

**IN THE CIRCUIT COURT OF HINDS COUNTY, MISSISSIPPI
FIRST JUDICIAL DISTRICT**

MISSISSIPPI DEPARTMENT OF HUMAN SERVICES

PLAINTIFF

VS.

CASE NO. 25CI1:22-cv-00286-EFP

**MISSISSIPPI COMMUNITY EDUCATION CENTER, INC.
NEW LEARNING RESOURCES FOUNDATION, INC.
JOHN DAVIS
BRIAN JEFF SMITH
AUSTIN GARRETT SMITH
NANCY WHITTEN NEW
ZACHARY W. NEW
MAGNOLIA STRATEGIES LLC
JESSE STEVEN NEW, JR.
FAMILY RESOURCE CENTER OF NORTH MISSISSIPPI, INC.
CHRISTI H. WEBB
AMY S. HARRIS
TED M. DIBIASE, SR.
HEART OF DAVID MINISTRIES, INC.
TED M. ("TEDDY") DIBIASE, JR.
PRICELESS VENTURES LLC
FAMILIAE ORIENTEM LLC
BRETT DALE DIBIASE
RESTORE2 LLC
ADAM ANDREW SUCH
SBGI, LLC
NICHOLAS CRONIN COUGHLIN
NCC VENTURES LLC
PAUL VICTOR LACOSTE
VICTORY SPORTS FOUNDATION, INC.
BRETT LORENZO FAVRE
FAVRE ENTERPRISES, INC.
MARCUS L. DUPREE
MARCUS DUPREE FOUNDATION, INC.
JACOB W. VANLANDINGHAM
PREVACUS, INC.
PRESOLMD, LLC
CHASE COMPUTER SERVICES
SOUL CITY HOSPITALITY LLC**

**NORTHEAST MISSISSIPPI FOOTBALL COACHES ASSOCIATION
WARREN WASHINGTON ISSAQUENA SHARKEY COMMUNITY ACTION
AGENCY
SOUTHTEC, INC.
RISE IN MALIBU, INC.**

DEFENDANTS

**DEFENDANT AUSTIN GARRETT SMITH'S
ANSWER AND DEFENSES TO COMPLAINT**

Defendant Austin Smith answers the Complaint as follows:

I. PARTIES

1. The allegations of Paragraph 1 do not pertain to Austin Smith. He neither admits nor denies them.

2. The allegations of Paragraph 2 do not pertain to Austin Smith. He neither admits nor denies them.

3. The allegations of Paragraph 3 do not pertain to Austin Smith. He neither admits nor denies them.

4. The allegations of Paragraph 4 do not pertain to Austin Smith. He neither admits nor denies them.

5. The allegations of Paragraph 5 do not pertain to Austin Smith. He neither admits nor denies them.

6. The allegations of Paragraph 6 do not pertain to Austin Smith. He neither admits nor denies them.

7. The allegations of Paragraph 7 do not pertain to Austin Smith. He neither admits nor denies them.

8. The allegations of Paragraph 8 do not pertain to Austin Smith. He neither admits nor

denies them.

9. The allegations of Paragraph 9 do not pertain to Austin Smith. He neither admits nor denies them.

10. The allegations of Paragraph 10 do not pertain to Austin Smith. He neither admits nor denies them.

11. The allegations of Paragraph 11 do not pertain to Austin Smith. He neither admits nor denies them.

12. The allegations of Paragraph 12 do not pertain to Austin Smith. He neither admits nor denies them.

13. The allegations of Paragraph 13 do not pertain to Austin Smith. He neither admits nor denies them.

14. The allegations of Paragraph 14 do not pertain to Austin Smith. He neither admits nor denies them.

15. The allegations of Paragraph 15 do not pertain to Austin Smith. He neither admits nor denies them.

16. The allegations of Paragraph 16 do not pertain to Austin Smith. He neither admits nor denies them.

17. The allegations of Paragraph 17 do not pertain to Austin Smith. He neither admits nor denies them.

18. The allegations of Paragraph 18 do not pertain to Austin Smith. He neither admits nor denies them.

19. The allegations of Paragraph 19 do not pertain to Austin Smith. He neither admits

nor denies them.

20. The allegations of Paragraph 20 do not pertain to Austin Smith. He neither admits nor denies them.

21. The allegations of Paragraph 21 do not pertain to Austin Smith. He neither admits nor denies them.

22. The allegations of Paragraph 22 do not pertain to Austin Smith. He neither admits nor denies them.

23. The allegations of Paragraph 23 do not pertain to Austin Smith. He neither admits nor denies them.

24. The allegations of Paragraph 24 do not pertain to Austin Smith. He neither admits nor denies them.

25. The allegations of Paragraph 25 do not pertain to Austin Smith. He neither admits nor denies them.

26. The allegations of Paragraph 26 do not pertain to Austin Smith. He neither admits nor denies them.

27. The allegations of Paragraph 27 do not pertain to Austin Smith. He neither admits nor denies them.

28. The allegations of Paragraph 28 do not pertain to Austin Smith. He neither admits nor denies them.

29. The allegations of Paragraph 29 do not pertain to Austin Smith. He neither admits nor denies them.

30. The allegations of Paragraph 30 do not pertain to Austin Smith. He neither admits

nor denies them.

31. The allegations of Paragraph 31 do not pertain to Austin Smith. He neither admits nor denies them.

32. The allegations of Paragraph 32 do not pertain to Austin Smith. He neither admits nor denies them.

33. The allegations of Paragraph 33 do not pertain to Austin Smith. He neither admits nor denies them.

34. The allegations of Paragraph 34 do not pertain to Austin Smith. He neither admits nor denies them.

35. The allegations of Paragraph 35 do not pertain to Austin Smith. He neither admits nor denies them.

36. The allegations of Paragraph 36 do not pertain to Austin Smith. He neither admits nor denies them.

37. The allegations of Paragraph 37 do not pertain to Austin Smith. He neither admits nor denies them.

38. The allegations of Paragraph 38 do not pertain to Austin Smith. He neither admits nor denies them.

39. Paragraph 39 is denied.

II. LEGAL REQUIREMENTS FOR USE OF TANF FUNDS

40. Austin Smith admits that Paragraph 40 correctly states applicable federal and state law.

41. Austin Smith admits that Paragraph 41 correctly states applicable federal and state

law.

