

**COMMONWEALTH OF KENTUCKY  
48<sup>TH</sup> JUDICIAL CIRCUIT  
FRANKLIN CIRCUIT COURT  
DIVISION I  
CIVIL ACTION NO. 21-CI-00871**

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**DR M. CHRISTOPHER BROWN, II**

**PLAINTIFF**

**v.**

**KENTUCKY STATE UNIVERSITY**

**DEFENDANT**

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**DEFENDANT’S ANSWER TO PLAINTIFF’S VERIFIED COMPLAINT AND  
COUNTERCLAIM**

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Defendant Kentucky State University (“Defendant” or “KSU”), by and through counsel, for its Answer to the Complaint of Plaintiff Dr. M. Christopher Brown (“Plaintiff” or “Brown”), hereby states as follows:

**PARTIES, JURISDICTION, AND VENUE**

1. Defendant admits the allegations in Paragraph 1 of Plaintiff’s Complaint.
2. Defendant denies the allegations in Paragraph 2 of Plaintiff’s Complaint for lack of knowledge or information sufficient to form a belief as to their truth.
3. Defendant admits that venue and jurisdiction are appropriate in this Court. Defendant denies the remaining allegations in Paragraph 3 of Plaintiff’s Complaint.

**GENERAL ALLEGATIONS**

4. Defendant admits that it elected Brown as President of KSU in March 2017. Defendant denies any remaining allegations in Paragraph 4 of Plaintiff’s Complaint.
5. Defendant admits the allegations in Paragraph 5 of Plaintiff’s Complaint.
6. Defendant denies the allegations in Paragraph 6 of Plaintiff’s Complaint.

7. Defendant admits that Brown signed the Agreement in December 2018 and that the Agreement is attached to the Complaint as Exhibit 1. Responding further, Defendant states that the Agreement otherwise speaks for itself. Defendant denies any remaining allegations in Paragraph 7 of Plaintiff's Complaint.

8. In response to Paragraph 8 of Plaintiff's Complaint, Defendant states that the Agreement speaks for itself. All remaining allegations in Paragraph 8 are denied.

9. In response to Paragraph 9 of Plaintiff's Complaint, Defendant states that the Agreement speaks for itself. All remaining allegations in Paragraph 9 are denied.

10. In response to Paragraph 10 of Plaintiff's Complaint, Defendant states that the Agreement speaks for itself. All remaining allegations in Paragraph 10 are denied.

11. In response to Paragraph 11 of Plaintiff's Complaint, Defendant states that the Agreement speaks for itself. All remaining allegations in Paragraph 11 are denied.

12. In response to Paragraph 12 of Plaintiff's Complaint, Defendant states that the Agreement speaks for itself. All remaining allegations in Paragraph 12 are denied.

13. In response to Paragraph 13 of Plaintiff's Complaint, Defendant states that the Agreement speaks for itself. All remaining allegations in Paragraph 13 are denied.

14. Defendant admits that a board meeting was held in July 2021 to address the grave financial issues discovered by KSU employees. Defendant denies the remaining allegations in Paragraph 14 of Plaintiff's Complaint.

15. Defendant denies the allegations in Paragraph 15 of Plaintiff's Complaint.

16. In response to Paragraph 16 of Plaintiff's Complaint, Defendant states that the referenced text message speaks for itself, if it exists. All remaining allegations in Paragraph 16 are denied.

17. In response to Paragraph 17 of Plaintiff's Complaint, Defendant states that any referenced email speaks for itself, if it exists. All remaining allegations in Paragraph 17 are denied.

18. In response to Paragraph 18 of Plaintiff's Complaint, Defendant states that any referenced communication speaks for itself, if it exists. All remaining allegations in Paragraph 18 are denied.

19. Defendant admits that Brown tendered a resignation letter, which speaks for itself. Defendant denies all remaining allegations in Paragraph 19 of Plaintiff's Complaint.

20. Defendant denies the allegations in Paragraph 20 of Plaintiff's Complaint.

21. Defendant admits that Brown's email access was discontinued on July 16, 2021 and denies the remaining allegations in Paragraph 21 of Plaintiff's Complaint.

22. Defendant denies the allegations in Paragraph 22 of Plaintiff's Complaint.

23. Defendant admits that it accepted Brown's resignation on or about July 20, 2021 and that Brown then left the Board meeting. Defendant denies any remaining allegations in Paragraph 23 of Plaintiff's Complaint.

