

**The exhibits attached to
the Complaint are on file
in the Supreme Court
Clerk's Office and the
Monongalia County
Circuit Clerk's Office.**

IN THE CIRCUIT COURT OF MONONGALIA COUNTY, WEST VIRGINIA

GREER INDUSTRIES, INC.

Plaintiff,

v.

CIVIL ACTION NO. 15-C-74
The Hon. Russell M. Clawges, Jr.

WEST VIRGINIA UNIVERSITY
FOUNDATION, INC.,

Defendant.

ANSWER AND COUNTERCLAIM OF
WEST VIRGINIA UNIVERSITY FOUNDATION, INC.
TO PLAINTIFF'S COMPLAINT

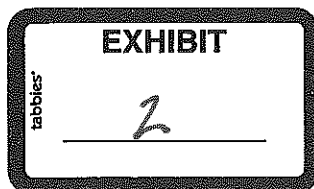
COMES NOW, the Defendant, the West Virginia University Foundation, Inc., ("WVUF"), by counsel, and for its Answer to Greer Industries, Inc.'s ("Greer") Complaint, states as follows:¹

ANSWER

Parties

1. In response to Paragraph 1 of Plaintiff's Complaint, WVUF admits that Greer is a West Virginia Corporation with its principal place of business in Morgantown, West Virginia and that has from time to time been a donor to WVUF. WVUF assumes that Greer is a West Virginia taxpayer but lacks firsthand information as to Greer's payment of taxes sufficient to admit this allegation in Paragraph 1 of the Complaint.

¹ WVUF is filing a Partial Motion to Dismiss contemporaneously with the filing of this Answer and the filing of this Answer should not be construed in anyway as a waiver any grounds for dismissal raised by WVUF in its Partial Motion to Dismiss.



[Handwritten signature]

2. In response to Paragraph 2 of Plaintiff's Complaint, WVUF admits that it is a private, non-profit 501(c)(3) corporation with its principal place of business in Monongalia County, West Virginia. WVUF also admits that Plaintiff has correctly quoted in Paragraph 2 of Plaintiff's Complaint language that appears on page 1 of WVUF's 2013-2014 Annual Report.

Jurisdiction and Venue

3. In response to Paragraph 3 of Plaintiff's Complaint, WVUF admits that jurisdiction is appropriate. WVUF denies its acts or omissions created a cause of action as alleged by Plaintiff and that Plaintiff is entitled to the relief sought in the Complaint.

4. In response to Paragraph 4 of Plaintiff's Complaint, WVUF admits that jurisdiction is appropriate. WVUF denies its acts or omissions create a cause of action and that Plaintiff is entitled to the relief sought in the Complaint.

5. In response to Paragraph 5, WVUF admits venue is proper in Monongalia County. WVUF denies its acts or omissions create a cause of action and that Plaintiff is entitled to the relief sought in the Complaint.

Facts

A. Introduction

6. In response to Paragraph 6 of Plaintiff's Complaint, WVUF denies the allegation as stated therein. WVUF admits that its mission as a non-profit, private charitable corporation is to maximize private charitable support of West Virginia University ("WVU") and its affiliated entities by generating, administering, investing, and disbursing funds and properties given by individuals, corporations, and philanthropic foundations in support of WVU and its affiliates. It further admits that it fulfills this mission in many ways, including but not limited to, raising

money for scholarships, faculty development, facilities and equipment and other priorities of WVU.

7. In response to Paragraph 7 of Plaintiff's Complaint, WVUF denies the allegations contained therein.

8. In response to Paragraph 8 of Plaintiff's Complaint, WVUF denies the allegations contained therein.

9. In response to Paragraph 9 of Plaintiff's Complaint, WVUF denies the allegations contained therein.

10. In response to Paragraph 10 of Plaintiff's Complaint, WVUF denies that Greer's status as a "taxpayer and donor" give it standing to bring all or some of the allegations set forth in its Complaint. WVUF denies Greer has suffered any damages and further denies the remainder of the allegations contained therein.

11. In response to Paragraph 11 of Plaintiff's Complaint, WVUF denies that Greer has suffered damage of any sort and that Greer has standing to bring any derivative actions to vindicate the rights of others who are not members or shareholders of WVUF. WVUF further denies the remainder of the allegations contained in said Paragraph.

B. WVUF's Investment in West Virginia Media Holdings

12. In response to Paragraph 12 of Plaintiff's Complaint, WVUF denies the allegations contained therein.

13. Paragraph 13 of Plaintiff's Complaint sets forth legal conclusions to which no response is required. In the event a response is deemed necessary, WVUF denies the allegation as stated therein, but does admit that W.Va. Code §29-19-8 incorporates language imposing

limitations on the solicitation activities of charitable organizations and that it requires the filing of public reports as more fully set forth in the text of said statute. WVUF denies any violation of W.Va. Code § 29-19-8.