42. Paragraph 42 is admitted. The Mississippi Department of Human Services has no authority beyond that designated by the grant and by Mississippi and federal law.

43. Paragraph 43 is admitted. Austin Smith agrees that the Mississippi Department of Human Services could not lawfully expend any money from grants except by complying with the terms of the grant.

III. DEFENDANTS' DUTIES AND KNOWLEDGE

44. Austin Smith has not seen any contracts between the State of Mississippi and the grantees and, therefore, neither admits nor denies the allegations in Paragraph 44.

45. Paragraph 45 is denied. The only contract which Austin Smith possesses is attached hereto as Exhibit "1," which is an Agreement between The Family Resource Center of North Mississippi, Inc. and Austin Smith. This contract does not state that it is a "TANF Subgrant."

46. Paragraph 46 is denied. Austin Smith knew only that at least some of the money which MCEC and FRC were spending consisted of grants from the State.

47. Paragraph 47 is denied, and as to Austin Smith, is baseless. No one ever told Austin Smith the money that he was receiving either by salary or by independent contract were TANF funds.

48. Paragraph 48 is denied insofar as it pertains to Austin Smith. At the times he contracted with the two nonprofit corporations at issue, Austin Smith was not under any affirmative duty to exercise any degree of care when receiving money under a contract. Austin Smith was required only to comply with the contract by performing the duties specified in the contract, and he did so. Furthermore, the C.F.R. regulations pertain to the duty of contractors with the State, and do

not pertain to persons such as Austin Smith, who enters good-faith contracts with nonprofit corporations.

49. Paragraph 49 is denied. Austin Smith had no duty to determine the source of funding of the entities with whom he contracted.

50. Paragraph 50 is denied in part and admitted in part. Austin Smith agrees that federal regulations require that only persons who “possess a special skill” or whose charges are “reasonable in relation to the services rendered” should be paid federal funds under 2 C.F.R. § 200.459(a). The regulation does not pertain to Austin Smith since he was neither an employee of the State nor a contractor with the State at the relevant times.

51. Paragraph 51 is denied. It is factually baseless. Austin Smith did have special skills in the area of computers, computer hardware, and coding. Austin Smith would have been the most logical person to perform computer/coding services because of his skills and training.

52. Paragraph 52 is admitted in part and denied in part. Austin Smith is qualified for the computer work which he was contracted to do. Austin Smith’s qualifications come from innate ability and from extensive training he received while working for MCEC and FRC.

53. Paragraph 53 is denied in part and admitted in part. Austin Smith admits that he is John Davis’ nephew. At the time Austin Smith entered the contracts to perform the coding services at issue, Austin Smith had a strained relationship with John Davis. Austin Smith had no knowledge that Davis had directed these contracts be awarded to Austin Smith, if, indeed, he did so.

54. Paragraph 54 is denied. Austin Smith did not know when he entered contracts with the two (2) nonprofit corporations that he was bound by any federal regulations.

55. Paragraph 55 is denied. From his experience with the two (2) nonprofits, Austin Smith thought that the two (2) nonprofits were performing the same type work. The extent to which the two (2) nonprofits were kept separate was a legal matter for the lawyers, and not a matter for which Austin Smith had any responsibility.

56. Paragraph 56 is denied. Austin Smith was not in a management or leadership position when employed by MCEC or FRC or the Mississippi Department of Human Services. Austin Smith was not in a position to know the sources of the nonprofits' funding. The limited knowledge Austin Smith has is only the result of statements Nancy New, John Davis, or various attorneys made to him.

57. Paragraph 57 is denied.

58. Paragraph 58 is admitted in part and denied in part. Austin Smith admits that everyone in Mississippi is bound by the provisions of Mississippi and federal law. Otherwise, Paragraph 58 is denied.

59. Paragraph 59 is denied. Austin Smith had no knowledge that any of the money he had received was governed by "TANF regulations." Further, since Austin Smith was not contracted with any entity which he knew to be receiving TANF funds, he does not believe he is bound by any "TANF regulations."

60. Paragraph 60 is denied. Austin Smith had no knowledge that he was under any duty to comply with TANF regulations, nor did he have any duty to learn the source of the funding of the two (2) nonprofit corporations since he was not in management and was not a member of the board of directors of either nonprofit.

61. Paragraph 61 is denied. Austin Smith had nothing whatsoever to do with the two nonprofits' breach of their obligations to MDHS.

IV. CORRUPT AGREEMENT BETWEEN JOHN DAVIS AND NANCY NEW

62. The allegations of Paragraph 62 do not pertain to Austin Smith. He neither admits nor denies them.

63. The allegations of Paragraph 63 do not pertain to Austin Smith. He neither admits nor denies them.

64. The allegations of Paragraph 64 do not pertain to Austin Smith. He neither admits nor denies them.

65. The allegations of Paragraph 65 do not pertain to Austin Smith. He neither admits nor denies them.

66. The allegations of Paragraph 66 do not pertain to Austin Smith. He neither admits nor denies them. Austin Smith's only relevant knowledge concerning this allegation is that he knew John Davis and Nancy New appeared to have a close relationship. Austin Smith knew that John Davis appeared to have a close relationship with Governor Bryant, to such an extent that John Davis told Austin Smith that Governor Bryant had promised John Davis would be his chief of staff when he, Governor Bryant, opened his private consulting business after leaving office. Further, Austin Smith knew that Nancy New had a close, personal relationship with both Governor Bryant and Governor Bryant's wife. Finally, Austin Smith knew that the three (3) DiBiase professional wrestlers were close friends with Austin Smith's uncle, John Davis.

V. ILLEGAL DIVERSIONS OF TANF FUNDS TO ENRICH JOHN DAVIS' FAMILY AND FRIENDS

67. Paragraph 67 is denied, to the extent it contains a table listing money which Austin Smith received both as salary and as an independent contractor. Austin Smith received his salary and received his contract under circumstances which he reasonably believed to be legitimate.

