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January 28, 2019

Via Federal Express

Vikki Shirley, Esquire
325 West Gaines Street, Suite 1652
Tallahassee, Florida 32399

Re: UCF Investigation

Dear Ms. Shirley:

On January 7, 2019, I sent a letter to members of the Board of Governors ("BOG") in which I provided information material to the investigation of UCF's misuse of E&G Carry Forward Funds for the construction of Trevor Colbourn Hall ("TCH") on the UCF campus. I am attaching herewith a copy of that letter, along with the attachments to it.

As stated in my January 7th letter, I believed it important to provide the BOG with information which was not produced in response to Freedom of Information Act requests I previously directed to UCF because I feared the information would be "overlooked" by the law firm that UCF's Board of Trustees retained to conduct an ostensibly independent investigation.

The report from UCF's internal investigation has now been completed and presented by the lead attorney/investigator, Joey Burby ("the Burby Report"). As I feared, the Burby Report overlooks material information and make assumptions and illogical leaps about the role of some at UCF, while it downplays and whitewashes the roles of others. I will not take a lot of your time with this letter, but I do want to make some key points concerning the Burby Report. I respectfully request that you disseminate this letter among members of the BOG as you deem appropriate.

As I previously noted, I represent several persons who are associated with UCF. This letter does not expressly seek to defend any of the persons I represent. I have not sued UCF and I am not trying to gain any sort of advantage in any pending lawsuit. I also do not seek to persuade you that nobody did anything wrong or there are not issues which need to be fixed. Rather, my hope is to provide information that will assist the State as it searches for the whole truth.

I do not ask you to take my word for anything. I only respectfully request that you consider documents we have uncovered as you consider what others have and will tell you.

A key fact relevant to the funding of TCH is that four engineering firms inspected the old Colbourn Hall and concluded it had multiple issues which posed a real threat to the health, safety, and welfare of the persons who used that building. In February of 2014, the engineers issued a report which identified structural problems and mold infestation that presented a real danger. A copy of the Colbourn Hall Building Analysis is attached.

When the Colbourn Hall Building Analysis was issued, UCF officials were advised that they had about two years before the old building became unusable. It was in this context that the funding decisions for TCH were made. As noted in letters from former UCF President, John Hitt, and former UCF VP for Administration and Finance, Bill Merck, the decision makers at UCF felt that Colbourn Hall presented a real emergency and their duties to the people at UCF who used the building required them to find a way to fix it.

I do not seek to excuse the decisions that were made. But the reasons they were made is important because the people involved in making the decisions had the right motives. No one was seeking any sort of personal gain or aggrandizement, facts which the Burby Report recognizes.

In addition to downplaying the emergency which led to the funding decisions for TCH, the Burby Report also, in my opinion, downplays the roles of UCF's current President, Dale Whittaker, and Marcos Marchena, Chairman of UCF's Board of Trustees, to whom Burby reported. Some of us involved in this matter have concerns as to the objectivity of Mr. Burby and his team, since Marcos Marchena personally established the scope of the investigation that was to be undertaken. I am attaching hereto e-mail concerning the retention of Mr. Burby's firm; you can reach your own conclusions as to whether a prospective target of an investigation should have any say as to the direction it should take.

In all events, I disagree as to Burby's conclusion that Dale Whittaker and Marcos Marchena were not involved in and/or did not know enough about the TCH funding

decisions to share culpability with lower level UCF employees who were fired as a result of Burby's conclusions.

The Burby Report finds that Dale Whittaker's signature on the Trevor Colbourn Hall Building Program, which specifically identifies the source of funding for TCH as "E&G," to be insignificant because Whittaker had not been employed at UCF for very long when he signed that report. However, the Burby Report does not adequately address e-mail that was sent to and from Dale Whittaker in 2016, more than two years after he was employed at UCF, and when he held the title Chief Budget Officer, which specifically addressed the TCH funding source. One e-mail included a "funding plan" which specifically identified the source of funding for TCH as "E&G" and which has Dale Whittaker's handwritten notes all over it. A copy of the funding plan dated 3/22/16 with Whittaker's handwriting on it is attached to the enclosed email from Tracy Clark of the same date. Clearly, in apparent contrast to his earlier statements, Whittaker knew that E&G funds were used to construct TCH.

