

STATE OF NORTH CAROLINA

FILED IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION

WAKE COUNTY

FILE NO:  
2007 JUL 12 P @ 38

WILLIAM PATRICK ANDREWS, )  
WAKE COUNTY, CSC )

Plaintiff, )

v. )

COMPLAINT

THE UNIVERSITY OF NORTH )  
CAROLINA, a body politic and corporate )  
institution of the State of North Carolina, )  
THE UNIVERSITY OF NORTH )  
CAROLINA AT CHAPEL HILL, a )  
constituent institution of the University of )  
North Carolina, and RAYMOND E. )  
DUBOSE, both individually and in his )  
official capacity as Director of Energy )  
Services for the University of North )  
Carolina at Chapel Hill, and Unknown )  
Persons, )

[with demand for jury trial]

Defendants. )

NOW COMES Plaintiff WILLIAM PATRICK ANDREWS (herein "Plaintiff"),  
by and through counsel and pursuant to N.C. R. Civ. P. 8, complaining against THE  
UNIVERSITY OF NORTH CAROLINA (herein individually "UNC" and collectively  
"Defendants"), a body politic and corporate institution of the State of North Carolina,  
THE UNIVERSITY OF NORTH CAROLINA at CHAPEL HILL (herein individually  
"UNC-CH" and collectively "Defendants"), a constituent institution of The University of  
North Carolina, RAYMOND E. DUBOSE (herein individually "Dubose" and  
collectively "Defendants"), both in his individual capacity and in his official capacity as  
Director of Energy Services for the University of North Carolina at Chapel Hill, and  
other persons unknown at present, but are believed to have exercised supervisory  
authority over Plaintiff during times relevant herein, alleges and says as follows:

## PARTIES

1. Plaintiff William Patrick Andrews is a citizen and a resident of Orange County, North Carolina.
2. Defendant University of North Carolina is a body politic and corporate institution within the State of North Carolina that is organized and exists pursuant to N.C. Gen. Stat. § 116-1, *et seq.*, and as such, is a State institution that is empowered to sue and be sued.
3. Defendant University of North Carolina at Chapel Hill is a constituent institution of the University of North Carolina that is organized and exists pursuant to N.C. Gen. Stat. § 116-4, *et seq.* and as such, is a State institution that is empowered to sue and be sued and is located in Orange County, North Carolina.
4. On information and belief, Defendant Raymond E. DuBose is a citizen and resident of Orange County, North Carolina and has been employed as Director of Energy Services Department within the Campus Services Division of the University of North Carolina at Chapel Hill and, at all times relevant herein, exercised supervisory authority over Plaintiff, pursuant to N.C. Gen. Stat. § 126-85.
5. On information and belief, there are other unknown persons who have exercised supervisory authority over Plaintiff and who are believed to have discriminated against Plaintiff in retaliation for his engagement in protected activity, as alleged herein. The identity and culpability of any

such persons are not presently known and can only be determined through discovery in this action.

### **JURISDICTION**

6. Plaintiff invokes the jurisdiction of this Court pursuant to N.C. Gen. Stat. § 126-84, *et seq.* (herein "Whistleblower Act")
7. This action has been filed within one year (1) after the occurrence of the last act of retaliation as culminated in the demotion of Plaintiff.
8. At all times relevant herein, Defendants have failed to post sufficient notice in accordance with N.C. Gen. Stat. § 95-9 or otherwise use appropriate means to keep its employees, including Plaintiff, informed of their protections and obligations under the Whistleblower Act, as required by N.C. Gen. Stat. § 126-88.
9. Plaintiff only became sufficiently aware of his rights under the Whistleblower Act more than 30 days (but within one year) after he was informed of his demotion by UNC-CH.

### **ADMINISTRATIVE PROCEDURES**

10. On information and belief and to the extent that it existed on or about July 12, 2006, Defendants' policy relating to rights under the Whistleblower Act did not afford or otherwise notify employees of a right to file an internal grievance or to petition for Contested Case within the Office of Administrative Hearings within any time period.
11. Instead, on information and belief and to the extent it existed if at all, Defendants' policy relating to rights under the Whistleblower Act only

notified employees that they may be able to file a complaint in the superior court if they believe they were subjected to retaliation for engaging in protected activity.