(A) Davis Brother-in-Law

68. Austin Smith neither admits nor denies Paragraph 68 pertaining to the improper payments to Austin Smith's father.

69. Austin Smith neither admits nor denies Paragraph 68 pertaining to the improper payments to Austin Smith's father.

70. Austin Smith neither admits nor denies Paragraph 68 pertaining to the improper payments to Austin Smith's father.

71. Austin Smith neither admits nor denies Paragraph 68 pertaining to improper payments to Austin Smith's father. Austin Smith had no knowledge that his father was receiving any money from TANF, until reading about it in the news media, primarily *Mississippi Today*, and learning about it in the forensic audit performed at the direction of Mississippi Department of Human Services director, Robert Anderson.

(B) Davis Nephew

72. Paragraph 72 is denied.

73. Paragraph 73 is denied.

74. Paragraph 74 is denied.

75. Paragraph 75 is denied.

76. Paragraph 76 is denied.

The true facts concerning the moneys which Austin Smith was paid by the two (2) nonprofits and concerning his employment with the Mississippi Department of Human Services will be described in a subsequent portion of this answer.

(C) Teddy DiBiase, Jr.

77. Austin Smith neither admits nor denies Paragraph 77 pertaining to allegations against Teddy DiBiase, Jr., and Christi Webb.

78. Austin Smith neither admits nor denies Paragraph 78 pertaining to allegations against Teddy DiBiase, Jr., and Christi Webb.

79. Austin Smith neither admits nor denies Paragraph 79 pertaining to allegations against Teddy DiBiase, Jr., and Christi Webb.

80. Austin Smith neither admits nor denies Paragraph 80 pertaining to allegations against Teddy DiBiase, Jr., and Christi Webb.

81. Austin Smith neither admits nor denies Paragraph 81 pertaining to allegations against Teddy DiBiase, Jr., and Christi Webb.

82. Austin Smith neither admits nor denies Paragraph 82 pertaining to allegations against Teddy DiBiase, Jr., and Christi Webb.

83. Austin Smith neither admits nor denies Paragraph 83 pertaining to allegations against Teddy DiBiase, Jr., and Christi Webb.

84. Austin Smith neither admits nor denies Paragraph 84 pertaining to allegations against Teddy DiBiase, Jr., and Christi Webb.

85. Austin Smith neither admits nor denies Paragraph 85 pertaining to allegations against Teddy DiBiase, Jr., and Christi Webb.

Austin Smith never observed Christi Webb do anything unlawful, and she appeared to Austin Smith to be generally interested in aiding the various worthwhile causes being funded by FRC.

Further, Christi Webb was known to be a Democrat, and it would be unlikely that the Bryant administration would have been seeking to enrich Christi Webb.

(D) Brett DiBiase

86. Austin Smith neither admits nor denies Paragraph 86.
87. Austin Smith neither admits nor denies Paragraph 87.
88. Austin Smith neither admits nor denies Paragraph 88.
89. Austin Smith neither admits nor denies Paragraph 89.
90. Austin Smith neither admits nor denies Paragraph 90.
91. Austin Smith neither admits nor denies Paragraph 91.
92. Austin Smith neither admits nor denies Paragraph 92.
93. Austin Smith neither admits nor denies Paragraph 93.
94. Austin Smith neither admits nor denies Paragraph 94.

Austin Smith knows that Brett DiBiase lied to Austin Smith's family by telling them that he (Austin Smith) had told Brett DiBiase that John Davis is homosexual. Shortly before John Davis resigned as director of DHS, John Davis explained to family members that Governor Bryant had told him (John Davis) that he (John Davis) was going to "fucking jail." John Davis told family members, including Austin Smith, that Brett DiBiase had received a check at John Davis' mailbox, and Governor Bryant apparently believed this check was a kickback. John Davis stated that Brett DiBiase was getting a divorce and wanted to hide his income from his wife. This was the reason the check was sent to John Davis' mailbox. John Davis indicated that Jacob Black, John Davis' second in command, had informed Governor Bryant about the check going to Davis' mailbox. Governor Bryant then reported the matter to the State auditor, and this report from Governor Bryant to the

State auditor formed the basis of the State auditor's claim that Governor Bryant was the "whistleblower" responsible for the investigation into the fraud occurring at the Department of Human Services.

(E) Ted DiBiase, Sr.

95. Austin Smith neither admits nor denies Paragraph 95 since Austin Smith is not involved in these allegations.

96. Austin Smith neither admits nor denies Paragraph 96 since Austin Smith is not involved in these allegations.

97. Austin Smith neither admits nor denies Paragraph 97 since Austin Smith is not involved in these allegations.

98. Austin Smith neither admits nor denies Paragraph 98 since Austin Smith is not involved in these allegations.

99. Austin Smith neither admits nor denies Paragraph 99 since Austin Smith is not involved in these allegations.

Austin Smith's relevant knowledge concerning "The Million Dollar Man," Ted DiBiase, Sr., is that John Davis told Austin Smith that Governor Bryant wanted money received from a federal program called a "faith-based initiative," to be administered by the Heart of David Ministries, Inc., run by Ted DiBiase, Sr., "The Million Dollar Man." According to what John Davis told Austin Smith, Governor Bryant claimed that Heart of David Ministries, Inc., and Ted DiBiase, Sr., would bring movies to the State of Mississippi.

(F) Adam Such

100. The allegations of Paragraph 100 do not pertain to Austin Smith. He neither admits

nor denies them.

101. The allegations of Paragraph 101 do not pertain to Austin Smith. He neither admits nor denies them.

102. The allegations of Paragraph 102 do not pertain to Austin Smith. He neither admits nor denies them.

103. The allegations of Paragraph 103 do not pertain to Austin Smith. He neither admits nor denies them.

(G) Nick Coughlin

104. The allegations of Paragraph 104 do not pertain to Austin Smith. He neither admits nor denies them.

105. The allegations of Paragraph 105 do not pertain to Austin Smith. He neither admits nor denies them.

106. The allegations of Paragraph 106 do not pertain to Austin Smith. He neither admits nor denies them.

107. The allegations of Paragraph 107 do not pertain to Austin Smith. He neither admits nor denies them.

108. The allegations of Paragraph 108 do not pertain to Austin Smith. He neither admits nor denies them.

109. The allegations of Paragraph 109 do not pertain to Austin Smith. He neither admits nor denies them.

110. The allegations of Paragraph 110 do not pertain to Austin Smith. He neither admits nor denies them.

Austin Smith knows only that Nick Coughlin and members of the DiBiase family owned a company called NCC Ventures, which was a company involved in the movie business. Coughlin is an attorney who subsequently worked as an assistant attorney general. Austin Smith learned about Coughlin's alleged illegal activities just as he learned about most of the allegations in the Complaint, through the *Mississippi Today* reporting of Anna Wolfe.