14. Paragraph 14 of Plaintiff's Complaint sets forth legal conclusions to which no response is required. In the event a response is deemed necessary, WVUF denies that it violated any obligations that may be imposed on it by federal law by virtue of its status as a 501(c)(3) entity.

15. In response to Paragraph 15 of Plaintiff's Complaint, WVUF admits Plaintiff has correctly quoted a portion of page 19 of its 2006-2007 Annual Report.

16. In response to Paragraph 16 of Plaintiff's Complaint, WVUF admits Plaintiff has correctly quoted a portion of Section 3.3.1 of its Code of Ethics and Standards of Conduct.

17. In response to Paragraph 17 of Plaintiff's Complaint, WVUF admits Plaintiff has correctly quoted the core values listed on page 27 of its 2013-2014 Annual Report.

18. In response to Paragraph 18 of Plaintiff's Complaint, WVUF denies the allegations contained therein.

19. In response to Paragraph 19 of Plaintiff's Complaint, WVUF admits the allegations contained therein.

20. In response to Paragraph 20 of Plaintiff's Complaint, WVUF admits the allegations contained therein.

21. In response to Paragraph 21 of Plaintiff's Complaint, WVUF admits that the divestment of its investment in West Virginia Media Holdings, LLC ("WVMH") was disclosed in Note 3 of its 2007 Audited Financial Statement and that Note 3 is included as part of Exhibit 1 to Plaintiff's Complaint and speaks for itself.

22. In response to Paragraph 22 of Plaintiff's Complaint, WVUF admits that the divestment of the investment it held in 2007 in West Virginia Media Holdings, LLC ("WVMH") was disclosed in Note 3 of its 2007 Audited Financial Statement and that said Note is attached as part of Exhibit 1 to Plaintiff's Complaint and speaks for itself.

23. In response to Paragraph 23 of Plaintiff's Complaint, WVUF admits that in 2002 W. Marston Becker was a member of its Board of Directors and that Mr. Becker was an investor in WVMH. WVUF further admits that in 2002 five members of its then 33 member Board of Directors had indicated they had made individual investments in WVMH. WVUF denies that Mr. Becker or other directors holding an investment in WVMH voted as a member of the WVUF Board of Directors to invest in WVMH.

24. In response to Paragraph 24 of Plaintiff's Complaint, WVUF admits that Dorothy Dotson, then V.P. of Investments for WVUF, served in an uncompensated capacity on WVMH's advisory board between approximately August 2002 and early 2007.

25. In response to Paragraph 25 of Plaintiff's Complaint, WVUF admits that on or about August 22, 2002, the members of the WVMH advisory board, including Dorothy Dotson, were granted limited unit option agreements by WVMH which, if unexercised, expired in 2012. Upon her receipt of the option agreement, Ms. Dotson pledged to gift or devise her unit option to WVUF. The unit option granted Ms. Dotson was never exercised and was returned to WVMH in 2004. WVUF denies the remaining allegations contained in Paragraph 25 of Plaintiff's Complaint.

26. In response to Paragraph 26 of Plaintiff's Complaint, WVUF denies the allegations contained therein.

27. In response to Paragraph 27 of Plaintiff's Complaint, WVUF denies the allegations contained therein.

28. In response to Paragraph 28 of Plaintiff's Complaint, WVUF admits, in part, the allegations contained therein. The realized loss reported for accounting purposes fails to account for revenue earned on the WVMH investment between 2002 and 2007 during which time WVMH timely paid WVUF interest in the amount of \$2,461,150 on the WVMH Subordinated Notes held by WVUF.

29. In response to Paragraph 29 of Plaintiff's Complaint, WVUF admits the allegations contained therein.

30. In response to Paragraph 30 of Plaintiff's Complaint, WVUF denies the allegations as stated therein. The realized loss reported for accounting purposes fails to account for revenue earned on the WVMH investment between 2002 and 2007 during which time WVMH timely paid WVUF interest in the amount of \$2,461,150 on the WVMH Subordinated Notes held by WVUF.

31. In response to Paragraph 31 of Plaintiff's Complaint, WVUF denies the allegations contained therein. On July 15, 2004, Robert Gwynne, a Vice President and General Counsel for both Greer and another company owned by the Raese family, West Virginia Radio Corp., wrote then WVUF President Duke Perry on behalf of John Raese, Greer's President and co-owner, objecting to the WVMH investment and stating in part:

"Mr. Raese and I are of the opinion that there are numerous grounds why the Foundation's investment in West Virginia Media Holdings is improper, not the least of which is the fact that endowment gifts that both of us have made are now being used to place West Virginia Media Holdings in a position where they can compete unfairly against our companies...."

