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**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH; CENTRAL DIVISION**

VARLO DAVENPORT,

Plaintiff,

vs.

RICHARD “BIFF” WILLIAMS; MARK
HOUSER; DON REID; JEFFREY
JARVIS; WILLIAM CHRISTENSEN;
DEL BEATTY; PAUL MORRIS; STEVE
JOHNSON; RON ISAACSON;
CHRISTINA DURHAM; MICHAEL
CARTER; AND JOHN DOES I-X.

Defendants.

COMPLAINT

Civil No. _____

Judge: _____

INTRODUCTION

1. This action is brought by Varlo Davenport to redress civil rights deprivations of clearly established law under the First, and Fourteenth Amendments of the United States Constitution in violation of 42 U.S.C. § 1983, and to seek redress for a pendant breach of contract claim grounded in Utah state law. Davenport seeks declaratory, compensatory, injunctive, exemplary (punitive), nominal relief and attorney fees.

2. The allegations contained in this lawsuit are derived from written Dixie State University (“DSU”) policy, discovery obtained, and recordings from court proceedings in the criminal case of *City of St. George v. Davenport*, including approximately 20,000 emails from DSU servers, transcripts of witnesses interviewed by DSU law enforcement and administration officials, statements reported in the press, minutes of public meetings, recorded conversations by faculty and students from DSU, from the investigation of

Davenport's attorneys, and from reasonable inferences drawn from these sources. On information and belief there is a factual basis for the allegations made herein, or to be drawn from the reasonable inferences, and as further discovery is made. (The vast majority of the information upon which this complaint is based was unknown to plaintiff until after the receipt of DSU emails on June 20, 2016).

JURISDICTION VENUE AND IMMUNITY

3. The Court has jurisdiction over the federal issues and questions raised in this Complaint pursuant to 28 U.S.C. § 1331, including matters arising under the First and Fourteenth Amendments to the United States Constitution and 42 U.S.C. § 1983.

4. The Court has supplemental jurisdiction over the pendant state law breach of implied contract claim pursuant to 28 U.S.C. § 1367.

5. Plaintiff has no obligation to provide notice to the governmental entity as sovereign immunity under the Eleventh Amendment has been waived in Utah for any cause of action based in contract, express or implied.

6. Each of the constitutional violations alleged against the defendants named herein is a violation of clearly established precedent, and as such, qualified immunity does not apply to any named defendant on the Constitutional claims.

7. Venue for the causes of action alleged against the defendants herein lies in the United States District Court for the District of Utah because the acts which are the basis for these federal and state claims took place within the boundaries of this judicial district.

THE PARTIES

8. Plaintiff is a male citizen of the United States of America and was a resident of St. George, Utah, at all times relevant, previously employed as a tenured professor of theater at DSU in St. George, Utah.

9. Each of the named defendants is a "person" subject to suit within the meaning of 42 U.S.C. § 1983 and was at all times relevant acting under color of law and subjected, or caused to be subjected, Davenport a United States citizen, to the deprivation of rights, privileges, or immunities secured by the Constitution and laws of the United States, and is liable to Davenport for the injuries caused by said deprivations.

10. Defendant Richard "Biff" Williams is a resident of Washington County, Utah and at all times relevant was the President of DSU. Williams is being sued in his personal capacity in all respects and is being sued in his official capacity for injunctive and prospective relief pursuant to *Ex Parte Young*, 209 U.S. 123 (1908).

11. Defendant Mark Houser is a resident of Washington County, Utah and was at all times relevant, a professor and the chairperson of the fine arts department at DSU. Houser was Davenport's immediate supervisor and is being sued in his personal capacity.

12. Defendant Don Reid is a resident of Washington County, Utah, and was at all times relevant, the Director of Dixie State's Public Safety Department and a graduate of the Utah Police Academy. Reid is being sued in his personal capacity.

13. Defendant William Christensen is a resident of Washington County, Utah and at all times relevant, was the Executive Vice President and chief academic officer at DSU. Christensen is being sued in his personal capacity.

14. Defendant Jeffrey Jarvis is a resident of Washington County, Utah and was at all times relevant, the Dean of the School of Visual and Performing Arts at DSU. Jarvis is being sued in his personal capacity.

15. Defendant Del Beatty is a resident of Washington County, Utah and at was all times relevant, the Dean of Students at DSU. Beatty is being sued in his personal capacity.

16. Defendant Paul Morris is a resident of Washington County, Utah and was at all times relevant, the Vice President of Administrative Services at DSU. Morris is being sued in his personal capacity.

17. Defendant Steve Johnson is a resident of Washington County, Utah and was at all times relevant, the Director of Media Relations and collegiate licensing at DSU. Johnson is being sued in his personal capacity.

18. Defendant Ron Isaacson is a resident of Washington County, Utah and was at all times relevant, the Assistant Director of Dixie State's Public Safety Department and a graduate of the Utah Police Academy. Isaacson is being sued in his personal capacity.

19. Defendant Christina J. Durham is a resident of Washington County, Utah and was at all times relevant, the Chair of the Board of Trustees of DSU. Durham is being sued in her personal capacity.

20. Defendant Michael Carter is a resident of Iron County, Utah and was at all times relevant, a member of the Utah State Bar and Assistant Utah Attorney General with DSU. Carter is being sued in his personal capacity.

21. Defendant John Does are persons responsible for the Constitutional violations and causes of action alleged in this Complaint, whose names are not known at the moment of filing this Complaint and are "persons" subject to suit within the meaning of 42 U.S.C. § 1983 and who acted to deprive Davenport of his rights under the United States Constitution and Utah State law. These Doe defendants' actions include, but are not limited to, the surreptitious creation of the "SWOT" analysis that targeted Davenport for

discipline, surreptitious communications with municipal Judge Karlin Myers in the prosecution of Davenport in the Washington County Justice Court, and made decisions to prosecute Davenport in the justice court without probable cause.

FACTS PERTAINING TO ALL CAUSES OF ACTION

22. In 1988, Varlo Davenport graduated from the Ohio State University with a Master's degree in fine arts.
23. In 2000, Davenport applied for employment at DSU as a professor of theater arts. His application was accepted and he was offered and he accepted employment.
24. In accepting employment, Davenport was not offered a written contract. Instead, he was informed by DSU administration that the terms of his relationship with DSU were to be governed under the DSU policy manual which indicated what the rights and responsibilities were of both he and DSU, the benefits to which he was entitled, terms necessary for tenure and the manner in which grievance procedures were to be handled at DSU.
25. There is no one, either faculty or staff, at DSU that has a written contract. Instead, the entirety of the relationship between DSU and its employees is set forth in the DSU policy manual.
26. In 2000, Davenport, in reliance on the promises made to him, moved with his family to St. George, Utah, and has resided there ever since.
27. Davenport taught theater and acting classes at DSU from 2000 until December 5, 2014.
28. From 2000 until 2008, Davenport actively pursued the requirements, pursuant to the DSU policy manual, to obtain tenure with the rights and commensurate pay that comes with tenure under DSU policy.
29. On May 6, 2008, Stephen Nadauld, then president of DSU, notified Davenport that his application for academic rank advancement to that of tenured professor was granted. The academic rank advancement became effective on July 1, 2008. Specifically, Nadauld indicated "that you are eligible for promotion based on the guidelines outlined in the Dixie State College Policy Manual."
30. In all instances relevant, DSU manifest its intent to be bound by the obligations set forth in policy, in some instances voluntarily undertaking additional duties beyond its normal obligation. DSU's manifestation of its intentions to be bound by policy is evidenced in at least the following respects:

- a. Davenport was informed by DSU that policy governed his initial employment with the University.
 - b. Davenport was informed by DSU that policy governed his application and award of tenure.
 - c. Davenport was informed by DSU that policy governed all instances of grievances or disciplinary action.
 - d. Davenport was by instructed by DSU and the faculty senate that all rights and responsibilities regarding interaction with students, administration, faculty, staff and the board of trustees, discipline and tenure was governed by policy.
31. In all instances relevant, Davenport reasonably relied on the policy provisions and understanding that he and DSU were expected to conform to the procedures outlined in policy:
- a. He moved his family to St. George when he was offered a job consistent with the rights and responsibilities set forth in policy.
 - b. He applied for and was granted tenure consistent with written policy.
 - c. In every instance regarding grievances or disciplinary action, Davenport relied on policy.
 - d. In every instance regarding interactions with students, faculty, staff, administration and the Board of Trustees, Davenport relied upon the written policy, and past practice of the University and responded accordingly.
32. The plain language of the DSU announced policies¹ demonstrate DSU's intent to create a contractual obligation between it and Davenport:
- a. Policy 101-1.1 entitled "policy process" provides "Dixie State University (DSU) creates, approves, issues, revises, and maintains all university wide policies to provide continuity, accessibility, clarity, and transparency to the university community.
 - b. Policy 101-1.2 "provides a comprehensive, timely, consistent, and relevant set of policies that cover key aspects of university life, maintain university core values, and protect as well as support students, staff, faculty, and university resources. Policies are designed to bring the university into compliance with state and federal law and best practices in higher education."

¹ The highlights in policy, are made by Davenport and refer to the most significant portions of policy pertaining to this lawsuit.

- c. Policy 101-2. entitled "Scope" reads "**University policies address governance and principles. Unless explicitly stated, every policy applies to all faculty, staff, and students, as well as visitors to university facilities and users of university resources.**"
- d. 101-3.7 provides "University policies are maintained by the Policy Office /PSC on the university policy website. University policies often prescribe standards, requirements, restrictions, rights, or responsibilities and support the mission, values, and operation of the university. In this document, the terms policy and policies refer to university policies. Policies may not exist except at the university level..."
- e. Board of trustees policy 101-3.1.2 provides "**That all employees of the University be advised that the hiring, assigning, transferring, terminating, or discipline of personnel of the University will be handled according to established personnel policies** through the Office of Human Resources."
33. There are no disclaimers in the policies of DSU that DSU did not intend to create an implied contract between Davenport and DSU through its policies.
34. The relevant policies the parties relied on which created contractual obligations between them relevant to this lawsuit, are DSU policies 101, 102, 103, 157, 304, 321, 322, 632 and 633.
35. **Policy 101** sets forth, in relevant part, the rights and **obligations of the parties to be bound by policy:**
- a. 101-1.1 "policy process" provides "Dixie State University (DSU) creates, approves, issues, revises, and maintains all university wide policies to provide continuity, accessibility, clarity, and transparency to the university community.
- b. 101-1.2 "provides a comprehensive, timely, consistent, and relevant **set of policies** that cover key aspects of university life, maintain university core values, and **protect as well as support students, staff, faculty**, and university resources. Policies are designed to bring the university into compliance with state and federal law and best practices in higher education."
- c. 101-2. "Scope" reads "University policies address governance and principles. Unless explicitly stated, **every policy applies to all faculty, staff**, and students, as well as visitors to university facilities and users of university resources."
- d. 101-3.7 provides "University policies are maintained by the Policy Office /PSC on the university policy website. University policies often prescribe standards, requirements, restrictions, **rights, or responsibilities** and support the mission, values, and operation of the university. In this document, the terms

policy and policies refer to university policies. Policies may not exist except at the university level. . ."