The Burby Report also overlooks information that was given to Marcos Marchena and other members of UCF's Board of Trustees every year concerning ongoing construction projects. The Burby Report absolves the Trustees because it opines that they would not know that reports which referred to "non-recurring funds" and "internal funding" included E&G, even though that is how such funds were reported to them for multiple years for multiple projects.

Surprisingly, Burby seems to give no weight whatsoever to a transcript from a meeting of the Finance and Facilities Committee of UCF's Board of Trustees on April 22, 2015, when Marchena was Chair of that committee. In that report, a copy of which is attached, Marchena is specifically and unambiguously advised that TCH was funded with "carry forward," a pool of funds that everyone who paid attention to UCF's finances knew consisted primarily of left over E&G funds. It is also interesting that an audio recording of a meeting of the Finance and Facilities Committee on April 3, 2014, where the TCH construction and funding issues was discussed, is missing. That "missing" tape is the subject of a pending lawsuit brought against UCF by Knight News.

Personally, I bear no ill will towards Whittaker or Marchena. However, I find it troubling that their involvement in the TCH funding decision was found to be relatively insignificant, while the employment of four lower level UCF employees was effectively terminated because they did not object to a funding decision that they did not make. Although these four lower level employees were not decision makers, they were imputed with knowledge that the funding decision was illegal, while Whittaker and Marchena, both of whom are decision makers and the latter a lawyer, are held to a much higher standard of proof. This is not fair to those (former) UCF employees or anyone else.

Vikki Shirley, Esq.

January 28, 2019

Page 4 of 4

The Burby Report goes out of its way to criticize Bill Merck because he did not consent to an "interview" by Burby. Those of us who were told how persons subject to such "interviews" were treated might better understand Mr. Merck's hesitation. What Burby does not report is that Mr. Merck asked if he could appear at the BOG meeting on September 13, 2018 to explain the TCH funding decision and was advised that such an appearance would be viewed as an act of insubordination, which would be cause for termination of his employment. Mr. Merck also provided Burby with a nine page single spaced letter stating his position, most of which the Burby Report ignores.

Bill Merck, UCF's former VP for Administration and Finance, has readily acknowledged that he recommended the funding plan for TCH. As a consequence, he resigned from UCF and lost various benefits. Mr. Merck accepted responsibility for his actions and stood up for those who worked under him and had no say in the decisions that were made. However, Mr. Merck has never stated that he was the only person involved in making UCF's funding decisions. After others involved in the TCH funding decision accused Mr. Merck of concealing facts from them, he publicly expressed his dismay at current UCF leadership's efforts to blame others and enlarge the distance between themselves and the truth.

On September 13, 2018, Whitaker told the BOG that Mr. Merck accepted responsibility for the TCH funding decision; Whitaker has since reiterated that statement over and again. From the context, it seems clear that Whitaker claims Mr. Merck is the *only* person responsible for that decision. More particularly, Whitaker seeks to absolve himself by blaming Merck, even though the truth is that both bear some responsibility.

More troubling than his pointing the finger at Merck is Whitaker's decision to fire the four UCF employees who were still employed at UCF when the Burby Report was rendered. Whitaker's efforts to blame those four persons, one of whom reported directly to him, could be viewed by those among us who are pessimistic as a classic deflection strategy. The selective omission of facts relevant to Whittaker and Marchena could be viewed the same way. I will save my defense for those who may need it for another day. Meanwhile, the ongoing cover up of what transpired at UCF, a cover up evidenced by the withholding of documents requested under the Freedom of Information Act and the extent to which the Burby Report seeks to absolve Marchena and Whittaker, is troubling.

I hope the BOG takes a closer look.

Sincerely,



Charles M. Greene

Enclosure(s)