12. Although not required to, Plaintiff did not file a contested case with the Office of Administrative Hearings or otherwise pursue and exhaust any administrative remedies that may have been available because the pursuit and exhaustion of any such administrative remedies would have been futile and inadequate for at least the following reasons:
  - a. Plaintiff was not fully aware of his rights under the Whistleblower Act until more than 30 days after the retaliatory event of his demotion. Accordingly, had Plaintiff filed a petition for Contested Case Hearing for retaliation under N.C. Gen. Stat. § 126-34.1(7), then based on UNC-CH's interpretation of the law, on information and belief, Plaintiff's petition for Contested Case Hearing would have been dismissed for filing the internal grievance more than 30 days after the retaliatory event;
  - b. Had Plaintiff filed a petition for Contested Case Hearing for retaliation under N.C. Gen. Stat. § 126-34.1(7), Plaintiff would have been deprived of his right to a trial by jury pursuant to N.C. Gen. Stat. Chapter 126, Article 14;
  - c. Had Plaintiff filed a petition for Contested Case Hearing for retaliation under N.C. Gen. Stat. § 126-34.1(7), Plaintiff would have been deprived of his right to recover his full measure of damages;

- d. Had Plaintiff filed a petition for Contested Case Hearing for retaliation under N.C. Gen. Stat. § 126-34.1(7), Plaintiff would have been deprived of his right to sue any defendant in an individual capacity;
  - e. Had Plaintiff filed a petition for Contested Case Hearing for retaliation under N.C. Gen. Stat. § 126-34.1(7), Plaintiff would have been deprived of his right to be awarded treble damages against individuals found to be in willful violation pursuant to N.C. Gen. Stat. § 126-87.
13. To the extent required, Plaintiff has satisfied all private, administrative, and judicial prerequisites for the institution of this action.

#### FACTUAL BACKGROUND

14. From at least June 8, 2000 up to and including this current date, Plaintiff has been employed by UNC-CH to serve as an electrical engineer in its Energy Services Department, which is a department in UNC-CH's Campus Services Division.
15. From June 8, 2000 until approximately August 23, 2006, Plaintiff was promoted by UNC-CH where he served in the management position of Facility Electrical Engineer III (also referred to as "management position"), which was classified as Pay Grade 80.
16. As a Facility Electrical Engineer III, Plaintiff was given broad supervision, planning, budgeting and management authority, *inter alia*, for all matters pertaining to the electrical systems and related infrastructure for UNC-CH (*i.e.* "Electric Distribution Unit").

17. Plaintiff's broad authority as referenced in the preceding paragraph extended to those projects that underlie Defendants' gross waste and mismanagement as alleged *infra*.
  
18. In the performance of his work duties up to the initial retaliatory event, Plaintiff had always met or exceeded Defendants' expectations even to the point of excelling in his employment duties for Defendants.

First Instance of Gross Waste and Management  
"Drainpipe-Ductbank Project"

19. Duke Power provides bulk electricity to UNC-CH's Electric Distribution Unit ("Unit"). The Unit distributes the bulk electricity to customers within the UNC-CH campus community based on a rate per kilowatt hour for campus use.
  
20. On information and belief, UNC-CH discovered that a storm drain pipe ("drain pipe") located about 30 feet deep underneath a parking lot adjacent to what is known as the "Dean Dome" on campus had leakage that over time had caused substantial "sink holes" in the parking lot.
  
21. The purpose of the drain pipe is to permit a creek to flow underneath the parking lot at the Dean Dome.
  
22. On information and belief, UNC-CH's consultants ("designers") developed a plan to repair the drain pipe by replacing it with larger pipe, which plan would require the excavation of the drain pipe located underneath the parking lot.

23. Also located near the drain pipe about six feet deep was a "ductbank" that covered the duct pipe owned by Duke Power that is used to distribute electricity within the UNC-CH campus.
24. On information and belief, as the designers work of excavation got closer to the parking lot, they discovered that the ductbank was located closer to the drain pipe than they had anticipated ("drain pipe-ductbank project").
25. Within the authority of his management position, Plaintiff determined and recommended that the most efficient solution to solve the drain pipe-ductbank conflict was to install a new ductbank around the parking lot or to otherwise redirect the distribution of electricity while the new drain pipe was installed and the parking lot repaired ("redirect approach")—all at an estimated cost of five hundred thousand dollars (\$500,000.00).
26. However, on information and belief, Plaintiff's supervisor Defendant DuBose disagreed with Plaintiff's proposed solution and instead recommended that UNC-CH excavate the drain pipe by building a wall underneath the ground to divide the drain pipe from the ductbank at an initial estimated cost of two (2) million dollars ("building a wall approach").
27. On information and belief, UNC-CH officials eventually decided to use the significantly more costly "building a wall approach" instead of the less costly "redirect approach."
28. Both before and after UNC-CH officials opted for the more costly "building a wall approach," Plaintiff complained to DuBose and other

UNC-CH officials at interval times about the gross waste and mismanagement of selecting this approach when compared to his less costly and more efficient “redirect approach.”