36. **Policy 102** sets forth, in relevant part, the parties' rights and obligations pertaining to the **Board of Trustees**:

- a. 2.1.2 Accept the concept that each Board member is only one member of an educational team and **has no authority except as a member of the Board in a legally constituted meeting.**
- b. 2.1.5 **Maintain confidentiality of privileged information.**
- c. 2.1.6 **...confine Board action to policy determination**, planning, overall approval and evaluation, and maintaining the fiscal stability of the University. The execution of policies established by the Board is the function of the President.
- d. 2.1.7 **Insure an atmosphere in which controversial issues can be presented** fairly and in which the dignity of each individual is maintained.
- e. 2.1.8 **Respect the Office and in no way misuse the power inherent in the Office.**
- f. 2.1.9 Support the President in decisions that conform to professional standards and Board policy.
- g. 3.1 The Board acknowledges the concern of faculty and employees of the University in certain matters relating to possible misinterpretation of Board members' roles and functions. In so acknowledging such concerns, the Board affirms the following:
 - h. 3.1.3 That the **Board recognizes the First Amendment, freedom of speech principle**, as fundamental to the operation of the University and that no employee of the University shall be subjected to economic or professional sanction for expressing his/her opinion in open meetings of the Board.
- 3.2 The members of the Board recognize their responsibility to **adhere to the Code of Ethics.**

37. **Policy 103** sets forth, in relevant part, the parties' rights and obligations pertaining to the **College President**:

- a. 2.1 The President **shall adhere to the highest ethical standards** and promote the moral development of the college community and shall support active moral reflection, dialogue, and principled conduct.
- b. 2.2.1 Recognize that his/her primary duty is to serve and represent the entire University.

- c. 2.2.2 **Trust and respect for all persons** within and without the college.
 - d. 2.2.3 **Be honest in actions and utterances.**
 - e. 2.2.4 **Be fair in the treatment of all.**
 - f. 2.2.5 **Display a sense of integrity and promise keeping.**
 - g. 2.2.6 Commit:
 - h. 2.2.6.6 To **maintaining confidentiality of privilege information**
 - i. 5.1 The President affirms his/her responsibility to Faculty, Administration and Staff.
 - j. 5.1.2 **Respects both the personal integrity and professionalism of faculty, staff, and administrators.**
 - k. 5.1.3 Promotes a college environment that fosters **mutual support and open communication among all administrators, faculty, and staff.**
 - l. 5.1.5 Seeks and respects the advice of administration, faculty, and staff in matters pertaining to college life and governance.
 - 5.1.6 **Treats all employees fairly and equitably, preserves confidentiality, provides appropriate due process,** and allows adequate time for corrective actions.
38. **Policy 157** sets forth, in relevant part, the obligations of the personnel at DSU pertaining to personal conduct.
- a. 4.1.1.2 **Employees must be honest, demonstrating integrity in their business and personal dealings** and in their public service commitments.
39. **Policy 304** sets forth, in relevant part, the parties' rights and obligations pertaining to **information to be maintained used and disseminated** in and from Davenport's personnel file.
- a. 1.1 The **University will maintain official personnel files on employees** which contain materials relevant to the individual's employment and will be the repository of such information.
 - b. 2.3 All personnel files will be secured and only authorized personnel will be permitted to view them. They are protected under the Government Records Access and Management Act (GRAMA).

c. 2.3.2 Personnel files may be accessed by administration, supervisors and the employee, if allowed under the GRAMA.

III. Employee Rights

d. 3.1 An employee has the right to review and have copies made of the contents of his/her file(s) upon request, in the presence of a Human Resource Officer, except for information or materials therein that are classified as "controlled" or "protected" under the GRAMA.

e. 3.2 **An employee is to be sent a copy of any derogatory or negative information by its originator, before it is placed in his/her file.**

f. 3.3 An employee **may submit a written response** to be included in his/her file(s) whenever derogatory or negative information is placed in the file(s).

g. 3.4 **An employee may request the inclusion of relevant documents** to be added to his/her file(s). (Relevancy to be determined by the Director of Human Resources.)

h. 3.6 **An employee can challenge any factual statement or entry of factual data in his/her file** upon the ground that it is inaccurate, misleading, inappropriate, or otherwise a violation of individual rights.

i. 3.6.1 Any such challenge shall be in writing to the Human Resource Director, who will review the facts and supporting data and make a determination as to the challenge.

40. **Policy 321** sets forth the parties' rights and obligations pertaining to **tenure**.
1.15 Tenure – Faculty members appointed to ongoing tenure-track positions who have earned the terminal degree required in the discipline of appointment by the time of the Final Probationary Review and who demonstrate excellence in teaching and exhibit a strong commitment to serving students, colleagues, the department, the institution, and the greater community can be awarded tenure after the appropriate probationary period and reviews. **Granting tenure after the probationary period acknowledges that faculty members are especially valued by the institution, are competent in their disciplines**, and are capable of continued excellence in teaching, service, and scholarly, research or creative contributions as appropriate to their role statement. **Tenured faculty members have specific rights and responsibilities regarding institutional and faculty governance**. Because granting tenure is regarded as the University's most critical personnel decision, it is imperative that a thorough, responsible screening be part of the tenure-granting process. Tenured faculty may apply for promotion and are required to submit portfolios for Post-Probation Reviews as scheduled. Tenured faculty members who receive favorable Post-Probation Reviews are eligible for salary increases as outlined in Faculty Salaries (Policy 341).

41. **DSU Policy 371**, in relevant part, sets forth the parties' rights and obligations pertaining to **faculty termination**:

a. 4.1 Dismissal for cause may be imposed on a faculty member in the following circumstances:

4.1.3 **Serious misconduct or unethical behavior.**

4.2 Procedures for Dismissal for Cause

4.2.3 **Faculty members being dismissed for cause have the right to due process**, including the right to contest the information before an impartial board of faculty peers.

b. 4.2.4 **Dismissal notices shall originate in the office of the Vice President Academic Services.** Any such notice shall contain a statement of the cause(s) of the proposed dismissal with supporting detail, including the name(s) of the person or persons making the charge(s) **and the nature of the factual information**, as well as an outline of the procedures available to the faculty member if s/he wishes to contest the information before a faculty Review Board.

4.3 Faculty Review Board

c. 4.3.3 **The Faculty Review Board shall consist of five (5) tenured faculty members.** The Vice President of Academic Services and the Faculty Senate will each select five (5) qualified faculty members to serve as a Faculty Review Board pool (total 10 faculty members). In addition, the two (2) Review Board Chairpersons not selected to chair a particular Review Board panel will be available to be selected as members of that Review panel. From the pool, a four (4) member Review Board panel will be selected in a neutral manner which also ensures impartiality of judgment as well as diversity in the academic expertise and experience of panel members.

d. 4.3.4 All five (5) members of the Review Board, including the chair, shall have equal voting rights.

e. 4.4.2 **DSU legal counsel shall serve as a resource** to the Review Board and may be present at the meeting to provide guidance on substantive law and procedural matters.

f. 4.4.4 **Review Board meetings will be held in accordance with generally accepted standards of procedural due process.** Information of the sort upon which responsible persons are accustomed to rely on in the conduct of serious affairs may be considered, and is not restricted to information which would be admissible under the strict rules of evidence of a court of law.

4.4.5 The Review Board may consider any information which the panel believes is of value or import in determining the issues involved. Every possible effort will be made to obtain the most reliable information available. **The Review Board panel shall make its findings and recommendations based only on the information presented by the parties at the reviews.**

g. 4.4.10 The dismissed faculty member and **the administration will have the right to interview and question anyone presenting a verbal statement at a Review Board meeting.**

h. 4.4.11 **Review Board members shall not conduct any separate investigations,** rely on prior knowledge of the facts, or develop their own information regarding the review.

i. 4.4.12 **The burden of proof rests with the institution, and shall be by a preponderance of information and satisfied only by information in the record considered as a whole.**

4.5 President's Review and Action:

j. 4.5.1 **The President shall consider the record and the findings, conclusions, and recommendations of the Review Board. Based upon such review** and without conducting a further hearing, the President shall, within ten (10) business days, do one of the following:

4.5.1.1 **Accept** the recommendation of the Faculty Review Board.

4.5.1.2 Request the Faculty Review Board reconvene, **hold further proceedings,** and issue a second recommendation.

4.5.1.3 **Reject the recommendation of the Faculty Review Board** because the Board's findings were contrary to the information presented and either uphold the termination or order reinstatement. If the President rejects the recommendation, s/he will do so in writing, to the Faculty Review Board and to the faculty member. The decision of the President shall be final.

4.6 **Confidentiality**

k. 4.6.1 To the extent possible, **administrators and Review Board members will maintain confidentiality with regard to any Review Board process or decision.**

42. **Policy 372** sets forth, in relevant part, the parties' rights and obligations pertaining to Davenport's **Corrective and Disciplinary Action which do not merit termination,** colloquially referred to as the "three strikes policy":

Purpose:

a. 1.1 If an employee's attitude, conduct or performance on the job is less than satisfactory, the supervisor should use the following procedure...

b. 2.1 Reasons for corrective action discussion include, but are not limited to: negligence; incompetence; insubordination; disorderly conduct; discourteous or abusive treatment of others; excessive absence; unauthorized absence; unsuitability to job requirements; unjustified interference with the work of others; misuse of institutional property and funds; fraud; use of alcohol or drugs or being under the influence while working; violation of statutory requirements or

University policies; and violation of other generally accepted standards of conduct and performance.

First Level Corrective Discussion

c. 3.1 The immediate supervisor will hold a **private discussion** with the employee. The object of the discussion is to notify the employee of the unacceptable behavior and advise him/her of the necessary corrective action which would bring the employee's attitude, performance or conduct to acceptable standards.

d. 3.1.1 The employee will be informed that this is the initial corrective action discussion and will be advised of the consequences that follow if the conduct or performance does not improve within the time frame set by the supervisor.

e. 3.1.2 The discussion will be documented by the supervisor, and on request a written notice provided to the employee.

f. 3.1.3 The supervisor may judge the problem to be of a serious enough nature to forgo the First Level of Discussion and initiate the discussion at the Second Level or at the Disciplinary Action Level.

Second Level Corrective Discussion

g. 4.1 If the employee fails to take the necessary corrective action after the First Level Discussion or commits an offense deemed serious enough to forgo the above procedures, the immediate supervisor will talk with the employee regarding his/her lack of improvement.

h. 4.1.1 **A written record of the Second Level Discussion will be placed in the employee's file and a copy given to the employee.** HR-22 form, Written Warning, is to be used.

i. 4.1.2 **The employee should be told of the consequences of continued failure to meet the standards set and be placed on probation.**

j. 4.1.2.1 The discipline related probation period will last up to one year.

k. 4.1.2.2 If during the year of disciplinary probation, the employee repeats his/her misconduct or continues to perform poorly, the supervisor can move to disciplinary action.

l. 4.1.3 Upon non-recurrence of problems and satisfactory performance for at least one year, the written record may be removed from the personnel file upon written request by the employee and/or determination by the supervisor and the Human Resources Director that there is no longer a problem and that it is appropriate to do so.

Disciplinary Action

- m. **5.1 If the employee fails to respond satisfactorily, commits another offense** or commits an offense deemed serious enough to forgo the above procedures, disciplinary action shall be recommended by the supervisor to the next level of supervision or the appropriate vice president.
- n. 5.1.1 The next level supervisor or the vice president, in consideration of the supervisor's recommendation, will determine the appropriate disciplinary action.
- o. 5.1.2 **Disciplinary action may include, but is not limited to, suspension, without pay, for a period of up to 10 working days, and/or a written reprimand and/or dismissal.**
- p. 5.1.3 Employees found working under the influence of drugs or alcohol will at least be suspended, without pay, for five working days. See Drug-Free Workplace (Policy 152).
- q. 5.1.4 **If an investigation is necessary** and it is not in the best interests of the University for the employee to remain at work, the employee may be suspended, with pay, until the investigation is terminated and the situation is appropriately resolved.

