGE, TRAINING, AND EXPERIENCE IN THE DISCIPLINES OF FINANCE AND INVESTMENT**

10. The plaintiff incorporates by reference the paragraphs above as if set forth herein in full.

11. At all times material to his service as a Board of Trustees member, plaintiff held the following Pennsylvania professional licenses:

(a) Series 7 (General Securities Representative Exam);

(b) Series 24 (Securities Principal Exam);

(c) Series 63 (Uniform Securities Agent State Law Exam);

(d) Series 65 (Uniform Investment Adviser Law Exam);

(e) Financial Industry Regulatory Authority (FINRA) Central Registration Depository (CRD) # 2431018; and NPN Registration # 2025569.

12. At all times material to his service as a Board of Trustees member, plaintiff served as an Investment Advisor Representative registered in the state of Pennsylvania.

13. At all times material to his service as a Board of Trustees member, plaintiff was credentialed with a securities license authorizing him to sell securities and/or offer financial advice in states of Pennsylvania, California, Florida, Georgia, Massachusetts, North Carolina, New Jersey, New York, South Carolina, Virginia, Vermont, and Wisconsin.

14. At all times material to his service as a Board of Trustees member, plaintiff possessed specialized knowledge, training, and experience in the disciplines of finance and investment.

**PENNSYLVANIA STATE UNIVERSITY BOARD OF TRUSTEES**

15. The plaintiff incorporates by reference the paragraphs above as if set forth herein in full.



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16. Defendant Pennsylvania State University functions with a Board of Trustees.

17. The affairs of defendant Pennsylvania State University are managed by Pennsylvania State University Board of Trustees [hereinafter "Board of Trustees"].

18. The Board of Trustees is a corporate body established by the Pennsylvania State University's Charter.

19. The Board of Trustees operates pursuant to Amended and Restated Bylaws of Pennsylvania State University.

20. The Board of Trustees is composed of thirty-eight (38) members involving both appointed and elected trustees.

21. Nine voting members of the Board of Trustees are elected by the alumni of the University to serve for a term of three (3) years.

22. Pursuant to the Bylaws of Pennsylvania State University an individual may serve as a Trustee for a total of twelve (12) years.

**PLAINTIFF'S SERVICE AS AN ELECTIVE MEMBER OF THE PENNSYLVANIA STATE UNIVERSITY BOARD OF TRUSTEES**

23. The plaintiff incorporates by reference the paragraphs above as if set forth herein in full.

24. In the calendar year 2022, plaintiff was elected by the alumni of the University to serve a three (3) year term as a voting member of the Board of Trustees.

25. Plaintiff assumed his position as member of the Board of Trustees July 1, 2022.

26. At all times material to his service as a Board of Trustees member, plaintiff stood in a fiduciary relationship to the University.

27. At all times material to his service as a Board of Trustees member, plaintiff honored a duty to act in good faith, with due regard to the interests of the University.



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28. At all times material to his service as a Board of Trustees member, plaintiff honored a duty to refrain from using any University information not available to the public at large obtained as a result of his service to the University for personal gain or benefit or for the gain or benefit of others.

29. At all times material to his service as a Board of Trustees member, plaintiff properly exercised his fiduciary responsibilities towards the University consistent with expectations of membership imposed by the Board.

30. At all times material to his service as a Board of Trustees member, plaintiff conducted himself consistent with the expectations of behavior set forth in the Amended and Restated Bylaws of the Pennsylvania State University.

31. At all times material to his service as a Board of Trustees member, plaintiff demonstrated himself to be a dedicated member of Penn State community, who at all times held a good faith belief that his work on the Board of Trustees was for the greater good of the University and the students it serves.

**CONSISTENT WITH EXPECTATIONS OF MEMBERSHIP PLAINTIFF SPOKE OPENLY, FREELY, AND CANDIDLY FOR THE GREATER GOOD OF THE UNIVERSITY AND THE STUDENT BODY IT SERVES**

32. The plaintiff incorporates by reference the paragraphs above as if set forth herein in full.

33. Consistent with expectations of membership, from time to time, as a Board of Trustees member, plaintiff spoke openly, freely, and candidly about what he believed to serve the greater good of the University and its student body.



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34. Consistent with expectations of membership, from time to time, as a Board of Trustees member, plaintiff engaged in principled, civil, and respectful debate with other Trustee members on topics concerning University business.

35. Consistent with expectations of membership, from time to time, as a Board of Trustees member, plaintiff engaged in principled, civil, and respectful debate with other Trustee members on topics concerning the manner in which the Board of Trustees operated.

36. Consistent with expectations of membership, from time to time, as a Board of Trustees member, plaintiff engaged in principled, civil, and respectful debate with other Trustee members on topics concerning the manner in which the Board of Trustees' Executive Committee operated.

37. Consistent with expectations of membership, from time to time, as a Board of Trustees member, plaintiff expressed dissent with competing ideas and opinions of other Trustee members concerning University business.

38. Consistent with expectations of membership, from time to time, as a Board of Trustees member, plaintiff expressed dissent with competing ideas and opinions of other Trustee members concerning the manner in which the Board of Trustees operated.

39. Consistent with expectations of membership, from time to time, as a Board of Trustees member, plaintiff expressed dissent with competing ideas and opinions of other Trustee members concerning the manner in which the Board of Trustees' Executive Committee operated.

40. Consistent with expectations of membership, from time to time, as a Board of Trustees member, plaintiff expressed independent thoughts about what he believed was the best course of action to be taken to advance the interests of the University.



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41. Consistent with expectations of membership, from time to time, as a Board of Trustees member, plaintiff advocated positions that in good faith he reasonably believed were in the best interests of the University and for otherwise speaking publicly on matters of significant concern to University stakeholders.

42. From time to time, plaintiff's faithful exercise of his judgment and expression of what he believed in good faith was best the course of action to be taken to advance the interests of the University, conflicted with competing ideas and opinions of defendants Matthew Schuyler and David Kleppinger.

43. Plaintiff's speech and expressions of dissent with competing ideas and opinions of other Trustee members concerning University business was protected speech guaranteed by the First Amendment of the United States Constitution and Article 1, Section 7 of the Pennsylvania Constitution.

44. Plaintiff's speech and expressions of dissent with competing ideas and opinions of other Trustee members concerning the manner in which the Board of Trustees operated was protected speech guaranteed by the First Amendment of the United States Constitution and Article 1, Section 7 of the Pennsylvania Constitution.

45. Plaintiff's speech and expressions of dissent with competing ideas and opinions of other Trustee members concerning the manner in which the Board of Trustees' Executive Committee operated was protected speech guaranteed by the First Amendment of the United States Constitution and Article 1, Section 7 of the Pennsylvania Constitution.

46. Plaintiff's speech and expressions which conflicted with competing ideas and opinions of defendants Matthew Schuyler and David Kleppinger concerning University business, the manner in which the Board of Trustees operated, and the manner in which the Board of



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Trustees' Executive Committee operated was protected speech guaranteed by the First Amendment of the United States Constitution and Article 1, Section 7 of the Pennsylvania Constitution.

**PLAINTIFF'S REQUEST OF THE BOARD OF TRUSTEES FOR ACCESS TO INFORMATION RELATING TO ADMINISTRATIVE FEES REPORTED TO HAVE BEEN PAID BY THE UNIVERSITY TO MANAGE THE UNIVERSITY'S $5 BILLION ENDOWMENT**

47. The plaintiff incorporates by reference the paragraphs above as if set forth herein in full.

48. The Board of Trustees is responsible for the oversight and management of defendant Pennsylvania State University's endowment valued at approximately Five billion dollars ($5,000,000,000.00).

49. The Board of Trustees has delegated various responsibilities and day-to-day operations of administering the University's Five-billion-dollar endowment to the Pennsylvania State University Office of Investment Management and the Penn State Investment Council.

50. Shortly after election to the Board of Trustees, plaintiff reviewed defendant Pennsylvania State University's endowment IRS 990 filings relating to the 2008 to 2023 calendar years to gain an understanding of the scope of the endowment he was responsible for as a newly elected Trustee.

51. Upon review of defendant Pennsylvania State University's endowment IRS 990 filings, plaintiff learned professional administrative fees paid to manage the University's Five-billion-dollar endowment rose dramatically in 2017, more than tripling the rate within (3) three years.

52. Upon election to the Board of Trustees, plaintiff requested access to certain information relating to defendant Pennsylvania State University's endowment IRS 990 filings



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maintained or otherwise controlled by certain Board of Trustees members which he reasonably believed necessary to: (1) familiarize himself with important affairs of the University; (2) intelligently render decisions necessary to manage the University; and (3) otherwise faithfully discharge his duty as trustee to protect the interests of the University.

53. On or around June 2022, plaintiff requested Board of Trustees members Robert Fenza, Vice Chair of The Finance Business and Capital Planning Committee, and defendant David Kleppinger, Vice-Chair of the Board, to provide him information or access to the specific data and items that totaled the aggregated figures listed on the IRS Form 990s administrative fees reported to have been paid by the University to manage its endowment.

54. On or around June 2022, Board of Trustees member Robert Fenza, verbally denied the initial request, stating that "*You don't need it. You need to mind your business and trust others.*"

55. Consistent with the fiduciary responsibilities plaintiff owed to the University, plaintiff renewed his requests to controlling Board of Trustees members for access to certain information relating to defendant Pennsylvania State University's endowment IRS 990 filings reporting upon fees paid by the University to manage its endowment.

56. Each of the plaintiff's requests to controlling Board of Trustees members for access to certain information relating to defendant Pennsylvania State University's endowment IRS 990 filings reporting upon fees paid by the University to manage its endowment was met with denial.

57. Plaintiff's requests for the information concerning administrative fees reported to have been paid by the University to manage its endowment was communicated through email exchanges between plaintiff, University employees, and fellow Trustees of the Board, inclusive



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of Shannon Harvey; Sara Thorndike, Penn State University Senior Vice President for Finance and Business/Treasurer; Robert Fenza; defendant Matthew Schuyler; and Mary Lee Schneider.