29. On information and belief, the actual cost of UNC-CH’s “building a wall approach” substantially exceeded the \$2 million “estimate” to be approximately \$5.3 million and took many more months to complete.

Second Instance of Gross Waste and Management by UNC-CH  
“Transmission Improvement Project”

30. At all times relevant herein, the UNC-CH campus has had three electric distribution substations (“substations”) that distributed up to approximately 40 megawatts of electricity each.
31. On information and belief, the current overall need of electricity to cover the customers at UNC-CH is approximately 78 megawatts.
32. On information and belief, UNC-CH through the assistance of consultants determined that within 8-10 years, the overall need of electricity to cover the customers at UNC-CH will be about 120 megawatts and in 15-20 years will be approximately 144 megawatts.
33. Accordingly, to accommodate the anticipated additional overall demand for electricity, UNC-CH will need to add transformers to have the capacity to distribute the increased future demand of electricity (“transmission improvement project”).
34. Plaintiff offered a plan for the transmission improvement project that was estimated at \$21 million to install and complete, but where UNC-CH



would retain complete ownership over the infrastructure (“Plaintiff’s plan”).

35. On information and belief, Duke Power had no interest in being involved in the prospective transmission improvement project until around 2005.
36. On information and belief, around 2005, Duke Power offered UNC-CH a plan on the transmission improvement project whereas UNC-CH would pay Duke Power the sum of \$23 million, plus approximately \$90,000.00 per month for 30 years (at a total present value of approximately \$37 million) with Duke Power retaining ownership of the infrastructure (“Duke Power’s plan”).
37. On information and belief, UNC-CH officials appeared before the North Carolina General Assembly to seek an exemption from the state law that prohibits a State entity from making a purchase of items without retaining ownership.
38. On information and belief, to secure approval of the exemption of the General Assembly, UNC-CH officials submitted to it that the estimated cost of Plaintiff’s plan was \$35 million (instead of the actual estimate of \$21 million) as a way of hiding the gross waste and mismanagement of selecting Duke Power’s plan.
39. On information and belief, the General Assembly granted UNC-CH an exemption so that it could implement Duke Power’s plan based unknowingly on the false estimate of Plaintiff’s plan.

40. Plaintiff complained on interval occasions to UNC-CH officials, including Defendant DuBose about the false estimate that UNC-CH provided to the General Assembly and the gross waste and mismanagement in selecting Duke Power's plan over Plaintiff's plan, but to no avail.

#### Retaliation by Defendants

41. On or about March 22, 2006, Defendants through DuBose issued Plaintiff a written warning ("first written warning") containing false accusations concerning Plaintiff's work performance and/or conduct.
42. On information and belief, the actual purpose of the first written warning was not because of any legitimate concerns about Plaintiff's work performance and/or conduct, but to retaliate against Plaintiff for having complained in good faith to UNC-CH officials about a violation of state laws pertaining to hiring practices and the gross waste and mismanagement and potential fraud that were inherent in UNC-CH's handling of the drain pipe-ductbank project and the transmission improvement project.
43. On June 2, 2006, Defendants through DuBose issued Plaintiff a written warning ("second written warning") containing false accusations concerning Plaintiff's work performance and/or conduct.
44. On information and belief, the actual purpose of the second written warning was not because of any legitimate concerns about Plaintiff's work performance and/or conduct, but to retaliate against Plaintiff for having complained in good faith to UNC-CH officials about the gross waste and

mismanagement and potential fraud that were inherent in UNC-CH's handling of the drain pipe-ductbank project and the transmission improvement project.

