IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

BARRY FENCHAK, *Plaintiff*, v. THE PENNSYLVANIA STATE UNIVERSITY, et al., *Defendants*.	Civil Action No. 2:25-cv-06313-KSM

DEFENDANTS' ANSWER AND
AFFIRMATIVE AND OTHER DEFENSES TO COMPLAINT

Defendants, The Pennsylvania State University (the "University"), Matthew Schuyler, and David Kleppinger (collectively with the University, "Defendants"), by and through their undersigned counsel, answer the allegations in the Complaint filed by Plaintiff Barry J. Fenchak ("Plaintiff") as follows. Unless expressly admitted, all allegations in the Complaint (including all headings) are denied.[1]

THE PARTIES AND RELATED ENTITIES

Complaint Paragraph 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.

Answer to 1. Defendants admit, upon information and belief, the allegations in this paragraph.

[1] For ease of reference and to facilitate a review of its Answer and Affirmative and Other Defenses, Defendants have attempted to incorporate the primary headings used by Plaintiff in the Complaint, although Defendants do not adopt, either expressly or by implication, any statements contained in those headings. To the extent a response is required, the allegations in the headings are denied.

Complaint Paragraph 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.

Answer to 2. Defendants admit that the University is a state-related land-grant institution of higher education with campuses and facilities in certain counties throughout Pennsylvania and that the University's main administrative office is located at 201 Old Main, University Park, PA 16802. Defendants also admit that the University exists as a multi-campus public research university that educates students from Pennsylvania, the nation, and the world. The remaining allegations in this paragraph state legal conclusions to which no response is required. To the extent a response is required, these allegations are denied.

Complaint Paragraph 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.

Answer to 3. Defendants admit that Mr. Schuyler is a current Trustee, that he was elected to the Board of Trustees (the "Board") effective July 2015, elected to serve as Vice Chair of the Board in 2017, elected to serve as Chair of the Board in 2020, and ended his term as Chair in November 2024. The remaining allegations in this paragraph state legal conclusions to which no response is required. To the extent a response is required, these allegations are denied.

Complaint Paragraph 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 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 [sic] 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.

Answer to 4. Defendants admit that Mr. Kleppinger is a current Trustee, that he was appointed to the Board effective January 2017, was elected to serve as Vice Chair of the Board in 2020, and assumed the role of Chair of the Board in November 2024. The remaining allegations in this paragraph state legal conclusions to which no response is required. To the extent a response is required, these allegations are denied.

JURISDICTION AND VENUE

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

Answer to 5. Defendants restate and incorporate their responses to the preceding paragraphs of the Answer as if fully set forth herein.

Complaint Paragraph 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.

Answer to 6. This paragraph states a legal conclusion to which no response is required. To the extent a response is required, Defendants state that the Court has subject matter jurisdiction, and that this case was properly removed to this Court pursuant to 28 U.S.C. §§ 1331, 1441, and 1446.

Complaint Paragraph 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.

Answer to 7. This paragraph states a legal conclusion to which no response is required. To the extent a response is required, Defendants state that the Court has personal jurisdiction over the University.

Complaint Paragraph 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.

Answer to 8. This paragraph states a legal conclusion to which no response is required. To the extent a response is required, Defendants state that the Court has personal jurisdiction over Defendants.

Complaint Paragraph 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.

Answer to 9. This paragraph states a legal conclusion to which no response is required. To the extent a response is required, Defendants state that venue is proper under 28 U.S.C. § 1441(a).

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

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

Answer to 10. Defendants restate and incorporate their responses to the preceding paragraphs of the Answer as if fully set forth herein.

Complaint Paragraph 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.

Answer to 11. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph, and deny them on that basis.

Complaint Paragraph 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.

Answer to 12. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph, and deny them on that basis.

Complaint Paragraph 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.

Answer to 13. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph, and deny them on that basis.

Complaint Paragraph 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.

Answer to 14. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph, and deny them on that basis.

PENNSYLVANIA UNIVERSITY BOARD OF TRUSTEES

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

Answer to 15. Defendants restate and incorporate their responses to the preceding paragraphs of the Answer as if fully set forth herein.

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

Answer to 16. Defendants admit that pursuant to the Board's Charter, the University is "under the management and government" of the Board. Defendants deny the remaining allegations in this paragraph.

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

Answer to 17. Defendants admit that pursuant to the Board's Charter, the University is "under the management and government" of the Board. Defendants deny the remaining allegations in this paragraph.

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

Answer to 18. Admitted.

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

Answer to 19. Defendants admit that the Board is governed by the University's Amended and Restated Bylaws (the "Bylaws"). By way of further explanation, Defendants state that the Bylaws are a written document that speaks for itself and respectfully refer the Court to the Bylaws for a true, complete, and comprehensive statement of its contents.

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

Answer to 20. Defendants admit that the Board is composed of thirty-eight (38) members, of which six (6) members are *ex officio*, six (6) members are appointed by the Governor

of the Commonwealth of Pennsylvania, nine (9) members are elected by the alumni and former students of the University, six (6) members are elected by agricultural organizations, six (6) members are elected from business and industry, one (1) member is elected by the student body, one (1) member is elected by the faculty, and three (3) members are elected by the Board.

Complaint Paragraph 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.

Answer to 21. Defendants admit that nine (9) voting members of the Board are elected by Penn State graduates and former students who have passed at least one semester or two terms of work or more in a degree program. Defendants further admit that the term for an alumni Trustee is three (3) years.

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

Answer to 22. Admitted.

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

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

Answer to 23. Defendants restate and incorporate their responses to the preceding paragraphs of the Answer as if fully set forth herein.

Complaint Paragraph 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.

Answer to 24. Defendants admit that plaintiff was elected to a seat on the Board by Penn State graduates, as well as former students who have passed at least one semester or two terms of work or more in a degree program, in 2022.

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

Answer to 25. Admitted.

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

Answer to 26. Defendants admit that, as a Trustee, Plaintiff owed fiduciary duties to the University. Defendants deny the remaining allegations in this paragraph.

Complaint Paragraph 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.

Answer to 27. Denied.

Complaint Paragraph 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.

Answer to 28. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph, and deny them on that basis.

Complaint Paragraph 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.

Answer to 29. Denied.

Complaint Paragraph 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.

Answer to 30. Denied.

Complaint Paragraph 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.

Answer to 31. Denied.

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

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

Answer to 32. Defendants restate and incorporate their responses to the preceding paragraphs of the Answer as if fully set forth herein.

Complaint Paragraph 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.

Answer to 33. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph, and deny them on that basis.

Complaint Paragraph 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.

Answer to 34. Defendants admit that Plaintiff disagreed with other Trustee members from time to time. Defendants deny the remaining allegations in this paragraph.

Complaint Paragraph 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.

Answer to 35. Defendants admit that Plaintiff disagreed with other Trustee members from time to time. Defendants deny the remaining allegations in this paragraph.

Complaint Paragraph 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.

Answer to 36. Defendants admit that Plaintiff disagreed with other Trustee members from time to time. Defendants deny the remaining allegations in this paragraph.

Complaint Paragraph 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.

Answer to 37. Defendants admit that Plaintiff disagreed with other Trustee members from time to time. Defendants deny the remaining allegations in this paragraph.

Complaint Paragraph 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.

Answer to 38. Defendants admit that Plaintiff disagreed with other Trustee members from time to time. Defendants deny the remaining allegations in this paragraph.

Complaint Paragraph 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.

Answer to 39. Defendants admit that Plaintiff disagreed with other Trustee members from time to time. Defendants deny the remaining allegations in this paragraph.

Complaint Paragraph 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.

Answer to 40. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph, and deny them on that basis.

Complaint Paragraph 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.