58. On February 16, 2024, during an in-person Trustee meeting, Trustee Mary Lee Schneider, then serving as the Vice Chair of the Finance Business and Capital Planning Committee, issued a verbal denial to plaintiff's repeated requests for administrative fees information, stating: "*You will never be given that information. That is my decision and I will make sure you will never get it*."

59. Consistent with the Code of Conduct under which Board of Trustees members were expected to operate, on February 16, 2024, plaintiff expressed to Trustee Mary Lee Schneider he would document her denial by sending an email confirming the conversation.

60. Trustee Mary Lee Schneider responded to the plaintiff she "*won't get it. I've blocked your emails."*

61. Plaintiff documented the February 16, 2024, incident memorializing the details of the conversation engaged between himself and Mary Lee Schneider in email correspondence forwarded to Mary Lee Schneider, with copies to the entire Board of Trustees, inclusive of defendant Matthew Schuyler.

62. Consistent with the fiduciary responsibilities plaintiff owed to the University, on March 5, 2024, March 18, 2024, and April 29, 2024, plaintiff forwarded renewed requests for access to certain information relating to defendant Pennsylvania State University's endowment IRS 990 filings reporting upon fees paid by the University to manage its endowment to various Board of Trustee members, inclusive of defendant Matthew Schuyler and the President of the University.



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63. Plaintiff's March 5, 2024, March 18, 2024, and April 29, 2024, requests for administrative fees information were rebuffed by defendant Pennsylvania State University and met with denial.

64. Plaintiff's requests for access to certain information relating to defendant Pennsylvania State University's endowment IRS 990 filings reporting upon fees paid by the University to manage its endowment administrative fees was protected speech guaranteed by the First Amendment of the United States Constitution and Article 1, Section 7 of the Pennsylvania Constitution.

**PLAINTIFF'S REQUEST OF THE BOARD OF TRUSTEES FOR ACCESS TO INFORMATION RELATING TO THE ELEVATE CONTRACT**

65. The plaintiff incorporates by reference the paragraphs above as if set forth herein in full.

66. Prior to May 21, 2024, defendant Pennsylvania State University entertained entering into a potential 10-year expanded ticketing partnership with Elevate Sports Ventures to maximize the University's revenue and support revenue projections necessary to complete the University's ongoing Seven Hundred Million ($700,000,000.00) renovation of Beaver Stadium, scheduled for completion in 2027.

67. Prior to May 21, 2024, defendant Pennsylvania State University and Elevate Sports Ventures entered into a Letter of Intent

68. Prior to May 21, 2024, defendant Pennsylvania State University and Elevate Sports Ventures had not executed an agreement.

69. Consistent with the fiduciary responsibilities plaintiff owed to the University, on April 29, 2024, May 4, 2024, and May 6, 2024, plaintiff forwarded requests to various controlling Board of Trustees members for access to information relating to the terms and conditions of a



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contract under negotiation which defendant Pennsylvania State University entertained entering into with Elevate Sports Ventures.

70. On May 7, 2024, defendants Matt Schuyler and David Kleppinger informed the plaintiff his request for access to information relating to the terms and conditions of a contract under negotiation which defendant Pennsylvania State University entertained entering into with Elevate Sports Ventures was denied upon a basis the request was inappropriate and not objectively or reasonably related to his duties as a trustee.

71. On May 7, 2024, defendants Matt Schuyler and David Kleppinger informed the plaintiff additional information regarding Elevate Sports Ventures would be provided to all trustees in the ordinary course.

72. Plaintiff's requests for access to information relating to the terms and conditions of a contract under negotiation which defendant Pennsylvania State University entertained entering into with Elevate Sports Ventures was protected speech guaranteed by the First Amendment of the United States Constitution and Article 1, Section 7 of the Pennsylvania Constitution.

## THE PUBLIC BOARD OF TRUSTEES MEETING CONVENED MAY 21, 2024

73. On May 21, 2024, the Board of Trustees convened a public meeting.

74. The May 21, 2024, Board of Trustees public meeting was convened with the use of remote technology.

75. Plaintiff appeared and participated in the May 21, 2024, Board of Trustees public meeting remotely.

76. The May 21, 2024, Board of Trustees public meeting was recorded.

77. The May 21, 2024, Board of Trustees public meeting is posted on the University's website.



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78. The May 21, 2024, Board of Trustees public meeting is accessible and may be viewed in its entirety by hyperlink:

*https://psu.mediaspace.kaltura.com/media/Committee+on+Finance%2C+Business+and+Capital+Planning+and+Board+of+Trustees+Meeting/1_26npe460.*

79. The May 21, 2024, Board of Trustees public meeting was chaired by defendant Matthew Schuyler.

80. A purpose of the May 21, 2024, Board of Trustees public meeting was for voting members of the Board of Trustees to consider and act upon a Resolution for project approval concerning Beaver Stadium renovations at University Park ("*Beaver Stadium Renovation Project*").

81. A copy of the proposed Resolution for project approval for Beaver Stadium renovations at University Park was provided to Trustees in advance of the May 21, 2024, Board of Trustees public meeting which read as follows:

> RESOLVED
>
> I. RESOLVED, That the Beaver Stadium renovation at University Park, as designed by Populous Architects, PC of Kansas City, Missouri ("The Project") is hereby authorized and approved.
>
> II. FURTHER BE IT RESOLVED, That the Officers of the University ("The Officers") be, and each of them with full authority to act without the others hereby authorized and directed to cause the University to expend funds and award contracts to accomplish the Project for an additional amount not to exceed $630,000,000 for a total project cost up to $700,000,000.
>
> III. FURTHER BE IT RESOLVED, That the Officers are hereby directed to seek and obtain the additional authorization and approval of this Board of Trustees prior to expending funds or awarding any contracts in connection with the Project for any amount over a total project cost of $700,000,000.
>
> IV. FURTHER BE IT RESOLVED, That the Officers be, and each of them with full authority to act without the others hereby authorized and directed, in the name and on behalf of the University, to prepare, execute, deliver, and perform such other agreements, instruments, applications, reports, filings, and other documents, and to take or cause to be



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taken any and all such actions, as any of the Officers so acting deems necessary or appropriate to make effective the foregoing resolutions.

82. The proposed Resolution authorized certain other Board of Trustees members to cause the University to award contracts on behalf of the University in furtherance of the ongoing Beaver Stadium Renovation Project, inclusive of a contract under negotiation with Elevate Sports Ventures.

83. During the May 21, 2024, Board of Trustees public meeting, in conversation unrelated to the plaintiff, Sara Thorndike, Penn State University Senior Vice President for Finance and Business/Treasurer, brought to attention the relationship existing between defendant Pennsylvania State University and Elevate Sports Ventures and its importance to the ongoing Beaver Stadium Renovation Project.

84. During the May 21, 2024, Board of Trustees public meeting, in conversation unrelated to the plaintiff, Sara Thorndike, Penn State University Senior Vice President for Finance and Business/Treasurer, brought to attention the relationship existing defendant Pennsylvania State University and Elevate Sports Ventures and its importance to the ongoing Beaver Stadium Renovation Project.

85. During the May 21, 2024, Board of Trustees public meeting, plaintiff represented he had previously made a request to certain members of the Board of Trustees to be provided access to information relating to the terms and conditions of a contract under negotiation which defendant Pennsylvania State University entertained entering into with Elevate Sports Ventures.

86. During the May 21, 2024, Board of Trustees public meeting, plaintiff represented he had received written notice his request to be provided access to information relating to the terms and conditions of a contract under negotiation which defendant Pennsylvania State



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University entertained entering into with Elevate Sports Ventures had been denied by certain members of the Board of Trustees.

87. During the May 21, 2024, Board of Trustees public meeting, plaintiff represented he had been placed on notice information concerning the agreement, which defendant Pennsylvania State University was entertaining entering into with Elevate Sports Ventures, would be provided to all members of the Board of Trustees at an appropriate time.

88. During the May 21, 2024, Board of Trustees public meeting, plaintiff inquired of defendant Matthew Schuyler and Trustee Sara Thorndike what would be the appropriate time all members of the Board of Trustees will be provided information concerning the agreement, which defendant Pennsylvania State University was entertaining entering into with Elevate Sports Ventures.

89. During the May 21, 2024, Board of Trustees public meeting, plaintiff inquired of defendant Matthew Schuyler and Trustee Sara Thorndike if a reason existed justifying denying himself and other members of the Board of Trustees access to information relating to the terms and conditions of a contract under negotiation which defendant Pennsylvania State University entertained entering into with Elevate Sports Ventures, prior to May 21, 2024.

**PLAINTIFF'S JULY 16, 2024, FILING OF AN ACTION IN THE CENTRE COUNTY COURT OF COMMON PLEAS TO COMPEL PRODUCTION OF CORPORATE INFORMATION**

90. Consistent with the fiduciary responsibilities plaintiff owed to the University, on July 16, 2024, plaintiff filed an action in the Centre County Court of Common Pleas, which proceeded under the caption Barry J. Fenchak v Pennsylvania State University Board Of Trustees, and Matthew Schuyler, No. 2024-CV-1843-CI, to compel production of information relating to administrative fees paid by the University to manage the University's $5 billion endowment.



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**PLAINTIFF'S JULY 19, 2024, INTERACTION WITH THREE (3) ADULT MEMBERS OF THE UNIVERSITY'S INFORMATION TECHNOLOGY TEAM AT PENN STATE UNIVERSITY'S ALTOONA CAMPUS**

91. On July 19, 2024, three (3) days after plaintiff filed suit in the Centre County Court of Common Pleas to compel production of information relating to administrative fees paid by the University to manage the University's $5 billion endowment, plaintiff attended a Board of Trustees meeting at Penn State University's Altoona campus.

92. Following the July 19, 2024, Board of Trustees meeting, plaintiff engaged in conversation with three (3) adult members of Penn State's information technology team, whom provided technical support on behalf of the Board.