The return address shown on Mr. Gwynne's July 15, 2004 letter to Mr. Perry was P. O. Box 1900, Morgantown, West Virginia 26507. The records of the West Virginia Secretary of State reflect the corporate mailing address for Greer Industries and for its Director, John R. Raese, is

P.O. Box 1900
Morgantown, WV 26507-1900

In late September or early October 2004, Greer officers, Mr. Raese and Mr. Gwynne demanded WVUF liquidate its WVMH investment. After WVUF sold its investment in WVMH, WVUF President Duke Perry personally advised both Mr. Raese and Mr. Gwynne of WVUF's divestment via a letter dated January 24, 2007 addressed to Mr. Raese and Mr. Gwynne as follows:

Mr. John R. Raese
Mr. J. Robert Gwynne
Greer Mansion
P.O. Box 1900
Morgantown, WV 26507-1900

Thus, Plaintiff Greer was fully advised in January 2007 of WVUF's liquidation of its WVMH investment through the personal knowledge of its co-owner, President and Director, John Raese, and also through the personal knowledge of its Vice President and General Counsel, Robert Gwynne..

32. In response to Paragraph 32 of Plaintiff's Complaint, WVUF denies the allegations as stated therein. WVU earned \$2,461,150 in interest on its WVMH investment between 2002 and 2007. When these interest earnings are coupled with the \$2,952,500 sale price of the investment, the actual loss on the WVMH investment was far less than alleged. If WVUF had not responded to the demand of Mr. Raese and Mr. Gwynne in 2004 that WVUF liquidate its WVMH investment, WVUF would, upon information and belief, have continued to earn substantial interest and would have suffered no loss from its WVMH investment.

33. In response to Paragraph 33 of Plaintiff's Complaint, WVUF denies the allegations as stated therein.

34. In response to Paragraph 34 of Plaintiff's Complaint, WVUF denies the allegations as stated therein. WVUF admits its WVMH notes and equity units were sold in 2007 to Northeastern Investments, a company in which Mr. Cary and Mr. Payne are, upon current information and belief, now believed to have been investors.

35. In response to Paragraph 35 of Plaintiff's Complaint, WVUF denies the allegations as stated therein.

36. In response to Paragraph 36 of Plaintiff's Complaint, WVUF denies the allegations as stated therein.

37. In response to Paragraph 37 of Plaintiff's Complaint, WVUF denies the allegations as stated therein.

C. The Scoreboard Transaction

38. In response to Paragraph 38 of Plaintiff's Complaint, WVUF denies the allegations as stated therein. WVUF expressly denies that the scoreboard transaction was unlawful.

39. In response to Paragraph 39 of Plaintiff's Complaint, WVUF denies the allegations as stated therein.

40. In response to Paragraph 40 of Plaintiff's Complaint, WVUF denies the allegations as stated therein. WVUF expressly denies that the Statue of Limitations has been tolled or otherwise extended by the discovery rule. Moreover, even assuming the allegations therein to be true, which allegations are expressly denied, WVUF denies that the alleged acts of

others named herein who are not parties to this action can operate to toll any statutes of limitations with respect to claims against WVUF.

41. In response to Paragraph 41 of Plaintiff's Complaint, WVUF, upon information and belief, admits the allegations as stated therein.

42. In response to Paragraph 42 of Plaintiff's Complaint, WVUF, upon information and belief, admits the allegations as stated therein.

43. In response to Paragraph 43 of Plaintiff's Complaint, WVUF is without sufficient knowledge or information as to the truth of the allegations set forth in Paragraph 43 of the Complaint and therefore denies the same and demands strict proof thereof.

44. In response to Paragraph 44 of Plaintiff's Complaint, WVUF denies the allegations as stated therein. In 2007, Ellerbe Becket provided architectural and engineering design services related to the planned upgrade of the Coliseum's lighting, sound and scoreboard systems.

45. In response to Paragraph 45 of Plaintiff's Complaint, WVUF denies the allegations as stated therein.

46. In response to Paragraph 46 of Plaintiff's Complaint, WVUF denies the allegations as stated therein. Upon information and belief, WVUF denies that Richard Ballard was an employee of Panasonic in May 2007. WVUF admits only that Exhibit 4 to Plaintiff's Complaint is an email dated May 14, 2014 from Russ Sharp to Richard Ballard and that the email speaks for itself.

47. In response to Paragraph 47 of Plaintiff's Complaint, WVUF denies the allegations as stated therein. WVUF, upon information and belief, admits that during the summer of 2007 representatives from WVU's President's Office, Central Administration and

Athletic Department were in discussions with Panasonic about various potential partnerships, including, but not necessarily limited to, the possibility that Panasonic might acquire naming rights to the Coliseum and provide a new scoreboard at the Coliseum as part of a larger campus wide technology initiative that was being discussed by WVU administrators.