Answer to 41. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph, and deny them on that basis.

Complaint Paragraph 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.

Answer to 42. Defendants admit that Plaintiff disagreed with Mr. Schuyler and Mr. Kleppinger from time to time. Defendants deny the remaining allegations in this paragraph.

Complaint Paragraph 43. Plaintiffs 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.

Answer to 43. This paragraph states a legal conclusion to which no response is required. To the extent a response is required, these allegations are denied.

Complaint Paragraph 44. Plaintiffs 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.

Answer to 44. This paragraph states a legal conclusion to which no response is required. To the extent a response is required, these allegations are denied.

Complaint Paragraph 45. Plaintiffs 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.

Answer to 45. This paragraph states a legal conclusion to which no response is required. To the extent a response is required, these allegations are denied.

Complaint Paragraph 46. Plaintiffs 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 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.

Answer to 46. This paragraph states a legal conclusion to which no response is required. To the extent a response is required, these allegations are denied.

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

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

Answer to 47. Defendants restate and incorporate their responses to the preceding paragraphs of the Answer as if fully set forth herein.

Complaint Paragraph 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).

Answer to 48. This paragraph states a legal conclusion to which no response is required. To the extent a response is required, Defendants deny the allegations in this paragraph and respectfully refer the Court to the Bylaws, which delineate the distribution of authority for management and oversight of the endowment.

Complaint Paragraph 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.

Answer to 49. Defendants admit that certain responsibilities for the day-to-day management of the University's Long-Term Investment Pool ("LTIP") investment program are managed by the Office of Investment Management ("OIM") and that OIM makes recommendations to the Penn State Investment Council ("PSIC"). Defendants deny the remaining allegations in this paragraph.

Complaint Paragraph 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.

Answer to 50. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph, and deny them on that basis.

Complaint Paragraph 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.

Answer to 51. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph, and deny them on that basis.

Complaint Paragraph 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 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.

Answer to 52. Defendants admit that at various points Plaintiff requested access to certain information related to the University's endowment. Defendants are without knowledge sufficient to identify the request or requests referred to in this paragraph, and deny the remaining allegations on that basis. To the extent this paragraph purports to characterize a written document, Defendants respectfully refer the Court to the referenced materials for a true, complete, and comprehensive statement of their contents.

Complaint Paragraph 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.

Answer to 53. Defendants admit that Plaintiff provided a request to David Kleppinger and Robert Fenza in or around June 2022. Defendants are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in this paragraph, and deny them on that basis. To the extent this paragraph purports to characterize a written document, Defendants state that the request is a written document that speaks for itself and respectfully refer the Court to the request for a true, complete, and comprehensive statement of its contents.

Complaint Paragraph 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."*

Answer to 54. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph, and deny them on that basis.

Complaint Paragraph 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.

Answer to 55. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph, including the identity of any "controlling Board of Trustees members" and deny them on that basis. To the extent this paragraph purports to characterize written documents, Defendants state that the requests are written documents that speak for themselves and respectfully refer the Court to the requests for a true, complete, and comprehensive statement of their contents.

Complaint Paragraph 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.

Answer to 56. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph, including the identity of any "controlling Board of Trustees members" and deny them on that basis. To the extent this paragraph purports to characterize written documents, Defendants state that the requests are written documents that speak for themselves and respectfully refer the Court to the requests for a true, complete, and comprehensive statement of their contents. By way of further response, Defendants state that Plaintiff was provided information relating to the endowment on June 23, 2023.

Complaint Paragraph 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 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.

Answer to 57. Defendants admit that Plaintiff sent certain requests for information regarding the endowment to various Trustees and University employees. Defendants are without knowledge sufficient to identify the documents referenced in paragraph 57, and deny the remaining allegations in this paragraph on that basis. To the extent that this paragraph purports to characterize written documents, Defendants respectfully refer the Court to the referenced materials for a true, complete, and comprehensive statement of their contents. By way of further response, Defendants state that Shannon Harvey and Sara Thorndike are and were not Trustees.

Complaint Paragraph 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 plaintiffs 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."

Answer to 58. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph, and deny them on that basis.

Complaint Paragraph 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.

Answer to 59. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph, and deny them on that basis.

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

Answer to 60. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph, and deny them on that basis.

Complaint Paragraph 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.

Answer to 61. Defendants admit that Plaintiff sent an email exchange to Mary Lee Schneider and members of the Board on February 19, 2024, regarding information requests. To the extent that this paragraph purports to characterize a written document, Defendants respectfully refer the Court to the referenced document for a true, complete, and comprehensive statement of its contents. Defendants are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in this paragraph and deny them on that basis.

Complaint Paragraph 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.

Answer to 62. Defendants admit Plaintiff sent a letter to the University's President and members of the Board, addressed to the attention of Mr. Schuyler, dated March 5, 2024; that Plaintiff sent an email to Mr. Schuyler and the University's President on March 18, 2024; and that Plaintiff sent a letter to members of the Board and the University's President dated April 29, 2024. Defendants respectfully refer the Court to those written documents for true, complete, and comprehensive statements of their contents and deny the remaining allegations in this paragraph.

Complaint Paragraph 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.

Answer to 63. Defendants are without knowledge or information sufficient to identify the communications referenced in this paragraph, and deny the allegations on that basis. To the extent this paragraph purports to characterize written documents, Defendants respectfully refer the Court to the referenced materials for a true, complete, and comprehensive statement of their contents. By way of further response, Defendants state that Mr. Fenchak was provided information relating to the endowment on March 18, 2023 and June 23, 2023.

Complaint Paragraph 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 l, Section 7 of the Pennsylvania Constitution.

Answer to 64. This paragraph states a legal conclusion to which no response is required. To the extent a response is required, these allegations are denied.

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

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

Answer to 65. Defendants restate and incorporate their responses to the preceding paragraphs of the Answer as if fully set forth herein.

Complaint Paragraph 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.

Answer to 66. Defendants admit that prior to May 21, 2024, the University was considering a partnership with Elevate Sports Ventures. Defendants deny the remaining allegations in this paragraph.

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

Answer to 67. Admitted.

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

Answer to 68. Admitted.

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

Answer to 69. Defendants admit Plaintiff sent an email relating to "Elevate" to various Trustees and other individuals on May 6, 2024. Defendants respectfully refer the Court to the email for a true, complete, and comprehensive statement of its contents. Defendants deny that the email was "[c]onsistent with the fiduciary responsibilities plaintiff owed to the University." Defendants are without knowledge as to the remaining allegations in this paragraph, including the identity of any "controlling Board of Trustees members," and deny the remaining allegations on that basis.

Complaint Paragraph 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.

Answer to 70. Defendants admit that Messrs. Schuyler and Kleppinger responded to Mr. Fenchak's requests relating to the Elevate contract, as well as other information requests, by letter dated May 7, 2024. By way of further response, Defendants state that the letter is a written document that speaks for itself, and respectfully refer the Court to the document for a true, complete, and comprehensive statement of its contents. To the extent a further response is required, Defendants deny the remaining allegations in this paragraph.

Complaint Paragraph 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.

Answer to 71. Defendants admit that Messrs. Schuyler and Kleppinger informed Plaintiff, by letter dated May 7, 2024, that additional information regarding Elevate would be provided to all Trustees in the ordinary course. By way of further response, Defendants state that the letter is a written document that speaks for itself, and respectfully refer the Court to the document for a true, complete, and comprehensive statement of its contents.

Complaint Paragraph 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 l, Section 7 of the Pennsylvania Constitution.

Answer to 72. This paragraph states a legal conclusion to which no response is required. To the extent a response is required, these allegations are denied.