93. During plaintiff's conversation with the three (3) adult members of Penn State's information technology team, plaintiff made a comment, in the context of a more expansive conversation, to the effect, that his wife says that he cannot wear baseball hats because it makes him look like "*a penis with a hat on*."

94. Plaintiff's remark arose in the context of the Trustees having just been provided with gift bags from the Altoona campus, which gift bags included a Penn State baseball hat.

95. The plaintiff's remark was an approximate quote from the 1992 PG-rated movie A League of Their Own, in which actor Tom Hank's character stated to a baseball umpire *'You look like a penis with that little ball cap on*."

96. Defendants launched a sexual harassment investigation against the plaintiff upon the basis of the comment made by the plaintiff during his July 19, 2024, interaction with the three (3) adult members of Penn State's information technology team at the Altoona campus.

97. Defendants, through the Trustee removal process outlined in the Amended and Restated Bylaws of Pennsylvania State University Adopted July 30, 2024, recommended plaintiff be removed from the Board of Trustees for violating the Trustee Code of Conduct as a result of



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the July 19, 2024, incident, and scheduled a meeting October 10, 2024, to determine whether plaintiff violated his duties as Trustee, such that he should be removed from the Board.

**PLAINTIFF'S AUGUST 27, 2024, AMENDMENT OF THE ACTION FILED IN THE CENTRE COUNTY COURT OF COMMON PLEAS TO COMPEL PRODUCTION OF CORPORATE INFORMATION**

98. In or about August 2024, defendant Pennsylvania State University revealed it had entered into an expanded ticketing partnership with Elevate Sports Ventures.

99. In or about August 2024, defendant Pennsylvania State University represented the business collaboration between the University and Elevate Sports Ventures was a crucial component of funding necessary for the University's ongoing Seven Hundred Million Dollar ($700,000,000.00) renovation of Beaver Stadium, scheduled for completion in 2027.

100. Consistent with the fiduciary responsibilities plaintiff owed to the University, on August 27, 2024, plaintiff amended the Complaint plaintiff filed in the Centre County Court of Common Pleas, which proceeded under the caption Barry J. Fenchak v Pennsylvania State University Board Of Trustees, and Matthew Schuyler, No. 2024-CV-1843-CI, to compel production of information informing upon the terms of the contract entered into between Pennsylvania State University Elevate Sports Ventures.

101. After considerable litigation, defendant Pennsylvania State University ultimately provided plaintiff with information relating to administrative fees paid by the University to manage the University's $5 billion endowment.

102. After considerable litigation, defendant Pennsylvania State University ultimately provided plaintiff with the contract entered into between Pennsylvania State University and Elevate Sports Ventures which he had requested.



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103. Plaintiff's filing of the action in the Centre County Court of Common Pleas, which proceeded under the caption Barry J. Fenchak v Pennsylvania State University Board of Trustees, and Matthew Schuyler, No. 2024-CV-1843-CI, to compel production of University information was protected speech guaranteed by the First Amendment of the United States Constitution and Article 1, Section 7 of the Pennsylvania Constitution.

**THE DEFENDANTS' RETALIATION AGAINST THE PLAINTIFF FOR EXERCISING PROTECTED SPEECH**

104. The plaintiff incorporates by reference the paragraphs above as if set forth herein in full.

105. Defendants Pennsylvania State University, Matthew Schuyler, and David Kleppinger individually and through representatives, retaliated against the plaintiff as a result of the plaintiff's exercise of protected speech guaranteed by the First Amendment of the United States Constitution and Article 1, Section 7 of the Pennsylvania Constitution, in the following ways:

(a) Truncated plaintiff's meaningful participation in public Board of Trustees meetings;

(b) Levied unwarranted and unjustified sanctions upon the plaintiff;

(c) Revoked plaintiff's social privileges;

(d) Removed plaintiff's membership on Board of Trustees Academic Affairs Research and Student Life Committee;

(e) Prohibited plaintiff from attending Board of Trustees meetings in person;

(f) Amended the Bylaws of the University on July 30, 2024, to empower the Chair of the Board to restrict a member Trustee's access to University information;



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(g) Amended the Bylaws of the University on July 30, 2024, to vest the Chair of the Board and the Chair of the Governance Committee with ultimate power to sanction and remove member Trustees from their position on the Board.

106. In furtherance of a scheme and plan to retaliate against the plaintiff for exercising protected speech guaranteed by the First Amendment of the United States Constitution and Article 1, Section 7 of the Pennsylvania Constitution, defendants Pennsylvania State University, Matthew Schuyler, and David Kleppinger individually and through representatives, in combination, crafted a false narrative the plaintiff breached duties of confidentiality owed to the University.

107. Defendant Matthew Schuyler and defendant David Kleppinger co-authored correspondence dated August 20, 2024, denying plaintiff's August 16, 2024, request for the agreement entered into between Pennsylvania State University and Elevate Sports Ventures.

108. The correspondence dated August 20, 2024, co-authored by defendant Matthew Schuyler and defendant David Kleppinger imputes into the mind of the reader false facts and implications, inclusive of:

(a) Plaintiff breached a duty of confidentiality owed to the University during the course of a public meeting convened by the Board of Trustees May 21, 2024;

(b) Plaintiff has repeatedly violated duties of confidentiality owed to the University;

(c) Plaintiff has placed the University at risk;

(d) Plaintiff is untrustworthy;

(e) Plaintiff is not competent to be entrusted with commercially sensitive information which concerns the University;



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(f) If provided with confidential commercially sensitive University information, plaintiff would willfully disclose the information to unauthorized persons;

(g) If provided with confidential commercially sensitive University information, plaintiff would willfully to disclose the information in a manner not authorized by Board of Trustees;

109. On September 17, 2024, at 3:16 p.m., the defendants published the August 20, 2024, correspondence co-authored by defendant Matthew Schuyler and defendant David Kleppinger containing false, misleading and defamatory statements concerning the plaintiff to the public at large by filing it of public record in the Office of the Centre County Prothonotary in the matter captioned Barry J. Fenchak v Pennsylvania State University Board Of Trustees, and Matthew Schuyler, No. 2024-CV-1843-CI [see Defendants' Praecipe To Attach Exhibit "A" To Defendants' Preliminary Objections To Plaintiff's Amended Complaint and correspondence dated August 20, 2024, identifying defendant Matthew Schuyler and defendant David Kleppinger as signatories attached hereto and marked as Exhibit 1].

110. In furtherance of a scheme and plan to retaliate against the plaintiff for exercising protected speech guaranteed by the First Amendment of the United States Constitution and Article 1, Section 7 of the Pennsylvania Constitution, defendants Pennsylvania State University, Matthew Schuyler, and David Kleppinger individually and through representatives, in combination, crafted a pretextual narrative that plaintiff engaged in sexual harassing conduct upon a basis his July 19, 2024, interaction with the three (3) adult members of the University's information technology team at its Altoona campus

111. In furtherance of a scheme and plan to retaliate against the plaintiff for exercising protected speech guaranteed by the First Amendment of the United States Constitution and Article



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1, Section 7 of the Pennsylvania Constitution, defendants Pennsylvania State University, Matthew Schuyler, and David Kleppinger individually and through representatives, in combination, crafted a pretextual narrative that plaintiff's July 19, 2024, interaction with three (3) adult members of the University's information technology team at the Altoona campus rose to the level of conduct which rendered plaintiff unfit to serve as a Board of Trustee member.

112. In furtherance of a scheme and plan to retaliate against the plaintiff for exercising protected speech guaranteed by the First Amendment of the United States Constitution and Article 1, Section 7 of the Pennsylvania Constitution, defendants Pennsylvania State University, Matthew Schuyler, and David Kleppinger individually and through representatives, in combination, initiated efforts to remove plaintiff from the Board of Trustees on October 9, 2024, upon the pretextual basis of the plaintiff's July 19, 2024, interaction with three (3) adult members of the University's information technology team at the Altoona campus rendered plaintiff unfit to serve as a Board of Trustee member.

113. In furtherance of a scheme and plan to retaliate against the plaintiff for exercising protected speech guaranteed by the First Amendment of the United States Constitution and Article 1, Section 7 of the Pennsylvania Constitution, on February 26, 2025, defendants through their newly created Nominating Subcommittee established by the July 30, 2024, Amended Bylaws, voted plaintiff ineligible to be listed on the ballot in the 2025 alumni trustee election upon the pretextual basis of the plaintiff's July 19, 2024, interaction with three (3) adult members of the University's information technology team at the Altoona campus.



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**THE DEFENDANT PENNSYLVANIA STATE UNIVERSITY'S KNOWLEDGE OF SIMILAR UNLAWFUL CONDUCT IN THE PAST AND FAILURE TO TAKE PRECAUTIONS AGAINST FUTURE VIOLATIONS**

114. Plaintiff incorporates by reference the previous paragraphs of the Complaint as if set forth fully herein.

***Defendant Pennsylvania State University's Denial of Seven (7) Trustees Edward B. Brown, III, Barbara L. Doran, Robert C. Jubelirer, Anthony P. Lubrano, Ryan J. McCombie, William F. Oldsey and Alice W. Pope's request to Access to Corporate Information***

115. At relevant times material hereto, Edward B. Brown, III, Barbara L. Doran, Robert C. Jubelirer, Anthony P. Lubrano, Ryan J. McCombie, William F. Oldsey and Alice W. Pope were each Trustees of Pennsylvania State University elected by the alumni to serve on the University's Board of Trustees.

116. In July of 2012, Louis Freeh, by Freeh Sporkin & Sullivan, LLP and Freeh Group International Solutions, LLC, released a "Report of the Special Investigative Counsel Regarding the Actions of the University Related to the Child Sexual Abuse Committed by Gerald A. Sandusky" (hereinafter the Freeh Report).

117. The Board of Trustees accepted the Freeh Report it had commissioned and announced that it would implement the recommendations in the report.

