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JEREMY S. BREON
PROTHONOTARY
CENTRE COUNTY, PA

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

BARRY J. FENCHAK Plaintiff v THE PENNSYLVANIA STATE UNIVERSITY BOARD OF TRUSTEES AND MATTHEW SCHUYLER IN HIS OFFICIAL CAPACITY AS CHARIMAN Defendants	Docket No. **2024-CV-l 843-Cl** Type of Case: **CIVIL ACTION – EQUITY** Type of Pleading **PLAINTIFF'S PETITION TO SANCTION DEFENDANTS** Filed on Behalf Of: **PLAINTIFF**

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Dated: January 28, 2026

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BARRY J. FENCHAK, Plaintiff v THE PENNSYLVANIA STATE UNIVERSITY BOARD OF TRUSTEES and MATTHEW SCHUYLER IN HIS OFFICIAL CAPACITY AS CHARIMAN Defendants	IN THE COURT OF COMMON PLEAS CENTRE COUNTY - CIVIL ACTION AT LAW No. 2024-CV-1843-Cl

PLAINTIFF'S PETITION TO SANCTION DEFENDANTS

AND NOW, comes plaintiff Barry J. Fenchak, by and through counsel, and applies to this Honorable Court to award plaintiff reasonable attorney's fees and litigation costs against defendants and their counsel, jointly and severally, pursuant to 42 Pa.C.S.A § 2503(7), as taxable costs in the matter and in support thereof sets forth the following:

RELELVANT PROCEDURAL HISTORY

1. On July 16, 2024, serving in the capacity of an elected member of the Board of Trustees of The Pennsylvania State University, plaintiff initiated the instant

action in equity by filing a Complaint in the Court of Common Pleas Centre County against defendants Pennsylvania State University Board of Trustees and Matthew Schuyler to compel them to provide information relating to: (1) specific data and items that totaled to the aggregated figures listed on the IRS Form 990s administrative fees reported to have been paid by Pennsylvania State University to professionals managing the University's $5 billion dollar endowment; and (2) the University's award of a contract to Elevate Sports Ventures, a professional ticketing sales agency, relating to ticketing sales for Penn State football games, and other University sporting events.

2. Plaintiff retained the law firm Obermayer Rebmann Maxwell & Hippel, LLP to prosecute the action against the defendants as a result of their failure to provide the plaintiff with information or access thereto which he had requested.

3. Terry L. Mutchler, Esquire; Justin J. Boehret, Esquire; and Erika L. Silverbreit, Esquire of the law firm Obermayer Rebmann Maxwell & Hippel, LLP were assigned to manage the prosecution of the action.

4. The matter was assigned to the docket of the Honorable Centre County Court of Common Pleas Judge Brian K. Marshall.

5. On August 27, 2024, plaintiff filed an Amended Complaint which initiated statutory and common law claims against the defendants framed in two (2) counts summarized as follows:

Count I
Statutory Claim
Enforcement of Inspection Pursuant To 15 Pa. C.S. § 5512(b)
(Barry J. Fenchak v Pennsylvania State University Board of Trustees and Matthew Schuyler, in his official capacity as Chairman)

Count II
Request For Preliminary and Permanent Injunctive Relief
(Barry J. Fenchak v Pennsylvania State University Board of Trustees and Matthew Schuyler, in his official capacity as Chairman)

6. On September 16, 2024, the defendants filed Preliminary Objections to the plaintiff's Amended Complaint.

7. The defendants Preliminary Objections presented a defense to the action maintaining, essentially, (1) the defendants owed no duty to the plaintiff to provide information requested upon a basis the information is beyond that which is objectively necessary for the plaintiff to discharge his duties as a trustee and plaintiff seeks information that is not maintained/provided in the ordinary course by the University and therefore overly burdensome to the University and its representatives; (2) plaintiff seeks information the University is not able to share due to legal obligations it has to Elevate Sports Ventures; and (3) plaintiff's repeated violations of confidentiality obligations created risk for the University that informs their decision not to provide the plaintiff the contract the University awarded Elevate Sports Ventures.

8. On September 23, 2024, the plaintiff filed an Emergency Motion for Preliminary Injunction to enjoin the defendants from removing the plaintiff from the Board of Trustees until resolution of the litigation, or further order of this Court.