THE PUBLIC BOARD OF TRUSTEES MEETING CONVENED MAY 21, 2024

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

Answer to 73. Defendants admit that on May 21, 2024, the Committee on Finance, Business and Capital Planning and the Board held a conference call, and that there was a public portion of the meeting. Defendants deny the remaining allegations in this paragraph.

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

Answer to 74. Defendants admit that the May 21, 2024 meeting was held via remote technology. Defendants deny the remaining allegations in this paragraph.

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

Answer to 75. Defendants admit that Plaintiff appeared and participated in the May 21, 2024 meeting remotely. Defendants deny the remaining allegations in this paragraph.

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

Answer to 76. Defendants admit that the public May 21, 2024 meeting was recorded. Defendants deny the remaining allegations in this paragraph.

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

Answer to 77. Defendants admit that a recording of the public May 21, 2024 meeting is posted on the University's website. Defendants deny the remaining allegations in this paragraph.

Complaint Paragraph 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/l_26npe460.

Answer to 78. This paragraph purports to characterize a webpage, which is a written document that speaks for itself. Defendants respectfully refer the Court to the webpage for a true, complete, and comprehensive statement of its contents. To the extent a further response is required, Defendants admit that the recording of the public May 21, 2024 meeting is publicly available at the hyperlink included in this paragraph.

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

Answer to 79. Defendants admit that Mr. Schuyler acted as the Chair of the Board during the session of the Board at the May 21, 2024 meeting. By way of further response, Robert

Fenza acted as the Chair of the Committee on Finance, Business and Capital Planning during the session of that Committee at the same May 21, 2024 meeting. Defendants deny the remaining allegations in this paragraph.

Complaint Paragraph 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").

Answer to 80. Defendants admit that a Resolution regarding the proposed project approval for Beaver Stadium renovations at University Park was included in the agenda for the May 21, 2024 meeting. Defendants deny the remaining allegations in this paragraph.

Complaint Paragraph 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

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

Answer to 81. Defendants admit that a Proposed Project Approval for Beaver Stadium Renovations, University Park was provided to Trustees in advance of the May 21, 2024 meeting. Defendants respectfully refer the Court to the document for a true, complete, and comprehensive statement of its contents.

Complaint Paragraph 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.

Answer to 82. This paragraph states a legal conclusion to which no response is required. To the extent a response is required, Defendants respectfully refer the Court to the document for a true, complete, and comprehensive statement of its contents.

Complaint Paragraph 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.

Answer to 83. This paragraph purports to characterize a statement made by Sara Thorndike in a recorded meeting. Defendants respectfully refer the Court to the May 21, 2024 meeting recording for a true, complete, and comprehensive statement of its contents.

Complaint Paragraph 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 [sic]

existing defendant Pennsylvania State University and Elevate Sports Ventures and its importance to the ongoing Beaver Stadium Renovation Project.

Answer to 84. This paragraph purports to characterize a statement made by Sara Thorndike in a recorded meeting. Defendants respectfully refer the Court to the May 21, 2024 meeting recording for a true, complete, and comprehensive statement of its contents.

Complaint Paragraph 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.

Answer to 85. This paragraph purports to characterize a statement made by Plaintiff in a recorded meeting. Defendants respectfully refer the Court to the May 21, 2024 meeting recording for a true, complete, and comprehensive understanding of its contents. To the extent a further response is required, Defendants admit that Plaintiff made comments referencing a prior information request during the May 21, 2024 meeting.

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

Answer to 86. This paragraph purports to characterize a statement made by Plaintiff in a recorded meeting. Defendants respectfully refer the Court to the May 21, 2024 meeting recording for a true, complete, and comprehensive understanding of its contents. To the extent a

further response is required, Defendants admit that Plaintiff made comments referring to the written response he received relating to his information request at the May 21, 2024 meeting.

Complaint Paragraph 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.

Answer to 87. This paragraph purports to characterize a statement made by Plaintiff in a recorded meeting. Defendants respectfully refer the Court to the May 21, 2024 meeting recording for a true, complete, and comprehensive understanding of its contents. To the extent a further response is required, Defendants admit that Plaintiff made comments referring to the Elevate contract at the May 21, 2024 meeting.

Complaint Paragraph 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.

Answer to 88. This paragraph purports to characterize a statement made by Plaintiff in a recorded meeting. Defendants respectfully refer the Court to the May 21, 2024 meeting recording for a true, complete, and comprehensive understanding of its contents. To the extent a further response is required, Defendants admit that Plaintiff directed questions to Mr. Schuyler and Ms. Thorndike in reference to the Elevate contract at the May 21, 2024 meeting. Defendants further state that Ms. Thorndike is not and was not a Trustee.

Complaint Paragraph 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.

Answer to 89. This paragraph purports to characterize a statement made by Plaintiff in a recorded meeting. Defendants respectfully refer the Court to the May 21, 2024 meeting recording for a true, complete, and comprehensive understanding of its contents. To the extent a further response is required, Defendants admit that Plaintiff directed questions to Mr. Schuyler and Ms. Thorndike in reference to the Elevate contract, at the May 21, 2024 meeting. Defendants further state that Ms. Thorndike is not and was not a Trustee.

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

Complaint Paragraph 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.

Answer to 90. Defendants admit that Plaintiff filed a lawsuit in the Centre County Court of Common Pleas on or around July 16, 2024, captioned *Barry J. Fenchak v. Pennsylvania State University Board of Trustees and Matthew Schuyler*, No. 2024-CV-1843-CI (*Fenchak I*). To the extent Plaintiff purports to characterize the *Fenchak I* complaint, Defendants state that that is a

written document that speaks for itself and respectfully refer the Court thereto for a true, complete, and comprehensive statement of its contents. Defendants deny the remaining allegations in this paragraph.

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

Complaint Paragraph 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.

Answer to 91. Defendants admit that on July 19, 2024, Plaintiff attended a Board meeting at the University's Altoona campus and that Plaintiff filed *Fenchak I* on or around July 16, 2024. To the extent Plaintiff purports to characterize the *Fenchak I* complaint, Defendants state that that is a written document that speaks for itself and respectfully refer the Court thereto for a true, complete, and comprehensive statement of its contents. Defendants deny the remaining allegations in this paragraph.

Complaint Paragraph 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.

Answer to 92. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph, and deny them on that basis.

Complaint Paragraph 93. During plaintiffs 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."

Answer to 93. Denied. By way of further response, Defendants respectfully refer the Court to the Investigation Memoranda prepared by the University's Office of Ethics and Compliance ("OEC Memoranda"), which contain the results of an independent investigation into Plaintiff's July 19, 2024 interaction with three individuals.

Complaint Paragraph 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.

Answer to 94. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph, and deny them on that basis. By way of further response, Defendants respectfully refer the Court to the OEC Memoranda.

Complaint Paragraph 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."

Answer to 95. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph, and deny them on that basis. To the extent this paragraph purports to characterize a quote from a film, Defendants respectfully refer the Court to the referenced materials for a true, complete, and comprehensive statement of their contents.

Complaint Paragraph 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.

Answer to 96. Denied. By way of further response, Defendants state that a University employee reported the July 19, 2024 incident to the University's Chief Ethics and Compliance

Officer ("CECO") on August 19, 2024, and that the University's Office of Ethics and Compliance ("OEC") then investigated the incident ("OEC Investigation"). Neither the Board nor any Trustees (aside from Mr. Fenchak, who provided a statement) had any involvement in the OEC Investigation.

Complaint Paragraph 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 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.

Answer to 97. Denied. By way of further response, Defendants state that the Board's Governance Committee unanimously recommended that Mr. Fenchak be removed from the Board as a result of the July 19, 2024 incident; that Mr. Schuyler as then-Chair of the Board and Mr. Kleppinger as then-Vice Chair of the Board signed a Joint Proposal scheduling a full Board vote on his removal for October 10, 2024; and that the foregoing referral to the full Board was required by the Bylaws.