118. After their election, Trustees Edward B. Brown, III, Barbara L. Doran, Robert C. Jubelirer, Anthony P. Lubrano, Ryan J. McCombie, William F. Oldsey and Alice W. Pope requested access to the materials that had been collected for and generated during Freeh's investigation (hereinafter "Freeh Source Materials").

119. When the requested materials were not produced, Trustees Edward B. Brown, III, Barbara L. Doran, Robert C. Jubelirer, Anthony P. Lubrano, Ryan J. McCombie, William F. Oldsey and Alice W. Pope forwarded correspondence to Keith E. Masser, Chairman of the Board



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of Trustees, and to Eric J. Barron, President of the University, requesting access to the Freeh Source Materials.

120. By letter dated April 17, 2015, the Chairman of the Board of Trustees and President of the University, by their counsel, responded the seven (7) Trustees had no right or duty to review the Freeh Source Materials upon a basis the materials were not reasonably related to the performance of Trustees' duties.

121. Consistent with the fiduciary responsibilities they owed to the University, on April 20, 2015, Trustees Edward B. Brown, III, Barbara L. Doran, Robert C. Jubelirer, Anthony P. Lubrano, Ryan J. McCombie, William F. Oldsey and Alice W. Pope filed a Petition to Compel Corporate Information in the Court of Common Pleas of Centre County, Pennsylvania against the University to compel the production of the Freeh Source Materials in the matter captioned In re Application by Nonprofit Corp. Trustees To Compel Inspection of Corp. Info., No. 1593-2015

122. On November 19, 2015, the Court of Common Pleas of Centre County granted the seven (7) Trustees Petition to Compel Corporate Information in the matter captioned In re Application by Nonprofit Corp. Trustees To Compel Inspection of Corp. Info., No. 1593-2015 (Centre Cnty., Nov. 19, 2015).

123. On March 13, 2017, the Commonwealth Court of Pennsylvania affirmed the November 19, 2015, order of the Court of Common Pleas of Centre County granting the seven (7) Trustees Petition to Compel Corporate Information [see: In re Application by Nonprofit Corp. Trustees To Compel Inspection of Corp. Info., 157 A.3d 994, 1001-02 (Pa. Commw. 2017).

124. As early as March 13, 2017, defendants knew, or reasonable should have known, speech exercised by a member of the Board of Trustees in the form of a request to be provided access to information which the member reasonably believed necessary to discharge fiduciary



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duties owed to the University, is protected speech guaranteed by the First Amendment of the United States Constitution and Article I, § 7 of the Pennsylvania Constitution.

125. As early as March 13, 2017, defendants knew, or reasonable should have known, all that is required of the plaintiff to be entitled to access requested University information is a showing the information requested be reasonably or fairly related to his duties as a Trustee.

126. As early as March 13, 2017, defendants knew, or reasonable should have known, although the majority decision of the Board of Trustees will control in a matter of corporate affairs, the majority of the Board of Trustees may not constitutionally deprive a Trustee, such as the plaintiff, access to University information which the plaintiff decided was needed to fulfill his duties as a Trustee.

127. As early as March 13, 2017, defendants knew, or reasonable should have known, in order to deny the request of the plaintiff to access requested University information the defendants must establish the requested University information is not reasonably related to the Trustee duties of the plaintiff or the plaintiff would use the University information in a manner which would violate his duty to the University.

***Defendant Pennsylvania State University's' Retaliation Against Trustee Anthony Lubrano for Exercising Protected Speech***

128. Anthony Lubrano was elected by the alumni of the University to serve a three (3) year term as a voting member of the Board of Trustees spanning the calendar years July 2012 to June 2018.

129. Anthony Lubrano was again elected by the alumni of the University to serve a three (3) year term as a voting member of the Board of Trustees spanning the calendar years July 2020 and July 2023.



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130. At all times material to his service as a Board of Trustees member, Anthony Lubrano stood in a fiduciary relationship to the University.

131. At all times material to his service as a Board of Trustees member, Anthony Lubrano honored a duty to act in good faith, with due regard to the interests of the University.

132. At all times material to his service as a Board of Trustees member, Anthony Lubrano honored a duty to refrain from using any University information not available to the public at large obtained as a result of his service to the University for personal gain or benefit or for the gain or benefit of others.

133. At all times material to his service as a Board of Trustees member, Anthony Lubrano properly exercised his fiduciary responsibilities towards the University consistent with expectations of membership imposed by the Board.

134. At all times material to his service as a Board of Trustees member, Anthony Lubrano conducted himself consistent with the expectations of behavior set forth in the Amended and Restated Bylaws of the Pennsylvania State University.

135. At all times material to his service as a Board of Trustees member, Anthony Lubrano demonstrated himself to be a dedicated member of Penn State community, who at all times held a good faith belief that his work on the Board of Trustees was for the greater good of the University and the students it serves.

136. Consistent with expectations of membership, from time to time, as a Board of Trustees member, Anthony Lubrano spoke openly, freely, and candidly about what he believed to serve the greater good of the University and its student body.



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137. Consistent with expectations of membership, from time to time, as a Board of Trustees member, Anthony Lubrano engaged in principled, civil, and respectful debate with other Trustee members on topics concerning University business.

138. Consistent with expectations of membership, from time to time, as a Board of Trustees member, Anthony Lubrano engaged in principled, civil, and respectful debate with other Trustee members on topics concerning the manner in which the Board of Trustees operated.

139. Consistent with expectations of membership, from time to time, as a Board of Trustees member, Anthony Lubrano engaged in principled, civil, and respectful debate with other Trustee members on topics concerning the manner in which the Board of Trustees' Executive Committee operated.

140. Consistent with expectations of membership, from time to time, as a Board of Trustees member, Anthony Lubrano expressed dissent with competing ideas and opinions of other Trustee members concerning University business.

141. Consistent with expectations of membership, from time to time, as a Board of Trustees member, Anthony Lubrano expressed dissent with competing ideas and opinions of other Trustee members concerning the manner in which the Board of Trustees operated.

142. Consistent with expectations of membership, from time to time, as a Board of Trustees member, Anthony Lubrano expressed dissent with competing ideas and opinions of other Trustee members concerning the manner in which the Board of Trustees' Executive Committee operated.

143. Consistent with expectations of membership, from time to time, as a Board of Trustees member, Anthony Lubrano expressed independent thoughts about what he believed was best the course of action to be taken to advance the interests of the University.



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144. Consistent with expectations of membership, from time to time, as a Board of Trustees member, Anthony Lubrano advocated positions that in good faith he reasonably believed were in the best interests of the University and for otherwise speaking publicly on matters of significant concern to University stakeholders.

145. From time to time, Anthony Lubrano's faithful exercise of his judgment and expression of what he believed in good faith was best the course of action to be taken to advance the interests of the University, conflicted with competing ideas and opinions of defendants Matthew Schuyler and David Kleppinger.

146. Anthony Lubrano's speech and expressions of dissent with competing ideas and opinions of other Trustee members concerning University business was protected speech guaranteed by the First Amendment of the United States Constitution and Article 1, Section 7 of the Pennsylvania Constitution.

147. Anthony Lubrano's speech and expressions of dissent with competing ideas and opinions of other Trustee members concerning the manner in which the Board of Trustees operated was protected speech guaranteed by the First Amendment of the United States Constitution and Article 1, Section 7 of the Pennsylvania Constitution.

148. Anthony Lubrano's speech and expressions of dissent with competing ideas and opinions of other Trustee members concerning the manner in which the Board of Trustees' Executive Committee operated was protected speech guaranteed by the First Amendment of the United States Constitution and Article 1, Section 7 of the Pennsylvania Constitution.

149. Anthony Lubrano's speech and expressions which conflicted with competing ideas and opinions of defendants Matthew Schuyler and David Kleppinger concerning University business, the manner in which the Board of Trustees operated, and the manner in which the Board



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of Trustees' Executive Committee operated was protected speech guaranteed by the First Amendment of the United States Constitution and Article 1, Section 7 of the Pennsylvania Constitution.

150. Defendants Pennsylvania State University, Matthew Schuyler, and David Kleppinger individually and through representatives, retaliated against the Anthony Lubrano as a result of Anthony Lubrano's exercise of protected speech guaranteed by the First Amendment of the United States Constitution and Article 1, Section 7 of the Pennsylvania Constitution, in the following ways:

(a) On March 28, 2024, reprimanded Anthony Lubrano for presenting a Resolution to honor the Paterno Family at the February 16, 2024, public board meeting;

(b) On March 28, 2024, reprimanded Anthony Lubrano for commenting upon matters of public concern involving the University, its programs and finances.

(c) Undertook a covert investigation of Anthony Lubrano's fitness to serve as a Trustee as a result of the proposed Paterno Resolution;

(d) Undertook a covert investigation of Anthony Lubrano's fitness to serve as a Trustee as a result of his commenting upon matters of public concern involving the University, its programs and finances.

**COUNT I**
**DEFAMATION PER SE**
**(Plaintiff v All Defendants)**

151. Plaintiff incorporates by reference the previous paragraphs of the Complaint as if set forth fully herein.

152. At all relevant times material hereto, defendant Matthew Schuyler served as the Chair of the Board of Trustees.



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153. At all relevant times material hereto, defendant David Kleppinger served as the Vice-Chair of the Board of Trustees.

154. At all relevant times material hereto, defendants exercised control of the content of correspondence dated August 20, 2024.

155. The correspondence dated August 20, 2024, contains statements which tend to harm the reputation of the plaintiff to lower him in the estimation of the community or to deter third parties from associating or dealing with him.

156. The correspondence dated August 20, 2024, contains statements which ascribe to the plaintiff conduct or characteristics that adversely affect the plaintiff's fitness to properly conduct his profession, trade or business.

157. The correspondence dated August 20, 2024, contains statements which ascribe to the plaintiff conduct or characteristics that adversely affect the plaintiff's fitness to properly conduct duties imposed upon and expected of a Board of Trustee member.

158. The correspondence dated August 20, 2024, contains statements which has grievously fractured the plaintiff's standing in the community of respectable society.