45. Also on June 2, 2006 and on behalf of UNC-CH, Defendants through DuBose issued Plaintiff his Annual Performance Review wherein DuBose rated Plaintiff as "Below Good" in some areas and "Unsatisfactory" in other areas ("false work evaluation").
46. On information and belief, the actual purpose of the false work evaluation was not because of any legitimate concerns about Plaintiff's work performance and/or conduct, but to retaliate against Plaintiff for having complained in good faith to UNC-CH officials about the gross waste and mismanagement and potential fraud that were inherent in UNC-CH's handling of the drain pipe-ductbank project and the transmission improvement project.
47. Plaintiff filed internal grievances to dispute the legitimacy of the first written warning, second written warning and the false work evaluation (collectively "internal grievances").
48. In response to the internal grievances, Defendants through DuBose in or about June-July 2006 presented Plaintiff with an "Agreement" wherein "Ray DuBose" agreed to remove the first written warning and the second written warning and upgrade Plaintiff's false work evaluation to reflect an overall performance rating from "Below Good" to "Good" in exchange for Plaintiff to "agree" to withdraw his first and second grievances and

“accept” a demotion to the position of Facility Electrical Engineer II (Pay Grade 77) with a corresponding loss of salary of approximately \$11,780.00 per year (“proposed agreement”). A true copy of the proposed agreement has been attached hereto as Exhibit A and is incorporated herein by reference.

49. On July 12, 2006, Defendants through DuBose and others informed Plaintiff that he was required to accept the proposed agreement (“demotion”) or that he would be terminated from his employment with UNC-CH (“threat”).
50. In response to Defendants’ threat through DuBose, Plaintiff signed the proposed agreement under the threat of termination if he were to decline and submitted the same to DuBose on July 12, 2006.
51. As a result of Plaintiff signing the proposed agreement under the threat of termination, UNC-CH effectuated the demotion of Plaintiff on or about August 23, 2006, which demotion caused Plaintiff to be reduced to the position of Facility Electrical Engineer II (Pay Grade 77) with the corresponding loss of salary of approximately \$11,780.00 per year and benefits.
52. On information and belief, the actual purpose of Plaintiff’s forced demotion was not because of any legitimate concerns about Plaintiff’s work performance and/or conduct, but to retaliate against Plaintiff for having complained in good faith to UNC-CH officials about the gross waste and mismanagement and potential fraud that were inherent in UNC-

CH's handling of the drain pipe-ductbank project and the transmission improvement project.

53. Further, on information and belief, the actual purpose of Plaintiff's forced demotion was to enact a proactive measure to keep Plaintiff away from having the management authority and responsibility that provides him with first-hand knowledge about the gross waste and management within the UNC-CH administration.
54. On information and belief, UNC-CH's purported policy for retaliation against reporting illegal conduct does not permit employees to file an internal grievance and does not advise employees of any internal grievance rights for concerns about retaliation as proscribed by the Whistleblower Act.

#### **CLAIM FOR RELIEF**

(Whistleblower Claim Act Claim—N.C. Gen. Stat. § 126-84, *et seq.* )

55. The foregoing allegations are hereby realleged and fully incorporated herein by reference as if fully set forth herein.
56. At all times relevant herein, Plaintiff has been a State employee of North Carolina within the meaning of the Whistleblower Act.
57. On information and belief, UNC-CH through its managing employees engaged in the gross mismanagement, gross waste and/or fraud of public monies (collectively "gross waste and mismanagement") when it:
  - a. Determined the "solution" in the drain pipe-ductbank project, as alleged herein;

- b. Determined the “solution” in the transmission improvement project, as alleged herein;
  - c. Reported a false estimate to the General Assembly when seeking an exemption in the transmission improvement project, as alleged herein
  - d. And in such other ways to be proved at trial following discovery.
58. Plaintiff engaged in a protected activity when he reported such gross waste and gross mismanagement and potential fraud in good faith on multiple occasions from at least January 2006 until June 2006 to UNC-CH officials, including Defendant DuBose (“protected activity”).
59. On information and belief, Defendants discriminated against Plaintiff because he engaged in the protected activity including but not limited to the following ways:
- a. When Defendants issued Plaintiff the first written warning containing false allegations or otherwise for the primary purpose of retaliating against Plaintiff;
  - b. When Defendants issued Plaintiff the second written warning containing false allegations or otherwise for the primary purpose of retaliating against Plaintiff;
  - c. When Defendants issued Plaintiff the false work performance evaluation containing artificially lowered work performance ratings not to accurately measure Plaintiff’s work performance, but for the primary purpose to retaliate against Plaintiff;