9. On October 9, 2024, the Court entered an order granting plaintiff's Emergency Motion for Preliminary Injunction and enjoined the defendants from removing the plaintiff from the Board of Trustees by vote, holding the plaintiff is likely to succeed on the merits of his action to compel the production of records and information requested in Count I of the Amended Complaint.

10. On October 9, 2024, this Court concluded in its order and opinion supporting its ruling granting Plaintiff's Emergency Motion for Preliminary Injunction seeking to enjoin the defendants from removing plaintiff from Board of Trustees by vote, *"[r]ather than provide Plaintiff with the information that he has requested, Defendants repeatedly denied the requests and sought an opportunity like the July 19, 2024, interaction that would provide the basis to remove the Plaintiff and permanently end his probing inquiries into the health of the endowment and other university business for which he has a responsibility."*

11. On October 9, 2024, this Court concluded in its order and opinion supporting its ruling granting Plaintiff's Emergency Motion for Preliminary Injunction seeking to enjoin the defendants from removing plaintiff from Board of Trustees by vote, this Court wrote "*...the courts of this Commonwealth have routinely ruled against defendants, and awarded attorney's fees, for the wrongful evasion of the mandates of 15 Pa. C.S. §5512."*

12. On October 11, 2024, the Court issued an Amended Order instructing continuation of the Preliminary Injunction is conditioned upon plaintiff posting a bond with the Prothonotary of Centre County in the amount equal to two-thousand five-hundred dollars ($2,500.00) by 4:00 p.m. on October 16, 2024, and that failure to post such a bond by the required date will result in automatic dissolution of the injunction.

13. October 15, 2024, plaintiff posted a bond with the Prothonotary of Centre County in the amount equal to two-thousand five-hundred dollars ($2,500.00).

14. Notwithstanding plaintiff's existing fiduciary and confidentiality obligations imposed upon him by virtue of duties as Trustee, nonetheless, on January 6, 2025, the defendants filed a Motion for Protective Order.

15. On January 29, 2025, the Court entered an order denying Defendant's Motion for a Protective Order, finding the defendants had not made an adequate showing of need for a protective order at this time and that the protective order was not appropriate.

16. On January 29, 2025, the Court entered an order declining to rule on Defendant's Preliminary Objections, understanding the defendants intended to withdraw the preliminary objections.

17. February 15, 2025, without order of the Court, defendants voluntarily made available to plaintiff the information requested by the plaintiff, which is the subject matter of the litigation, inclusive of 510 pages of information relating to the

Endowment from July 1, 2017 - June 30, 2023, and a complete, unredacted copy of the Elevate Contract in an electronic format which was not usable by the plaintiff.

18. On February 21, 2025, the defendants withdrew their Preliminary Objections to the plaintiff's Amended Complaint.

19. February 28, 2025, without order of the Court, defendants voluntarily made available to plaintiff the information requested by the plaintiff, which is the subject matter of the litigation, inclusive of 510 pages of information relating to the Endowment from July 1, 2017 - June 30, 2023, and a complete, unredacted copy of the Elevate Contract in an electronic format which was usable by the plaintiff.

20. On March 4, 2025, the defendants filed an Answer and New Matter to Plaintiff's Amended Complaint.

21. The defendants' Answer and New Matter to Plaintiff's Amended Complaint was signed by defendants' attorneys of record within the meaning of Pa. R.Civ.P.No. 1023.1.

22. The defendants Answer and New Matter to Plaintiff's Amended Complaint was verified by defendant David M. Kleppinger within the meaning of Pa. R.Civ.P.No. 1024.

23. The defendants' Answer and New Matter to Plaintiff's Amended Complaint denied information requested by plaintiff relating to the University's $5

billion endowment concerned matters pertaining to the University's investment and spending policies, and other operations affecting critical interests of the University.

24. The defendants' Answer and New Matter to Plaintiff's Amended Complaint denied information requested by plaintiff relating to the Elevate Sports Ventures contract concerned matters pertaining to the University's assets, liabilities, and operations.

25. The defendants' Answer and New Matter to Plaintiff's Amended Complaint denied plaintiff requested certain information relating to the University's $5 billion endowment and the Elevate Sports Ventures contract in good faith and in accordance with his legal duty to act in the best interest of the University.