159. Defendants published or otherwise disseminated the defamatory communication contained in the correspondence dated August 20, 2024, to the public at large September 17, 2024, at 3:16 p.m., by filing the correspondence of public record in the Office of the Centre County Prothonotary in the matter captioned Barry J. Fenchak v Pennsylvania State University Board Of Trustees, and Matthew Schuyler, No. 2024-CV-1843-CI.

160. Defendants abused any conditionally privileged occasion attached to the correspondence dated August 20, 2024.



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161. Defendants acted with knowledge of the falsity of defamatory statements contained within the correspondence dated August 20, 2024.

162. Defendants acted with a reckless disregard for the truth of defamatory statements contained within the correspondence dated August 20, 2024.

163. Defendants aforementioned actions or omissions were intentional.

164. Defendants aforementioned actions or omissions were deliberate.

165. Defendants aforementioned actions or omissions demonstrated a conscious disregard to the rights of the plaintiff.

166. Defendants aforementioned actions or omissions demonstrated a reckless indifference to the welfare of the plaintiff.

167. The aforementioned retaliatory conduct of the defendants was outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community.

168. Defendant Pennsylvania State University is liable to the plaintiff pursuant to Section 213 of the Restatement (Second) of Agency.

169. Defendant Pennsylvania State University is liable to the plaintiff pursuant to Section 317 of the Restatement (Second) of Torts.

170. Defendant Pennsylvania State University is vicariously liable to the plaintiff.

171. As a direct and proximate result of defendants' aforementioned reckless and deliberately indifferent actions or omissions, plaintiff has been caused to suffer a stigma to his reputation.



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172. As a direct and proximate result of defendants' aforementioned reckless and deliberately indifferent actions or omissions, plaintiff has been caused to suffer a loss of prestige and professional standing.

173. As a direct and proximate result of defendants' aforementioned reckless and deliberately indifferent actions or omissions, plaintiff has been caused to suffer actual harm, inclusive of injury to reputation, impairment of standing in the community, personal humiliation and mental anguish.

174. As a direct and proximate result of defendants' aforementioned reckless and deliberately indifferent actions or omissions, plaintiff has been caused to incur reasonable attorney's fees and costs prosecuting the instant action

WHEREFORE, plaintiff requests that this Court enter judgment in his favor and against defendants, jointly and severally, and the relief which follows:

I. That plaintiff be awarded compensatory damages as proven;

II. That plaintiff be awarded punitive damages as proven;

III. That plaintiff be awarded reasonable attorney's fees as provided for pursuant to Section 4.02(c) of the Amended and Restated Bylaws of the Pennsylvania State University;

IV. That plaintiff be awarded the cost of prosecuting this claim as provided for pursuant to Section 4.02(c) of the Amended and Restated Bylaws of the Pennsylvania State University;

V. That plaintiff be awarded reasonable expert fees as provided for pursuant to Section 4.02(c) of the Amended and Restated Bylaws of the Pennsylvania State University;

VI. That plaintiff be awarded interest and damages for prejudgment delay;

VII. That plaintiff be awarded further relief as this Court may deem appropriate.



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**COUNT II**
**PRESENTATION FALSE LIGHT INVASION OF PRIVACY**
**(Plaintiff v All Defendants)**

175. Plaintiff incorporates by reference the previous paragraphs of the Complaint as if set forth fully herein.

176. The correspondence dated August 20, 2024, contains statements which placed the plaintiff in a false light.

177. The correspondence dated August 20, 2024, publicized matters that even if true, are selectively publicized in a manner which created a false impression of the plaintiff.

178. The false light in which the defendants placed the plaintiff by publicizing or disseminating the correspondence dated August 20, 2024, would be highly offensive to a reasonable person.

179. Defendants had knowledge of the falsity of the publicized matter and the false light in which the plaintiff would be placed.

180. Defendants acted in reckless disregard as to the falsity of the publicized matter and the false light in which the plaintiff would be placed.

181. Defendants' aforementioned actions or omissions were intentional.

182. Defendants' aforementioned actions or omissions were deliberate.

183. Defendants' aforementioned actions or omissions demonstrated a conscious disregard to the rights of the plaintiff.

184. Defendants' aforementioned actions or omissions demonstrated a reckless indifference to the welfare of the plaintiff.

185. The aforementioned retaliatory conduct of the defendants was outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community.



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186. Defendant Pennsylvania State University is liable to the plaintiff pursuant to Section 213 of the Restatement (Second) of Agency.

187. Defendant Pennsylvania State University is liable to the plaintiff pursuant to Section 317 of the Restatement (Second) of Torts.

188. Defendant Pennsylvania State University is vicariously liable to the plaintiff.

189. As a direct and proximate result of the defendants' aforementioned reckless and deliberately indifferent actions or omissions, plaintiff has been caused to suffer those harms, losses, and damages aforementioned.

WHEREFORE, plaintiff requests that this Court enter judgment in his favor and against the defendants, jointly and severally, and the relief which follows:

I. That plaintiff be awarded compensatory damages as proven;

II. That plaintiff be awarded punitive damages as proven;

III. That plaintiff be awarded reasonable attorney's fees as provided for pursuant to Section 4.02(c) of the Amended and Restated Bylaws of the Pennsylvania State University;

IV. That plaintiff be awarded the cost of prosecuting this claim as provided for pursuant to Section 4.02(c) of the Amended and Restated Bylaws of the Pennsylvania State University;

V. That plaintiff be awarded reasonable expert fees as provided for pursuant to Section 4.02(c) of the Amended and Restated Bylaws of the Pennsylvania State University;

VI. That plaintiff be awarded interest and damages for prejudgment delay;

VII. That plaintiff be awarded further relief as this Court may deem appropriate.



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**COUNT III**
**BREACH OF DUTY OF CONFIDENTIALITY AND LOYALTY**
**(Plaintiff v All Defendants)**

190. Plaintiff incorporates by reference the previous paragraphs of the Complaint as if set forth fully herein.

191. Pursuant to the Amended and Restated Bylaws of Pennsylvania State University defendants owed plaintiff a duty of care to conduct itself / themselves with professionalism, embodying respect and courtesy for others, inclusive of the plaintiff.

192. Pursuant to the Amended and Restated Bylaws of Pennsylvania State University defendants owed plaintiff a duty of care to act in a way that merits the continued trust and confidence of the University's students, alumni, community, faculty, staff, and other stakeholders.

193. Pursuant to the Amended and Restated Bylaws of Pennsylvania State University defendants owed plaintiff a duty of care to conduct itself / themselves ethically, demonstrating honesty, integrity, fairness, respect and professionalism toward all matters and persons.

194. Pursuant to the Amended and Restated Bylaws of Pennsylvania State University defendants owed plaintiff a duty of care to conduct itself / themselves in a manner consistent with a scrupulous regard for the highest standards of ethical conduct and personal integrity.

195. Pursuant to the Amended and Restated Bylaws of Pennsylvania State University defendants owed plaintiff a duty of care to refrain from making bad faith allegations of wrongdoing, e.g., allegations that are knowingly false, capricious, maliciously motivated or made with reckless disregard for fact.

196. Pursuant to the Amended and Restated Bylaws of Pennsylvania State University defendants owed plaintiff a duty of care to refrain from publicly disseminating the correspondence dated August 20, 2024.



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197. Pursuant to the Amended and Restated Bylaws of Pennsylvania State University defendants owed plaintiff a duty of care to the plaintiff to act with confidentiality and loyalty.

198. Defendants breached the duties of care owed to the plaintiff in the following, but limited ways:

(a) Publishing or otherwise disseminating the defamatory communication contained in the correspondence dated August 20, 2024, to the public at large September 17, 2024, at 3:16 p.m., by filing the correspondence dated August 20, 2024, of public record in the Office of the Centre County Prothonotary in the matter captioned Barry J. Fenchak v Pennsylvania State University Board Of Trustees, and Matthew Schuyler, No. 2024-CV-1843-CI;

(b) Defaming the plaintiff;

(c) Placing the plaintiff in a false light;

(d) Retaliating against the plaintiff for voicing his opinions, beliefs, or disagreements that differ from prevailing views maintained defendants Pennsylvania State University, Matthew Schuyler, and David Kleppinger;

(e) Retaliating against the plaintiff for exercising protected speech guaranteed by the First Amendment of the United States Constitution and Article 1, Section 7 of the Pennsylvania Constitution.

199. Defendants' aforementioned actions or omissions were intentional.

200. Defendants' aforementioned actions or omissions were deliberate.

201. Defendants' aforementioned actions or omissions demonstrated a conscious disregard to the rights of the plaintiff.

202. Defendants' aforementioned actions or omissions demonstrated a reckless indifference to the welfare of the plaintiff.



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203. The aforementioned retaliatory conduct of the defendants was outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community.

204. Defendant Pennsylvania State University is liable to the plaintiff pursuant to Section 213 of the Restatement (Second) of Agency.

205. Defendant Pennsylvania State University is liable to the plaintiff pursuant to Section 317 of the Restatement (Second) of Torts.

206. Defendant Pennsylvania State University is vicariously liable to the plaintiff.

207. As a direct and proximate result of the defendants' breach of the duties of care owed to the plaintiff, plaintiff has been caused to suffer those harms, losses, and damages aforementioned.