(H) Northeast Mississippi Football Coaches Association

111. The allegations of Paragraph 111 do not pertain to Austin Smith. He neither admits nor denies them.

112. The allegations of Paragraph 112 do not pertain to Austin Smith. He neither admits nor denies them.

113. The allegations of Paragraph 113 do not pertain to Austin Smith. He neither admits nor denies them.

114. The allegations of Paragraph 114 do not pertain to Austin Smith. He neither admits nor denies them.

Austin Smith knows nothing about the Northeast Mississippi Football Coaches Association except what he has been told by his attorney. According to Austin Smith's attorney, the Northeast Mississippi Football Coaches Association sponsors the Northeast Mississippi High School All-Star football game for the purpose of attempting to aid high school football players in getting college scholarships. Notably, the Attorney General has not named as a defendant the Mississippi Board of Institutions of Higher Learning, even though the "forensic audit" found that several Mississippi universities received TANF funds in order to aid football programs at public universities.

**V. ILLEGAL DIVERSIONS OF TANF FUNDS TO ENRICH NANCY NEW'S
FAMILY AND FRIENDS**

115. Austin Smith neither admits nor denies the allegations of Paragraph 115. Austin Smith learned about these serious allegations by reading *Mississippi Today*.

(A) Purchases of Stock in Prevacus and PreSolMD

116. The allegations of Paragraph 116 do not pertain to Austin Smith. He neither admits nor denies them.

117. The allegations of Paragraph 117 do not pertain to Austin Smith. He neither admits nor denies them.

118. The allegations of Paragraph 118 do not pertain to Austin Smith. He neither admits nor denies them.

119. The allegations of Paragraph 119 do not pertain to Austin Smith. He neither admits nor denies them.

120. The allegations of Paragraph 120 do not pertain to Austin Smith. He neither admits nor denies them.

121. The allegations of Paragraph 121 do not pertain to Austin Smith. He neither admits nor denies them.

122. The allegations of Paragraph 122 do not pertain to Austin Smith. He neither admits nor denies them.

123. The allegations of Paragraph 123 do not pertain to Austin Smith. He neither admits nor denies them.

124. The allegations of Paragraph 124 do not pertain to Austin Smith. He neither admits nor denies them.

125. The allegations of Paragraph 125 do not pertain to Austin Smith. He neither admits nor denies them.

126. The allegations of Paragraph 126 do not pertain to Austin Smith. He neither admits nor denies them.

127. The allegations of Paragraph 127 do not pertain to Austin Smith. He neither admits nor denies them.

128. The allegations of Paragraph 128 do not pertain to Austin Smith. He neither admits nor denies them.

129. The allegations of Paragraph 129 do not pertain to Austin Smith. He neither admits nor denies them.

With respect to payments of welfare funds to Prevacus, Austin Smith knows nothing beyond what has been reported by *Mississippi Today* and described in the single audit of the State Auditor. According to the *Mississippi Today*, documented by text messages, Governor Bryant arranged for TANF funds to be transferred to Prevacus, a private corporation.

VII. ILLEGAL DIVERSIONS OF TANF FUNDS TO ENRICH SPORTS CELEBRITIES

130. Austin Smith neither admits nor denies Paragraph 130.

(A) Paul LaCoste

131. Austin Smith neither admits nor denies Paragraph 131.

132. Austin Smith neither admits nor denies Paragraph 132.

133. Austin Smith neither admits nor denies Paragraph 133.

(B) Marcus Dupree

134. Austin Smith neither admits nor denies Paragraph 134.

135. Austin Smith neither admits nor denies Paragraph 135.

136. Austin Smith neither admits nor denies Paragraph 136.

(C) Brett Favre

137. Austin Smith neither admits nor denies Paragraph 137.

138. Austin Smith neither admits nor denies Paragraph 138.

VIII. VIOLATIONS BY DEFENDANTS OF LEGAL DUTIES

139. Austin Smith neither admits nor denies Paragraph 139 since Austin Smith was not in an executive position and has no knowledge of these allegations.

140. Austin Smith neither admits nor denies Paragraph 140 since Austin Smith was not in an executive position and has no knowledge of these allegations.

141. To the extent Paragraph 141 pertains to Austin Smith, Austin Smith denies the allegations.

142. Austin Smith denies the allegations in Paragraph 142.

143. To the extent Paragraph 143 is intended to pertain to Austin Smith, the allegations are denied.

144. To the extent Paragraph 144 is intended to pertain to Austin Smith, Austin Smith did not tortiously interfere with anyone's contract.

145. To the extent Paragraph 145 is intended to pertain to Austin Smith, it is denied. Austin Smith knew of no regulations which would pertain to him, since he was merely contracting with nonprofit corporations. C.F.R. regulations do not govern contracts between private entities. Even if they did, Austin Smith did not violate any C.F.R. regulations.

146. Paragraph 146 is denied. Austin Smith performed the obligations for which he was

contracted to perform.

147. Paragraph 147 is denied because there is no duty upon Austin Smith to conform to regulations he knew nothing about.

148. Paragraph 148 is denied, and Austin Smith has neither participated in false statements, or concealed material facts.

IX. CONTRACTUAL VIOLATIONS BY ADDITIONAL DEFENDANTS

(A) SouthTec, Inc.

149. Austin Smith neither admits nor denies Paragraph 149 pertaining to SouthTec, Inc.

150. Austin Smith neither admits nor denies Paragraph 150 pertaining to SouthTec, Inc.

151. Austin Smith neither admits nor denies Paragraph 151 pertaining to SouthTec, Inc.

152. Austin Smith neither admits nor denies Paragraph 152 pertaining to SouthTec, Inc.

(B) Chase Computer Services, Inc.