48. In response to Paragraph 48 of Plaintiff's Complaint, WVUF denies the allegations as stated therein. WVUF admits only that Exhibit 4 to Plaintiff's Complaint is an email dated May 14, 2014 from Russ Sharp to Richard Ballard and that the email speaks for itself.

49. In response to Paragraph 49 of Plaintiff's Complaint, WVUF denies the allegations as stated therein. WVUF denies the involvement in any unlawful "process." WVUF admits that Exhibit 6 includes a November 28, 2007 e-mail from WVU Athletic Department employee Russ Sharp to WVU Vice President of Administration and Finance, Narvel Weese, and that the November 28, 2007 e-mail speaks for itself. WVUF admits that Richard Ballard, acting as an alum of WVU and not as an employee of Panasonic, emailed Lyn Dotson on 12/23/07 as reflected in the e-mail included in Exhibit 6 and then initiated a telephone conference with Lyn Dotson on 12/24/07 to discuss gift/purchase arrangement proposed by Panasonic whereby Panasonic would donate a new scoreboard system for the WVU Coliseum via WVUF and WVUF would purchase a new Panasonic Scoreboard system for Milan Puskar Stadium. WVUF admits Lyn Dotson informed Wayne King of the Panasonic proposal by e-mail dated 12/27/07.

50. In response to Paragraph 50 of Plaintiff's Complaint, WVUF denies the allegations as stated therein. Upon information and belief, WVUF admits that in 2008 WVU

officials, Richard Ballard, and Panasonic employees discussed Panasonic's offer to donate a scoreboard system and ribbon boards for the Coliseum.

51. In response to Paragraph 51 of Plaintiff's Complaint, WVUF denies the allegations as stated therein. WVUF admits that Panasonic offered to donate a new scoreboard and ribbon board system for the Coliseum and that the donation, if accepted, would alter the scope of the RFP being developed for the Coliseum upgrades.

52. In response to Paragraph 52 of Plaintiff's Complaint, WVUF denies the allegations as stated therein.

53. In response to Paragraph 53 of Plaintiff's Complaint, WVUF denies the allegations as stated therein. WVUF admits that Panasonic offered to gift the Coliseum scoreboard system in conjunction with a purchase of a Panasonic scoreboard for Milan Puskar Stadium. WVUF further admits that Exhibit 7 to Plaintiff's Complaint is an email dated January 16, 2008 from Russ Sharp to Rossi Wiles and that the email speaks for itself.

54. In response to Paragraph 54 of Plaintiff's Complaint, WVUF denies the allegations as stated therein. WVUF admits that Exhibit 8 to Plaintiff's Complaint is a January 24, 2008 letter from Wayne King of WVUF and Narvel Weese of WVU to John Baisley of Panasonic and that the letter speaks for itself. WVUF admits Exhibit 8 amounted to a letter of intent in as much as the acceptance of a Coliseum scoreboard gift and the agreement to explore funding for the purchase of a new scoreboard for Milan Puskar Stadium were conditioned upon the parties reaching an agreement on the "scope of work, specifications and features of the video scoreboards and sound systems...".

55. In response to Paragraph 55 of Plaintiff's Complaint, WVUF denies the allegations as stated therein. WVUF admits Exhibit 8 to Plaintiff's Complaint is a January 24,

2008 letter from Wayne King and Narvel Weese to John Baisley of Panasonic and that the letter speaks for itself.

56. In response to Paragraph 56 of Plaintiff's Complaint, WVUF denies the allegations as stated therein. WVUF does admit that in April, 2011 Panasonic equipment was purchased for the Basketball Practice Facility with funds donated by a private donor and that the private donor specified the use of Panasonic equipment for the Basketball Practice Facility as part of its gift. WVUF also admits that as part of renovations to the Puskar facilities building in July 2012, Panasonic equipment was installed using donor funds from a specific gift.

57. In response to Paragraph 57 of Plaintiff's Complaint, WVUF denies the allegations as stated therein.

58. In response to Paragraph 58 of Plaintiff's Complaint, WVUF denies the allegations as stated therein. WVUF admits on that on March 24, 2008 it entered into a Sales and Installation Agreement with Panasonic to purchase a new scoreboard system and banner boards for the football stadium and to accept the gift of a scoreboard system and banner boards in the Coliseum, all of which was to meet a mutually agreed upon set of equipment specifications.

59. In response to Paragraph 59 of Plaintiff's Complaint, WVUF admits that it did not competitively bid the purchase of the Milan Puskar Stadium scoreboard and banner board systems being acquired from Panasonic. WVUF denies that it was required to competitively bid this purchase. WVUF further denies the remainder of the allegations in Paragraph 59.