26. The defendants' Answer and New Matter to Plaintiff's Amended Complaint denied information requested by the plaintiff pertaining to the University's $5 billion endowment and the Elevate Sports Ventures contract was information reasonably related to the plaintiff's performance of his duties as a Trustee.

27. On May 16, 2025, upon motion of the defendants, the Court entered an order dissolving plaintiff's injunctive relief.

28. On June 16, 2025, plaintiff was deemed ineligible to serve as a Board of Trustee member candidate.

29. On November 4, 2025, the defendants filed a Motion for Summary Judgment.

30. On November 21, 2025, the plaintiff filed an Answer to Defendants' Motion for Summary Judgment and supporting papers.

31. On January 6, 2026, the Court entered an order granting Defendants' Motion for Summary Judgment upon a basis the action was made moot.

THE ACTIONS OF THE DEFENDANTS AND THEIR COUNSEL WERE VEXATIOUS

32. Section 102 of the Judicial Code, 42 Pa.C.S.A. § 102, defines a participant as litigants, witnesses and their counsel.

33. Section 2503(7) of the Judicial Code, 42 Pa.C.S.A. § 2503(7), authorizes the court to award of counsel fees against any participant as a sanction for dilatory, obdurate, or vexatious conduct during the pendency of a matter.

34. Vexatious conduct during the pendency of a matter within the meaning of Section 2503(7) of the Judicial Code, 42 Pa.C.S.A. § 2503(7), is characterized as behavior which is without reasonable or probable cause or excuse, harassing, or annoying.

35. At all material times relevant to the litigation, the defendants and their counsel knew, by virtue of his position as a Board of Trustee member and the fiduciary responsibilities imposed upon him as a result thereof, the well-settled case law of Pennsylvania entitled plaintiff access to the information which is the subject matter of this litigation.

36. During the pendency of the matter the defendants and their counsel manufactured grounds to deny the plaintiff's access to the information requested by the plaintiff concerning administrative fees reported to have been paid by Pennsylvania State University to professionals managing the University's $5 billion dollar endowment, inclusive of:

(a) University attorneys and investment manager Joseph Cullen represented to the plaintiff October 3, 2024, a basis upon which the University relied to refuse to disclose to the plaintiff the information requested concerning administrative fees reported to have been paid by the University to professionals managing the University's $5 billion dollar endowment was their collective belief plaintiff would not understand the information if it was provided;

(b) Without a good faith basis founded in rule or law, the University contended the information requested by the plaintiff concerning administrative fees reported to have been paid by the University to professionals managing the University's $5 billion dollar endowment was not reasonably related to the performance of the duties of a Board of Trustee member within the meaning of the provisions of 15 Pa. C.S. §5512 [relating to the Nonprofit Corporation Law of 1988].

37. During the pendency of the matter the defendants and their counsel manufactured grounds to deny the plaintiff's request for access to the terms of the University's award of the 10-year term contract to Elevate Sports Ventures relating

to ticketing sales for Penn State football games, and other University sporting events, forecasted to generate $1 billion in revenue and a source of University income to be dedicated to fund the $700 million Beaver Stadium renovation project, rather than provide plaintiff information as required by the provisions of 15 Pa. C.S. §5512 [relating to the Nonprofit Corporation Law of 1988], inclusive of:

(a) The University falsified a claim it owed a contractual obligation to Elevate Sports Ventures to restrict disclosure of the Elevate Agreement to the plaintiff;

(b) The University falsified a claim a contractual obligation, it construed as requiring it to restrict disclosure of the Elevate Agreement to the plaintiff, was enforceable and insulated the University from providing information to the plaintiff as required by the provisions of 15 Pa. C.S. §5512 [relating to the Nonprofit Corporation Law of 1988];

(c) The University falsified a claim plaintiff breached a duty of confidentiality during the public May 2024, Board of Trustees meeting;

(d) Without a good faith basis founded in rule or law, the University contended the Elevate Agreement was not reasonably related to the performance of the duties of a Board of Trustee member within the meaning of the provisions of 15 Pa. C.S. §5512 [relating to the Nonprofit Corporation Law of 1988].

(e) Without objective foundation or support the University falsely accused, if provided the information, plaintiff would disclose confidential information relative to the Elevate Sports Ventures contract.