153. Austin Smith neither admits nor denies Paragraph 153 pertaining to Chase Computer Services, Inc.

154. Austin Smith neither admits nor denies Paragraph 154 pertaining to Chase Computer Services, Inc.

155. Austin Smith neither admits nor denies Paragraph 155 pertaining to Chase Computer Services, Inc.

156. Austin Smith neither admits nor denies Paragraph 156 pertaining to Chase Computer Services, Inc.

(C) Warren Washington Issaquena Sharkey Community Action Agency

157. Austin Smith neither admits nor denies Paragraph 157.

158. Austin Smith neither admits nor denies Paragraph 158.

159. Austin Smith neither admits nor denies Paragraph 159.

160. Austin Smith neither admits nor denies Paragraph 160.

During Austin Smith's time with the Mississippi Department of Human Services, he never knew the Warren Washington Issaquena Sharkey Community Action Agency existed, but did learn of its existence after Austin Smith was subsequently employed by the State College Board.

(D) Soul City Hospitality LLC

161. Austin Smith neither admits nor denies Paragraph 161.

162. Austin Smith neither admits nor denies Paragraph 162.

163. Austin Smith neither admits nor denies Paragraph 163.

164. Austin Smith neither admits nor denies Paragraph 164.

165. Austin Smith neither admits nor denies Paragraph 165.

Austin Smith did not even know Soul City Hospitality, LLC, existed when he was employed by either of the two (2) nonprofits or the Mississippi Department of Human Services.

X. DAMAGES CAUSED

166. Austin Smith denies Paragraph 166 as it pertains to him.

167. Austin Smith denies Paragraph 166 as it pertains to him.

The State of Mississippi has named Austin Smith as a defendant in this suit without knowing the circumstances under which Austin Smith received employment or his contracts, and has made baseless claims that Austin Smith had no computer skills when Austin Smith has outstanding computer skills and a talent for doing computer work.

IX. TITLE TO PROPERTY ACQUIRED BY DEFENDANTS WITH TANF FUNDS

168. Paragraph 168 does not pertain to Austin Smith and it is, therefore, neither admitted nor denied.

169. Paragraph 169 does not pertain to Austin Smith and it is, therefore, neither admitted nor denied.

COUNT 1: VIOLATION OF MISS. CODE ANN. § 43-1-27

170. Paragraph 170 is denied, and to the extent it pertains to Austin Smith, Austin Smith never concealed any material fact and has never been asked by any representatives of the State of Mississippi about any of the allegations in this suit.

COUNT 2: TORT OF CIVIL CONSPIRACY

171. Paragraph 171 is denied, and to the extent it pertains to Austin Smith, Austin Smith has not conspired with anyone to do any illegal act.

COUNT 3: TORT OF NEGLIGENCE

172. Paragraph 172 is denied.

COUNT 4: TORT OF INTENTIONAL INTERFERENCE WITH CONTRACTUAL RELATIONS

173. Paragraph 173 is denied. Austin Smith has never interfered with any contract, and if the nonprofits breached their contract with the Mississippi Department of Human Services, Austin Smith had nothing to do with that breach.

COUNT 5: BREACH OF CONTRACTS BY DEFENDANTS OTHER THAN MCEC OR FRC

174. Paragraph 174 is denied.

COUNT 6: BREACH OF SUBGRANT CONTRACTS BY MCEC AND FRC

175. Paragraph 175 is denied.

I. FACTS CONCERNING INVOLVEMENT OF AUSTIN SMITH WITH STATE OF MISSISSIPPI, AND NONPROFIT ENTITIES OPERATED BY NANCY NEW AND CHRISTI WEBB

The facts concerning Austin Smith's relationship with the State of Mississippi, Nancy New, Christi Webb, and the nonprofits which they headed are as follows:

1. At age twenty-two (22), Austin Smith secured employment with the Mississippi Department of Human Resources, which was then headed by his uncle, John Davis. Austin Smith was hired by Garrig Shields, an attorney then employed by Mississippi Department of Human Services. Austin Smith began in an entry-level position earning approximately \$41,000 per year. Austin Smith's primary job duty was to monitor contracts.

2. Within a few months, Austin Smith was promoted to a workforce development position, with a salary increase to \$45,000 per year.

3. While working in workforce development, Austin Smith met Nancy New, whom he later learned is the chief executive officer of Mississippi Community Education Center, Inc., "MCEC." Austin Smith worked with Nancy New, because her nonprofit corporation funded workforce development projects. Austin Smith almost immediately learned there was a close relationship between Nancy New and Governor Bryant's wife, because the governor's wife was often present when Austin Smith saw Nancy New. Later, Austin Smith learned that New was giving clothing to Governor Bryant's wife.

4. While Austin Smith was still working for MDHS, Austin Smith met Christi Webb,

whom he now knows to be the chief executive officer of Family Resource Center of North Mississippi “FRC.” Austin Smith initially did not know there was any difference between MCEC and FRC, and knew them collectively as “Families First.”

5. In approximately July 2018, Austin Smith learned that his employment was formally switched to New’s nonprofit entity, MCEC, from Webb’s nonprofit entity, FRC.

6. Austin Smith’s primary job duty when he worked for both nonprofits was project management and computer services. The computer services which Austin Smith performed for both nonprofits included:

- A. Changing the two (2) nonprofits’ business operations from an exclusively paper operation to a computer operation, immensely enhancing their efficiency; and
- B. Doing almost all of the hardware computer work for the nonprofit operated by Webb.

7. Both New and Webb appreciated Austin Smith’s computer skills, and sent him to several computer training courses in order to further enhance his skill. Austin Smith was the most skilled computer person working for either nonprofit.

8. Austin Smith understood that both nonprofits received grants from the State of Mississippi. He did not know the requirements of any specific grant, such as the TANF Grant. Austin Smith was not in management, and had no ability to control the distributions of funds from the two (2) nonprofits. Austin Smith was never consulted on how either nonprofit spent its money. Austin Smith was never asked his opinion about the now infamous State executive policy under which few needy families received financial assistance.

9. In the spring of 2018, Christi Webb informed Austin Smith of her intent to operate a program to teach coding skills to poor persons who could not afford to pay college costs to learn these skills. Webb stated that such a coding academy was appropriate because Amazon was moving

a facility to Mississippi, and it would be hiring persons with coding skills. Webb informed Austin Smith that because of Austin Smith's computer skills, he would be the person selected to write a curriculum to teach coding skills. Webb and Austin Smith discussed the complexity of the computer skills that would be required, and the necessity that Austin Smith obtain further skills in coding because of the many languages used for the software. Webb sent Austin Smith to New Orleans for a series of training courses, scheduled to last approximately six (6) months.

