

IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

JOHN L. PADGETT,]	
]	
Plaintiff,]	Case No. _____
]	
v.]	
]	
GEORGIA REPUBLICAN PARTY, INC.]	
]	
Defendant.]	

COMPLAINT FOR INDEMNITY

COMES NOW, John L. Padgett (“Plaintiff” or “Padgett”), and by and through his counsel states and shows as follows for his Complaint against the Georgia Republican Party, Inc. (“GRP” or “Defendant”).

PARTIES AND JURISDICTION

1. Plaintiff John L. Padgett is a citizen of Georgia and resident of Athens, Clarke County Georgia.
2. Defendant Georgia Republican Party Inc. is a non-profit corporation organized and existing under the laws of the State of Georgia. GRP may be served via its registered agent Vincent Russo, at 500 14th Street NW Atlanta, Georgia 30318.
3. Defendant is subject to jurisdiction and venue is proper in this Court.

FACTS RELATED TO THE CLAIM

4. Padgett was elected as the Chairman of the Georgia Republican Party in 2013.
5. Based upon advice of counsel, Anne W. Lewis, the unincorporated political party formed a non-profit corporation called the Georgia Republican Party Inc. in 2014.
6. John Padgett served as the Chairman of the Party and the initial director of the corporation.
7. Padgett served two 2 year terms as Chairman and Director, and his last term expired in 2017 when he was succeeded by John Watson as Chairman. Padgett was not paid a salary or any direct compensation for his service as Chairman and Director, but he only received reimbursement for travel and telephone expenses directly associated with his duties.
8. In 2014, Quiana Keith, an employee of the Georgia Republican Party, filed a lawsuit in the Northern District of Georgia alleging that she had been discriminated and retaliated against based on her race (the “Keith Complaint”) The Keith Complaint named the Georgia Republican Party, Inc. as a defendant, but also named John Padgett “in his capacity as Chairman of the Georgia Republican Party and Georgia Republican Party Inc.”
9. Because Padgett and the GRP were named separately in the lawsuit, the GRP’s attorney Anne Lewis advised Padgett that he should retain separate counsel to represent him in the matter, as there was a potential, based upon facts yet to be discovered, that Padgett’s individual interests could diverge from those of the GRP, and Lewis did not believe she could or should serve as counsel for both Padgett and the GRP.
10. Based upon that advise and recommendation, Padgett retained Fisher & Phillips LLP (“F&P”), a well-known and well regarded law-firm with expertise in defense of employment claims, including race discrimination claims.

11. F&P mounted an aggressive defense of Padgett, conducted discovery and legal analysis regarding the claims and legal theories asserted against Padgett, and eventually filed a Motion to Dismiss John Padgett from the case. That Motion argued that there was no legal authority for Plaintiff to have filed suit against Padgett in his “official capacity” whether denominated as “Chairman” or “CEO” and that there were no allegations of individual conduct on the part of Padgett sufficient to support any claim for individual liability against him. Essentially, F&P argued that Padgett never should have been named in the case, because Plaintiff Keith only named Padgett as defendant in his representative capacity (much as claims against Cities or Government entities name individuals as defendants in their “official capacity.”).

12. The Motion to Dismiss was referred to a Magistrate Judge for initial ruling, which recommended that the claims against Padgett be dismissed, which recommendation was adopted by the District Judge and became the final ruling on February 2, 2016.

13. Padgett was wholly successful on the merits as to all claims asserted against him individually or in his “official capacity” as the Director/Chairman/CEO of the Georgia Republican Party, Inc.

14. Unfortunately for Padgett, such success was not without cost, as the F&P firm generated a substantial fee for the legal work they provided.

15. While Padgett knew that the GRP owed him a duty of indemnity to pay the legal fees he incurred in the defense, Padgett was a good steward of the GRP’s funds and rather than just pay the fee from GRP coffers, Padgett rejected F&P’s claimed fees, contending that some of the time claimed was excessive or unnecessary.

16. F&P was unwilling to compromise their claim for fees at that time, and they eventually filed suit against Padgett in the Superior Court of Clarke County, seeking in excess of \$375,000 (inclusive of interest and collection fees) from Padgett.

17. Padgett retained his own counsel to defend that lawsuit (CCEA), and answered the complaint and asserted a counterclaim, arguing that improper timing of certain motions filed by F&P resulted in excessive and needless legal work and associated fees.

18. Padgett's litigation and defense of F&P's claim was quite successful, and although fees were certainly owed, Padgett was able to negotiate an agreement for entry of a Consent Judgment for \$375,000, but which could be fully satisfied and released in exchange for a payment of \$205,000 on or before October 5, 2017.

19. The new Chairman of the GRP was unwilling to make this payment to indemnify Padgett and he was forced to use personal efforts and resources to obtain funds to make the settlement payment. Padgett was ultimately successful in obtaining funds and making the stipulated settlement payment of \$205,000.00 to F&P – saving the GRP \$170,000 by his efforts.

20. Thereafter, on several occasions, Padgett requested that the GRP reimburse him for those legal costs and expenses.

21. In 2018, the undersigned counsel sent a letter to John Watson, then Chairman of the GRP, specifically describing Padgett's indemnity claim, explaining the Keith case, the dramatically discounted payment against F&P's claims, and provided copies of the statutory authority for mandatory indemnification of Padgett's claims (O.C.G.A. § 14-2-852).