24. Defendant denies the allegations in Paragraph 24 of Plaintiff's Complaint.

**COUNT ONE**  
**CONSTRUCTIVE DISCHARGE**

25. Defendant incorporates its responses in Paragraphs 1-24 of Plaintiff's Complaint by reference.

26. Defendant states that the allegations in Paragraph 26 of Plaintiff's Complaint state a legal conclusion to which no response is required. To the extent a response is required, Defendant denies the allegations in Paragraph 26.

27. Defendant denies the allegations in Paragraph 27 of Plaintiff's Complaint.

28. Defendant denies the allegations in Paragraph 28 of Plaintiff's Complaint.

**COUNT II**  
**BREACH OF CONTRACT**

29. Defendant incorporates its responses in Paragraphs 1-28 of Plaintiff's Complaint by reference.

30. In response to Paragraph 30 of Plaintiff's Complaint, Defendant states that the Agreement speaks for itself. All remaining allegations in Paragraph 30 are denied.

31. Defendant denies the allegations in Paragraph 31 of Plaintiff's Complaint.

32. Defendant denies the allegations in Paragraph 32 of Plaintiff's Complaint.

33. Defendant denies the allegations in Paragraph 33 of Plaintiff's Complaint.

34. Defendant denies the allegations in Paragraph 34 of Plaintiff's Complaint.

**DEFENSES**

Defendant hereby asserts the following defenses, without prejudice to its right to argue that Plaintiff bears the burden of proof as to any or all of these defenses.

**FIRST DEFENSE**

Plaintiff's Complaint fails to state a claim upon which relief can be granted.

**SECOND DEFENSE**

Plaintiff has failed to mitigate his damages, if any.

**THIRD DEFENSE**

Plaintiff's claims fail, in whole or in part, to the extent that he has failed to utilize and exhaust available administrative remedies and/or satisfy any prerequisites to suit.

**FOURTH DEFENSE**

At all times relevant hereto, Defendant made a good faith effort to comply with all federal and state laws.

#### **FIFTH DEFENSE**

Plaintiff's claims are barred, in whole or in part, because Defendant applied its business judgment, acted at all times in good faith, and to the extent Defendant took any employment actions relating to Plaintiff, Defendant had legitimate business reasons for any employment actions.

#### **SIXTH DEFENSE**

Plaintiff's claims fail, in whole or in part, because Defendant treated him lawfully and in good faith compliance with all applicable rules, regulations, and laws.

#### **SEVENTH DEFENSE**

Plaintiff's claims are barred, in whole or in part, by the doctrines of waiver, estoppel, laches, release and/or unclean hands.

#### **EIGHTH DEFENSE**

To the extent Plaintiff suffered any damages or losses for which he seeks to hold Defendant responsible, those damages or losses were caused in whole or in part by Plaintiff's own acts, conduct, or omissions or the acts, conduct or omissions of third parties.

#### **NINTH DEFENSE**

Plaintiff's Complaint is barred, in whole or in part, because there was an overriding legitimate business justification for Defendant's decision.

#### **TENTH DEFENSE**

Plaintiff's claims for damages must be reduced or dismissed to the extent that after-acquired evidence demonstrates that Plaintiff engaged in conduct that would have otherwise resulted in his termination.

#### **ELEVENTH DEFENSE**

Plaintiff resigned his employment and therefore no damages are owed. In the alternative, Defendant had just cause to terminate Plaintiff's employment had he not resigned and therefore no damages are owed.

#### **TWELFTH DEFENSE**

Plaintiff breached his Agreement with Defendant and his breach of contract claim is therefore barred as a matter of law.

#### **THIRTEENTH DEFENSE**

Defendant reserves the right to assert such other defenses and affirmative defenses as may arise during the course of this litigation.

## **KSU'S COUNTERCLAIMS**

KSU, by way of Counterclaims against Brown, states as follows:

### **FACTS COMMON TO ALL COUNTERCLAIMS**

1. In connection with and as a condition of his employment with KSU, on December 6, 2018 Brown executed the Revised and Corrected Amended Employment Agreement ("Agreement") and agreed to abide by certain duties and responsibilities as President of KSU. (A copy of the Revised and Corrected Amended Employment Agreement is attached as Exhibit 1 to Brown's Complaint).

2. Under the Agreement, Brown was contractually bound to "undertake and perform properly, efficiently and consonantly with the standards of KSU, all duties and responsibilities set forth in the KSU Board of Regents Bylaws, and all other duties and responsibilities attendant to the position of President." (*See* Agreement, § 3.1).