Dismissal

- r. 6.1 **An employee may be recommended for dismissal according to the above procedure or for serious misconduct, without the above preceding First and Second Level Corrective Discussions, including, but not limited to, the following job-related reasons** (also see 373 Termination and Reduction in Workforce):
- 6.1.1 Fraud, including falsification on employment application.
 - 6.1.2 Misuse of University property or funds.
 - 6.1.3 Violation of statutory requirements of institutional regulations and policies, such as regulations related to discrimination or harassment.**
 - 6.1.4 Conviction of a crime by a court of competent jurisdiction.
 - 6.1.5 Lewd, threatening, abusive or violent treatment of the public, students, or other employees.
- s. 6.2 **A written record of all proceedings related to disciplinary action and dismissal will be placed in the employee's official personnel file and a copy of the record will be given to the employee.**
- t. 6.3 **Employees receiving formal disciplinary action, that is at least a Second Level Corrective Discussion, will be informed by their supervisor or the Human Resources Director of their right to use the grievance process.**

43. **DSU Policy 632** sets forth, in relevant part, the parties' rights and obligations pertaining to **academic freedom and faculty responsibilities**:

a. 2.18 Professional responsibility provides that **persons having a formal association with Dixie State University shall not be involved in acts which violate the academic freedom or constitutional rights of others, or the rules and regulations of Dixie State University, the Board of Trustees or the Board of Regents.**

b. 3.1 Introduction - The institution is operated for the common good and not to further the interest of either the individual faculty member or the institution as a whole. **The common good depends upon the free search for truth and its free exposition. Academic freedom is essential to these purposes and applies to both teaching and community service.** Academic freedom in its teaching aspect is fundamental for the protection of the rights of the teacher in teaching and of the student to freedom in learning.

c. 3.2 Academic freedom in teaching - Faculty members possess the right to **full freedom in the classroom in discussing their subjects.** They may present any **controversial material** relevant to their courses of instruction, but they shall be careful not to introduce into their teaching controversial matter which has no relation to the subject being taught.

44. **DSU policy 633** sets forth in relevant part, **faculty rights** the administration will protect.

a. 3.1 Additional rights of faculty include, but are not limited to:

3.1.1 **Due process in proceedings involving the possibility of disciplinary action.**

3.1.1.1 Faculty members will normally **expect a presumption that their conduct is proper and made in good faith.** In bringing formal allegations or complaints, **accusers have the burden to provide facts and evidence sufficient to overcome this presumption.**

45. During his tenure at DSU, Davenport produced, acted in, and directed numerous plays for public audiences at DSU. The actors were largely DSU students. The subject matter chosen by Davenport routinely included mature subject matter of a sexual nature, use of profanity, and the depiction of violence.

46. During Davenport's tenure at DSU, the administration ran the University as a parochial school, demanding compliance and instruction consistent with the tenants of the Latter-day Saint religious movement. Davenport believed that students needed to experience a far ranging secular experience similar to what they would experience upon graduation and entering the job market across the nation in a fiercely competitive industry.

47. Davenport understood, as a tenured professor, he was protected by DSU policy and the First Amendment pertaining to academic freedom regarding teaching methodology and the content of the theater productions in which he was involved at DSU.

48. During his time at DSU, Davenport was never informed that his productions were inappropriate by DSU, nor was he ever disciplined for the productions, nor was he ever informed that any negative material was placed in his personnel file regarding any such productions.

49. In or about 2009, DSU hired defendant Mark Houser as the chairperson of the fine arts department. Houser had no prior experience in academia nor in administration. Houser was Davenport's immediate supervisor and was not tenured.

50. Houser professes pious beliefs that profanity, romantic or sexual acts, and acts of violence are serious sins which should not be portrayed, in any forum, irrespective of academic freedom, free speech, and DSU policy.

51. Houser's general reputation for truthfulness amongst the faculty at DSU is that he is dishonest.

52. In 2010 and 2011, defendant John Does (administration officials at DSU) in conjunction with Houser initiated a surreptitious program (known as the "SWOT" program) wherein faculty members, including Davenport were targeted for demotion and termination for exercising academic freedoms guaranteed under DSU policies and the First Amendment.

53. The targeted professors were never apprised they were targets, nor given notice or the opportunity to be heard regarding their targeting, as guaranteed under DSU policy and the Fourteenth Amendment.

54. As the creation of a targeting document breached policy and the Constitution, department heads were instructed to keep the contents of the program "absolutely confidential," by Houser.

55. In both 2010 and 2011, defendant Houser authored a "SWOT analysis" wherein he targeted Davenport for demotion, and two other professors for termination. Houser was able to facilitate the removal of the other two professors, Monica Hart and Brett Innes.

56. Davenport did not become aware of the fact he was a target of Houser until the "SWOT analysis" was turned over to his attorneys in emails in June 2016, as part of the criminal proceedings referenced infra, a year-and-a-half after his employment with DSU was terminated.

57. In the “SWOT analysis,” Houser acknowledged Davenport was being targeted for exercising academic freedom²:

“We now have a **standing reputation of doing nothing but Dark Shows**, with language and Varlo's name is [*sic*] attached to it because he is our leader/chair... All shows need to be held to a standard which suits the maximum audience - **no nudity, no sex, minimal violence/blood/gore, very minimal language if any (absolutely no GD, F word)** - and they should only be used so many times before it is deemed unfit for our audience.”

58. In the “SWOT analysis,” Houser falsely wrote:

Professor **Davenport speaks ill of other faculty members and students in class regularly**. He often exhibits a **very unprofessional** demeanor in faculty and production meetings, putting down others when they are not present and spreading rumors about those who appose [*sic*] his ways. Professor Davenport has also leaked confidential information to his spouse and other students in order to turn them against administration and other professors in the department. His **attitude toward administration is extremely contentious**.--Outside work/professional development takes away from the quality of work and production all too often (those employed simultaneously with Tuacahn being one of the major contributors to this).

Founders Syndrome/Dictatorship (admitted to by Varlo)- no one on [*sic*] the department likes that the department head dictates the department decisions but they are afraid to voice it and are intimidated - this has created a void in coherence among the faculty and staff.

Professor Davenport **has been known to threaten and intimidate others and is considered a bully by other faculty and staff members**. As the department head, he has also **abused his authority** and denied the proper support and resources to those faculty who try to stand up for the students or who push for better ways for the department to operate.

There are many students threatening to leave or leaving who do not like the atmosphere of professor Harding's and Professor Davenport's classrooms, productions and the way they treat other students and faculty members. **They have written formal letters to administration asking for change**. They do not get past the Department Chair level.

Both Professors have been known to tell their students not to bother filling out student surveys, 'they don't read them anyway, no one does.

Professor **Davenport does not play well with others**, especially those outside the department, he steps on toes if he thinks something should be done differently.

² Highlighting provided by Plaintiff pertaining to the most egregious claims made by Houser.

Many **outside organizations do not like to work with Professor Davenport** because he is not professional and very disorganized.

-**Nepotism**- Professor Davenport's family, spouse and children, seem to feel entitled to ownership of the costume shop and certain privileges afforded them by his position. **They openly flaunt and admit that to other students and faculty, sometimes using it to manipulate them.**

59. In the SWOT analysis Houser wrote that Davenport should be demoted:

The Department Head position [Davenport] needs to be given to someone capable of yielding it fairly - **Varlo Davenport relinquishes the Chair position...**"

60. Houser, in early 2012, began surreptitiously soliciting information from theater students that could be used to demote/terminate Davenport. During the Spring of 2012, Houser solicited and received letters critical of Davenport from four students BB, MR, MH, and BeB, insuring the students that their letters would remain anonymous, knowing this was a violation of policy and the Fourteenth Amendment.

61. Houser did not provide Davenport copies of the letters, nor place them in Davenport's personnel file, nor inform Davenport of the allegations. Instead, Houser secreted those letters in a "special file" maintained in his office. As Davenport was never made aware of the allegations, he did not have a chance to refute the allegations.

62. In or about 2012, DSU DOE defendants established an "ethics and compliance hotline," colloquially referred to as the "whistleblower site," wherein complaints could be levied against any students or professors "anonymously."

63. When allegations are made against faculty through the whistleblower site the information is used against the faculty member without the faculty member being apprised of the allegations being made, in violation of DSU policy, and the fourteenth amendment.

64. Almost immediately after establishment of the whistleblower site, (which became operational in January 2013) "whistleblowers" would anonymously report false claims against faculty via a process known as "scrubbing," where an email would be sent through a third-party server before forwarding to the whistleblower site removing any metadata, making it impossible to trace the IP address of the individual making false allegations.

65. In August 2014, the DSU Board of Trustees hired defendant Williams, as the president of DSU.

66. Williams had immediate access to the information coming into the whistleblower site and was aware that false allegations were routinely made against faculty.

Nevertheless, Williams used information coming into the whistleblower site to discipline faculty without revealing the nature or the source of the allegations.

67. In the spring of 2014, an issue arose between Davenport and a fellow professor (“KD”) at DSU. On June 14, 2014, pursuant to policy, that issue was resolved informally by Brent Hansen, the supervisor of Houser. Pursuant to that agreement, Davenport wrote an apology letter to KD and agreed to not direct theatrical productions at DSU for a year, and the complaint against Davenport was dropped, with no record of the complaint or the disciplinary action being placed in his file.

68. In the fall of 2014, Houser’s probationary period at DSU was complete and he was eligible for tenure pursuant to DSU policy 321, Houser submitted his portfolio to DSU for consideration. Pursuant to DSU tenure policy, Houser's portfolio was presented to the faculty tenure committee, on which Davenport sat.

69. In October 2014, the committee met and voted 15-0 against Houser’s request for tenure because of his reputation of dishonesty, because he was surreptitiously compiling files on faculty members in violation of DSU policy and the fourteenth amendment, and because he had falsified his credentials to become a professor at DSU.

70. No professor denied tenure at DSU has ever retained employment there. It was anticipated that Houser's employment would end after Spring semester 2015.

71. After being notified of the tenure committee’s recommendation, Houser stated to two DSU professors that his only chance at maintaining employment in academia would be to undermine the credibility of the tenure committee, and specifically Davenport, believing that Davenport had “poisoned” the other committee members against him. In November 2014, Houser indicated to another professor that he was going to "take Davenport out."

72. Irrespective of the fact that Davenport had no disciplinary action in his personnel file, and irrespective of the fact the issue with KD was resolved informally in June, metadata from emails obtained in June 2016, reveal that Houser, on November 19, 2014 at 10:22 PM created a document on his DSU computer entitled “Final Disciplinary Review and Development Plan,” (The “plan”) where he intended to use the issue with KD, and information from the four students kept in his “secret files” as a basis to convince administration to fire Davenport, in an attempt to keep his own job.

73. In “the plan,” Houser set forth 10 alleged violations against Davenport, none of which were in his personnel file, all of which were false, or had been resolved in the June meeting. He also falsely wrote that Davenport had been given three warnings that his behavior must change or it may be necessary to “consider whether Professor Davenport should be allowed to continue his contract at DSU or not,” to make it appear as though Davenport had been given due process under the “three strikes policy,” when he had not.

74. Houser drafted “the plan” in such a way as to give the false impression that the allegations had been proven against Davenport and that Davenport had agreed to the discipline, with the approval of Hansen. He dated the purported agreement to June 13, 2014 to give the impression that it was contemporaneous with the issues with KD. The purported agreement, was not signed by Davenport, who never saw it, nor by Hansen who had retired 4 months previous. It was signed by Houser on November 25, 2014, with the notation “updated 11/25/2014.”

75. During the fall semester of 2014, Davenport was teaching an afternoon "Theater 1033" class; “Introduction to Acting.” There were 12 students in the class which was held in the DSU Dolores Eccles Fine Arts Center, room 156. (Eccles 156). Eccles 156 consists of a “stage” which is simply a flat area situated in the front of the classroom, with chairs facing the stage much as an audience would sit in front of the stage in a theater.

76. Eccles 156 was surveilled, during the Fall 2014 semester, by a camera located in the rear center of the room focused on the stage where the students would warm up and practice various acting techniques. The surveillance was recorded and monitored by the DSU security offices under the supervision of defendant Don Reid

77. Two of the techniques Davenport used in teaching students were derived from theater practitioner Konstantin Stanislavski which help students overcome embarrassment and inhibitions by drawing on prior emotional experiences through physical resistance techniques.

78. These techniques are used by every theater professor at DSU, with the approval from the administration, and are used in acting classes and universities throughout the United States, and the world.