WHEREFORE, plaintiff requests that this Court enter judgment in his favor and against the defendants, jointly and severally, and the relief which follows:

I. That plaintiff be awarded compensatory damages as proven;

II. That plaintiff be awarded punitive damages as proven;

III. That plaintiff be awarded reasonable attorney's fees as provided for pursuant to Section 4.02(c) of the Amended and Restated Bylaws of the Pennsylvania State University;

IV. That plaintiff be awarded the cost of prosecuting this claim as provided for pursuant to Section 4.02(c) of the Amended and Restated Bylaws of the Pennsylvania State University;

V. That plaintiff be awarded reasonable expert fees as provided for pursuant to Section 4.02(c) of the Amended and Restated Bylaws of the Pennsylvania State University;

VI. That plaintiff be awarded interest and damages for prejudgment delay;

VII. That plaintiff be awarded further relief as this Court may deem appropriate.



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**COUNT IV**
**VIOLATIONS OF CIVIL RIGHTS - 42 U.S.C.A. § 1983**
**FIRST AMENDMENT – FREE SPEECH**
**INSTITUTIONAL LIABILITY**
**(Plaintiff v Pennsylvania State University)**

208. The plaintiff incorporates by reference the paragraphs above as if set forth herein in full.

209. At all material times relevant to the subject matter described in this Complaint defendant Pennsylvania State University was person within the meaning of 42 U.S.C.A. § 1983.

210. At all material times relevant to the subject matter described in this Complaint defendant Pennsylvania State University was a state actor within the meaning of 42 U.S.C.A. § 1983.

211. At all material times relevant to the subject matter described in this Complaint defendant Pennsylvania State University acted under the color of state law.

212. Prior to plaintiff assuming his position as member of the Board of Trustees on July 1, 2022, defendant Pennsylvania State University policymakers knew or reasonably should have known the Board of Trustees Leadership, inclusive of defendants Matthew Schuyler and David Kleppinger, operated under a custom and practice of retaliating against Trustees, such as the plaintiff, whom exercised protected speech in the form of:

(a) Requesting access to corporate information regarding University business;

(b) Voicing his opinions, beliefs, or disagreements that differ from prevailing views maintained defendant Pennsylvania State University, Chair of the Board, or Vice Chair of the Board;

(c) Exercising protected speech guaranteed by the First Amendment of the United States Constitution and Article 1, Section 7 of the Pennsylvania Constitution;



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(d) Expressing dissent to the ideas and opinions of defendant Pennsylvania State University, Chair of the Board, or Vice Chair of the Board concerning University business and the manner in which the Board of Trustees and the Board of Trustees' Executive Committee operated;

(e) Expressing dissent to the ideas and opinions of defendants Matthew Schuyler and David Kleppinger concerning University business and the manner in which the Board of Trustees and the Board of Trustees' Executive Committee operated;

(f) Expressing independent thoughts about what the Trustee in good faith reasonably believed was best the course of action to be taken to advance the interests of the University which diverged from or conflicted with the ideas and opinions of defendant Pennsylvania State University, Chair of the Board, or Vice Chair of the Board;

(g) Expressing independent thoughts about what the Trustee in good faith reasonably believed was best the course of action to be taken to advance the interests of the University which diverged from or conflicted with the ideas and opinions of defendants Matthew Schuyler and David Kleppinger;

(h) Advocating positions which the Trustee in good faith reasonably believed were in the best interests of the University and for otherwise speaking publicly on matters of significant concern to University stakeholders.

213. On July 30, 2024, defendant Pennsylvania State University policymakers adopted, and operated thereafter, under Section 2.03(e) of the Amended and Restated Bylaws of Pennsylvania State University which empowered the Chair of the Board with unfettered discretion to serve as the final arbiter of disputes regarding a member Trustee's request for access to University information or records.



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214. On July 30, 2024, defendant Pennsylvania State University policymakers adopted, and operated thereafter, under Section 2.05 of the Amended and Restated Bylaws of Pennsylvania State University which empowered the Chair to admonish a Trustee member.

215. On July 30, 2024, defendant Pennsylvania State University policymakers adopted, and operated thereafter, under Section 2.05 of the Amended and Restated Bylaws of Pennsylvania State University which empowered the Chair to sanction a Trustee member, inclusive of the removal of the Trustee, for a period determined at the discretion of the Chair, from participating in Committees, Board Entities, Board Assignments, Board Social Events, Board Athletic Events, University Social Events, and University Athletic Events, as determined by the Chair.

216. On July 30, 2024, defendant Pennsylvania State University policymakers adopted, and operated thereafter, under Section 2.05 of the Amended and Restated Bylaws of Pennsylvania State University which improperly entitled the Board's Governance Committee to undertake a fact finding and initial consideration of factors giving rise to the Governance Committee's recommendation for sanctions or removal of a Trustee in secrecy, in a private session of the Governance Committee, outside of the earshot and view of the public.

217. On July 30, 2024, defendant Pennsylvania State University policymakers adopted, and operated thereafter, under Section 2.05 of the Amended and Restated Bylaws of Pennsylvania State University which improperly shields the Board's Governance Committee's fact finding and initial consideration of the factors giving rise to the Governance Committee's recommendation for sanctions or removal of a Trustee from public view.

218. July 30, 2024, defendant Pennsylvania State University policymakers adopted, and operated thereafter, under Section 2.05 of the Amended and Restated Bylaws of Pennsylvania



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State University which improperly mandates that the Board's Governance Committee shall recommend removal of any Trustee facing a second sanction within an annual Board cycle.

219. July 30, 2024, defendant Pennsylvania State University policymakers adopted, and operated thereafter, under Section 2.05 of the Amended and Restated Bylaws of Pennsylvania State University which required the affirmative vote of only 2/3 of those Trustees present at a duly called Board of Trustees Meeting to remove a Trustee from the position of Trustee.

220. At all relevant times material hereto defendant Pennsylvania State University, with a deliberate indifference to the constitutional rights of the plaintiff, by and through its final policy makers, had in force and effect an unconstitutional policy, practice, or custom acting through the instrumentality of its agency, the Board of Trustees, which failed to sufficiently protect against retaliation being taken against Trustees, such as the plaintiff, and which policy caused a violation of a right to free speech protected by the First Amendment, and injury, and loss.

221. At all relevant times material hereto defendant Pennsylvania State University, with a deliberate indifference to the constitutional rights of the plaintiff, by and through its final policy makers, had in force and effect an unconstitutional policy, practice, or custom acting through the instrumentality of its agency, the Board of Trustees, which failed to ensure to Chair of the Board and Vice Chair of the Board were monitored sufficient to prevent retaliation from being taken against Trustees, such as the plaintiff, and cause a violation of a right to free speech protected by the First Amendment, and injury, and loss.

222. Defendant Pennsylvania State University policymakers knew or reasonably should have known it was foreseeable and almost certain that operating under policy, practice, or custom set forth Sections 2.03 and 2.05 of the Amended and Restated Bylaws of Pennsylvania State



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University would lead to Trustees, such as the plaintiff, suffering a deprivation of the right of free speech protected by the First Amendment, and injury, and loss.

223. Defendant Pennsylvania State University policymakers knew or reasonably should have known it was foreseeable and almost certain that operating under policy, practice, or custom set forth Sections 2.03 and 2.05 of the Amended and Restated Bylaws of Pennsylvania State University would create an environment causing Board leadership to reasonably believe their actions would not be properly monitored and that misconduct would not be investigated and would be tolerated.

224. Policymakers of the defendant Pennsylvania State University responsible for establishing a final policy with respect to safeguarding the constitutional rights of Trustees, such as the plaintiff, exercised a deliberate choice to follow a course of action, from among various alternatives, which caused plaintiff to suffer a deprivation of free speech protected by the First Amendment of the United States Constitution.

225. As a direct and proximate result of the defendant Pennsylvania State University's aforementioned customs, practices, or policies plaintiff was caused to suffer a deprivation of rights protected by the First Amendment of the United States Constitution.

226. As a direct and proximate result of the defendant Pennsylvania State University's aforementioned customs, practices, or policies the plaintiff was caused to suffer injury, harm and loss aforementioned

227. As a direct and proximate result of the defendant Pennsylvania State University's customs, practices, or policies the plaintiff has been caused to incur attorney's fees and costs prosecuting this matter.



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WHEREFORE, the plaintiff prays for judgment in his favor against defendant Pennsylvania State University, jointly and severally, and the relief which follows:

I. That plaintiff be awarded compensatory damages as proven;

II. That plaintiff be awarded punitive damages as proven;

III. That plaintiff be awarded reasonable attorney's fees as provided for pursuant to 42 U.S.C.A. § 1988;

IV. That plaintiff be awarded the cost of prosecuting this claim as provided for pursuant to 42 U.S.C.A. § 1988;

V. That plaintiff be awarded reasonable expert fees as provided for pursuant to 42 U.S.C.A. § 1988;

VI. That plaintiff be awarded interest and damages for prejudgment delay;

VII. That plaintiff be awarded further relief as this Court may deem appropriate.

**COUNT V**
**VIOLATIONS OF CIVIL RIGHTS - 42 U.S.C.A. § 1983**
**FIRST AMENDMENT – DEPRIVATION OF FREE SPEECH**
**INDIVIDUAL LIABILITY**
**(Plaintiff v Matthew Schuyler)**

228. The plaintiff incorporates by reference the paragraphs above as if set forth herein in full.

229. At all material times relevant to the subject matter described in this Complaint defendant Matthew Schuyler was person within the meaning of 42 U.S.C.A. § 1983.

230. At all material times relevant to the subject matter described in this Complaint defendant Matthew Schuyler served a leadership position on the Board of Trustees, which empowered him to give orders to Trustees, such as the plaintiff, which if disobeyed would give rise to a potential of discipline.



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231. At all material times relevant to the subject matter described in this Complaint defendant Matthew Schuyler served a supervisory position as it relates to the plaintiff.

232. At all material times relevant to the subject matter described in this Complaint defendant Matthew Schuyler acted under the color of state law.

233. Defendant Matthew Schuyler deliberately retaliated against the plaintiff as result of the plaintiff's exercise of speech protected the First Amendment of the United States Constitution.

234. The aforementioned actions of the defendant Matthew Schuyler were outrageous, malicious, willful, and effected with a reckless indifference to the welfare of the plaintiff.

235. As a direct and proximate result of the defendant Matthew Schuyler's intentional and indifferent actions the plaintiff was caused to suffer a deprivation of constitutional rights protected by the First Amendment of the United States Constitution.

236. As a direct and proximate result of the defendant Matthew Schuyler's intentional and indifferent actions the plaintiff was caused to suffer a loss of liberty.