60. In response to Paragraph 60 of Plaintiff's Complaint WVUF denies the allegations as stated therein. As of March 28, 2008, WVUF had a donor's commitment of \$750,000 plus a \$5,000,000 guarantee to support the Milan Puskar Stadium scoreboard purchase. WVUF denies any implication that the advancement of WVUF's discretionary funds to purchase

Panasonic equipment for the use and benefit of the WVU football program was outside the mission of WVUF or that the Panasonic purchase resulted in the reallocation of non-discretionary WVUF funds dedicated for any other specific purpose.

61. In response to Paragraph 61 of Plaintiff's Complaint, WVUF admits WVU's Vice President of Finance and Administration, Narvel Weese, and WVUF anticipated that privately donated discretionary funds available to the Athletic Department would continue to be raised and applied to repay the advance from WVUF's discretionary funds for the Puskar Stadium Panasonic equipment purchase.

62. In response to Paragraph 62 of Plaintiff's Complaint, WVUF admits the Foundation Board authorized Wayne King on February 16, 2008 to enter into an agreement with Panasonic at a cost not to exceed \$5,000,000. Contract negotiations were still ongoing between Panasonic and WVUF at the time so WVUF denies the remainder of the allegations in Paragraph 62.

63. In response to Paragraph 63 of Plaintiff's Complaint, WVUF admits the Panasonic equipment purchased by WVUF for Milan Puskar Stadium was not bid as set forth in Paragraph 63 of the Complaint, but WVUF denies the implication that there was a requirement for WVUF to follow a "required procurement process" or that WVU was required to use a bidding process in connection with the purchase being made by WVUF.

64. In response to Paragraph 64 of Plaintiff's Complaint, WVUF denies the allegations contained therein.

65. In response to Paragraph 65 of Plaintiff's Complaint, WVUF denies the allegation in Paragraph 65 of the Complaint that its 2008 contract with Panasonic was unlawful. WVUF admits that Exhibit 12 to the Complaint contains incomplete excerpts from an April 29-30, 2008

email exchange between Russ Sharp and Narvel Weese. Plaintiff omits Mr. Weese's responses to Mr. Sharp and Mr. Pastilong which constitute part of the email string and which support the propriety of the transaction.

66. In response to Paragraph 66 of Plaintiff's Complaint, WVUF admits the memorandum attached as Exhibit 13 was sent by or in the name of Ed Pastilong to Narvel Weese and that the memorandum speaks for itself. WVUF denies that Mr. Pastilong's conclusions were factually or legally justified or that an improper procurement process was used for the scoreboard.

67. In response to Paragraph 67 of Plaintiff's Complaint, WVUF denies the allegations as stated therein. WVUF denies that Mr. Pastilong's concerns as expressed in his May 9, 2008 memorandum were factually or legally justified. WVU officials had already responded appropriately to Mr. Pastilong when the May 9, 2008 memorandum was published.

68. In response to Paragraph 68 of Plaintiff's Complaint, WVUF denies the allegations as stated therein. As of March 28, 2008, WVUF had a donor commitment of \$750,000 to support the Milan Puskar Stadium purchase. WVUF denies any implication that the advancement of WVUF's discretionary funds to purchase Panasonic equipment for the use and benefit of the WVU football program was outside the mission of WVUF or that the Panasonic purchase resulted in the reallocation of non-discretionary WVUF funds dedicated for any other specific purpose. WVUF admits a "Scoreboard Fund" was established in connection with the purchase of the Panasonic equipment installed in Milan Puskar Stadium to track WVUF's internal transfers to and from the account as well as expenditures made and receipt of private funds transferred into the account.

69. In response to Paragraph 69 of Plaintiff's Complaint, WVUF defendant admits it made an advance in 2008 from its discretionary reserve funds to purchase the Panasonic equipment installed in Milan Puskar Stadium and that the Scoreboard Fund was created as an account to track WVUF's internal transfers to and from the Scoreboard Fund account as well as expenditures made out of the Scoreboard Fund account and receipts of private donations deposited into the Scoreboard Fund in connection with the purchase of the Panasonic equipment installed in Milan Puskar Stadium.

70. Paragraph 70 of Plaintiff's Complaint contains no allegations directed against WVUF to which a response is deemed necessary. If a response is deemed necessary, WVUF admits, upon information and belief, that a draft WVU Board of Governors agenda item which, in part, referenced the Stadium Scoreboard project, was prepared for Mr. Weese but was later edited to exclude the scoreboard project reference. WVUF denies the remaining allegations set forth in Paragraph 70 of the Complaint regarding the actions of Mr. Weese.