79. To the uninitiated, the use of physical resistance training and the drawing on prior life experiences to connect with the character the actor is portraying can be difficult if not impossible to understand.

80. CS was an incoming freshman at DSU in August 2014. She had graduated from high school a year early in the Midvale, Utah, area, and was on academic scholarship. She needed to maintain a high grade point average to keep her academic scholarship. She was one of the students in Davenport’s afternoon theater 1033 class. On November 21, 2014, she was 17 years and 11 months old.

81. At the outset of the 2014 fall semester, Davenport instructed the students in 1033, including CS, that acting is a difficult discipline. He informed the students that acting requires participation and that grades were largely based upon the student’s ability and willingness to act. He instructed the students that if they did not perform acting scenes and complete a final examination, which was an acting scene with a partner, they would receive an “F” for the semester. He informed them they would draw upon prior personal

experience and use physical resistance techniques through the semester and explained the purposes behind the techniques.

82. At the outset of the 2014 semester, and throughout the semester, Davenport instructed the 1033 students, including CS, that if any physical resistance or drawing upon prior personal experience went too far, to simply say “stop” and the exercise would “stop.”

83. Throughout the 2014 semester, all the students in 1033, including CS, performed acting scenes in front of the class, engaged in physical resistance techniques, and drew upon prior experiences as part of the techniques used in acting.

84. As the fall semester progressed, CS was having difficulty performing the acting scenes that were required in the 1033 class, because of her shy nature. She was routinely missing class and feared that she was going to get an “F” in the class and lose her academic scholarship.

84. On the afternoon of November 21, 2014, CS arrived in Eccles 156 for her theater 1033 class. There were 10 students present in class that day. Because she had not been present recently, Davenport instructed CS and her male partner, RH that they would be practicing their scene, which CS had chosen.

85. The scene required CS’s character to get emotional and angry with a friend (RH’s character), whose character was using alcohol and drugs. As the scene progressed, CS was giving a flat performance with neither emotion nor anger, as she was obviously inhibited in performing the scene.

86. In order to get CS to overcome her embarrassment and inhibitions, Davenport used physical resistance and prior experience techniques. The physical resistance included CS pounding on RH’s hands with her fists, a student holding her shoulders in her chair, Davenport gently tugging on her hair, and students touching her eyelashes and pulling her headband. The prior experience had CS recall a family member with a drug related past. Davenport asked CS several times if she was okay throughout the exercises and CS told Davenport on she was fine. She only became demonstrably emotional when recalling a family members use of drugs.

87. Surveillance video of the acting class revealed that nothing untoward transpired, for an acting class, throughout the entirety of the class.

88. After class, CS traveled to Midvale, Utah, to her mother and step-father’s home. CS told her mother, MS, she was going to get an "F" in Davenport's theater class. Rather than tell her mother she was going to flunk out because she was too shy and embarrassed to act, she told her mother she couldn’t act because Davenport hated her and had physically and emotionally abused her.

89. On November 24, 2014, MS contacted Houser via telephone. She asked Houser if there was any reason why Davenport and the other students would ever touch her daughter.

90. Houser, looking for any reason he could to terminate Davenport's employment, and knowing that physical resistance is used in acting classes at DSU and across the country, lied to MS telling her that there would never be any reason for a student or a professor to touch an acting student.

91. MS asked Houser if Davenport had a history of similar conduct and Houser lied to MS telling her that Davenport had a long, documented history of bullying students.

92. MS told Houser that CS was at DSU on scholarship and that if she got an "F" in Davenport's class that she would lose her scholarship, and that CS did not want to take the final exam.

93. Houser told MS to not worry about it, that CS would not need to take the final exam and that he would make sure that CS would be given an "A." Houser knew that would be a violation of DSU policy, as well as accreditation regulations to give CS a grade she had not earned, but needed to placate CS in order to find a basis to terminate Davenport and keep his own job.

94. Houser suggested to MS that she should file criminal charges against Davenport and get an attorney to sue Davenport. He instructed CS and MS to email him a statement regarding the events in class on November 21, instructing them specifically as to the details they should put in the statement.

95. On November 25, 2014, Houser received the statement from CS and MS, containing the false claim that Davenport had assaulted CS on November 21, 2014.

96. That same day, Houser met with defendant, Dean of Students, Del Beatty. He asked Beatty if he had any negative information that could be used against Davenport. Beatty lied to Houser, telling him that he had six years of documented complaints from students against Davenport. In reality, Beatty did not have one documented complaint from a student pertaining to Davenport.

97. Later that day, Beatty emailed defendant Jarvis, (Houser's boss) claiming "there was a steady stream of students from Varlo's classes claiming unfairness and favoritism," and that he "had six years of documentation to prove it," knowing that claim was categorically false and knowing that it would be used as a basis to discipline Davenport.

98. On the same day, Houser, Beatty, and Jarvis met. It was agreed that they would do what they could to terminate Davenport's employment. The three agreed that CS would be given a letter grade for Davenport's class, without taking the final exam and without completing any additional coursework, even though that was a violation of DSU policy and accreditation standards. Houser then started putting together a "complaint

against faculty member” (“the complaint”) based on the false allegations from Beatty and CS.

99. On December 1, 2014, Houser, met with CS’s acting partner, RH. RH informed Houser that CS’s claim that Davenport assaulted her were not true. He told Houser he was in the best position to determine what happened as he was with CS most of the class. He told Houser nothing untoward happened. He said it was “just another day in acting class.”

100. Houser kept the information received from RH and the fact he had interviewed RH out of the complaint, so his superiors would not know that CS’s claim of assault was directly contradicted by her acting partner.

101. Houser met with two other students on December 1, 2014. from the November 21 class, TB and WH. Both these students indicated that CS’s claims of assault were false.

102. Houser did not record the interviews with RH, TB, or WH, nor did he have them write out written statements.

103. Houser instead then incorporated into the “complaint” false statements he attributed to TB and WH:

"[TB’s] account directly paralleled the report provided in writing to the Department Chair by [CS]... The professor then proceeded to yell at her and pick on her to try to get her to yell. [CS] told him she could not say her lines and continued to cry. Because she was not saying her lines or getting to where the professor desired her to go, he was getting frustrated with her and started pulling her hair really hard, enough that her face was straight up and she looked like she was having trouble breathing... He then let her hair go but started to pull on her shirt violently backwards to try to get her mad. This went on for about 4-5 minutes until the Professor finally gave up...[CS] sat down and continued to break down and cry for the remainder of the class...When she was asked if the professor explained what he was going to do or intended to do, [TB] replied no he did not. She was then asked if Professor Davenport asked if he could touch the student in any way and she replied no, he just marched right up to her, frustrated and grabbed her hair..."

[WH] stated that in the process of rehearsal... Davenport became frustrated because he was not getting out of her what he wanted her to do. His desire was to make her mad and get her to yell... She states that the professor asked her and Chris to come up and start pushing [CS] around and pulling her hair to get her to yell and become mad. That was not working and so the professor had them sit down...The professor then, frustrated himself, started pushing and bullying [CS] pretty heavily and when she still was not getting where he wanted her to go. He grabbed her by the hair quite hard. It looked like he was pulling really hard because her neck was all the way back and she could not say her lines. She just kept crying...She further explained that [CS] just sat down, exhausted afterward and continued to sob the rest of the class... When asked if

the professor explained what they were about to do or if they asked if they could touch the student, [WH's] reply was, I don't recall him asking or explaining anything... "

104. Houser did not interview the other students from the class; SI, EP, JBC, CB, CW, or TN, all of whom have subsequently indicated that CS claims of assault are not true as what transpired in class on November 21, 2014, was nothing out of the ordinary. Houser, never documented why he did not interview those students.

105. On December 1, 2014, Reid watched the surveillance video from the November 21, 2014, acting class from Eccles 156, and saw nothing out of the ordinary. He did see Davenport tug on CS's hair at one point. However, CS did not appear in any distress and continued to engage in physical resistance exercises for the remainder of the class, showing no signs of emotion except at the point where Davenport had her recall her father's prior drug use.

106. On December 4, 2014, having returned to St. George without her parents, CS met with Beatty, outside the presence of her parents and told Beatty that she wasn't hurt in class, but was more embarrassed than anything. Beatty told that to Houser and Jarvis, but did not include it in any documentation to DSU administration.

107. The final version of Houser's "complaint" contained the false claim of assault by CS and Houser's falsified interviews with TB and WH, and the following recommendation and false allegations:

[I]t is the Chairs [sic] recommendation that professor Davenport's contract with DSU Theatre department be terminated entirely, based on the destructive nature and trend in his classrooms, the level of unceasing unethical behavior toward students and faculty, lack of professionalism and the general sense of terror that exists among the students in (and outside of) the department. The Theatre department has been losing a steady number of students each year due to the atmosphere that is being promoted by the performance faculty in general. Progress cannot be made if we are deterring students from our program.

108. On December 4, 2014, Houser sent the "complaint" and the recently fabricated "plan" to Williams, even though he knew no information should go to Williams, who would ultimately be the final arbiter of any discipline of Davenport pursuant to DSU policy in order to predispose Williams against Davenport.

109. On December 5, 2014, Reid having reviewed the video from Eccles 156 told Houser that no criminal case existed against Davenport, and that, "Had Mr. Davenport merely explained to his class that such actions are helpful in certain situations and informed them they have a choice not to participate, and then instructed other students to challenge her within certain boundaries, this would be much like an altercation that occurs on a basketball court and/or a football field where some physical contact is

expected, and the courts tend to be of the opinion that what happens on the field is between the coach and the players within certain boundaries...”

110. On that same date Reid, after having told Houser no criminal case existed told Houser that he would nevertheless file criminal charges to avoid a potential civil lawsuit if DSU administration wanted him to. “The fact that we would file criminal charges separate from the in-house complaint would be an added defense in the event of a civil law suit down the road.” If the administration wanted to “send a stronger message by way of documentation I would have no qualms about submitting a complaint request to the D.A.’s office.”

111. Later that same day Reid met with CS, her mother and step-father. CS told Reid the same falsehood she had put in her written statement that Davenport pulled her hair as hard as he could for several minutes and that she tried to pull it out of his hands as hard as she could with both hands but was not strong enough to break free and that she was sobbing the entire 50 minute class.

112. Reid knew that CS’s claims were false because he had reviewed the surveillance video.

113. The elements of criminal assault under Utah law require proof that the Defendant, with the required culpable mental state, with unlawful force or violence, did bodily injury or attempted to do bodily injury to another, without their consent.

114. Reid has been in law enforcement in Utah 40 years and knew the elements of criminal assault.

115. Reid knew Davenport did not have the culpable mental state as the physical resistance was a legitimate teaching technique. He knew CS did not receive bodily injury nor was there an attempt by Davenport to injure her. He knew there was no evidence Davenport used unlawful force, and he knew that CS had consented to the physical resistance by her voluntary participation in the physical resistance he observed on the video footage.

116. Reid told CS and her parents:

“This is an academic setting, and if he can show that there’s a relationship academically...” The truth is if I -- if I look at his syllabus and it’s in his syllabus that you might would be intimidated for the purpose of teaching you to dig deep, if he’s got that in his syllabus, we’re not going to get criminal charges against him. It’ll be called “academic freedom.” And it will be -- say, “Well, you saw what was in the syllabus. That’s what he says is going to happen.” That’s why, you know, if he does do this -- because I know I’ve seen -- I’ve seen movies where acting coaches and acting teachers will do this on a higher level.

And it's just like with domestic violence and other kinds of cases, when there's a relationship, it changes things.

This is drama. This is an acting class. I've done this for other students to get out of them."

And if I were to find out that this is done in acting class at other universities I'd realize I don't have a case.

117. Even though Reid knew no crime had been committed and that CS was not telling the truth, Reid knew administration could use the false allegations levied against Davenport to terminate Davenport, and he gave her the option to do so:

You know that you've got the full weight of the administration behind you, from the president to the vice president to the deans, even to our office.