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

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

Answer to 98. Defendants admit that in or around August 2024, the University announced that Elevate was selected to lead fan engagement, ticketing, and premium seating and

experiences strategy for Penn State Athletics. Defendants deny the remaining allegations in this paragraph.

Complaint Paragraph 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.

Answer to 99. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph, and deny them on that basis. To the extent this paragraph purports to characterize a written document, Defendants respectfully refer the Court to the referenced material for a true, complete, and comprehensive statement of its contents.

Complaint Paragraph 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.

Answer to 100. Defendants admit that Plaintiff amended his complaint in *Fenchak I* on or around August 27, 2024. To the extent this paragraph purports to characterize that amended complaint, Defendants state that is a written document that speaks for itself and respectfully refer the Court thereto for a true, complete, and comprehensive statement of its contents. Defendants deny the remaining allegations in this paragraph.

Complaint Paragraph 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.

Answer to 101. Defendants admit that the Board provided Plaintiff with the information he sought relating to the endowment on February 15, 2025. Defendants deny the remaining allegations in this paragraph. By way of further response, Defendants state that the information was provided following entry of an appropriate protective order, and subject to a reservation of rights regarding Plaintiff's rights to demand the material.

Complaint Paragraph 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.

Answer to 102. Defendants admit that the Board provided Plaintiff with a complete, unredacted copy of the Elevate contract on February 15, 2025. Defendants deny the remaining allegations in this paragraph. By way of further response, Defendants state that the information was provided following entry of an appropriate protective order, and subject to a reservation of rights regarding Plaintiff's rights to demand the material.

Complaint Paragraph 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-l 843-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.

Answer to 103. This paragraph states a legal conclusion to which no response is required. To the extent a response is required, these allegations are denied.

THE DEFENDANTS' RETALIATION AGAINST THE PLAINTIFF FOR EXERCISING PROTECTED SPEECH

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

Answer to 104. Defendants restate and incorporate their responses to the preceding paragraphs of the Answer as if fully set forth herein.

Complaint Paragraph 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 l, 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;

(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.

Answer to 105. Denied.

Complaint Paragraph 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 l, 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.

Answer to 106. Denied.

Complaint Paragraph 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.

Answer to 107. Defendants admit that Mr. Schuyler and Mr. Kleppinger co-authored a letter to Plaintiff dated August 20, 2024. Defendants respectfully refer the Court to the August 20, 2024 letter for a true, complete, and comprehensive statement of its contents. Defendants deny the remaining allegations in this paragraph.

Complaint Paragraph 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;

(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;

Answer to 108. Defendants are not required to respond to the allegations in this paragraph because they relate solely to claims that have been dismissed with prejudice. To the extent a response is required, Defendants state that the August 20, 2024 letter is a written document that speaks for itself, and respectfully refer the Court thereto for a true, complete, and comprehensive statement of its contents. Defendants deny the remaining allegations in this paragraph.

Complaint Paragraph 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 Plaintiffs 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].

Answer to 109. Defendants are not required to respond to the allegations in this paragraph because they relate solely to claims that have been dismissed with prejudice. To the extent a response is required, Defendants admit that the August 20, 2024 correspondence was attached as Exhibit A to the September 16, 2024 Preliminary Objections filed in *Fenchak I*. Defendants deny the remaining allegations in this paragraph.

Complaint Paragraph 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

Answer to 110. Denied.

Complaint Paragraph 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 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.

Answer to 111. Denied.

Complaint Paragraph 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.

Answer to 112. Denied.

Complaint Paragraph 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.

Answer to 113. Denied.

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

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

Answer to 114. Defendants restate and incorporate their responses to the preceding paragraphs of the Answer as if fully set forth 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

Complaint Paragraph 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.

Answer to 115. Defendants admit that Edward B. Brown, III was elected by the alumni and former students of the University to serve as a Trustee and served as a Trustee from July 2013 to June 2025; that Barbara L. Doran was elected by the alumni and former students of the University to serve as a Trustee and served as a Trustee from July 2013 to June 2022; that Robert C. Jubelirer was elected by the alumni and former students of the University to serve as a Trustee and served as a Trustee from July 2014 to June 2020; that Anthony P. Lubrano was elected by the alumni and former students of the University to serve as a Trustee and served as a Trustee from July 2012 to June 2018 and from July 2020 to the present, with a term that expires in June 2026; that Ryan J. McCombie was elected by the alumni and former students of the University to serve as a Trustee and served as a Trustee from July 2012 to June 2018; that William F. Oldsey was elected by the alumni and former students of the University to serve as a Trustee and served as a Trustee from July 2013 to June 2025; and that Alice W. Pope was elected by the alumni and former students of the University to serve as a Trustee and served as a Trustee from July 2014 to June 2023.

Complaint Paragraph 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 Pennsylvania State University Related to the Child Sexual Abuse Committed by Gerald A. Sandusky" (hereinafter the Freeh Report).

Answer to 116. This paragraph purports to characterize a written document that speaks for itself. Defendants respectfully refer the Court to the referenced materials for a true, complete, and comprehensive statement of their contents. To the extent a further response is required, Defendants admit that a report with the quoted title was authored by Louis Freeh at Freeh Sporkin & Sullivan, LLP and dated July 12, 2012.

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

Answer to 117. Defendants admit that a Special Investigations Task Force, on behalf of the Board, engaged Freeh Sporkin & Sullivan LLP as Special Investigative Counsel, and that Freeh Sporkin & Sullivan LLP prepared the Freeh Report. The remaining allegations are denied as stated.

Complaint Paragraph 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").

Answer to 118. Admitted.

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

Answer to 119. This paragraph purports to characterize a written document that speaks for itself. Defendants respectfully refer the Court to the referenced document for a true, complete, and comprehensive statement of its contents.

Complaint Paragraph 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.

Answer to 120. This paragraph purports to characterize a written document that speaks for itself. Defendants respectfully refer the Court to the referenced document for a true, complete, and comprehensive statement of its contents.

Complaint Paragraph 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.

Answer to 121. Defendants admit that 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, captioned *In re Application by Nonprofit Corp. Trustees To Compel Inspection of Corp. Info.*, No. 1593-2015. Defendants respectfully refer the Court to the referenced

document for a true, complete, and comprehensive statement of its contents. Defendants deny the remaining allegations in this paragraph.

Complaint Paragraph 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).

Answer to 122. This paragraph purports to characterize the Court of Common Pleas of Centre County's opinion, which is a written document that speaks for itself. Defendants respectfully refer the Court to the opinion for a true, complete, and comprehensive statement of its contents. To the extent a further response is required, Defendants admit that the Court of Common Pleas of Centre County granted the petition.

Complaint Paragraph 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, I 001-02 (Pa. Commw. 2017).

Answer to 123. This paragraph purports to characterize the Commonwealth Court's opinion, which is a written document that speaks for itself. Defendants respectfully refer the Court to the opinion for a true, complete, and comprehensive statement of its contents. By way of further response, Defendants state that the issue presented to the Commonwealth Court was whether the trial court erred in denying the petitioners' request for reimbursement of their attorneys' fees and costs. *See In re Nonprofit Corp. Trs. to Compel Inspection of Corp. Info.*, 157 A.3d 994, 995 (Pa. Commw. Ct. 2017).

Complaint Paragraph 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 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.

Answer to 124. This paragraph states a legal conclusion to which no response is required. To the extent a response is required, these allegations are denied.

Complaint Paragraph 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.

Answer to 125. This paragraph states a legal conclusion to which no response is required. To the extent a response is required, these allegations are denied.