10. While Austin Smith was attending the computer-coding training in New Orleans, Austin Smith's uncle, John Davis, informed him that a new company named ABLE Consulting was being created, and the company would be operated jointly by him (Austin Smith) and an individual he did not then know named Brett DiBiase. Davis relayed that DiBiase was going to meet him in Biloxi so that Austin Smith could get to know DiBiase. According to Austin Smith's uncle, Smith would be performing computer and coding functions, and DiBiase would be performing drug counseling. At the time John Davis gave this information to Austin Smith, Smith knew neither that Brett DiBiase was a professional wrestler, nor that Brett DiBiase was himself a drug addict.

11. Austin Smith met Brett DiBiase in Biloxi as John Davis directed, for a "get acquainted" meeting.

12. Almost immediately following the meeting with Brett DiBiase in Biloxi, Austin Smith's family, including Austin Smith's own parents and John Davis, became hostile toward Austin Smith because Brett DiBiase had told them that Austin Smith had said that John Davis is homosexual. In fact, Austin Smith never told Brett DiBiase that John Davis was homosexual.

13. Because Brett DiBiase had lied about him, Austin Smith informed John Davis that

he (Austin Smith) would have no dealings with Brett DiBiase. Therefore, Austin Smith never had business dealings with Brett DiBiase, or with “ABLE Consulting”.

14. In the summer of 2018, in apparent reference to Austin Smith’s earlier conversation with Christi Webb, and a similar conversation Austin Smith had with Attorney Laura Goodsen, Attorney Garrig Shields presented Austin Smith with a DocuSigned contract with Christi Webb’s nonprofit. Under this contract, Austin Smith was to write a coding curriculum in exchange for a payment of \$130,000 (one hundred and thirty-thousand dollars). A true and correct copy of this Agreement is attached as Exhibit “1.”

15. Approximately seven (7) to eight (8) months after Austin Smith executed Exhibit “1,” Nancy New contacted Austin Smith and informed him that she wanted Austin Smith to perform the same type services that the Austin Smith was performing for Webb’s nonprofit for her nonprofit. New informed Austin Smith that her nonprofit would be paying him \$140,000 (one hundred and forty-thousand dollars) for similar work, but that additional work would be required. This additional work involved sequences in JavaScript and involved computer website and application design.

16. Subsequently, all of Austin Smith’s documents relevant to the coding contracts were subpoenaed by the FBI. Complying with the subpoena, Austin Smith gave all of his documents regarding his contract to the FBI. Austin Smith can now not locate the contract which he signed with Nancy New’s company. It is likely that Austin Smith gave his only copy of this contract to the FBI. Austin Smith has never had a DocuSigned contract with Nancy New’s company, but only a contract with handwritten signatures..

17. As was the case with the contract from Christi Webb, the contract with Nancy New

was paid in advance. Austin Smith's counsel has now advised him that such advanced payments were apparently made because, under MISS. CODE ANN. § 43-43-5, contractors had to first make payment before they could be reimbursed by the state.

18. During his time working for and contracting with the two (2) nonprofits, Austin Smith observed Nancy New and Christi Webb going to "Families First" meetings with Governor Bryant's wife, Deborah Bryant, and with Mississippi Supreme Court Justice Dawn Beam. The fact that New and Webb were meeting with highly-respected, prominent citizens, such as Deborah Bryant and Justice Beam, concerning "Families First," was further cause for Austin Smith to believe that there was nothing wrong with his contracts, especially since he understood that Webb and New were discussing with Deborah Bryant and Justice Beam how to spend "Families First" funds, including spending the funds to teach coding to poor persons unable to attend college.

19. Austin Smith completed and turned in the work he had contracted to perform. Austin Smith subsequently learned that this work was never used. Instead, Lobaki, Inc. contracted to perform substantially similar work. To Austin Smith's knowledge, Lobaki, Inc. created a "coding academy," but no one ever graduated from it.

20. While Austin Smith was still performing the services he had contracted to perform, Dr. Angela Mayfield, at that time executive director of the Mississippi State Community College Board, contacted Austin Smith and offered him employment as project manager for a preschool development grant known as "PDGB5." This grant was to perform services for low income children, the type of services which were normally performed by the Department of Public Welfare, but would now be performed by the Mississippi State Community College Board. Because this would be a

management position and would include state benefits, Austin Smith accepted that offer of employment.

21. Despite his title as project manager, Austin Smith was not allowed to actually determine how the PDGB5 grant funds were spent. All of the spending decisions were made by Dr. Laurie Smith, who was a high-level workforce advisor to Governor Bryant, and was later a high-level education advisor to President Trump. Austin Smith “signed off” on expenditures because he was being directed to do so by his immediate superior, Dr. Mayfield, and by Dr. Laurie Smith, who was his *de facto* superior, although she did not actually work for the Community College Board but, instead, worked for Governor Bryant.

22. During his time with the Community College Board, Austin Smith refused to “sign off” on only one expenditure. Dr. Mayfield, in the presence of Dr. Laurie Smith, directed Austin Smith to sign an authorization for payment for advertising to TeleSouth Communications, a large media company which operates the well-known radio show “SuperTalk.” Austin Smith declined to sign for this advertising because the time for making the expenditure under the terms of the grant had expired.

23. After the PDGB5 Grant expired, Austin Smith was the only grant employee whose employment was terminated. Among the PDGB5 Grant employees retained were Austin Smith’s secretary, the niece of SuperTalk’s prominent host, Paul Gallo.

24. In late September 2021, a CPA firm, newly-retained by the Mississippi Department of Human Services, published a “forensic audit” finding massive amounts of waste, fraud and abuse. The forensic audit published that John Davis had a “conflict of interest” in employing Austin Smith and in contracting with him. In fact, Austin Smith never spoke with John Davis about his contracts

with the nonprofits. Austin Smith was listed in this forensic audit, although Austin Smith had not been mentioned in the “single audit” which had been prepared by the Mississippi State Auditor.