There have been a lot of people, vice presidents, department heads, in the last few weeks, that have gotten their pink slip.

I will be asked for recommendations and all that sort of thing. I don't -- I'm not privy to that either. And it has nothing at all to do with me, but let's say they go the far end of the spectrum. And let's say this guy loses his job and his career. Would that make a difference to you, as to whether or not you wanted to file criminal charges? Because then you're looking at he gets fired, his career is done and he's still also facing criminal charges. In your mind, would you -- is that a -- are you saying, "That's how far I want it to go," or are you saying it might make a difference?

Once I tell him [Williams] that you guys have indicated to me that that that would weigh heavy in the decision you want to make, as far as criminal prosecution, I would think that there would be some leeway there.

And so you need to be the one to decide, so you need to tell us what justice would be for you. And you know more of how you felt. You know more of what you think his intent was and all those kinds of things. So if it was something like this guy lost -- just lost his job...and everything else. If you felt like that was enough, that was justice and justice was done for you, so you start the healing process. If that's not enough, if this was, you know, done out on the street by somebody else, it wouldn't be justice for you until they had a criminal history.

118. CS's step father and mother told Reid that if Davenport got fired instead of getting a "slap on the wrist," that they would not pursue criminal charges against him.

119. Reid told them he was sure that Williams would fire Davenport, but if not, CS would need to amend the statement she had previously sent Houser, making sure to include a paragraph focusing on "mainly the fact that he's never personally gotten involved with any other student on stage to do this same kind of thing."

120. Reid told them that to ensure fairness to all parties, if CS's parents wanted him to conduct a criminal investigation, he would need an updated statement, then his investigation would include:

- a. Mirandizing and interviewing Davenport.
- b. Interviewing all the witnesses in the class.
- c. Going to other universities, in this same class category to see what's in their syllabus.

121. As soon as Reid finished talking to CS and her parents, he telephoned Williams and told him what he saw on the video and what occurred in the interview. He told him that they could use CS's complaint to fire Davenport and that any irregularities in her claims would not be discovered as CS's parents would not want him to conduct a criminal investigation provided Davenport was fired.

122. Williams, knowing it was a violation of DSU policy to be involved in the process at all, as he would be the final decision maker of the disciplinary proceedings against Davenport, and that Davenport was owed a presumption that his actions were proper and in good faith, and having reviewed the false documentation drafted by Houser and Beatty, knowing that it was not in Davenport's personnel file, immediately called a meeting in Will Craver's office to discuss firing Davenport. Present were Craver, Christensen, Williams, and Jarvis.

123. Williams, having not given Davenport the right to a pretermination hearing, instructed Christensen to fire Davenport immediately, and to make it appear as though it was Christensen's decision, not Williams, because he knew his involvement was a violation of policy and that any dismissal of faculty was to originate in the office of the vice president of academic services, Christensen's office, not the office of the president.

124. After Williams left Craver's office, on the afternoon of December 5, 2014, Jarvis summoned Davenport to Craver's office where Christensen, without explanation and without a pretermination hearing informed Davenport that he was fired.

125. At 7:02 pm Christensen emailed Davenport a "notice of dismissal" indicating his employment was being terminated, not pursuant to the "three strikes policy" but instead for "serious misconduct that took place in one of your acting classes (THEA 1033-02) on 21 November 2014, involving a student [CS]."

126. Prior to the receipt of the DSU emails in June 2016, Davenport was never made aware that it was Williams, not Christensen who terminated him and that the termination was based on Beatty's false claim that there were numerous student complaints against him and based on the falsehoods contained in Houser's "final report," and Williams' communications with Reid.

127. Williams contacted CS's stepfather on or about December 8, 2014, and told him that he had fired Davenport.

128. Knowing that CS's claims of assault were false, and that CS did not want him to file criminal charges, as Williams had fired Davenport, Reid did not open a criminal file. Reid did not book the recording of the interview with CS into evidence. Reid did not attempt to interview any of the eyewitnesses. Reid did not attempt to interview Davenport, and he made no attempt to find out what the syllabi from other universities provide regarding physical resistance and academic freedom. Reid made no attempt to preserve or book into evidence the surveillance video from Eccles 156.

129. On or about December 8, 2014, Jarvis met with Christensen and discussed that the firing of Davenport without a pretermination hearing violated policy and the 14th Amendment. They discussed the fact they did not want a Faculty Review Board (FRB) to know that Davenport was fired without a pretermination hearing. It was decided that Jarvis would draft a memorandum suggesting Davenport be "suspended" even though he had already been fired and the "memorandum" would be the document they would use to bring allegations against Davenport, and for submission to the FRB.

130. On December 8, 2014, Jarvis drafted and emailed a "Memorandum " to Christensen requesting that Davenport be "suspended with pay" pending a due process hearing, that the University's attorney consult Don Reid about filing criminal charges and that Davenport be fired for the following four reasons:

"That Professor Davenport assaulted [CS] (a student) in class, both verbally and physically."

"That Professor Davenport engaged in acting exercises intended to 'explore' deep emotional states, without setting pre-determined safe zones for students."

"That Professor Davenport, on many occasions, has conducted classes in a manner leading to student complaints to Dean of Students Del Beatty."

"That Professor Davenport, on at least one occasion, has threatened colleagues in theater faculty production meetings."

131. The December 8 "Memorandum" served as the complaint against Davenport with the FRB.

132. During December 2014, at least five students who were present in the November 21, 2014 theater class contacted Hauser and Jarvis and told them that nothing untoward happened in that class between Davenport and CS. Neither Jarvis nor Hauser documented those conversations.

133. On December 19, 2014, Davenport requested a faculty review hearing. The FRB hearing was scheduled for January 29, 2015 consistent with policy, with five faculty members acting as the board.

134. At some time in December 2014, Williams hired CS to work for him in his office. The two of them became close and Williams had numerous conversations with CS about what happened in class on November 21, 2014, her family, and her future plans, knowing that he would be the final decision maker in the discipline of Davenport. Williams never informed Davenport of the relationship he developed with CS or the nature of their conversations. Davenport never discovered the relationship between Williams and CS until receiving the DSU emails in June 2016.

135. Williams knew Davenport was in the process of appealing his termination and that Williams would be the final decision maker of any discipline. He recognized that by establishing a relationship with CS, he would have a conflict of interest in rendering a final decision on Davenport's discipline.

136. CS worked for Williams from December 2014 until she withdrew from DSU on February 26, 2015.

137. On December 23, 2014, Houser told Davenport to give CS an "A" (even though she never took the final exam and even though she had not earned it), stating, "The Dean has requested that [CS] be given an A for the semester. You can finish that out. Thank you."

138. Davenport refused to give CS a grade she had not earned, awarding her the grade she had up until her last date in class November 21, 2014.

139. During this timeframe, Jarvis informed Christensen that numerous students had come forward indicating that CS's claims about the incident in class on November 21, 2014 were false. Christensen withheld that information from Davenport.

140. On December 23, 2014, Davenport, concerned that DSU was going to use unsubstantiated allegations to discipline him, asked Craver to provide him everything from his personnel file.

141. Craver pulled Davenport's personnel file and realized that the allegations contained in Jarvis' "memorandum" from Beatty of six years of student complaints were not there nor were the claims by Houser that Davenport had threatened a colleague in a production meeting, as his personnel file was empty. As such, Craver knew that DSU could not use the "three strikes policy" against Davenport without violating policy.

142. The following week, Craver informed Christensen that Davenport had asked for documentation in his personnel file, and the file was empty. He told Christensen it was a violation of policy to take any action against Davenport for any reason other than the incident with CS and that DSU couldn't use the "three strikes policy" to sanction Davenport. Christensen told Craver he would respond to Davenport's request for information from his personnel file.

143. On the morning of December 29, 2014, Christensen emailed Davenport informing him that the only issue before the FRB was "The cause(s) that you will need to address include; your apparent assault upon [CS] in grabbing her hair and pulling her head back, your instructions to involve other students in physically touching another student without permission, the apparent lack of a "safe out" for the student, and otherwise taking an acting class beyond acting and into a real perception of anger and hostility."

144. Davenport emailed back, requesting his personnel file. "I appreciate this information. A few days ago, I spoke with Will about getting a copy of my personnel file. I understand he has been short-handed, but as it relates, I would like to also request copies of any documents or items that the University will be relying on to establish the merits of its actions. Could you let me know when I might be able to receive them?"

145. Knowing there was nothing in Davenport's personnel file, and having told Davenport to prepare only for the CS incident, Christensen never responded to Davenport's request for the documentation from his personnel file, and began actively pursuing information he could use against Davenport without Davenport's knowledge, from outside Davenport's personnel file.

146. On the afternoon of December 29, 2014, Christensen instructed Craver, Houser and Beatty to start compiling information from any source in addition to the CS incident. "I believe the whole story is best told by showing an escalation of events over time, and a pattern of behavior, that led to and culminated in this latest incident. Otherwise, I am not very confident that a review board of faculty peers will be willing to recommend dismissal if they believe it is based on a single fax paus [sic]."

147. On January 22, 2015, Beatty, in response to Christensen's request for additional information wrote Craver admitting that he had made up the allegation that he had documentation of numerous student complaints against Davenport. Beatty emailed Craver, "The students never would submit anything formal against Varlo, they just would ask who they should talk to about concerns they were having with a professor or a class. I always referred them to Brent Hansen and/or Don Hinton."

148. Christensen, knowing that Beatty's claims were false, that there was no disciplinary action documented in Davenport's personnel file, that CS's claim of assault was false, that none of the students in class would corroborate her claim, and that Houser had falsified what WH and TB had told him, informed Jarvis, that Jarvis was going to present DSU's case to the FRB without evidence.

149. Jarvis contacted Houser and informed him that since he got the whole thing going, that he was going to present with Jarvis. Jarvis and Houser, knowing they had no evidence to present to the FRB decided they couldn't call any witnesses regarding the CS incident because the FRB would discover that the CS story was a fabrication.

150. They decided that Houser would restate the falsehoods he had put in his complaint and the memorandum regarding what TB and WH had told him, and they would present the written statement of CS and try to bolster those hearsay statements.

151. They decided they would present the information Houser had from his secret files pertaining to prior events, knowing that Christensen had told Davenport that only the claims pertaining to CS would be going forward, and knowing that Davenport had never seen the content of Houser's secret files, nor had the opportunity to refute the information in them, and that it was all kept out of his personnel file.

152. Houser, Jarvis and Christensen met with assistant attorney general Carter in preparation for the FRB hearing to discuss use of Houser's secret files. Carter told them they couldn't use the secret files as that was a violation of due process and policy as Davenport had never seen the information, nor had the opportunity to refute it, and it had been addressed previously and was never part of Davenport's file.

153. Without any evidence, Houser and Jarvis agreed that they would argue the false information contained in the "memorandum" for which there was no evidence, and try to bolster the false allegations in the "complaint" without any witnesses to corroborate the false claims of Houser and CS. Houser would try and "bootleg" in the information from his secret files that Carter would not let the FRB consider.

154. At or about this time, Craver, who understood the political motivations in the firing of Davenport, in direct contravention of a directive given him by Christensen, contacted Davenport and let him know that there was nothing in his personnel file.

155. On January 26, 2015, Davenport wrote Craver concerned that DSU's motivation had nothing to do with CS, which was a pretext to terminate him:

"Will, there has been something troubling me about this procedure from the beginning - the first phone conversation I had with HR was to ask the question, 'What is it I'm supposed to address, the complaint of assault by the student, or the accusations of intimidation or bullying a faculty member?' The charge, as stated in the Academic Vice President's letter of December 5, was that I had assaulted a student, and he goes so far as to list specific issues within that charge. I have prepared a defense to address these issues. However, as I read over the evidentiary materials provided to me by administration, it appears that the assault issue is a pretext for asking me to address earlier grievances that were handled informally, and that are completely unrelated to student's accusation. This inclusion leapfrogs the protection of a formal review of the earlier grievances, and thereby denies me the opportunity to fully defend myself. If these earlier, unrelated issues are going to be used as evidence in this faculty review, then I respectfully request a formal hearing of the earlier grievances, so that I can fully address each one in turn, prior to their being used against me."