Complaint Paragraph 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.

Answer to 126. This paragraph states a legal conclusion to which no response is required. To the extent a response is required, these allegations are denied.

Complaint Paragraph 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.

Answer to 127. This paragraph states a legal conclusion to which no response is required. To the extent a response is required, these allegations are denied.

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

Complaint Paragraph 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.

Answer to 128. Denied. By way of further response, Defendants state that Anthony Lubrano was elected by the alumni and former students of the University to a three-year term as a voting member of the Board from July 2012 to June 2015 and then to a second three-year term from July 2015 to June 2018.

Complaint Paragraph 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.

Answer to 129. Admitted.

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

Answer to 130. Defendants admit that as a Trustee, Mr. Lubrano owed fiduciary duties to the University. Defendants deny the remaining allegations in this paragraph.

Complaint Paragraph 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.

Answer to 131. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph, and deny them on that basis.

Complaint Paragraph 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.

Answer to 132. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph, and deny them on that basis.

Complaint Paragraph 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.

Answer to 133. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph, and deny them on that basis.

Complaint Paragraph 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.

Answer to 134. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph, and deny them on that basis.

Complaint Paragraph 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.

Answer to 135. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph, and deny them on that basis.

Complaint Paragraph 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.

Answer to 136. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph, and deny them on that basis.

Complaint Paragraph 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.

Answer to 137. Defendants admit that Mr. Lubrano disagreed with other Trustees from time to time. Defendants deny the remaining allegations in this paragraph.

Complaint Paragraph 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.

Answer to 138. Defendants admit that Mr. Lubrano disagreed with other Trustees from time to time. Defendants deny the remaining allegations in this paragraph.

Complaint Paragraph 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.

Answer to 139. Defendants admit that Mr. Lubrano disagreed with other Trustees from time to time. Defendants deny the remaining allegations in this paragraph.

Complaint Paragraph 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.

Answer to 140. Defendants admit that Mr. Lubrano disagreed with other Trustees from time to time. Defendants deny the remaining allegations in this paragraph.

Complaint Paragraph 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.

Answer to 141. Defendants admit that Mr. Lubrano disagreed with other Trustees from time to time. Defendants deny the remaining allegations in this paragraph.

Complaint Paragraph 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.

Answer to 142. Defendants admit that Mr. Lubrano disagreed with other Trustees from time to time. Defendants deny the remaining allegations in this paragraph.

Complaint Paragraph 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.

Answer to 143. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph, and deny them on that basis.

Complaint Paragraph 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.

Answer to 144. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph, and deny them on that basis.

Complaint Paragraph 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.

Answer to 145. Defendants admit that Mr. Lubrano disagreed with Mr. Schuyler and Mr. Kleppinger from time to time. Defendants deny the remaining allegations in this paragraph.

Complaint Paragraph 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.

Answer to 146. This paragraph states a legal conclusion to which no response is required. To the extent a response is required, these allegations are denied.

Complaint Paragraph 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.

Answer to 147. This paragraph states a legal conclusion to which no response is required. To the extent a response is required, these allegations are denied.

Complaint Paragraph 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.

Answer to 148. This paragraph states a legal conclusion to which no response is required. To the extent a response is required, these allegations are denied.

Complaint Paragraph 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 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.

Answer to 149. This paragraph states a legal conclusion to which no response is required. To the extent a response is required, these allegations are denied.

Complaint Paragraph 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.

Answer to 150. This paragraph states a legal conclusion to which no response is required. To the extent a response is required, these allegations are denied.

COUNT I
DEFAMATION PER SE
(Plaintiff v All Defendants)

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

Answer to 151. Defendants restate and incorporate their responses to the preceding paragraphs of the Answer as if fully set forth herein.

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

Answer to 152. Defendants are not required to respond to the allegations in this paragraph because they relate solely to claims that have been dismissed with prejudice. To the extent a response is required, Defendants deny the allegations in this paragraph.

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

Answer to 153. Defendants are not required to respond to the allegations in this paragraph because they relate solely to claims that have been dismissed with prejudice. To the extent a response is required, Defendants deny the allegations in this paragraph.

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

Answer to 154. Defendants are not required to respond to the allegations in this paragraph because they relate solely to claims that have been dismissed with prejudice. To the extent a response is required, Defendants deny the allegations in this paragraph.

Complaint Paragraph 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 patties from associating or dealing with him.

Answer to 155. Defendants are not required to respond to the allegations in this paragraph because they relate solely to claims that have been dismissed with prejudice. To the extent a response is required, Defendants deny the allegations in this paragraph.

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

Answer to 156. Defendants are not required to respond to the allegations in this paragraph because they relate solely to claims that have been dismissed with prejudice. To the extent a response is required, Defendants deny the allegations in this paragraph.

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

Answer to 157. Defendants are not required to respond to the allegations in this paragraph because they relate solely to claims that have been dismissed with prejudice. To the extent a response is required, Defendants deny the allegations in this paragraph.

Complaint Paragraph 158. The correspondence dated August 20, 2024, contains statements which has grievously fractured the plaintiffs standing in the community of respectable society.

Answer to 158. Defendants are not required to respond to the allegations in this paragraph because they relate solely to claims that have been dismissed with prejudice. To the extent a response is required, Defendants deny the allegations in this paragraph.

Complaint Paragraph 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.

Answer to 159. Defendants are not required to respond to the allegations in this paragraph because they relate solely to claims that have been dismissed with prejudice. To the extent a response is required, Defendants deny the allegations in this paragraph.

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

Answer to 160. Defendants are not required to respond to the allegations in this paragraph because they relate solely to claims that have been dismissed with prejudice. To the extent a response is required, Defendants deny the allegations in this paragraph.

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

Answer to 161. Defendants are not required to respond to the allegations in this paragraph because they relate solely to claims that have been dismissed with prejudice. To the extent a response is required, Defendants deny the allegations in this paragraph.

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

Answer to 162. Defendants are not required to respond to the allegations in this paragraph because they relate solely to claims that have been dismissed with prejudice. To the extent a response is required, Defendants deny the allegations in this paragraph.

Complaint Paragraph 163. Defendants aforementioned actions or omissions were intentional.

Answer to 163. Defendants are not required to respond to the allegations in this paragraph because they relate solely to claims that have been dismissed with prejudice. To the extent a response is required, Defendants deny the allegations in this paragraph.

Complaint Paragraph 164. Defendants aforementioned actions or omissions were deliberate.

Answer to 164. Defendants are not required to respond to the allegations in this paragraph because they relate solely to claims that have been dismissed with prejudice. To the extent a response is required, Defendants deny the allegations in this paragraph.

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

Answer to 165. Defendants are not required to respond to the allegations in this paragraph because they relate solely to claims that have been dismissed with prejudice. To the extent a response is required, Defendants deny the allegations in this paragraph.

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

Answer to 166. Defendants are not required to respond to the allegations in this paragraph because they relate solely to claims that have been dismissed with prejudice. To the extent a response is required, Defendants deny the allegations in this paragraph.

Complaint Paragraph 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.

Answer to 167. Defendants are not required to respond to the allegations in this paragraph because they relate solely to claims that have been dismissed with prejudice. To the extent a response is required, Defendants deny the allegations in this paragraph.

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

Answer to 168. Defendants are not required to respond to the allegations in this paragraph because they relate solely to claims that have been dismissed with prejudice. To the extent a response is required, Defendants deny the allegations in this paragraph.

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

Answer to 169. Defendants are not required to respond to the allegations in this paragraph because they relate solely to claims that have been dismissed with prejudice. To the extent a response is required, Defendants deny the allegations in this paragraph.