237. As a direct and proximate result of the defendant Matthew Schuyler's intentional and indifferent actions the plaintiff was caused to suffer that injury, harm and loss aforementioned.

238. As a direct and proximate result of the defendant Matthew Schuyler's intentional and indifferent actions the plaintiff was caused to incur attorney's fees and costs prosecuting this matter.

WHEREFORE, the plaintiff prays for judgment in his favor against defendant Matthew Schuyler, jointly and severally, and the relief which follows:

I. That plaintiff be awarded compensatory damages as proven;

II. That plaintiff be awarded punitive damages as proven;



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III. That plaintiff be awarded reasonable attorney's fees as provided for pursuant to 42 U.S.C.A. § 1988;

IV. That plaintiff be awarded the cost of prosecuting this claim as provided for pursuant to 42 U.S.C.A. § 1988;

V. That plaintiff be awarded reasonable expert fees as provided for pursuant to 42 U.S.C.A. § 1988;

VI. That plaintiff be awarded interest and damages for prejudgment delay;

VII. That plaintiff be awarded further relief as this Court may deem appropriate.

**COUNT VI**
**VIOLATIONS OF CIVIL RIGHTS - 42 U.S.C.A. § 1983**
**FIRST AMENDMENT – DEPRIVATION OF FREE SPEECH**
**INDIVIDUAL LIABILITY**
**(Plaintiff v David Kleppinger)**

239. The plaintiff incorporates by reference the paragraphs above as if set forth herein in full.

240. At all material times relevant to the subject matter described in this Complaint defendant David Kleppinger was person within the meaning of 42 U.S.C.A. § 1983.

241. At all material times relevant to the subject matter described in this Complaint defendant David Kleppinger served a leadership position on the Board of Trustees, which empowered him to give orders to Trustees, such as the plaintiff, which if disobeyed would give rise to a potential of discipline.

242. At all material times relevant to the subject matter described in this Complaint defendant David Kleppinger served a supervisory position as it relates to the plaintiff.

243. At all material times relevant to the subject matter described in this Complaint defendant David Kleppinger acted under the color of state law.



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244. Defendant David Kleppinger deliberately retaliated against the plaintiff as result of the plaintiff's exercise of speech protected the First Amendment of the United States Constitution.

245. The aforementioned actions of the defendant David Kleppinger were outrageous, malicious, willful, and effected with a reckless indifference to the welfare of the plaintiff.

246. As a direct and proximate result of the defendant David Kleppinger's intentional and indifferent actions the plaintiff was caused to suffer a deprivation of constitutional rights protected by the First Amendment of the United States Constitution.

247. As a direct and proximate result of the defendant David Kleppinger's intentional and indifferent actions the plaintiff was caused to suffer a loss of liberty.

248. As a direct and proximate result of the defendant David Kleppinger's intentional and indifferent actions the plaintiff was caused to suffer that injury, harm and loss aforementioned.

249. As a direct and proximate result of the defendant David Kleppinger's intentional and indifferent actions the plaintiff was caused to incur attorney's fees and costs prosecuting this matter.

WHEREFORE, the plaintiff prays for judgment in his favor against defendant David Kleppinger, jointly and severally, and the relief which follows:

I. That plaintiff be awarded compensatory damages as proven;

II. That plaintiff be awarded punitive damages as proven;

III. That plaintiff be awarded reasonable attorney's fees as provided for pursuant to 42 U.S.C.A. § 1988;

IV. That plaintiff be awarded the cost of prosecuting this claim as provided for pursuant to 42 U.S.C.A. § 1988;



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V. That plaintiff be awarded reasonable expert fees as provided for pursuant to 42 U.S.C.A. § 1988;

VI. That plaintiff be awarded interest and damages for prejudgment delay;

VII. That plaintiff be awarded further relief as this Court may deem appropriate.

**COUNT VII**
**VIOLATION OF CONSTITUTION OF THE COMMONWEALTH OF PENNSYLVANIA**
**CIVIL ACTION FOR DEPRIVATION OF FREE SPEECH PROTECTED**
**BY ARTICLE I, SECTION 7 PENNSYLVANIA CONSTITUTION**
**INSTITUTIONAL LIABILITY**
**(Plaintiff v Pennsylvania State University)**

250. The plaintiff incorporates by reference the paragraphs above as if set forth herein in full.

251. At all relevant times material hereto Article 1 Section 7 of the Constitution of the Commonwealth of Pennsylvania conferred upon the plaintiff a substantive right to engage in free communication of thoughts and opinions.

252. Policymakers of the defendant Pennsylvania State University responsible for establishing a final policy, custom, or practice with respect to safeguarding the free speech rights of the plaintiff exercised a deliberate choice to follow a course of action, custom, practice or policy from among various alternatives, which violated Articles 1, Section 7 of the Constitution of the Commonwealth of Pennsylvania and caused the plaintiff to suffer a deprivation of constitutional rights and those various injuries, loss and expenses as set forth above.

253. As a direct and proximate result of the above-described customs, practices, or policies, employed by the defendant Pennsylvania State University, plaintiff has been caused to suffer a deprivation of constitutional rights protected by the Articles 1, Section 7 of the Constitution of the Commonwealth of Pennsylvania and those various injuries, loss and expenses as set forth above.



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WHEREFORE, the plaintiff prays for judgment in his favor against defendant Pennsylvania State University, jointly and severally, and the relief which follows:

I. That plaintiff be awarded compensatory damages as proven;

II. That plaintiff be awarded punitive damages as proven;

III. That plaintiff be awarded reasonable attorney's fees as provided for pursuant to Section 4.02(c) of the Amended and Restated Bylaws of the Pennsylvania State University;

IV. That plaintiff be awarded the cost of prosecuting this claim as provided for pursuant to Section 4.02(c) of the Amended and Restated Bylaws of the Pennsylvania State University;

V. That plaintiff be awarded reasonable expert fees as provided for pursuant to Section 4.02(c) of the Amended and Restated Bylaws of the Pennsylvania State University;

VI. That plaintiff be awarded interest and damages for prejudgment delay;

VII. That plaintiff be awarded further relief as this Court may deem appropriate.

**COUNT VIII**
**VIOLATION OF CONSTITUTION OF THE COMMONWEALTH OF PENNSYLVANIA**
**CIVIL ACTION FOR DEPRIVATION OF FREE SPEECH PROTECTED**
**BY ARTICLE I, SECTION 7 PENNSYLVANIA CONSTITUTION**
**INDIVIDUAL LIABILITY**
**(Plaintiff v Matthew Schuyler)**

254. The plaintiff incorporates by reference the paragraphs above as if set forth herein in full.

255. At all relevant times material hereto Articles 1, Section 7 of the Constitution of the Commonwealth of Pennsylvania conferred upon the plaintiff a substantive right or a protectable liberty interest to be free from seizure and initiation of criminal legal process against him without probable cause achieved through state actors deliberately falsifying information to prosecutors and issuing authorities.



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256. At all relevant times material hereto Article 1 Section 7 of the Constitution of the Commonwealth of Pennsylvania conferred upon the plaintiff a substantive right to engage in free communication of thoughts and opinions.

257. As a direct and proximate result of the defendant Matthew Schuyler's Kleppinger's aforementioned deliberate actions the plaintiff has been caused to suffer a deprivation of constitutional rights protected by Articles 1, Section 7 of the Constitution of the Commonwealth of Pennsylvania.

WHEREFORE, the plaintiff prays for judgment in his favor against defendant Matthew Schuyler jointly and severally, and the relief which follows:

I. That plaintiff be awarded compensatory damages as proven;

II. That plaintiff be awarded punitive damages as proven;

III. That plaintiff be awarded reasonable attorney's fees as provided for pursuant to Section 4.02(c) of the Amended and Restated Bylaws of the Pennsylvania State University;

IV. That plaintiff be awarded the cost of prosecuting this claim as provided for pursuant to Section 4.02(c) of the Amended and Restated Bylaws of the Pennsylvania State University;

V. That plaintiff be awarded reasonable expert fees as provided for pursuant to Section 4.02(c) of the Amended and Restated Bylaws of the Pennsylvania State University;

VI. That plaintiff be awarded interest and damages for prejudgment delay;

VII. That plaintiff be awarded further relief as this Court may deem appropriate.



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**COUNT IX**
**VIOLATION OF CONSTITUTION OF THE COMMONWEALTH OF PENNSYLVANIA**
**CIVIL ACTION FOR DEPRIVATION OF FREE SPEECH PROTECTED**
**BY ARTICLE I, SECTION 7 PENNSYLVANIA CONSTITUTION**
**INDIVIDUAL LIABILITY**
**(Plaintiff v David Kleppinger)**

258. The plaintiff incorporates by reference the paragraphs above as if set forth herein in full.

259. At all relevant times material hereto Articles 1, Section 7 of the Constitution of the Commonwealth of Pennsylvania conferred upon the plaintiff a substantive right or a protectable liberty interest to be free from seizure and initiation of criminal legal process against him without probable cause achieved through state actors deliberately falsifying information to prosecutors and issuing authorities.

260. At all relevant times material hereto Article 1 Section 7 of the Constitution of the Commonwealth of Pennsylvania conferred upon the plaintiff a substantive right to engage in free communication of thoughts and opinions.

261. As a direct and proximate result of the defendant David Kleppinger's aforementioned deliberate actions the plaintiff has been caused to suffer a deprivation of constitutional rights protected by Articles 1, Section 7 of the Constitution of the Commonwealth of Pennsylvania.