3. Under Section 3.3 of the Agreement, Brown agreed to comply with the following obligations:

- a) to manage, supervise, and direct the academic and administrative activities of KSU as its chief executive officer;
- b) to maintain appropriate relationships with all students, faculty, staff, and alumni of KSU;
- c) to initiate (without derogating from the Board's power to so initiate) and participate in the formulation of KSU policies and the consideration of all matters before the Board;
- d) to follow and implement all directions and resolutions of the Board, and to report to and be accountable to the Board;
- e) to ensure the appointment of outstanding individuals to the senior administrative positions of KSU, to remain consistent with the budget approved from time to time by the Board (the "budget"), and to ensure that adequate review mechanisms and succession plans are established for these individuals;
- f) to ensure the preparation of draft budgets and the implementation of the budget;

- g) to formulate sound long-range planning for the ongoing development of KSU and direct the implementation of those plans when approved by the board;
- h) to periodically review the organization and structure of the University, recommend improvements thereto, participate in all relevant Board discussions and thereafter implement Board-approved changes in a planned and orderly fashion;
- i) to study and appraise results of operations to reinforce successful operations and to rectify any deficiencies or adverse situations;
- j) to ensure the risks to KSU identified in risk assessment processes are appropriately managed and communicated;
- k) to direct all phases of the daily business operations of KSU personally, and through delegation to qualified individuals of proper authority and responsibility;
- l) to ensure that the academic and other activities of the University are conducted in compliance with state laws, University policies, and accreditation standards;
- m) to maintain satisfactory senior-level relationships with third parties generally, including professional advisors, charitable supporters, governments, agencies of governments and neighboring communities;
- n) to protect the reputation and public image of KSU;
- o) to carry out his duties and responsibilities in a manner consistent with University's core values of mutual respect and equity; and;
- p) to serve as chief spokesperson for KSU.

(See Agreement, § 3.3).

4. During the course of Brown's employment with KSU, Brown breached his administrative and fiduciary obligations to the University, and further grossly mismanaged KSU's budget, resulting in financial hardship for the University and an inability to make various payments on debts and for normal operations, and withheld information from the Board of Regents regarding the financial condition of KSU. This includes, but is not limited to incurring significant budget deficits for fiscal years 2019, 2020 and 2021 and misrepresenting the use of endowment funds to the Board of Regents.



5. Brown's mismanagement and misuse of University funds and failure to supervise KSU's former Chief Financial Officer, Douglas Allen II, resulted in KSU not having the funds necessary to pay operational invoices. Furthermore, Brown did not ensure continuity in succession by securing a transition plan from Allen upon Allen's resignation in June 2021.

6. Brown further breached his contractual obligations when he failed to inform and obtain approval from KSU's Board of Regents before accessing funds from the Revenue Anticipation Note at its September 3, 2020 meeting for the use of operational expenses; thereby, misleading the Board as to the University's financial position.

7. Additionally, Brown failed to ensure that KSU complied with the terms and conditions of the Revenue Anticipation Note, which could have resulted in KSU defaulting on the Revenue Anticipation Note.

8. Brown, the sole employee of KSU's Board of Regents, charged with the oversight of KSU's budget and operations as its chief executive officer, knew or should have known not only that KSU received over \$5 million in federal funds to reimburse the state for capital construction projects the state was managing for KSU, but also that KSU failed to reimburse those funds to the state.

9. Furthermore, Brown knew or should have known of the facts set forth in paragraphs 6, 7, and 8 of this Counterclaim and that he had an affirmative duty to alert the Board. Nevertheless, he failed to alert the Board of these facts.

10. Moreover, KSU was required to pay over \$600,000 in an installment payment on a note associated with an energy performance contract by June 30, 2021. Brown, again, knew or should have known that KSU did not have the funds to pay the impending invoice, which

potentially could have resulted in KSU defaulting on the contract and losing all warranties associated with work performed. Yet he again failed to alert the Board of this fact.

12. Brown, contrary to his responsibilities, failed to notify the Board of Regents about the University's true financial condition. Rather, he repeatedly misrepresented the University's financial situation to the Board of Regents each time an inquiry was made by board members during multiple public board meetings.

13. As a result of Brown's fiscal mismanagement, breach of his administrative and fiduciary obligations to the University, and neglect, in addition to his failure to inform the Board of Regents of the accurate financial position of the University, KSU was unable to cover all of its essential expenses with the Commonwealth's quarterly appropriation paid in July 2021.

14. As a result of Brown's conduct, KSU's Board of Regents, through its sole employee, lacked the necessary information to make informed decisions on crucial matters related to the University that required action by the Board.