22. Defendant GRP never responded to the undersigned's letter in 2018, and they declined to indemnify Padgett orally several times thereafter – all without providing any explanation or justification for their refusal to indemnify Padgett for these costs, which he clearly and

undeniably only incurred because of his service as a Director and Chairman of the GRP. As a result of the GRP's refusal to engage on this issue, Padgett is now forced to file this action.

COUNT I – STATUTORY INDEMNIFICATION PURSUANT TO O.C.G.A. § 14-3-852

23. Plaintiff incorporates the factual allegations of Paragraphs 1 – 22 as if fully restated herein.

24. The Georgia Corporation Code for Profit Corporations and Non-Profit Corporations (such as the GRP) have identical provisions regarding mandatory indemnification of legal costs or fees for directors (such as Padgett) who are successful in defense of legal proceedings. The Statutes, O.C.G.A. § 14-2-852 (Profit Corporations) and O.C.G.A. § 14-3-852 (Non-profit corporations) provide:

A corporation shall indemnify a director who was successful, on the merits or otherwise, in the defense of any proceeding to which the director was a party because the director was a director of the corporation against reasonable expenses incurred by the director in connection with the proceeding.

25. Padgett was named as a party to the Keith litigation solely because of his position as a Director of the GRP, and service as Chairman of the Party.

26. Padgett was wholly vindicated and “successful” as that term is used in the above referenced statutes, based upon the District Court’s order dismissing him as a party to the litigation.

27. Padgett incurred substantial costs, but they were reasonable, as he did not blindly pay claims from F&P (relying upon this mandatory indemnification) but instead he retained his own

counsel to litigate F&P's claim to obtain a substantially reduced payment of \$205,000.00 to resolve the matter.

28. Based upon and O.C.G.A. § 14-3-852 Padgett is entitled to be indemnified for all funds paid to the F&P firm (\$205,000.00) as well as all attorneys' fees Padgett paid to Jefferson M. Allen and the firm of Cohen Cooper Estep & Allen to defend Padgett in the F&P fee litigation, which amounts exceed \$25,000 and will be proven at trial. Plaintiff further claims as damages any and all attorneys' fees incurred in the prosecution of this indemnity claim.

COUNT II – COMMON LAW INDEMNIFICATION AND UNJUST ENRICHMENT
(as an Alternative to Count I)

29. Plaintiff incorporates the factual allegations of Paragraphs 1 – 28 as if fully restated herein.

30. Plaintiff served as a director and Chairman of the Georgia Republican Party in a voluntary capacity, only receiving reimbursement for costs and expenses directly associated with his work for and on behalf of the GRP.

31. Legal fees incurred in the defense of the Keith Litigation, which were only required because Padgett had been named as the Chairman of the GRP, are essentially the same type of costs and expenses he was regularly reimbursed for by the GRP.

32. The GRP owed him a duty to reimburse him for those costs and expenses, based upon an implied contract or the principal of common law indemnification, that the GRP should indemnify Padgett for costs and legal fees *that he would not have incurred but for his service as Chairman of the GRP* – not due to any wrongful action or inaction on his part.

33. It would be unjust to force Padgett solely to bear the burden of these legal fees, costs and expenses, which Padgett would have had authority to pay, as the Chairman of the GRP (as he

authorized and did pay the attorney representing the GRP in the Keith Litigation), but because the GRP relied upon contributions from political contributors, as a steward of the funds of the GRP and to support its mission, Padgett did not force the issue in 2015 or 2016 in order to preserve GRP funds for political activities during that Presidential election year. The GRP would be unjustly enriched unless required to indemnify Padgett these costs and expenses.

34 Based upon the principal of common law indemnification and unjust enrichment Padgett is entitled to be indemnified for all funds paid to the F&P firm (\$205,000.00 as well as all attorneys' fees Padgett paid to Jefferson M. Allen and the firm of Cohen Cooper Estep & Allen to defend Padgett in the F&P fee litigation, which amounts exceed \$25,000 and will be proven at trial. Plaintiff further claims as damages any and all attorneys' fees incurred in the prosecution of this indemnity claim.

WHEREFORE, Plaintiff John Padgett prays and requests:

- 1) That process issue and that the summons and complaint be served on Defendant;
- 2) That as to Count I – Statutory Indemnity under O.C.G.A. § 14-3-852; that the Court enter judgment in favor of Plaintiff for all amounts paid to F&P to settle claims for unpaid legal fees in the Keith litigation, along with all amounts paid to CCEA for the F&P litigation, along with costs and attorneys fees of this action;
- 3) That as to Count II – Common Law Indemnity or Unjust Enrichment (as an alternative to Count I) that the Court enter judgment in favor of Plaintiff for all amounts paid to F&P to settle claims for unpaid legal fees in the Keith litigation, along with all amounts paid to CCEA for the F&P litigation, along with costs and attorneys fees of this action;
- 4) That the Court enter any and all other relief as is justified in equity and the facts of the case.

Respectfully submitted this the 16th day of September, 2021

COHEN COOPER ESTEP & ALLEN, LLC

/s/s Jefferson M. Allen

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