(f) Without objective foundation or support, the University falsely contended plaintiff was motivated to access information relative to Elevate Sports Ventures upon a basis that he was "obsessed" with the Board of Trustees.

38. The University defended the action without probable cause or a good faith basis.

39. The University defended the action with the sole purpose and intent to attempt to end plaintiff's probing inquiries into the health of the endowment and other University business for which he has a responsibility.

40. The University defended the action with the sole purpose to impose financial and emotional hardship upon the plaintiff to discourage him, and similarly situated Trustees, from probing inquiries into the health of the endowment and other University business for which he has a responsibility.

41. The defense and legal contentions presented by the defendants during the pendency of the matter were not warranted by existing law or argument for the extension, modification or reversal of existing law or the establishment of new law.

42. The defendants denied the plaintiff's claim or significant parts thereof without reasonable foundation in fact or law during the pendency of the matter.

43. The defense and legal contentions presented by the defendants during the pendency of the matter were orchestrated to make the plaintiff's instant action, and similarly situated actions to compel the production of information, unduly burdensome, counterproductive, and financially draining upon the plaintiff.

44. The defense and legal contentions presented by the defendants during the pendency of the matter were orchestrated with the intended goal of deterring the plaintiff, and other Trustees, from compelling information not provided, and to accept the defendants' decline of a Trustees' request for information without dissent, question, critical thinking, or deliberation.

45. The defense and legal contentions presented by the defendants during the pendency of the matter may fairly be characterized as frivolous, and certainly without reasonable or probable cause, within the meaning of Section 2503(7) of the Judicial Code, 42 Pa.C.S.A.§ 2503(7).

46. The conduct of the defendants and their counsel during the pendency of a matter may fairly be characterized as harassing within the meaning of Section 2503(7) of the Judicial Code, 42 Pa.C.S.A.§ 2503(7).

47. The conduct of the defendants and their counsel during the pendency of a matter may fairly be characterized as annoying within the meaning of Section 2503(7) of the Judicial Code, 42 Pa.C.S.A.§ 2503(7).

48. The conduct of the defendants and their counsel during the pendency of a matter was vexatious within the meaning of Section 2503(7) of the Judicial Code, 42 Pa.C.S.A.§ 2503(7).

THE ACTIONS OF THE DEFENDANTS AND THEIR COUNSEL WERE DILATORY

49. Dilatory conduct during the pendency of a matter within the meaning of Section 2503(7) of the Judicial Code, 42 Pa.C.S.A. § 2503(7), is characterized as behavior which displayed a lack of diligence that delayed proceedings unnecessarily and caused additional legal work.

50. By virtue of his election to the Board of Trustees the plaintiff owed a fiduciary responsibility to the University.

51. By virtue of his election to the Board of Trustees the plaintiff owed a duty of confidentiality with respect to nonpublic information concerning the University, including its finances, operations, and personnel, as well as nonpublic information about internal Board discussions and dynamics.

52. By virtue of his election to the Board of Trustees, the confidentiality of University information and data was a fundamental fiduciary responsibility of the plaintiff.

53. Notwithstanding plaintiff's existing fiduciary and confidentiality obligations imposed upon him by virtue of duties as Trustee, on January 6, 2025, the

defendants filed a Motion for Protective Order seeking to impose additional duties of confidentiality upon the plaintiff.

54. The defendants' filing of the Motion for Protective Order unnecessarily delayed the proceedings, causing additional legal work and unnecessary expense.

55. The defendants filed Preliminary Objections which presented frivolous defenses, only to later to withdraw the pleading.

56. The defendants' filing of Preliminary Objections unnecessarily delayed the proceedings, causing additional legal work and unnecessary expense.

57. On March 4, 2025, the defendants filed an Answer and New Matter to Plaintiff's Amended Complaint contending plaintiff was not entitled to information requested, notwithstanding on February 28, 2025, without order of the Court, defendants voluntarily made available to plaintiff the information requested by the plaintiff, which is the subject matter of the litigation, inclusive of 510 pages of information relating to the Endowment from July 1, 2017 - June 30, 2023, and a complete, unredacted copy of the Elevate Contract in an electronic format which was usable by the plaintiff.

58. The defendants filed Answer and New Matter to Plaintiff's Amended Complaint which denied undisputed facts and presented frivolous defenses.