WHEREFORE, the plaintiff prays for judgment in his favor against defendant David Kleppinger jointly and severally, and the relief which follows:

I. That plaintiff be awarded compensatory damages as proven;

II. That plaintiff be awarded punitive damages as proven;

III. That plaintiff be awarded reasonable attorney's fees as provided for pursuant to Section 4.02(c) of the Amended and Restated Bylaws of the Pennsylvania State University;



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IV. That plaintiff be awarded the cost of prosecuting this claim as provided for pursuant to Section 4.02(c) of the Amended and Restated Bylaws of the Pennsylvania State University;

V. That plaintiff be awarded reasonable expert fees as provided for pursuant to Section 4.02(c) of the Amended and Restated Bylaws of the Pennsylvania State University;

VI. That plaintiff be awarded interest and damages for prejudgment delay;

VII. That plaintiff be awarded further relief as this Court may deem appropriate.

Respectfully submitted,

By: */s/ Steven F. Marino*

Steven F. Marino, Esquire
PA Attorney I.D. No. 53034
Joseph Auddino, Esquire
PA Attorney I.D. No. 316752
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*Attorneys for Plaintiff*

Dated: October 30, 2025



Case ID: 250801859

Docusign Envelope ID: 642A2946-792E-4C0E-991B-00EE8BF3CCCA

**VERIFICATION**

The undersigned, having read the attached verifies that the facts set forth in the forgoing are based on information furnished to counsel in the course of this proceeding and are true and accurate to the best of the knowledge, information and belief of the undersigned. The language included in the submission is that of counsel and not of the undersigned. To the extent that the content of the submission is that of counsel, the undersigned has relied upon counsel in providing this Verification. This Verification is executed subject to the penalties for unsworn falsification to authorities pursuant to 18 Pa.C.S.A 4904.

Respectfully submitted,

Mr. Barry Fenchak

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# EXHIBIT

# 1

Case ID: 250801859

IN THE COURT OF COMMON PLEAS OF CENTRE COUNTY, PENNSYLVANIA
CIVIL ACTION – LAW

| | |
|---|---|
| BARRY J. FENCHAK,<br><br>Plaintiff,<br><br>vs.<br><br>THE PENNSYLVANIA STATE UNIVERSITY BOARD OF TRUSTEES AND MATTHEW SCHUYLER IN HIS OFFICIAL CAPACITY AS CHAIRMAN,<br><br>Defendants. | Docket No. 2024-CV-1843-CI<br><br>Type of Case: Civil Action - Equity<br><br>Type of Pleading: Praecipe to Attach Exhibit A to Preliminary Objections Amended Complaint<br><br>Filed on behalf of Defendants<br><br>Counsel of Record for Defendants:<br><br>**MARSHALL DENNEHEY, P.C.**<br><br>Christopher J. Conrad, Esquire<br>PA ID No. 202348<br>Gary H. Dadamo, Esquire<br>PA ID No. 93292<br>200 Corporate Center Dr. Ste 300<br>Camp Hill, PA 17011<br>Ph. 717-651-3531<br>Fax: 717-651-3707<br>cjconrad@mdwcg.com<br>ghdadamo@mdwcg.com |

FILED FOR RECORD BY EMAIL
2024 SEP 17 PM03 16
JEREMY S. BREON
PROTHONOTARY
CENTRE COUNTY, PA

Case ID: 250801859

**MARSHALL DENNEHEY, P.C.**
Christopher J. Conrad, Esquire
PA ID No. 202348
Gary H. Dadamo, Esquire
PA ID No. 93292
200 Corporate Center Drive, Suite 300
Camp Hill, PA 17011
Ph. 717-651-3531 /Fax: 717-651-3707
cjconrad@mdwcg.com
ghdadamo@mdwcg.com
*Attorneys for Defendant, Board of Trustees of the Pennsylvania State University, and Matthew Schuyler*

| | | |
|---|---|---|
| BARRY J. FENCHAK,<br>Plaintiff, | : | COURT OF COMMON PLEAS<br>CENTRE COUNTY, PENNSYLVANIA |
| v. | : | CIVIL ACTION |
| THE PENNSYLVANIA STATE UNIVERSITY BOARD OF TRUSTEES, and MATTHEW SCHUYLER IN HIS OFFICIAL CAPACITY AS CHAIRMAN,<br>Defendants. | : | NO. 2024-cv-1843-CI |

**DEFENDANTS' PRAECIPE TO ATTACH EXHIBIT "A" TO DEFENDANTS' PRELIMINARY OBJECTIONS TO PLAINTIFF'S AMENDED COMPLAINT**

TO THE PROTHONOTARY:

Kindly attach the attached Exhibit "A" to Defendants' Preliminary Objections to Plaintiff's Amended Complaint, which were previously filed of record on September 16, 2024. Exhibit "A" is referenced in Paragraph 103 of the Amended Complaint.



Case ID: 250801859

Respectfully Submitted,

**MARSHALL DENNEHEY, P.C.**

BY: */s/ Christopher J. Conrad*
Christopher J. Conrad, Esquire
PA ID No. 202348
Gary H. Dadamo, Esquire
PA ID No. 93292
200 Corporate Center Drive, Ste 300
Camp Hill, PA 17011
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cjconrad@mdwcg.com
ghdadamo@mdwcg.com

*Attorneys for Defendants, Board of Trustees of the Pennsylvania State University and Matthew Schuyler*

DATE: September 17, 2024



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## CERTIFICATE OF COMPLIANCE

I certify that this filing complies with the provision of the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* that require filing confidential information and documents differently than non-confidential information and documents.

Submitted by: Defendant Board of Trustees of the Pennsylvania State University, and Matthew Schuyler

Signature: */s/ Christopher J. Conrad*
Name: Christopher J. Conrad, Esquire

Attorney No. (if applicable): 202348



Case ID: 250801859

## CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing document has been served upon the following known counsel and parties of record this 17th day of September, 2024, **via email and regular mail**, as follows:

Justin J. Boehret, Esq.
Erika L. Silverbreit, Esq.
Terry L Mutchler, Esq.
Obermayer Rebmann Maxwell & Hippel LLP
Centre Square West
1500 Market Street, Suite 3400
Philadelphia, PA 19102-2101
Justin.boehret@obermayer.com

**MARSHALL DENNEHEY, P.C.**

BY: */s/ Christopher J. Conrad*
Christopher J. Conrad, Esquire
PA ID No. 202348
200 Corporate Center Dr., Ste. 300
Camp Hill, PA 17011
Ph.717-651-3531/ Fax 717-651-3707
cjconrad@mdwcg.com
*Attorneys for Defendants, Board of Trustees of the Pennsylvania State University and Matthew Schuyler*

DATE: September 17, 2024



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# EXHIBIT A

Case ID: 250801859

PennState

**Board of Trustees**
The Pennsylvania State University
201 Old Main
University Park, PA 16802-1589

August 20, 2024

Mr. Barry J. Fenchak
596 Devonshire Drive
State College, PA 16803

Dear Barry,

We write in response to your August 16, 2024 request for the University's agreement with Elevate.

On multiple occasions, including April 18, 2024 and May 2, 2024, all trustees were provided with detailed information about the confidential financial guarantees and revenue share provision in the proposed arrangement with Elevate. Questions were posed by trustees and answered by University administrators regarding this information, as well as related to the reference checks conducted to confirm Elevate *bona fides*. As you know, the Board has received and will continue to receive regular updates on the Beaver Stadium renovation project, including information on ticket/seat sales.

While we welcome all trustees' efforts to prepare for and meaningfully participate in Board proceedings and fulfill their oversight obligations to the University, your request for this document is unreasonable, beyond that which is objectively necessary for you to discharge your duties as a trustee, and seeks information the University is not able to share due to legal obligations it has to Elevate. Furthermore, your repeated violations of your confidentiality obligations have created risk for the University that inform our decision not to provide the contract to you.

Under the terms of the University's agreement with Elevate, disclosure of the Agreement within the University is contractually restricted to those individuals who have a need to know such information in connection with the University's duties and obligations under the Agreement. In other words, disclosure of the Agreement within the University is limited to those persons tasked with carrying out the obligations in the Agreement including Penn State Finance operations that support those obligations.

Additionally, and despite your mischaracterization that such claims of confidentiality are "specious," the Elevate Agreement, and the framework of the Agreement itself, contains commercially sensitive information that Elevate has sought to protect. Your prior confidentiality breach related to Elevate – your disclosure of the existence of a confidential letter of intent between the University and Elevate in a public meeting of the Board in May 2024 – was raised by Elevate as a significant concern. Further sharing of confidential information by you could damage the University's relationship with Elevate.

We are available to discuss this further should you wish to do so.

Sincerely,

Matt Schuyler, Chair

David Kleppinger, Vice Chair

Case ID: 250801859

**MARINO ASSOCIATES**
**BY:** STEVEN F. MARINO, ESQUIRE
ATTORNEY I.D. #53034
JOSEPH AUDDINO, ESQUIRE
ATTORNEY I.D. #316752
301 WHARTON STREET
PHILADELPHIA, PA 19147
(215) 462-3200

Attorneys for Plaintiff

| | |
|---|---|
| BARRY FENCHAK,<br><br>Plaintiff,<br>v<br><br>PENNSYLVANIA STATE UNIVERSITY, et al.<br><br>Defendants, | IN THE COURT OF COMMON PLEAS<br>PHILADELPHIA COUNTY -<br>CIVIL ACTION - AT LAW<br><br>No. 250801859 |

## CERTIFICATE OF SERVICE

I certify that on the below listed date a true and correct copy of the foregoing Plaintiff's Complaint and supporting papers was electronically filed with the Court using the CM/ECF system, which forwarded a notification to all parties of interest participating in the CM/ECF system, and served upon the persons and in the manner indicated below, which service satisfies the requirements of Pa.R.C.P. Nos. 205.4(g) and 440.

Regular Mail:
Pennsylvania State University
201 Old Main
University Park, PA 16802
*[Pro se defendant]*

Matthew Schuyler
201 Old Main
University Park, PA 16802
*[Pro se defendant]*

David Kleppinger
201 Old Main
University Park, PA 16802
*[Pro se defendant]*

Case ID: 250801859

**MARINO ASSOCIATES**

By: */s/ Steven F. Marino*
STEVEN F. MARINO, ESQUIRE
*Attorney for Plaintiff*

Dated: October 30, 2025



Case ID: 250801859