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

Answer to 170. Defendants are not required to respond to the allegations in this paragraph because they relate solely to claims that have been dismissed with prejudice. To the extent a response is required, Defendants deny the allegations in this paragraph.

Complaint Paragraph 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.

Answer to 171. Defendants are not required to respond to the allegations in this paragraph because they relate solely to claims that have been dismissed with prejudice. To the extent a response is required, Defendants deny the allegations in this paragraph.

Complaint Paragraph 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.

Answer to 172. Defendants are not required to respond to the allegations in this paragraph because they relate solely to claims that have been dismissed with prejudice. To the extent a response is required, Defendants deny the allegations in this paragraph.

Complaint Paragraph 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.

Answer to 173. Defendants are not required to respond to the allegations in this paragraph because they relate solely to claims that have been dismissed with prejudice. To the extent a response is required, Defendants deny the allegations in this paragraph.

Complaint Paragraph 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.

Answer to 174. Defendants are not required to respond to the allegations in this paragraph because they relate solely to claims that have been dismissed with prejudice. To the extent a response is required, Defendants deny the allegations in this paragraph.

Count I – Plaintiff's Wherefore Paragraph

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.

Answer to Plaintiff's "Wherefore" Paragraph: Defendants are not required to respond to the allegations in the "Wherefore" paragraph because they relate solely to claims that have been dismissed with prejudice. To the extent a response is required, Defendants deny the allegations in this paragraph and further deny that Plaintiff is entitled to any relief from any of Defendants.

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

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

Answer to 175. Defendants restate and incorporate their responses to the preceding paragraphs of the Answer as if fully set forth herein.

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

Answer to 176. Defendants are not required to respond to the allegations in this paragraph because they relate solely to claims that have been dismissed with prejudice. To the extent a response is required, Defendants deny the allegations in this paragraph.

Complaint Paragraph 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.

Answer to 177. Defendants are not required to respond to the allegations in this paragraph because they relate solely to claims that have been dismissed with prejudice. To the extent a response is required, Defendants deny the allegations in this paragraph.

Complaint Paragraph 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.

Answer to 178. Defendants are not required to respond to the allegations in this paragraph because they relate solely to claims that have been dismissed with prejudice. To the extent a response is required, Defendants deny the allegations in this paragraph.

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

Answer to 179. Defendants are not required to respond to the allegations in this paragraph because they relate solely to claims that have been dismissed with prejudice. To the extent a response is required, Defendants deny the allegations in this paragraph.

Complaint Paragraph 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.

Answer to 180. Defendants are not required to respond to the allegations in this paragraph because they relate solely to claims that have been dismissed with prejudice. To the extent a response is required, Defendants deny the allegations in this paragraph.

Complaint Paragraph 181. Defendants' aforementioned actions or omissions were intentional.

Answer to 181. Defendants are not required to respond to the allegations in this paragraph because they relate solely to claims that have been dismissed with prejudice. To the extent a response is required, Defendants deny the allegations in this paragraph.

Complaint Paragraph 182. Defendants' aforementioned actions or omissions were deliberate.

Answer to 182. Defendants are not required to respond to the allegations in this paragraph because they relate solely to claims that have been dismissed with prejudice. To the extent a response is required, Defendants deny the allegations in this paragraph.

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

Answer to 183. Defendants are not required to respond to the allegations in this paragraph because they relate solely to claims that have been dismissed with prejudice. To the extent a response is required, Defendants deny the allegations in this paragraph.

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

Answer to 184. Defendants are not required to respond to the allegations in this paragraph because they relate solely to claims that have been dismissed with prejudice. To the extent a response is required, Defendants deny the allegations in this paragraph.

Complaint Paragraph 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.

Answer to 185. Defendants are not required to respond to the allegations in this paragraph because they relate solely to claims that have been dismissed with prejudice. To the extent a response is required, Defendants deny the allegations in this paragraph.

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

Answer to 186. Defendants are not required to respond to the allegations in this paragraph because they relate solely to claims that have been dismissed with prejudice. To the extent a response is required, Defendants deny the allegations in this paragraph.

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

Answer to 187. Defendants are not required to respond to the allegations in this paragraph because they relate solely to claims that have been dismissed with prejudice. To the extent a response is required, Defendants deny the allegations in this paragraph.

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

Answer to 188. Defendants are not required to respond to the allegations in this paragraph because they relate solely to claims that have been dismissed with prejudice. To the extent a response is required, Defendants deny the allegations in this paragraph.

Complaint Paragraph 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.

Answer to 189. Defendants are not required to respond to the allegations in this paragraph because they relate solely to claims that have been dismissed with prejudice. To the extent a response is required, Defendants deny the allegations in this paragraph.

Count II – Plaintiff's Wherefore Paragraph

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.

Answer to Plaintiff's "Wherefore" Paragraph: Defendants are not required to respond to the allegations in the "Wherefore" paragraph because they relate solely to claims that have been dismissed with prejudice. To the extent a response is required, Defendants deny the allegations in this paragraph and further deny that Plaintiff is entitled to any relief from any of Defendants.

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

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

Answer to 190. Defendants restate and incorporate their responses to the preceding paragraphs of the Answer as if fully set forth herein.

Complaint Paragraph 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.

Answer to 191. Defendants are not required to respond to the allegations in this paragraph because they relate solely to claims that have been dismissed with prejudice. To the extent a response is required, Defendants deny the allegations in this paragraph.

Complaint Paragraph 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.

Answer to 192. Defendants are not required to respond to the allegations in this paragraph because they relate solely to claims that have been dismissed with prejudice. To the extent a response is required, Defendants deny the allegations in this paragraph.

Complaint Paragraph 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.

Answer to 193. Defendants are not required to respond to the allegations in this paragraph because they relate solely to claims that have been dismissed with prejudice. To the extent a response is required, Defendants deny the allegations in this paragraph.

Complaint Paragraph 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.

Answer to 194. Defendants are not required to respond to the allegations in this paragraph because they relate solely to claims that have been dismissed with prejudice. To the extent a response is required, Defendants deny the allegations in this paragraph.

Complaint Paragraph 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.

Answer to 195. Defendants are not required to respond to the allegations in this paragraph because they relate solely to claims that have been dismissed with prejudice. To the extent a response is required, Defendants deny the allegations in this paragraph.

Complaint Paragraph 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.

Answer to 196. Defendants are not required to respond to the allegations in this paragraph because they relate solely to claims that have been dismissed with prejudice. To the extent a response is required, Defendants deny the allegations in this paragraph.

Complaint Paragraph 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.

Answer to 197. Defendants are not required to respond to the allegations in this paragraph because they relate solely to claims that have been dismissed with prejudice. To the extent a response is required, Defendants deny the allegations in this paragraph.

Complaint Paragraph 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.

Answer to 198. Defendants are not required to respond to the allegations in this paragraph because they relate solely to claims that have been dismissed with prejudice. To the extent a response is required, Defendants deny the allegations in this paragraph.

Complaint Paragraph 199. Defendants' aforementioned actions or omissions were intentional.

Answer to 199. Defendants are not required to respond to the allegations in this paragraph because they relate solely to claims that have been dismissed with prejudice. To the extent a response is required, Defendants deny the allegations in this paragraph.

Complaint Paragraph 200. Defendants' aforementioned actions or omissions were deliberate.

Answer to 200. Defendants are not required to respond to the allegations in this paragraph because they relate solely to claims that have been dismissed with prejudice. To the extent a response is required, Defendants deny the allegations in this paragraph.

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

Answer to 201. Defendants are not required to respond to the allegations in this paragraph because they relate solely to claims that have been dismissed with prejudice. To the extent a response is required, Defendants deny the allegations in this paragraph.