156. On January 26, 2015, Craver and Christensen argued over using evidence against Davenport that was not in his personnel file. Craver was adamant that it could not be used, as the allegations coming from Houser were suspect and Davenport was never given notice or the opportunity to respond to the allegations as required by policy, or they were resolved, and because Christensen told Davenport to only prepare to meet the allegations pertaining to CS.

157. Christensen, understanding that both the Beatty and CS allegations were false, knew the only way he could justify the termination of Davenport would be with information from Houser's secret files.. Christensen instructed Craver not to respond to Davenport telling him, again, that he would take care of Davenport's request.

158. On January 26, 2015 Christensen, responded to Davenport's email to Craver, "Thanks for your email requesting clarification regarding the upcoming FRB board. The review will indeed be specifically focused on the causes for dismissal stated in my letter to you dated 5 December 2014. Any additional information provided to the review board and copied to you is meant solely to help determine the consistency or inconsistency of your behavior as it relates to the stated causes. Even though earlier grievances may have come to some resolution in their own time, the particular causes in question cannot be fairly addressed in total isolation of previous behavior. Nevertheless, should you effectively defend yourself against the causes stated in my letter, the review board is not permitted to then shift to pursuing prior grievances as causes. Conversely, should you contend that your behavior leading to the stated causes was a total anomaly, you should be prepared to address, in general terms, how the stream of prior grievances does not fail to support your argument."

159. Christensen's representation to Davenport that "prior grievances" would not be used as an independent basis to discipline Davenport was false. At no time did Christensen inform the FRB that the "prior grievances" could only be considered if Davenport had adequately defended himself against the claims made by CS. To the contrary, the FRB was told that prior grievances were to be considered as an independent basis to discipline Davenport, as set forth in the "memorandum."

160. Pursuant to DSU policy, a five-member FRB board was convened on January 29, 2015 at DSU to consider the charges levied against Davenport as laid out in the "memorandum." The board was chaired by Dr. Sue Bennett. Waiting outside of the hearing room were six students from the November 21, 2014 acting class. Both Houser and Jarvis recognized them. Houser was concerned because at least 3 of the students had previously approached him and told him that nothing untoward happened in acting class on November 21, and he had secreted that from DSU administration.

161. Jarvis addressed the FRB first. Even though CS and the witnesses from class were available to testify (CS was present in the building when the hearing was taking place), Jarvis told the FRB "there is no way to know what happened in class on that day." He told the FRB there was nothing in Davenport's personnel file which "caused him some concern," arguing, in a nonsensical fashion that Davenport should be disciplined because

there was no disciplinary information in his personnel file. Jarvis then turned the presentation over to Houser.

162. Houser, knowing the six students waiting to testify would demonstrate CS's claim was false, and knowing there was no evidence to support the Beatty claim, out of desperation, told the board he was in the possession of secret files regarding Davenport, which he wanted them to consider, knowing that Carter told him he could not use those documents as that would violate policy and the Fourteenth Amendment:

[I have documents] that was not pursued by the chair of the department, at the time, that went to -- went through the chain of command the way that it was supposed to. And the chair felt that it didn't need to go any further than him...And there is a formal complaint that was filed against him last spring, that we pursued with the faculty member. I guess it wasn't a formal complaint. We didn't formalize it...Yeah. It was informal... The other informal letters that I have -- I have had over the years I provided to the dean. As -- after this incident happened, there were a lot of people that came forward and informed me of things that had happened to them throughout...Those people that wrote those letters, whether it was four years ago, three years ago, two years ago, this year and a few days ago as well that had not been -- and the dean and I talked about that a little bit. Didn't know whether it was relevant to this -- they're relevant to this situation. And if they're needed, then I have them. People that, most of them wish to remain anonymous, their statements are signed. And they are willing to give their names, but only if they are kept anonymous by the committee and by administration, the names and some of the details of the situation...So if those need to be provided, I can provide those as well. But I did that purposely so I would follow -- I would be within policy. And I operate very much that way. And this isn't necessarily about me and my administration. But I believe that I was operating to the full potential of that policy and my knowledge as a chair and my experience with not just this one instance, but over the last five years that I've been here, what I've seen and not really even what I've seen, but what's been recorded. I'm not -- and I've not really been happy that some of that was left lie... I had forwarded to Mr. Christensen material that I presumed had been forwarded to you. But I'm not aware of what you have and what you do not have. I'm not aware of what was shared with Varlo and what wasn't shared with Varlo...So it's the best way to proceed for me to go back to my office and collect that material and provide that to you.. Just various people saying there have been many complaints, the dean of students had many complaints, the chair had many complaints. You came over to HR, and people said, "Oh, we've had many complaints..."

163. Carter, who pursuant to policy is required to give counsel to the board responded:

There is an interest of fairness here that I think needs to be addressed. The fact that there is being represented that there are four or five years' worth of accumulated information represents in my mind a circumstance of unfairness, in terms of timing. If there were those kinds of instances, it seems appropriate to me that some kind of action should have been taken on those things and that they

shouldn't have, in effect, been saved up until now...And that they weren't acted upon leaves them with some dimension of diminished credibility or even relevance to this situation. And so it's my recommendation that there be some kind of time frame established here that is not prejudicial to Mr.

Davenport. Because administration, at some point in that process, determined that those were -- in a couple of respects, you mentioned minutia. And someone made a discretionary administrative judgment not to act on them. If there were other significant offenses and someone decided that they weren't so significant as to address them with him formally or informally, then it seems to me that now isn't the appropriate time, from a standpoint of time related fairness. So I recommend that the -- I -- we looked at those -- some of those documents and felt that it was in -- unfair to Mr. Davenport to have to answer back five years ago to something that somebody brings forward now, when it should have been brought forward five years ago... But I'm not comfortable, and I would recommend to the committee that something that has been held in a drawer somewhere for five years isn't appropriate to discuss now, as a matter of timing. If it were relevant, it should have been relevant five years ago, four years ago, three years ago. I'm not comfortable, as a matter of fairness for it to be relevant now.

164. Based on Carter's advice, the FRB did not consider any evidence from Houser's secret files.

165. Houser having presented no witnesses regarding the CS matter, and having been instructed that he couldn't use documentation from his secret files then fabricated a story to discredit the eyewitnesses that Davenport was going to call regarding the CS matter. He told the committee the students from the class were a threatening, DSU administration hating group, called "Varlo's army" who were biased and tainted. He demanded that the committee investigate anyone who testified favorably for Davenport, claiming to have evidence of their bias that could be produced from witnesses, whom he claimed wished to remain anonymous.

166. The Committee then asked Davenport to present his defense. Davenport, representing himself, presented to the committee five authoritative texts on the use of physical resistance in teaching acting.

167. Davenport produced 15 syllabi from universities around the country regarding the use of physical resistance in acting.

168. Davenport presented correspondence from numerous professors of theater from across the country who indicated that physical resistance is an appropriate methodology in teaching acting.

169. Davenport called Dr. Richard Bugg from Southern Utah University to testify. Dr. Bugg testified that the pulling of an actress's hair to make her feel vulnerable would be appropriate in an academic setting, and is consistent with the literature.

170. While Davenport had six students available to testify, he called five witnesses to testify, who all testified that nothing untoward happened in the acting class of November 21, 2014. (Due to time constraints, he produced letters from two more students).

171. Davenport called character witnesses who had worked with him for over a decade who testified he had never acted or reacted out of anger in any academic setting.

172. At the conclusion, the FRB board voted 5-0 to reinstate Davenport, issuing four pages of written findings, addressing the allegations contained in the “memorandum” as the complaint against Davenport:

In December 2014, Professor Varlo Davenport was suspended with pay by Dean Jeffery Jarvis and Vice President William Christensen...(The FRB was never made aware of the termination of Davenport by Williams on December 5, nor of the termination letter that Christensen sent Davenport on that date).

The hearing was held on January 29, 2015, from 3:15-5:45. The administration was represented by Dean Jeffery Jarvis and Mr. Mark Houser... Davenport brought several witnesses to testify on his behalf, including Ken Peterson, Associate Professor of Music, Glenn Webb, Chair of the Music Department, and Professor Richard Bugg, Professor of Theatre Arts at Southern Utah University. Several students also testified for Professor Davenport.

When we asked the administration to state their reasons for termination, they included the following:

Reason One - The administration claimed that on November 21, 2014, Professor Davenport physically and verbally assaulted [CS] during an Acting I class when she was rehearsing her scene with another student...we conclude that this particular concern is not valid...a minority of students’ interpretations [the committee assumed the false report of what Houser claimed TB and WH said in the “complaint” were actually true] of what happened in class that day are not consistent with a majority of other students’ interpretations of what happened... All agree that Professor Davenport tugged the student’s hair, in order to stimulate an emotional response reflective of the scene that the student was acting out. But even [CS] partner who was sitting right in front of her testified that Professor Davenport only tugged her hair for a “few seconds,” not “for a long period of time,” as the student reported. In fact, each of the five students who spoke at the hearing said that that there was no hair-pulling, and that it was a mere tugging that lasted 3-5 seconds. These students did not testify as a group; rather, each one separately confirmed the hair tugging incident lasted only a few seconds. In fact, they seemed surprised that we were even asking them about a hair-pulling incident because they had hardly noticed it at the time.

Furthermore, this kind of classroom interaction in an acting class is based on solid pedagogical theory. Professor Davenport gave the review board several documented excerpts from respected experts in the field as well as numerous syllabi from similar

classes at other institutions describing these teaching methods. Professor Richard Bugg from Southern Utah University testified that such techniques are often used in acting classes and that he firmly supports Professor Davenport's efforts to teach his students using these methods. From all the evidence presented, we believe Professor Davenport was fulfilling the requirements of the class by working with this student.

[W]e must ask: Was there a pattern of inappropriate behavior from Professor Davenport? During the hearing Dean Jarvis explained that when he heard of [CS] complaint, he began an investigation to see if there had been other complaints. He reported that the Dean of Students, Del Beatty, said many students had complained about Professor Davenport. Yet, when our review board asked to see the documentation, Will Craver forwarded an email from Del Beatty who said that he had no supporting documentation of any student complaints. Dean Jarvis said that he then went to the Human Resources Department to see if there was a pattern of documented student complaints about Professor Davenport. Once again, no documentation was provided. Yet Dean Jarvis told us that he decided to go ahead with the termination of Professor Davenport despite the lack of supporting documentation... Because the administration did not provide evidence of any pattern of concerns, we find this first reason an invalid reason for termination.

Reason Two - The administration claimed that Professor Davenport engaged in acting exercises without setting pre-determined safe zones for students..[W]e conclude that this particular concern is not valid. We believe this because **Professor Davenport said he orally explained the concept of "safe zones" many times in this Acting I class.** Several students confirmed that he repeated this concept of "safe zones" on several occasions throughout the semester. **The student admitted that [CS] was often absent and might not have been present when he discussed the concept of "safe zones."** In fact, the hearing revealed that [CS] may have missed "four or five weeks" of classes at a time. It would be unjust for DSU to terminate a long-standing professional bases primarily on the testimony of one student who was not invested in the class... Because **the administration did not provide evidence that Professor Davenport failed to set safe zones,** we find this second reason an invalid reason for termination.

Reason Three - The administration claimed that the Dean of Students, Del Beatty, has had many student complaints about Professor Davenport...[W]e conclude that this particular concern is not valid. We believe this because **there is no documentation of any student complaints...**Because the administration did not provide evidence of numerous student complaints, we find this third reason an invalid reason for termination.