25. Because of the publicity generated against Austin Smith as a result of the forensic audit, Austin Smith was unable to obtain suitable employment in Mississippi. He finally obtained employment in the State of Tennessee, where he now resides. The adverse publicity as a result of the forensic audit and the demand destroyed Austin Smith’s reputation. This publicity adversely affected Austin Smith’s ability to obtain employment, and was a significant cause of his having to file a bankruptcy petition. Austin Smith, however, has not listed the State of Mississippi or the United States as creditors in the bankruptcy because Austin Smith did not know that the contracts which he performed were in any way unlawful.

II. AFFIRMATIVE DEFENSES

1. Lack of authority to sue Austin Smith. Under Mississippi law, neither the Mississippi Department of Human Services nor the Attorney General of the State of Mississippi has authority to sue Austin Smith, a private party, because of his contractual dealings with a nonprofit entity. *See e.g., Lincoln Cnty. v. Entrican*, 230 So. 2d 801, 804 (Miss. 1970) (“procedure prescribed by statute must be strictly construed to the exclusion of all other methods of redress”), and *see* Attorney General’s Opinion, 2005 WL 428011, *2 (Miss. A.G. Jan. 24, 2005) (“Once dues are paid into a private organization, the funds are no longer public funds and are no longer restricted by the laws governing state agencies’ investments and expenditures”). The only applicable authority to sue under the circumstances of this case is found in MISS. CODE ANN. § 7-7-211(g). That statute authorizes suits only for recovery of “public funds,” which have been misappropriated by an “officer” or employee of any “state, county or other public office.” Except for the few months when he was a

salaried employee for the Mississippi Department of Human Services, Austin Smith was not a public employee, but only a contractor with a nonprofit, private entity. Thus, the suit against Austin Smith is not authorized by law.

Alternatively, if this suit be authorized by MISS. CODE ANN. § 43-1-27(1), no amount is due because there is no allegation that Austin Smith made a “false statement, misrepresentation, [or] concealment of a material fact. . . .” as required by that statute.

2. Failure to join necessary parties. MISS. R. CIV. P. 19(a)(2)(ii) requires one to be joined as a party if the litigation otherwise poses a “substantial risk of incurring double, multiple, or otherwise inconsistent obligations. . . .” Because the Complaint omits persons who have the same obligations as the persons being sued, additional parties/defendants are necessary in order for this litigation to proceed. At the least, the following parties should be made defendants:

GOVERNOR PHIL BRYANT SHOULD BE NAMED AS A NECESSARY
PARTY DEFENDANT

A. In Paragraphs 116 through 130 of the present Complaint, under the heading “(A) Purchases of Stock in Prevacus and PreSolMD,” the Attorney General has outlined a scheme under which welfare money was transferred for the benefit of private entities, including Prevacus, Inc., and PreSolMD. The Attorney General, however, has omitted Bryant as a defendant. Text messages published by Anna Wolfe in *Mississippi Today* prove that Bryant participated in this scheme, by agreeing to “open a hole” for the transfer of taxpayer money to the private entities Prevacus, Inc., and PreSolMD. In the text messages, Governor Bryant is offered stock in Prevacus, Inc. According to the text messages, Bryant agreed to accept stock in Prevacus, Inc. within days after leaving office. The transfer of welfare money to Prevacus, Inc., a private entity, could not have occurred except for Governor Bryant’s agreeing to “open a hole” for the transfer of the taxpayer money to Prevacus, Inc.

Accordingly, Bryant is jointly liable with those defendants whom the Attorney General sues under Paragraphs 116 through 130 of the Complaint.

B. Paragraphs 95 through 99 of the Complaint under the heading “Ted DiBiase, Sr.,” alleges the misappropriation of over \$1,000,000 in TANF funds for the benefit of Heart of David Ministries, Inc., a so-called “faith-based ministry.” The Complaint, however, does not mention the involvement of Governor Bryant in the misappropriation of funds to Heart of David Ministries, Inc.

In early 2017, after John Davis testified before Congress praising Mississippi’s welfare program, John Davis told Austin Smith that the State was going to receive funds because of a “faith-based initiative.” John Davis further informed Austin Smith that Governor Bryant had directed that the contract for distribution of these “faith-based initiative” fund, was to be awarded to Heart of David Ministries, Inc. According to Davis, Governor Bryant chose Heart of David Ministries, Inc. because the DiBiases, who operated Heart of David Ministries, Inc., would bring movies to the State of Mississippi.

Assuming that the “faith-based initiative” actually means TANF funds, Governor Bryant could not have actually believed that Heart of David Ministries, Inc., operated by the DiBiases (a professional wrestling family), had a “special skill” to expend welfare money for the benefit of needy families. Ted DiBiase, Sr., “The Million Dollar Man,” was a champion in professional wrestling, a pseudosport, in which the champions are determined by fixed matches. According to a post about him on Wikipedia, “The Million Dollar Man” repeatedly bragged that he was paying bribes for his championship belts. According to the same source, Ted DiBiase, Sr. authored a book entitled *Every Man Has His Price*. One who practices deceit as a profession is unlikely to possess special skills that would be used to benefit needy families. Governor Bryant’s directing welfare funds to the Heart

of David Ministries, Inc. was negligent. It was also a direct violation of 2 C.F.R. § 200.319, since there was no “full and open competition,” for the funds, although there are hundreds, if not thousands, of honest “faith-based ministries” in Mississippi which would have qualified for the funds.

C. Nancy New informed Austin Smith that she had paid for addiction treatment of Noah Malone, grand nephew of Governor Bryant. That Governor Bryant was involved in his nephew’s treatment is corroborated by text messages between Governor Bryant and John Davis. Paragraphs 86 through 94 of the Complaint describe a scheme under which Brett DiBiase received treatment for addiction from various defendants who are named. To the same extent as other defendants are liable for improper use of TANF funds for the treatment of Brett DiBiase, Governor Bryant is liable for TANF funds or welfare funds expended for the treatment of Governor Bryant’s grand nephew. Paying for treatment for Governor Bryant’s grand nephew is especially egregious, since State law establishes onerous requirements for needy families to receive benefits. *See* MISS. CODE ANN. § 43-17-5.