59. The defendants' filing of Answer and New Matter to Plaintiff's Amended Complaint unnecessarily delayed the proceedings, causing additional legal work and unnecessary expense.

60. During the pendency of this matter the defendants and their counsel developed a scheme to remove plaintiff from the Board of Trustees under a pretext his behavior was unprofessional and he was unworthy to serve the position of Trustee.

61. On June 16, 2025, as a result of the defendants' scheme, plaintiff was deemed ineligible to serve as a Board of Trustee member candidate.

62. The defendants presented a baseless defense in this matter to delay the progress of these proceeding sufficient for the defendants to devise a scheme to remove plaintiff from his position as a Board of Trustee member and rendered the proceedings moot.

63. The conduct of the defendants and their counsel during the pendency of a matter was dilatory within the meaning of Section 2503(7) of the Judicial Code, 42 Pa.C.S.A.§ 2503(7).

THE COST OF PROFESSIONAL SERVICES INCURRED BY PLAINTIFF PROSECUTING THE INSTANT MATTER

64. Terry L. Mutchler, Esquire, Justin J. Boehret, Esquire, and Erika L. Silverbreit, Esquire are accomplished trial attorneys with considerable experience, skill, and ability to effectively represent clients, such as the plaintiff.

65. The professional services provided by the law firm Obermayer Rebmann Maxwell & Hippel, LLP to prosecute this action against the defendants were billed by Obermayer Rebmann Maxwell & Hippel, LLP at a rate equal to $475.00 per hour.

66. During the course of litigation of the pending matter, the law firm Obermayer Rebmann Maxwell & Hippel, LLP advanced court costs and expenses of litigation on behalf of the plaintiff.

67. A record and accounting of the time and effort dedicated and litigation costs advanced by the law firm Obermayer Rebmann Maxwell & Hippel, LLP in this matter was maintained contemporaneously with the work effort.

68. On November 7, 2025, the plaintiff retained the law firm of Marino Associates to undertake the prosecution of this action against the defendants

69. The professional services provided by the law firm Marino Associates to prosecute this action against the defendants were billed by Marino Associates at a rate equal to $425.00 per hour.

70. During the course of litigation of the pending matter, the law firm Marino Associates advanced court costs and expenses of litigation on behalf of the plaintiff.

71. A record and accounting of the time and effort dedicated and litigation costs advanced by the law firm Marino Associates in this matter was maintained contemporaneously with the work effort.

72. The hourly rate equal to $475.00 charged by the law firm Obermayer Rebmann Maxwell & Hippel, LLP and $425.00 per hour charged by the law firm Marino Associates for services rendered by the law firm Marino Associates utilized in computing the lodestar value of the services rendered by plaintiff's counsel are comparable to those of other similarly situated lawyers in the Philadelphia legal marketplace and are reasonable.

73. The rates of counsel are reasonable and are not inconsistent with the range of reasonable rates for attorneys in the geographic area of Philadelphia, Pennsylvania with similar skill and experience.

WHEREFORE, upon consideration of the facts set forth and any others which may arise during a course of a hearing of this matter the plaintiff prays this Court enter an award of reasonable attorney's fees and litigation costs as authorized by 42 Pa.C.S.A. § 2503(7) in favor of the plaintiff and against the defendants as the court may seem fit under the circumstance.

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Respectfully submitted,

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BARRY J. FENCHAK, Plaintiff v THE PENNSYLVANIA STATE UNIVERSITY BOARD OF TRUSTEES and MATTHEW SCHUYLER IN HIS OFFICIAL CAPACITY AS CHARIMAN Defendants	:	IN THE COURT OF COMMON PLEAS CENTRE COUNTY - CIVIL ACTION AT LAW No. 2024-CV-1843-Cl

CERTIFICATE OF SERVICE

I certify that on the below listed date a true and correct copy of the foregoing Plaintiff's Memorandum of Law in Support of Plaintiff's Petition to Sanction Defendants and supporting papers was electronically filed with the Court using the Prothonotary/Clerk of Court's Electronic Filing System (prothonotary/clerkofcourts-orders@centrecountypa.gov), and served upon the persons and in the manner indicated below, which service satisfies the requirements of Pa.R.Civ.P. Nos. 205.4(g) and 440 and Centre County Local Civil Rule 205.4.

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