Reason Four - The administration claimed that Professor Davenport threatened colleagues in a theatre faculty production meeting. After reading all documentation provided by all parties - and after hearing both sides explain themselves during the hearing - we conclude that this particular concern is not valid. We believe this because two of Professor Davenport's peers testified that he does not threaten colleagues and instead works with his production team in a professional, respectful

manner. One commented on the many accolades our theatre department has received over the last 15 years — many of them directly attributed to Professor Davenport and his production teams. Dean Jarvis made it very clear at the start of the hearing that there is a history of profound political tension between the chair, Mr. Houser, and Professor Davenport. It seems that this history of political tension within the department may have caused the chair (and perhaps the dean) to assume guilt, and then act hastily upon that assumption. Indeed, neither the chair nor the dean ever found more than a minority of two students who were willing to confirm the student-accuser's story. A politically-motivated termination is in direct contrast to our DSU policy on termination of a faculty member. Because the administration did not provide evidence of any pattern of "threatening" behavior, we find this fourth reason an invalid reason for termination.

Recommendations from the faculty review board... We believe that the administration did not provide "the burden of proof . . . by a preponderance of information" and, therefore, we recommend that Professor Davenport be reinstated.

173. The FRB forwarded the findings to Christensen, Craver and Williams. Williams instructed Christensen and Craver to keep the findings of the FRB confidential as he did not want word to get out that no evidence was presented at the FRB supporting the allegations made against Davenport. He specifically informed Craver to not provide Davenport a copy of the findings. As such, Davenport was never provided a copy of the findings.

174. Craver never forwarded the findings of the FRB to Davenport. He instead emailed him that the FRB had "ruled in his favor" and that, pursuant to policy, Williams would review their determination and issue a final decision.

175. Williams reviewed the audio of the FRB, and listened to Houser's and Jarvis's desperate attempts to get Davenport fired without any eyewitness testimony. He was keenly interested in Houser's secret files that Carter would not permit to be introduced in evidence, and he wanted to know if CS had been skipping class as the FRB found.

176. Williams, knowing it was a violation of policy and due process to consider any information outside of that presented to the FRB, immediately contacted Houser and instructed him to provide the secret files and CS's attendance records referred to in the FRB.

177. Williams secreted from Davenport that he requested information from Houser's secret files that were never presented to the FRB board.

178. On February 23, 2015, Houser falsely informed Williams, via email, that CS "participated heavily in the course." even though her attendance records did not.

179. On the same date, on his DSU computer, Houser, having told the FRB there were no formal complaints against Davenport, hastily created a formal complaint he entitled

“Response to Grievance Files.” The document falsely purported to have been sent to “Administration and Human Resources,” on July 12, 2014, disciplining Davenport.

180. The metadata reveals the “Response to Grievance Files” was created February 23, 2015 at 2:18 p.m. Mountain Standard Time. Houser back dated it “July 12, 2014” and initialed each page. The document was drafted in such a way as to make it appear that there was a formal complaint made against Davenport when it was not. The report made the following numerous false and unsubstantiated allegations against Davenport:

[T]here is a clear and serious violation of multiple institutional policies including, but not limited to, breach [sic] of confidentiality (on multiple levels involving faculty responsibilities), personal conduct/conflict of interest, discrimination and harassment and nepotism. Professor Davenport has certainly exhibited serious misconduct and unethical behavior in his interactions with faculty, students and our [sic] even the public. He has been warned and reprimanded in regard to many of these infractions before. In this particular situation there is a clear trend. As long as the cycle has continued, and as I am aware, long before my time, it is apparent that the behavior will not change. Prof. Davenport’s hier [sic] of entitlement and ego end up turning faculty and students off of theater. They are hindering the educational, production and operational progress of the department. He does not work well with others...Such harassment or discrimination undermines the sense of human dignity and belonging of all people in the environment.

181. Houser forwarded to Williams the “plan” that he had fabricated on November 19, 2014; copies of the complaint with the false claims he attributed to TB and WH and supporting negative documentation that was kept in his secret file regarding the resolved issues from June 2014 with KD; the SWOT document; a letter Houser had solicited from former professor Monica Hart critical of Davenport regarding events that were years old; the four letters solicited from students in 2012 critical of Davenport; a letter he had solicited from a student, DC, dated January 17, 2015 claiming Davenport was a “jerk;” and, in all probability, other information from his secret files, currently unknown to Davenport.

182. None of the information provided to Williams had ever been presented to Davenport. It was not contained within his file, and it was not presented at the FRB.

183. Davenport never had notice or opportunity to be heard regarding the documentation that Williams relied upon in terminating Davenport’s employment.

184. In the email, Houser made the following false and unsubstantiated allegations, of which Davenport was never made aware, nor able to challenge:

“Here is all the information (in the next 3 emails) you requested from my employee file on interactions with Professor Davenport. Most are from the last year. There are many accounts which span the 5 years I have been here. The

accounts beyond the last year were included for the reason of establishing the trend of unacceptable behavior and unprofessionalism exhibited by Professor Davenport. I am told there were many more before I arrived but found no record. Former Dean, Brent Hanson, may be able to offer some insight there...

In my five years with the institution, and the Theatre department, I have seen many more instances glazed over and not reported. I have kept record for that purpose. I have held a meeting at the end of each year, for the past 3 years, with Professor Davenport to discuss what I can do to encourage a better working relationship and to build trust between us. Each time promises were made but each time Professor Davenport returned to his habits and over the years, his demeanor toward administration and toward me have gotten worse.

I have done all I can, exhaustingly, short of discounting my own integrity, to support Professor Davenport. Beyond that, I also have a responsibility to do what is best for our program, the students and the other faculty. I believe I have done that, overextending myself in many ways to do so.

You mentioned in our meeting with the other administration that you were dedicated to doing what was "right and good". I have been and I am striving to do the same.

Please feel free to talk to me in person if you need any clarification...

185. Williams also initiated contact with numerous potential witnesses regarding Davenport. Specifically, he contacted Monica Hart and had a discussion with her regarding her interaction with Davenport years earlier. He also contacted CS and her parents.

186. Williams never informed Davenport that he had considered evidence outside of what was presented to the FRB nor that he had numerous conversations with witnesses. As such, Davenport never had notice and opportunity to be heard regarding the evidence that Williams secretly evaluated.

187. On February 24, 2015, based on information obtained outside of the FRB board, Williams terminated Davenport. He sent him an email, "After a thorough review I have elected to reject the FRB's recommendation. This letter is to notify you that your original letter from Dr. Bill Christensen, dated December 5, 2014 regarding your notice of dismissal and termination of your employment, is upheld."

188. Williams never informed Davenport why he was firing him, because the decision was based on information obtained outside of the FRB. Nor did Williams disclose that the initial decision to terminate Davenport was made by Williams because that was a violation of due process and policy.

189. Williams instructed Reid to have his officers personally deliver to Davenport notice of his termination at home, in a show of force to dissuade Davenport from challenging his termination in civil court. Officers personally delivered Davenport's termination notice to him at his home on February 25.

190. At the time of his termination, Davenport's salary and benefits package with DSU was \$100,911.50. His salary and benefits were terminated on February 23, 2015.

191. At the time of his termination Davenport was 52 years old. He loved his profession and intended to continue working until age 72.

192. Undaunted by the show of force by law enforcement in delivering the notice of termination, Davenport emailed Craver at 1:53 PM on February 25 asking him if Williams considered correspondence or had communications outside the FRB upon which he based his decision. If so, Davenport requested a hearing to address those issues.

193. On that same date, Craver and Williams discussed the fact that Davenport suspected he was terminated for reasons that were secreted from him. Williams instructed Craver to have no further contact with Davenport, as he needed to keep under wraps the information he relied on or there would be a mutiny on campus, or words to that effect.

194. Over the next several days, Davenport informed numerous colleagues, friends and family members that he suspected his termination from DSU was pretextual, based upon allegations he had never seen, as there was no competent evidence presented against him at the FRB, which had ruled unanimously in his favor. Word also leaked from those in attendance at the FRB that there was no evidence presented against Davenport, and that Williams termination of Davenport was unjustified.

195. On February 26, 2015 at 7:49 AM, Joel Thomas, a registered nurse and alumnus of DSU emailed Williams, Durham, Houser, Jarvis, Craver and DSU board of trustees member/St. George city Mayor Jon Pike requesting they reevaluate the termination of Davenport asking for a fair and objective investigation that would abide by the precepts of due process.

196. On February 26, 2015, at 10:31 PM Katie Whitmire, a graduate of DSU and, a then graduate student at Duke University, emailed Williams, Durham, Houser, Jarvis, Craver, and Board of Trustees/St. George city Mayor Jon Pike that Davenport was denied due process and that his termination should be reconsidered and he should be reinstated.

197. As word got out amongst the faculty at DSU that Davenport was terminated in spite of the FRB's 5-0 decision to reinstate him, numerous faculty members approached DSU faculty Senate President Nate Staheli and faculty Senate President-elect Erin O'Brien requesting an independent investigation of the manner in which Williams reached a decision as why it was that Davenport was terminated. Those concerns were relayed from Staheli and O'Brien to Williams, including copies of numerous emails sent to Staheli and O'Brien from faculty.

198. On that same date, Whitmire started an online petition at www.change.org for submission to DSU requesting an investigation into the termination of Davenport based upon the due process abuses:

Varlo Davenport was unfairly terminated from his position as a tenured professor at Dixie State University. He was exonerated of the complaint filed against him by a panel of his peers, but that decision was then overruled by the President of the University without due process or cause. Varlo is a respected and much loved professor, who has influenced the lives of his students in immeasurable ways. He has served the University and the theatre community in Southern Utah for 15+ years and deserves ethical treatment and due process. Please sign this petition if you support the reinstatement of Varlo Davenport!

199. On March 1, 2015, Davenport's brother-in-law, Bryan Benson, Ph.D. posted a letter on Facebook alleging that Williams terminated Davenport, a tenured professor at DSU, without due process, and without speaking with Davenport.

200. The facebook link was provided to Williams as well as every member of the DSU Board of Trustees on March 2, 2015.

201. On March 2, 2015, there was incredible pressure on Williams to justify the termination of Davenport:

Spencer Ricks, the editor of the DSU student newspaper, the Dixie Sun, tweeted "petition to reinstate Prof. Barlow Davenport reaches 1000 signatures," and Ricks started sending emails to DSU administration seeking comment as to why Davenport was terminated.

There were numerous requests from the press asking for DSU to give a statement as to the reasons for Davenport's termination.

Faculty members circulated a petition on the DSU campus to have Davenport reinstated claiming that Davenport's fourteenth amendment due process rights were violated by Williams and that the actions that took place in class on November 21, 2014 were protected by First Amendment academic freedom. Faculty demanded a closed-door meeting with President Williams to discuss the violations.

202. On March 2, 2015, Williams met with Morris, Reid's boss, and the two colluded on a plan to frame Davenport and to save Williams' job for the wrongful termination of Davenport. There were two elements to the plan. First, they would leak false information (believed to have come into the whistleblower site via the scrubbing process) that Davenport had had sex with an underage student. Secondly, they would instruct DSU chief security officer Don Reid to submit a complaint request to the prosecutor's office to file criminal charges against Davenport, even though they knew CS's claims were false.

203. That afternoon Williams called Houser and asked him for the cell phone numbers of CS's parents. Williams contacted CS's stepfather, and informed him that DSU wanted to file criminal charges against Davenport, asking if he would be okay with that. CS's step-father, JS, indicated that he would.

204. On March 2, 2015, Morris called Reid into his office and told him that Williams was in political hot water over the wrongful termination of Davenport and that criminal charges needed to be filed against Davenport as political cover. Morris told Reid that there was a firestorm taking place with faculty members claiming Williams violated Davenport's due process rights and that what occurred in class on November 21 was protected by academic freedom. Reid was reluctant to get involved in the scheme to frame Davenport and told Morris he never sent in a complaint request to the prosecutor's office because CS was not truthful regarding what transpired in the November 21, 2014 acting class. Morris called Williams and told him Reid was reluctant to file a criminal complaint request.