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

Answer to 202. Defendants are not required to respond to the allegations in this paragraph because they relate solely to claims that have been dismissed with prejudice. To the extent a response is required, Defendants deny the allegations in this paragraph.

Complaint Paragraph 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.

Answer to 203. Defendants are not required to respond to the allegations in this paragraph because they relate solely to claims that have been dismissed with prejudice. To the extent a response is required, Defendants deny the allegations in this paragraph.

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

Answer to 204. Defendants are not required to respond to the allegations in this paragraph because they relate solely to claims that have been dismissed with prejudice. To the extent a response is required, Defendants deny the allegations in this paragraph.

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

Answer to 205. Defendants are not required to respond to the allegations in this paragraph because they relate solely to claims that have been dismissed with prejudice. To the extent a response is required, Defendants deny the allegations in this paragraph.

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

Answer to 206. Defendants are not required to respond to the allegations in this paragraph because they relate solely to claims that have been dismissed with prejudice. To the extent a response is required, Defendants deny the allegations in this paragraph.

Complaint Paragraph 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.

Answer to 207. Defendants are not required to respond to the allegations in this paragraph because they relate solely to claims that have been dismissed with prejudice. To the extent a response is required, Defendants deny the allegations in this paragraph.

Count III – Plaintiff's Wherefore Paragraph

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.

Answer to Plaintiff's "Wherefore" Paragraph: Defendants are not required to respond to the allegations in the "Wherefore" paragraph because they relate solely to claims that have been dismissed with prejudice. To the extent a response is required, Defendants deny the allegations in this paragraph and further deny that Plaintiff is entitled to any relief from any of Defendants.

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

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

Answer to 208. Defendants restate and incorporate their responses to the preceding paragraphs of the Answer as if fully set forth herein.

Complaint Paragraph 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.

Answer to 209. This paragraph states a legal conclusion to which no response is required. To the extent a response is required, Defendants deny the allegations in this paragraph.

Complaint Paragraph 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.

Answer to 210. This paragraph states a legal conclusion to which no response is required. To the extent a response is required, Defendants deny the allegations in this paragraph.

Complaint Paragraph 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.

Answer to 211. This paragraph states a legal conclusion to which no response is required. To the extent a response is required, Defendants deny the allegations in this paragraph.

Complaint Paragraph 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 I, Section 7 of the Pennsylvania Constitution;

(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.

Answer to 212. Denied.

Complaint Paragraph 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.

Answer to 213. Defendants admit that the Board adopted Amended and Restated Bylaws on July 30, 2024. By way of further response, Defendants state that the Bylaws are a written document that speak for themselves, and respectfully refer the Court to the Bylaws for a true,

complete, and comprehensive statement of their contents. Defendants deny the remaining allegations in this paragraph.

Complaint Paragraph 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.

Answer to 214. Defendants admit that the Board adopted Section 2.05 of the Amended and Restated Bylaws on July 30, 2024. By way of further response, Defendants state that the Bylaws are a written document that speak for themselves, and respectfully refer the Court to the Bylaws for a true, complete, and comprehensive statement of their contents. Defendants deny the remaining allegations in this paragraph.

Complaint Paragraph 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.

Answer to 215. Defendants admit that the Board adopted Section 2.05 of the Amended and Restated Bylaws on July 30, 2024. By way of further response, Defendants state that the Bylaws are a written document that speak for themselves, and respectfully refer the Court to the Bylaws for a true, complete, and comprehensive statement of their contents. Defendants deny the remaining allegations in this paragraph.

Complaint Paragraph 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.

Answer to 216. Defendants admit that the Board adopted Section 2.05 of the Amended and Restated Bylaws on July 30, 2024. By way of further response, Defendants state that the Bylaws are a written document that speak for themselves, and respectfully refer the Court to the Bylaws for a true, complete, and comprehensive statement of their contents. Defendants deny the remaining allegations in this paragraph.

Complaint Paragraph 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.

Answer to 217. Defendants admit that the Board adopted Section 2.05 of the Amended and Restated Bylaws on July 30, 2024. By way of further response, Defendants state that the Bylaws are a written document that speak for themselves, and respectfully refer the Court to the Bylaws for a true, complete, and comprehensive statement of their contents. Defendants deny the remaining allegations in this paragraph.

Complaint Paragraph 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 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.

Answer to 218. Defendants admit that the Board adopted Section 2.05 of the Amended and Restated Bylaws on July 30, 2024. By way of further response, Defendants state that the Bylaws are a written document that speak for themselves, and respectfully refer the Court to the Bylaws for a true, complete, and comprehensive statement of their contents. Defendants deny the remaining allegations in this paragraph.

Complaint Paragraph 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.

Answer to 219. Defendants admit that the Board adopted Section 2.05 of the Amended and Restated Bylaws on July 30, 2024. By way of further response, Defendants state that the Bylaws are a written document that speak for themselves, and respectfully refer the Court to the Bylaws for a true, complete, and comprehensive statement of their contents. Defendants deny the remaining allegations in this paragraph.

Complaint Paragraph 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.

Answer to 220. Denied.

Complaint Paragraph 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.

Answer to 221. Denied.

Complaint Paragraph 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 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.

Answer to 222. Denied.

Complaint Paragraph 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.

Answer to 223. Denied.

Complaint Paragraph 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.

Answer to 224. Denied.

Complaint Paragraph 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.

Answer to 225. Denied.

Complaint Paragraph 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.

Answer to 226. Denied.

Complaint Paragraph 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.

Answer to 227. Denied.

Count IV – Plaintiff's Wherefore Paragraph

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.

Answer to Plaintiff's "Wherefore" Paragraph: This paragraph states a legal conclusion to which no response is required. To the extent a response is required, Defendants deny the allegations in this paragraph and further deny that Plaintiff is entitled to any relief from any of Defendants.

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

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

Answer to 228. Defendants restate and incorporate their responses to the preceding paragraphs of the Answer as if fully set forth herein.

Complaint Paragraph 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.

Answer to 229. This paragraph states a legal conclusion to which no response is required. To the extent a response is required, these allegations are denied.

Complaint Paragraph 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.

Answer to 230. This paragraph states a legal conclusion to which no response is required. To the extent a response is required, these allegations are denied.

Complaint Paragraph 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.

Answer to 231. This paragraph states a legal conclusion to which no response is required. To the extent a response is required, these allegations are denied.

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

Answer to 232. This paragraph states a legal conclusion to which no response is required. To the extent a response is required, these allegations are denied.

Complaint Paragraph 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.

Answer to 233. Denied.

Complaint Paragraph 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.

Answer to 234. Denied.

Complaint Paragraph 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.

Answer to 235. Denied.

Complaint Paragraph 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.

Answer to 236. Denied.

Complaint Paragraph 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.

Answer to 237. Denied.

Complaint Paragraph 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.

Answer to 238. Denied.

Count V – Plaintiff's Wherefore Paragraph

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 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.

Answer to Plaintiff's "Wherefore" Paragraph: This paragraph states a legal conclusion to which no response is required. To the extent a response is required, Defendants deny the allegations in this paragraph and further deny that Plaintiff is entitled to any relief from any of Defendants.

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

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

Answer to 239. Defendants restate and incorporate their responses to the preceding paragraphs of the Answer as if fully set forth herein.

Complaint Paragraph 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.

Answer to 240. This paragraph states a legal conclusion to which no response is required. To the extent a response is required, these allegations are denied.

Complaint Paragraph 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.

Answer to 241. This paragraph states a legal conclusion to which no response is required. To the extent a response is required, these allegations are denied.

Complaint Paragraph 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.

Answer to 242. This paragraph states a legal conclusion to which no response is required. To the extent a response is required, these allegations are denied.