71. Paragraph 71 of Plaintiff's Complaint contains no allegations directed against WVUF to which a response is deemed necessary. If a response is deemed necessary, WVUF denies the allegations as stated therein. Upon information and belief, WVU's policies did not require Board of Governors approval for capital projects costing less than \$1,000,000. WVUF admits the Panasonic scoreboards, ribbon display boards and ancillary equipment in the Coliseum and Milan Puskar Stadium were installed and have been in open and obvious use since the 2008-2009 school year, that WVU's Athletic Department and the University have received and benefited from substantially increased advertising revenues generated by the Panasonic installations, and that WVU accepted title to the Panasonic equipment in 2010.

72. In response to Paragraph 72 of Plaintiff's Complaint, WVUF denies the allegations contained therein.

73. In response to Paragraph 73 of Plaintiff's Complaint, WVUF denies the allegations contained therein.

74. In response to Paragraph 74 of Plaintiff's Complaint, WVUF admits that the WVU Athletic Department agreed in 2008 to use a portion of the private donations to discretionary funds it routinely receives every year to repay over a five year period the negative balance in the Scoreboard Fund which resulted from WVUF's internal transfer of funds to pay for the purchase of the Panasonic equipment. Upon information and belief, WVUF further admits the WVU Athletic Department chose not to pursue additional private gifts specific to the Scoreboard installation and sought in late 2009 or early 2010 to obtain an internal institutional advance from WVU's Central Administration (to which request WVUF was not a party), to fund other operations of the Athletic Department while applying privately donated funds routinely generated by the Mountaineer Athletic Club for facilities improvements and scholarships to timely retire the scoreboard deficit within the previously agreed 5 year period. WVUF denies that any state funds were received from the WVUF Athletic Department to retire the balance in the Scoreboard Fund.

75. In response to Paragraph 75 of Plaintiff's Complaint, WVUF denies the allegation as stated therein. Upon information and belief, WVUF admits a WVU Central Administration internal loan to the WVU Athletic Department is being repaid by the WVU Athletic Department in accordance with the schedule set forth in Exhibit 17.

76. In response to Paragraph 76 of Plaintiff's Complaint, WVUF denies the allegations as stated therein. WVUF denies Plaintiff's characterization of the Scoreboard Fund

plan and WVUF denies that any state funds were received by it from the WVU Athletic Department or WVU's Central Administration to retire the balance in the Scoreboard Fund.

77. In response to Paragraph 77 of Plaintiff's Complaint, WVUF denies the allegations contained therein.

78. In response to Paragraph 78 of Plaintiff's Complaint, WVUF denies the allegations as stated therein. WVUF denies Plaintiff's characterization of the Scoreboard Fund plan and WVUF further denies that any state funds were received by it from the WVU Athletic Department or WVU's Central Administration to retire the balance in the Scoreboard Fund. WVUF admits that the WVU Athletic Department agreed in 2008 to use private funds it routinely receives to repay over a five year period the negative balance in the Scoreboard Fund resulting from WVUF's internal transfer of funds to pay for the purchase of the Panasonic equipment.

Counts

COUNT 1 – VIOLATION OF THE SOLICITATION OF CHARITABLE FUNDS ACT (Against Defendant West Virginia University Foundation, Inc.)

79. In response to Paragraph 79 of Plaintiff's Complaint, WVUF reasserts and incorporates by reference its Responses to Paragraphs 1 through 78 of the Complaint as if fully set forth herein.

80. Paragraph 80 of Plaintiff's Complaint states legal conclusion to which no response is required. In the event a response is deemed necessary, WVUF denies that any obligations and/or duties imposed on WVUF pursuant to the Solicitation of Charitable Funds Act were breached.

81. In response to Paragraph 81 of Plaintiff's Complaint, WVUF denies the allegations as contained therein since it is an incomplete statement of WVUF's mission and role. WVUF admits that its mission is to maximize private charitable support of West Virginia University ("WVUF") and to provide services to WVU and its affiliated organizations. It further admits that it fulfills this mission in many ways, including raising and investing money, accepting gifts of real and personal property, and the provision of funding for scholarships, faculty development, capital projects, equipment needs and other priorities of WVU and its affiliated organizations.

82. In response to Paragraph 81 of Plaintiff's Complaint, WVUF denies the allegations as stated therein. WVUF routinely communicated to Athletic Department donors that their unrestricted donations through the Mountaineer Athletic Club and other Athletic Department Funds were to be used for the improvement of Athletic Department facilities. WVUF denies contributions to WVUF have been used to "allow" West Virginia University to side-step any procurement rules and obligations, and further denies that its actions or inactions were done for the purpose of "causing substantial private benefit or personal enrichment."