- d. When Defendants forced Plaintiff to sign the forced agreement under the threat of termination in response to Plaintiff's internal grievances;
  - e. When Defendants demoted Plaintiff in August 2006;
  - f. In such other ways as may be determined through discovery and proved at trial.
60. Defendants' alleged "reasons" for demoting Plaintiff, issuing the written warnings and falsely lowering his work performance ratings were specious and served merely as a pretext to retaliate against Plaintiff because he had been engaging in the protected activity.
61. Even if Defendants had valid or legitimate reasons for taking adverse action against Plaintiff, which is denied, Defendants' retaliatory animus was a substantial causative factor for the adverse action that was taken against Plaintiff.
62. On information and belief, Defendants' violations of N.C. Gen. Stat. § 126-85 were willful and unjustified.
63. As a direct and proximate result of the retaliation by Defendants, Plaintiff has incurred damages in an amount to proven at trial, but in excess of \$10,000.00.

#### **DEMAND FOR JURY TRIAL**

Pursuant to N.C. R. Civ. P. 38(b), Plaintiff hereby demands a jury trial in this action.

## PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays unto the Court as follows:

1. That the Court declare that the employment practices of Defendants, as complained of herein, were unlawful, willful and violated Plaintiff's rights under the Whistleblower Act;
2. That the Court grant a permanent injunction against Defendants as follows:
  - a. That Defendants be required to reinstate Plaintiff to the same job position, classification, salary, seniority rights and benefits that Plaintiff had immediately prior to the demotion effective around July 24, 2006, plus any applicable pay raises that Plaintiff would have received had he not been demoted in the interim;
  - b. That Defendants be required to remove any and all materials or references contained within Plaintiff's personnel file that indicate Plaintiff received a demotion.
  - c. That Defendants, their agents, managers, and employees be enjoined from any further acts of retaliation against Plaintiff;
3. That Plaintiff have and recover of Defendants, jointly and severally, the amount of his damages, including but not limited to back wages and loss of benefits, in an amount in excess of \$10,000.00, plus interest;
4. That the amount of Plaintiff's damages be trebled and that he be awarded his reasonable attorney's fees pursuant to N.C. Gen. Stat. § 126-87;
5. That the cost of this action be taxed against Defendants;

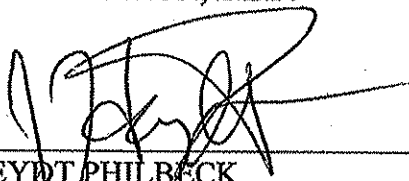


6. That the Court grant Plaintiff such other and further relief as it deems just and proper.

This the 12<sup>th</sup> day of July, 2007.

BAILEY & DIXON, L.L.P.

By:



\_\_\_\_\_  
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at CHAPEL HILL



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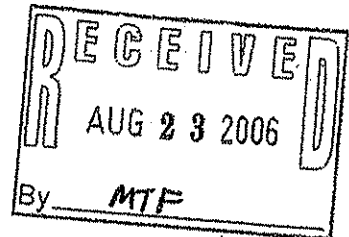
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AGREEMENT

DATE: July 12, 2006

PARTICIPANTS: Ray DuBose, Director of Energy Services  
William Patrick Andrews, Manager of Electrical Distribution Systems



TERMS:

Ray Dubose agrees to:

- Remove the two written warnings dated March 22, 2006 and June 2, 2006 from Pat Andrew's file
- Change Pat Andrew's June 2, 2006 overall annual performance rating from "Below Good" to "Good"
- Reclassify Pat Andrew's position to a Facility Electrical Engineer II (salary grade 77) and set his salary as \$76,122. This position will be working with system improvement projects as opposed to capital improvement projects and will not supervise any direct reports.

Pat Andrews agrees to:

- Withdraw his step 2 grievance dated March 22, 2006 (This grievance was withdrawn on June 13, 2006).
- Withdraw his step 1 grievance dated July 3, 2006.
- Withdraw his performance review appeal dated June 20, 2006.
- Accept a reclassification down from a Facility Electrical Engineer III (salary grade 80) to a Facility Electrical Engineer II (salary grade 77) and a salary reduction from a salary of \$91,034 to a salary of \$79,254 (annual net loss of \$11,780).\*

\*These figures reflect the 2006 Legislative Salary Increase of 5.5% made effective July 1, 2006.

*Ray DuBose*  
Ray DuBose

7-13-06  
DATE

*William Patrick Andrews*  
William Patrick Andrews

July 12, 2006  
DATE