#### **COUNT I: BREACH OF FIDUCIARY DUTY**

15. KSU incorporates by reference the allegations contained in the previous paragraphs of its Counterclaim as if fully set forth herein.

16. As President of KSU, Brown was in a position of trust and owed KSU a fiduciary duty, a duty of good faith, and a duty of loyalty, which required Brown to act in KSU's best interests at all times during the course of Brown's employment.

17. Upon information and belief, during the course of Brown's employment with KSU, Brown breached his fiduciary duty, duty of good faith, and duty of loyalty by withholding and misrepresenting critical information related to KSU's debts, obligations, and financial condition. This breach resulted in placing KSU into a position where it will be unable to maintain basic

operations and led to KSU seeking an emergency appropriation of approximately \$23 million from the Commonwealth of Kentucky to cover its budgetary shortfalls.

18. Through his actions and inactions, Brown breached his fiduciary duty, duty of good faith, and duty of loyalty by failing to serve KSU faithfully or failing to act in KSU's best interests.

19. Brown's breach of his fiduciary duty, duty of good faith, and duty of loyalty warrants the forfeiture of any compensation and benefits received during any period of time in which his breaches occurred.

20. As a result of Brown's breach of his fiduciary duty, duty of good faith, and duty of loyalty, KSU has suffered substantial damages in an amount above the jurisdictional limits of this Court.

## **COUNT II: BREACH OF CONTRACT**

21. KSU incorporates by reference the allegations contained in the previous paragraphs of its Counterclaim as if fully set forth herein.

22. Each and every instance referenced above in which Brown failed to comply with his obligations under the Agreement, either alone or in concert with others, including but not limited to Brown's mismanagement and misuse of KSU's budget and failure to inform the Board of Regents of the financial condition of KSU, constitutes a breach of the Agreement, including, but not limited to the following:

- Failure “to manage, supervise, and direct the academic and administrative activities of KSU as its chief executive officer;”
- Failure “to follow and implement all directions and resolutions of the Board, and to report to and be accountable to the Board;”
- Failure “to ensure the appointment of outstanding individuals to the senior administrative positions of KSU, to remain consistent with the budget approved from time to time by the Board ... and to ensure that adequate review mechanisms and succession plans are established for these individuals;”
- Failure “to study and appraise results of operations to reinforce successful operations and to rectify any deficiencies or adverse situations;”
- Failure “to ensure the risks to KSU identified in risk assessment processes are appropriately managed and communicated;”
- Failure “to direct all phases of the daily business operations of KSU personally, and through delegation to qualified individuals of proper authority and responsibility;” and
- Failure “to protect the reputation and public image of KSU.”

23. As a result of Brown’s breaches of the Agreement, KSU has been and/or will be severely and irreparably damaged in an amount greater than the jurisdictional limits of this Court.

WHEREFORE, having fully answered, KSU requests that Brown’s Complaint be dismissed and that Judgment be entered in favor of KSU on its Counterclaim as follows:

- (a) Compensatory damages in an amount to be determined by the Court;
- (b). Costs and reasonable attorneys’ fees;
- (c). Pre-judgment interest and post-judgment interest on any monetary relief awarded in conjunction with this action; and
- (d) For such other and further relief as this Court may deem just and proper.

Respectfully submitted,

/s/ Ryan M. Martin

Ryan M. Martin (KBA #92619)

Adair M. Smith (KBA #98356)

Jackson Lewis P.C.

201 E. Fifth Street, 26<sup>th</sup> Floor

Cincinnati, OH 45202

Telephone: (513) 898-0050

Fax: (513) 898-0051

E-mail: ryan.martin@jacksonlewis.com

E-mail: adair.smith@jacksonlewis.com

*Counsel for Defendant Kentucky State  
University*

**CERTIFICATE OF SERVICE**

I hereby certify that on this 13<sup>th</sup> day of January, 2022, a true and accurate copy of the foregoing was served upon the following via the Court's electronic filing system.

Jonathan D. Goldberg  
Jan M. West  
GOLDBERG SIMPSON, LLC  
9301 Dayflower Street  
Prospect, KY 40059  
Email: [jgoldberg@goldbergsimpson.com](mailto:jgoldberg@goldbergsimpson.com)  
Email: [jwest@goldbergsimpson.com](mailto:jwest@goldbergsimpson.com)

*Counsel for Plaintiff*

/s/ Ryan M. Martin  
Ryan M. Martin (KBA #92619)

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