83. In response to Paragraph 83 of Plaintiff's Complaint, WVUF denies the allegations contained therein.

84. In response to Paragraph 84 of Plaintiff's Complaint, WVUF denies the allegations contained therein.

85. In response to Paragraph 85 of Plaintiff's Complaint, WVUF denies the allegations contained therein and demands strict proof thereof. WVUF specifically denies that Greer Industries, Inc. donated to WVUF based upon any material misrepresentation or omission involving WVUF's purchase of the Panasonic video scoreboards or banner board equipment and

further denies that Greer Industries, Inc. suffered any injury in connection with the WVUF/Panasonic contracts or has standing to sue WVUF in connection with the WVUF/Panasonic contracts.

86. There is no Paragraph numbered 86.

In response to the "WHEREFORE" clause of Count One of Plaintiff's Complaint, WVUF denies that the Plaintiff is entitled to any recovery requested in said "Wherefore" clause of Count I of the Complaint, including subparagraphs (1) through (5), inclusive, and demands strict proof thereof.

COUNT II – BREACH OF FIDUCIARY DUTY ACTION

87. In response to the allegations set forth in Paragraph 87 of Plaintiff's Complaint, WVUF asserts and incorporates by reference its responses to Paragraphs 1 through 85 and the unnumbered "Wherefore" paragraph of Count I of the Complaint as if fully set forth herein.

88. The allegations set forth in Paragraph 88 of Plaintiff's Complaint attempt to state a legal conclusion to which a response is not required. To the extent any response is required; WVUF denies that any duties owed by it or its officers or directors have been breached.

89. The allegations set forth in Paragraph 89 of Plaintiff's Complaint attempt to state a legal conclusion to which a response is not required. To the extent any response is required; WVUF denies that any duties owed by it or its officers or directors have been breached.

90. The allegations set forth in Paragraph 90 of Plaintiff's Complaint attempt to state a legal conclusion to which a response is not required. To the extent any response is required; WVUF denies that any duties owed by it or its officers or directors have been breached.

91. In response to Paragraph 91 of Plaintiff's Complaint, WVUF denies the allegations set forth in Paragraph 91 of the Complaint, including subparagraphs (a) through (g).

92. In response to Paragraph 92 of Plaintiff's Complaint, WVUF denies the allegations set forth therein.

93. In response to Paragraph 93 of Plaintiff's Complaint, WVUF denies the allegations set forth therein.

94. WVUF denies that the Plaintiff has suffered any injury by any actions or inactions of this defendant as alleged in Paragraph 94 of the Complaint, and demands strict proof thereof. Further, the allegations in Paragraph 94 of the Complaint attempt to state a legal conclusion regarding Plaintiff's standing which is an attempt to state a legal conclusion to which a response is not required. To the extent any response is required, WVUF denies it has violated any law. WVUF further denies that Greer Industries, as it is neither a member nor shareholder of WVUF, has standing, either directly or derivatively, to assert the claims that it attempts to set forth in Count II of this Complaint.

95. WVUF denies that the Plaintiff has suffered any injury by any actions or inactions of this defendant as alleged in Paragraph 95 of the Complaint.

In response to the "WHEREFORE" clause of Count II of the Complaint, including subparagraphs (1) through (5), inclusive, WVUF denies that Plaintiff is entitled to any relief as against it and demands strict proof thereof.

96. Any and all allegations not herein specifically admitted are hereby specifically denied.

Affirmative Defenses

97. The Complaint fails to state a claim upon which relief can be granted against WVUF.

98. The Plaintiff lacks both common law and statutory standing to bring this claim.

99. The Plaintiff's claims against WVUF are barred by laches and should be dismissed.

100. The Plaintiff's claims for breach of fiduciary duty, violation of the Solicitation of Charitable Funds Act, W.Va. Code § 29-19-1, *et seq.*, and under the Nonprofit Corporation Act, W.Va. Code § 31E-8-842 (2009) are all time-barred under the applicable statutes of limitations and should be dismissed.

101. Plaintiff's claims for equitable relief may be barred by the doctrine of unclean hands.

102. W.Va. Code § 29-19-13 and § 29-19-15 are unconstitutional in so far as they constitute an impermissible prior restraint upon free speech under the First Amendment to Constitution of the United States and under Article III Section 7 of the Constitution of West Virginia.

103. W.Va. Code § 29-19-13 is void for vagueness and therefore violates the Due Process rights of this defendant under the Fifth and Fourteenth Amendments to the United States Constitution and under Article III, Section 10, of the Constitution of West Virginia.

104. Plaintiff is not entitled to any punitive damages as alleged in the Complaint for the reason that the alleged conduct of WVUF cannot be determined in any manner to have been in willful, wanton or reckless disregard of the contractual rights of the Plaintiff; nor did WVUF willfully, wantonly or recklessly commit any tortious acts against the Plaintiff.