D. The Complaint alleges that Nancy New, and companies operated by her, received multimillions in TANF grants from 2016 through 2019. Such a massive expenditure to Nancy New and her companies could not have been made if there had been “full and open competition” for the grants as required by 2 C.F.R. § 200.319. The most plausible reason for this massive transfer to New and her companies is the friendship between Bryant and New. There was no “full and open competition” for this massive federal funding as required by 2 C.F.R. § 200.319.

E. Governor Bryant was personally involved in the transfer of money intended for needy

families to Prevacus, Inc., to Heart of David Ministries, Inc., and for the benefit of Bryant's nephew. Governor Bryant's personal involvement in these misexpenditures would have communicated to Governor Bryant's immediate subordinate, John Davis, and to Governor Bryant's long-time, personal friend, Nancy New, that Bryant did not require TANF funds to be used exclusively for the benefit of needy families, but that the governor ratified and approved use of TANF funds for non-TANF purposes. Thus, to the extent that Governor Bryant's immediate subordinate, John Davis, and close personal friend, Nancy New, were expending TANF funds for non-TANF purposes without "full and open competition," Governor Bryant is jointly responsible.

THE UNIVERSITY OF SOUTHERN MISSISSIPPI ATHLETIC FOUNDATION, THE
BOARD OF TRUSTEES OF STATE INSTITUTIONS OF HIGHER LEARNING OF THE
STATE OF MISSISSIPPI, AND THE MEMBERS OF THEIR GOVERNING BOARDS,
SHOULD BE NAMED AS NECESSARY
PARTY DEFENDANTS

A. The Attorney General has failed to name as defendants the University of Southern Mississippi Athletic Foundation, the Board of Trustees of State Institutions of Higher Learning of the State of Mississippi, and their members. These entities executed a phony lease and sublease, under which MCEC paid \$5,000,000 for the "lease" of University of Southern Mississippi Athletic Facilities. In fact, MCEC never made any meaningful use of MCEC's athletic facility. The "lease" and "sublease" were a cover for the transfer of \$5,000,000 to be used for the construction of a volleyball court. The phony lease and sublease purporting to lease Southern Mississippi facilities to MCEC are attached hereto as Exhibits "2(a)" and "2(b)." Minutes of the Board of Trustees of State Institutions of Higher Learning of the State of Mississippi approving the lease is attached hereto as Exhibit "3." A letter from the Auditor of the State of Mississippi asserting that the Mississippi Board of Institutions of Higher Learning had actual knowledge that the \$5,000,000 was

welfare money is attached hereto as Exhibit “4.” The Mississippi Board of Institutions of Higher Learning, as well as the University of Southern Mississippi Athletic Foundation and the members of their governing boards, should be named as defendants because they are directly responsible for the transfer of \$5,000,000 in welfare funds for purposes other than the benefit of needy families.

LOBAKI, INC. SHOULD BE NAMED AS A NECESSARY
PARTY DEFENDANT

A. After Austin Smith completed his contract by performing the duties which he had been contracted to perform, neither MCEC nor FRC utilized the curriculum which Austin Smith had developed. Instead, the nonprofits, or one of them, retained Lobaki, Inc., to perform coding services similar to what Austin Smith had been contracted to perform and had performed. Lobaki, Inc. purported to operate a “coding academy” to train persons in coding, but there were never any graduates of the coding academy. Since the Attorney General alleges that Austin Smith is liable because of his involvement in the “coding curriculum,” it is inescapable that Lobaki, Inc. must be liable for the same reasons. Lobaki, Inc. is, therefore, also a necessary party defendant.

LOGAN DILLON AND KIM DILLON ARE
NECESSARY PARTY DEFENDANTS

A. Paragraphs 86 through 94 of the Complaint alleges a scheme under which various defendants caused Brett DiBiase to receive “treatment fees” for treatment at a luxury facility in California. The Complaint, however, does not make any claim for “treatment fees” which were paid by Nancy New’s nonprofit, MCEC for treatment of Logan Dillon. Nancy New informed Austin Smith that she was paying for treatment for Logan Dillon, the son of Kim Dillon, the chief executive officer of TeleSouth Communications. Logan Dillon is also a former legislative liaison for Governor Bryant. The fact that such welfare department funds were likely used for the treatment of Logan

Dillon is corroborated by Logan Dillon's former wife, an acquaintance of Austin Smith, who informed Austin Smith that her ex-husband, Logan Dillon, in fact, was receiving treatment paid for by Nancy New's nonprofit. Such a misuse of money intended for TANF beneficiaries is especially egregious since State law establishes onerous requirements for needy families to receive benefits. *See* MISS. CODE ANN. § 43-17-5.

III. DENIAL OF EQUAL PROTECTION OF THE LAW AS GUARANTEED BY THE FOURTEENTH AMENDMENT OF THE UNITED STATES CONSTITUTION

Former Governor Phil Bryant, Prevacus, Inc., the University of Southern Mississippi Athletic Foundation, the Board of Trustees of State Institutions of Higher Learning of the State of Mississippi and their members, are all participants in the welfare fraud alleged in this Complaint. Their participation has been documented either by the State Auditor, by the outside forensic audit, or by *Mississippi Today*, which supports its articles with texts and public records. Arbitrarily naming Austin Smith, who has no assets with which to pay a judgment, while not suing politically-influential entities, such as former Governor Phil Bryant, Prevacus, Inc., the University of Southern Mississippi Athletic Foundation, and the Members of the Board of Trustees of State Institutions of Higher Learning of the State of Mississippi, represents arbitrary denial of equal protection of laws guaranteed by the Fourteenth Amendment of the United States Constitution.

IV. REQUEST FOR RELIEF

Defendant Austin Garrett Smith, therefore, requests that this Court dismiss the Complaint against him.

RESPECTFULLY SUBMITTED, this the 24th day of June, 2022.

AUSTIN GARRETT SMITH, Defendant

By: /s/ JIM WAIDE

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CERTIFICATE OF SERVICE

This will certify that undersigned counsel for Defendant Austin Garrett Smith has this day filed the above and foregoing with the Clerk of the Court, utilizing the Mississippi courts electronic case data filing system (MEC), which sent notification of such filing to the following:

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DATED, this the 24th day of June, 2022.

/s/ JIM WAIDE

Jim Waide