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

Answer to 243. This paragraph states a legal conclusion to which no response is required. To the extent a response is required, these allegations are denied.

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

Answer to 244. Denied.

Complaint Paragraph 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.

Answer to 245. Denied.

Complaint Paragraph 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.

Answer to 246. Denied.

Complaint Paragraph 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.

Answer to 247. Denied.

Complaint Paragraph 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.

Answer to 248. Denied.

Complaint Paragraph 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.

Answer to 249. Denied.

Count VI – Plaintiff's Wherefore Paragraph

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;

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.

Answer to Plaintiff's "Wherefore" Paragraph: This paragraph states a legal conclusion to which no response is required. To the extent a response is required, Defendants deny the allegations in this paragraph and further deny that Plaintiff is entitled to any relief from any of Defendants.

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)

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

Answer to 250. Defendants restate and incorporate their responses to the preceding paragraphs of the Answer as if fully set forth herein.

Complaint Paragraph 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.

Answer to 251. Defendants are not required to respond to the allegations in this paragraph because they relate solely to claims that have been dismissed with prejudice. To the extent a response is required, Defendants deny the allegations in this paragraph.

Complaint Paragraph 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.

Answer to 252. Defendants are not required to respond to the allegations in this paragraph because they relate solely to claims that have been dismissed with prejudice. To the extent a response is required, Defendants deny the allegations in this paragraph.

Complaint Paragraph 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.

Answer to 253. Defendants are not required to respond to the allegations in this paragraph because they relate solely to claims that have been dismissed with prejudice. To the extent a response is required, Defendants deny the allegations in this paragraph.

Count VII – Plaintiff's Wherefore Paragraph

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.

Answer to Plaintiff's "Wherefore" Paragraph: Defendants are not required to respond to the allegations in the "Wherefore" paragraph because they relate solely to claims that have been dismissed with prejudice. To the extent a response is required, Defendants deny the allegations in this paragraph and further deny that Plaintiff is entitled to any relief from any of Defendants.

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)

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

Answer to 254. Defendants restate and incorporate their responses to the preceding paragraphs of the Answer as if fully set forth herein.

Complaint Paragraph 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.

Answer to 255. Defendants are not required to respond to the allegations in this paragraph because they relate solely to claims that have been dismissed with prejudice. To the extent a response is required, Defendants deny the allegations in this paragraph.

Complaint Paragraph 256. At all relevant times material hereto Article l 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.

Answer to 256. Defendants are not required to respond to the allegations in this paragraph because they relate solely to claims that have been dismissed with prejudice. To the extent a response is required, Defendants deny the allegations in this paragraph.

Complaint Paragraph 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.

Answer to 257. Defendants are not required to respond to the allegations in this paragraph because they relate solely to claims that have been dismissed with prejudice. To the extent a response is required, Defendants deny the allegations in this paragraph.

Count VIII – Plaintiff's Wherefore Paragraph

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.

Answer to Plaintiff's "Wherefore" Paragraph: Defendants are not required to respond to the allegations in the "Wherefore" paragraph because they relate solely to claims that have been dismissed with prejudice. To the extent a response is required, Defendants deny the allegations in this paragraph and further deny that Plaintiff is entitled to any relief from any of Defendants.

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)

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

Answer to 258. Defendants restate and incorporate their responses to the preceding paragraphs of the Answer as if fully set forth herein.

Complaint Paragraph 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.

Answer to 259. Defendants are not required to respond to the allegations in this paragraph because they relate solely to claims that have been dismissed with prejudice. To the extent a response is required, Defendants deny the allegations in this paragraph.

Complaint Paragraph 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.

Answer to 260. Defendants are not required to respond to the allegations in this paragraph because they relate solely to claims that have been dismissed with prejudice. To the extent a response is required, Defendants deny the allegations in this paragraph.

Complaint Paragraph 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.

Answer to 261. Defendants are not required to respond to the allegations in this paragraph because they relate solely to claims that have been dismissed with prejudice. To the extent a response is required, Defendants deny the allegations in this paragraph.

Count IX – Plaintiff's Wherefore Paragraph

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;

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.

Answer to Plaintiff's "Wherefore" Paragraph: Defendants are not required to respond to the allegations in the "Wherefore" paragraph because they relate solely to claims that have been dismissed with prejudice. To the extent a response is required, Defendants deny the allegations in this paragraph and further deny that Plaintiff is entitled to any relief from any of Defendants.

AFFIRMATIVE AND OTHER DEFENSES

Defendants assert the following affirmative and other defenses. Defendants undertake the burden of proof only as to those defenses deemed affirmative defenses by law, regardless of how they are stated herein. Defendants reserve the right to amend this Answer if additional defenses, counterclaims, or third party claims become apparent through the course of this action, and also to assert any and all defenses on which Defendants do not bear the burden of proof.

FIRST DEFENSE

The Complaint and each cause of action thereof fails to set forth facts sufficient to state a claim upon which relief may be granted against Defendants and further fails to state facts sufficient to entitle Plaintiff to the relief sought, or to any other relief whatsoever from Defendants.

SECOND DEFENSE

Plaintiff's claims are barred, in whole or in part, by his lack of standing.

THIRD DEFENSE

Plaintiff's claims are barred, in whole or in part, by estoppel, waiver, forfeiture, abandonment, acquiescence, ratification, and/or laches.

FOURTH DEFENSE

Plaintiff's claims are barred, in whole or in part, under the doctrines of claim and/or issue preclusion.

FIFTH DEFENSE

Plaintiff's claims are barred, in whole or in part, by the doctrine of judicial estoppel.

SIXTH DEFENSE

Plaintiff's speech made in his capacity as a Trustee is not protected speech under the First Amendment.

SEVENTH DEFENSE

No conduct by Defendants qualifies as retaliation under the First Amendment.

EIGHTH DEFENSE

Defendants' actions were based on constitutionally permissible considerations, including legitimate business reasons, compliance with the corporate governance standards, the best interests of the University, and the efficient operation of the University's Board of Trustees, not any retaliatory motives.

NINTH DEFENSE

Even if Plaintiff engaged in protected speech and that protected speech were a motivating factor in the course of events leading to his removal, Defendants would have reached the same decision in the absence of any protected conduct.

TENTH DEFENSE

Plaintiff has not suffered any loss caused by any actions by Defendants.

ELEVENTH DEFENSE

Defendants are entitled to qualified immunity from Plaintiff's claims.

TWELFTH DEFENSE

Plaintiff cannot establish vicarious liability.

THIRTEENTH DEFENSE

Plaintiff's claims are barred, in whole or in part, by the applicable statute of limitations.

PRAYER FOR RELIEF

WHEREFORE, Defendants respectfully pray that the Court enter judgment in favor of all Defendants on all remaining counts, deny Plaintiff's prayers for relief, dismiss the remaining claims with prejudice, and award Defendants any other relief as the Court may deem just and proper.

Dated: May 1, 2026

Respectfully submitted,

/s/ Andrew R. Stanton

Andrew R. Stanton (Pa. #93409)
Susan E. Kessler (Pa. #322558)
JONES DAY
500 Grant Street, Suite 4500
Pittsburgh, PA 15219
Tel: (412) 391-3939
Fax: (412) 394-7959
astanton@jonesday.com
skessler@jonesday.com

Counsel for Defendants, The Pennsylvania State University, Matthew Schuyler, and David Kleppinger

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on May 1, 2026, I electronically filed a true and correct copy of the foregoing Defendants' Answer and Affirmative and Other Defenses to the Complaint using the Court's CM/ECF system, which will generate a Notice of Electronic Filing that effects service on all counsel of record, L. Civ. R. 5.1.2(7)(a).

Dated: May 1, 2026

/s/ Andrew R. Stanton
Andrew R. Stanton