105. The Plaintiff's Complaint, to the extent that it seeks punitive damages from WVUF, violates the Defendant's rights to procedural due process under the Fourteenth Amendment of the United States Constitution and the Constitution of the State of West Virginia and therefore fails to state a cause of action upon which punitive damages can be awarded.

106. To the extent Plaintiff's Complaint seeks punitive damages from WVUF, such claim for damages violates WVUF's rights to protection from excessive fines as provided in the Eighth Amendment of the United States Constitution and Article 3, Section V of the Constitution of the State of West Virginia and violates WVUF's rights to substantive due process as provided in the Fifth and Fourteenth Amendments of the United States Constitution and the Constitution of the State of West Virginia and therefore fails to state a cause of action upon which punitive damages can be awarded.

107. WVUF denies that this civil action is one in which attorney fees can be properly awarded, and, therefore, affirmatively moves that the portion of the Plaintiff's Complaint seeking payment of attorney fees be dismissed.

108. Plaintiff's claims against WVUF related to or arising out of the WVMH Investment are barred on the basis of waiver, settlement and release.

109. WVUF asserts that Plaintiff is estopped from bringing any claims against it related to or arising out of the WVMH investment.

110. Plaintiff attempts to assert a shareholder derivative action, but as Plaintiff is neither a shareholder nor member of WVUF, it lacks standing to bring fiduciary duty claims against WVUF.

111. WVUF asserts Plaintiff's breach of fiduciary duty claims are improper attempts to assert a shareholder derivative action and barred as Plaintiff has failed to plead such claims with particularity and in accordance with the pleading requirements set forth in Rule 23.1 of the West Virginia Rules of Civil Procedure.

112. WVUF asserts and reserves the following affirmative defenses: assumption of the risk, contributory negligence, comparative negligence, waiver, failure to mitigate, and any and

all other matters constituting an affirmative defense which may become apparent through the course of discovery.

113. WVUF asserts that the Plaintiff's alleged damages, if any, were not directly or proximately caused by WVUF.

114. WVUF asserts and reserves any and all defenses that are or may be available to it pursuant to the West Virginia Nonprofit Corporation Act, W.Va. Code § 31E-1-101, *et seq.*, and/or the West Virginia Business Corporation Act, W.Va. Code § 31D-1-101, *et seq.*

115. WVUF asserts the affirmative defense of the business judgment rule.

116. WVUF reserves the right to assert additional defenses, counterclaims or cross claims as may be determined after discovery in this matter, including but not limited to defenses available to it under any constitution, statute, common law or rule, including but not limited to Rule 8(c) of the West Virginia Rules of Civil Procedure.

117. WVUF asserts and reserves the right to amend its Answer to assert in counterclaims, cross-claims, or third party complaint as may be shown to be available during the course of discovery in this matter.

118. WVUF asserts and reserves any and all grounds raised in support of its Partial Motion to Dismiss filed contemporaneously herewith as affirmative defenses that it also raises and asserts in this answer.

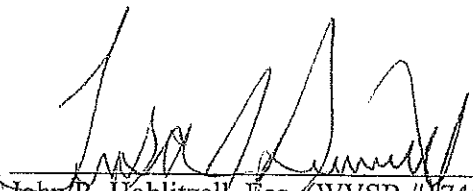
WHEREFORE, West Virginia University Foundation respectfully requests that it be dismissed as a party defendant in this matter, for recovery of its costs and attorney fees incurred in the defense of this action, and for such other and further relief that this Court deems appropriate.

COUNTERCLAIM

Now comes the defendant and files the following Counterclaim against the Plaintiff,
Greer Industries, Inc.:

This action requests the Court to declare the rights and liabilities of the parties under the West Virginia Declaratory Judgments Act, WV Code § 55-13-1 *et seq.* Under WV Code § 55-13-10, this defendant is entitled to recovery of its costs and attorney fees from the plaintiff incurred in the defense of this action.

**WEST VIRGINIA UNIVERSITY
FOUNDATION, INC.**
By Counsel



John R. Hoblitzell, Esq. (WVSB #1746)
John D. Hoblitzell, III, Esq. (WVSB# 9346)
Ann L. Haight, Esq. (WVSB #1527)
Kay Casto & Chaney PLLC
P.O. Box 2031
Charleston, West Virginia 25327
304-345-8900
304-345-8909 (Facsimile)

and

Teresa J. Dumire, Esq. (WVSB #8032)
Debra Scudiere, Esq. (WVSB #1750)
Kay Casto & Chaney PLLC
1085 Van Voorhis Rd., Suite 100
Morgantown, WV 26505
304- 225-0970
304-225-0974 (Facsimile)