205. On March 2, 2015, at 7:30 PM, Williams contacted Reid and instructed him to file a complaint request with the prosecutor's office, inferring his job was on the line. He told Reid that he was taking a lot of heat from the faculty Senate and that he had talked to CS's father who was willing to go forward with criminal charges.

206. On March 2, 2015, at 8:45 PM Reid contacted Morris and asked how he was supposed to go forward with criminal charges where he had conducted no investigation and knew that CS was not truthful. Morris instructed him not to determine the veracity of the evidence but to just go with the information CS had claimed to administration and to get the administration files which would document CS false claims that could be used against Davenport.

207. On March 2, 2015, at 9:15 PM, Reid contacted Williams and told him that he would file a complaint request, but if they were going to do it, it needed to be with the county attorney. He explained that where CS was 17 at the time, the county could file a class A misdemeanor charge of "child abuse" which charge, regardless of a conviction, would destroy Davenport's reputation and it would be financially devastating to defend against such a charge. Williams agreed and told Reid that he would make sure Reid had full access to the administrative files.

208. Reid had previously told CS and her parents that if he could manipulate the evidence, he may get charges filed against Davenport and that the filing of charges would be enough to ruin Davenport's career and to damage him financially. [I]f I do file a complaint request, the language has to be just right. I have to be able to put it succinctly, in order to convince a prosecutor to take the case, that sort of thing...County attorneys they have to take good cases to get reelected...When I do this, before I submit a complaint request to the County Attorney's Office, I write my reports for defense attorneys. I try to look at it from the perspective of a defense attorney, knowing exactly what the defense attorney is going to be. This individual is going to have to diminish

what he's done here and try to give an alibi or an excuse for it. So, I'm trying to hit those possible alibis ahead of time...And I'm pretty sure that would ruin his career, just the arrest itself, by it alone, would take care of that end of it, as well...However, it's been my experience that the greater the stakes are for the individual, you force them to have to get an attorney and do everything they possibly can to try to get a better situation, that's where plea bargaining comes in. In this case to try to get a county attorney to take it, I think I would submit it as battery..."

209. On March 3, 2015, the political pressure Williams was under for firing Davenport was at a fever pitch:

At 11:20 AM, Williams called a meeting in his office with Christensen, Craver, Prof. Brent Yergenson, assistant Utah attorney general, Mike Carter, Reid and Johnson to discuss the pressure being applied by the faculty Senate and the difficulty in proving elements of assault.

At noon, DSU sociology professor Matthew Smith-Lahrman emailed Williams expressing concern over Davenport's firing questioning the "process by which it occurred." He asked for a meeting with the president to ease anxieties felt by faculty as it was most alarming that a tenured professor could be fired for almost anything. Williams forwarded the email to Craver, Reid and Christensen.

In the afternoon of March 3, 2015, Davenport appeared on the local Fox radio affiliate KZNU 1450 on the "Kate Dally" show openly protesting the manner in which he was terminated without due process. He told Dally and other media members that he was fired without Williams so much as talking to him. Within 45 minutes, Williams and all the other defendants had been given a link to the interview.

In the afternoon of March 3, 2015, DSU professor of history, Joel Lewis, gave his students an assignment to conduct an investigation as to whether DSU administration followed due process in the termination of Davenport. Within hours, Williams and Morris had IT pull Lewis' emails and instructed Christensen to have Lewis rescind the assignment. Christensen and Lewis did as instructed. Williams also contacted Reid about the possibility of filing criminal charges against Lewis. Reid told Williams that he would pursue criminal charges against Lewis if Williams so desired. [Even though there was no possibility that a crime had been committed].

At 12:22 PM Michelle Thomson, with *Today's Youth-Tomorrow's Future* sent an email to David L. Buhler, Utah Commissioner of higher education, and the entire Utah Board of Regents requesting an independent investigation of the termination of Davenport because her sources indicated that the firing was retaliatory.

Neither Buhler nor the Board of Regents conducted an independent investigation. Instead, Buhler, 23 minutes later forwarded Thomson's complaint to Williams.

T 3:18 p.m. Dallas Hyland a reporter for the *Southern Utah Independent* newspaper emailed Steve Johnson about a statement.

At 7:30 PM Williams forwarded the Thomson complaint to Craver indicating that this was one of multiple complaints that had made its way to the Board of Regents. Craver responded “This is ridiculous! But hopefully help is on the way,” a reference to the framing of Davenport that was underway by Reid.

At 7:59 PM, Whitmire emailed the petition with almost 1200 signatures to Williams, Durham, Houser, Jarvis, Craver, Board of trustees member/St. George City Mayor Jon Pike, and Reid requesting reconsideration by the president and the Board of Trustees as “policies and procedures were not followed in the termination of Barlow Davenport.”

Throughout the course of the day numerous additional complaints of policy and due process violations were reported to Williams over the firing of Davenport, coming from faculty, alumni and students.

210. On the same date at 9:46 PM Williams instructed Craver to “nudge” chief Reid, claiming “this is painful.” Thereafter, Craver contacted Reid and told him criminal charges needed to be filed against Davenport as soon as possible.

211. Consistent with what he told CS and her parents, Reid started withholding information, coercing eyewitness testimony, and manipulating evidence and putting political pressure on the county attorney’s office to file criminal charges filed against Davenport.

a. On March 3, 2015, at 8:30 AM Reid met with Craver and discovered that there were no complaints in Davenport’s personnel file. He never put that in any report.

b. On or about the same date, Reid obtained the information from the FRB, including the syllabi Davenport had presented from numerous other universities demonstrating that the physical restraint techniques were used throughout institutions across the country, written statements from several students that nothing untoward transpired in acting class on November 21, 2014, and the written findings of the FRB. He listened to the eyewitness testimony of each of the students from the class as well as the professor who testified on Davenport’s behalf.

c. On March 3, 2015 at 3:30 Reid called CS’s stepfather and told him that he needed CS to edit her witness statement, including information Reid believed would be more likely to have a prosecutor file charges. A revised statement was emailed to Reid. Reid copied the email, then redacted the metadata from the email, before turning it over to prosecutors, to hide the fact that the statement was made months after the initial statement at his at his request to make the case more

appealing for a prosecutor to file charges, and to hide the fact that it was Williams who was pushing for prosecution.

d. On March 4, 2015, Williams forwarded to Reid the numerous complaints he had received complaining of the termination of Davenport without due process. He requested that these be forwarded to the county attorney to demonstrate the need for filing criminal charges against Davenport. Reid withheld those emails from his report not wanting prosecutors to know that he and Williams were pursuing criminal charges to justify the wrongful termination of Davenport. He told Williams “I have received, read, and copied each of these emails... I will not be submitting the details of most of them as part of the complaint request that I am preparing for the County Attorney but I will certainly make sure he is aware of the tone and the fire storm this case is generating...I've seen other Presidents have to go through this very same knee-jerk reaction from certain faculty, (many of whom are upset they did not get to participate in the protests and sit-ins of the 60s), and it does seem always to come from a certain group in a certain location. I have been the target of the same group on a few occasions and I've been able to keep my sanity only by keeping a sense of humor, (having joked on many occasions that a well placed grenade in a certain building could do wonders for the universal struggle between right and wrong).

e. On March 5, 2015, Reid and defendant Isaacson met and agreed that it would be best to file a complaint request with the county attorney, as opposed to the city attorney, because of the prejudicial impact a charge of “child abuse” would have against Davenport, both in terms of damage to reputation and financial resources.

f. Later that day, Williams told Reid that the charges needed to be filed “sooner rather than later,” and that Reid should take the case to the city prosecutor, implying that he had a relationship with St. George City and they would file the charges. However, Reid convinced Williams that it would be better to see if the County Attorney’s office would take the case because the allegation would be “child abuse.” Reid also told Williams that the complaint request was not ready. Williams told him to get the report filed the next day.

g. On March 6, 2015, Reid completed his “incident report and complaint request” for submission to the County Attorney’s office. In the document, consistent with his agreement with Morris, Reid set forth the allegations CS had made to him, including a summary of his conversation with CS. Knowing CS’s claims were false Reid wrote “[CS] told me that at this point she is “sobbing” and that she grabbed her hair at a point between Mr. Davenport’s hand and her scalp and struggled to pull it out of his grip. She said that at one point she actually let go and jerked her head forward to get him to release.”

h. Reid withheld from the incident report the fact he had reviewed the video recording of the events in Eccles 156, demonstrating CS claims were not truthful.

- i. Reid withheld from the incident report that he was pursuing criminal charges at the insistence of Williams and Morris as justification for the wrongful termination of Davenport by Williams .
 - j. Reid withheld the syllabi that demonstrated that what transpired in Eccles 156 was routine for acting class.
 - k. Reid withheld the written statements from students submitted at the FRB demonstrating CS's claims were false.
 - l. Reid withheld all of the testimony of the witnesses who had testified on behalf of Davenport.
 - m. Reid withheld the fact that Davenport's personnel file revealed he had never been sanctioned by DSU.
 - n. Reid withheld the written findings of the FRB.
 - o. Just before 5:00 PM on March 6, 2015, Reid called Belnap and told him he needed to have Davenport charged with "child abuse" not "simple assault." He delivered the "incident report and complaint request" to Belnap's office just at the close of business.
 - p. Immediately after delivering the "incident report and complaint request" to Belnap's office, Reid contacted Williams and let him know that the complaint request had been filed.
 - q. After returning from Belnap's office, Reid began working with defendant Johnson on a falsified "news release" for Williams to provide to the press. The release, in relevant part, provided; "I can unequivocally state that Professor Davenport was given full due process and was afforded all rights provided by Dixie State University policy...Given that a criminal complaint has now been filed by the student's family, my decision to terminate Professor Davenport for cause has been validated."
212. After receiving Reid's call, Williams called his contact with *The Spectrum* newspaper, Kevin Jenkins, to let him know that "a criminal investigation is currently being conducted by local law enforcement," requesting that he report it, (knowing that the public allegation that a criminal investigation was taking place would get faculty and alumni to back off). Jenkins wrote that a criminal investigation was taking place against Davenport by "local law enforcement" in an article the next day in print and online.
213. Throughout early March, 2015, Williams received additional complaints through Staheli and O'Brien coming from faculty specifically challenging whether Williams had complied with policy and due process regarding burden of proof and considering evidence not received in the FRB. Staley received "many phone calls from many

faculty... feeling threatened for their jobs, as well as that the president can just hatchet whomever he wants to.” O’Brien was receiving similar phone calls and was conveying that information to Williams.

214. On or about March 6, Williams told Staheli and O’Brien, in the presence of Ricks and others, that Davenport was being investigated for having an affair with an underage student. Williams knew it was false and he knew that these individuals would likely repeat this information to their colleagues or the public respectively.

215. Over the next several weeks both Staheli and O’Brien told faculty members they supported the president’s decision to terminate Davenport, and “when the rest of the information became public, referring to but not revealing the false allegations of sexual misconduct reported to them by Williams, they would understand why Davenport was fired.

216. On March 8, Ricks posted the information he had heard from Williams on his social media account, Twitter, “Varlo Davenport is under investigation for allegedly having an affair with a student. Look for updates soon...”

217. On Monday, March 9, 2015, the Davenport “incident report and complaint request” was forwarded to Deputy Washington County Attorney Jerry Jaeger and Washington County Attorney lead detective, Barry Golding for review. Golding reviewed the file and did online research and found references to Davenport and numerous students indicating that nothing untoward occurred during acting class on November 21, 2014. He was concerned that Reid withheld that information from the County attorney’s office, and that it conflicted with the version of events Reid attributed to CS.

218. On March 10, 2015, Golding called and interviewed CS over the phone. Contrary to the claims submitted in the “incident report and complaint request” that CS she was in pain and crying throughout the class, CS told Golding “it hurt a little,” that she was fine after the events in class on November 21, 2014. Golding suspected Reid was withholding and falsifying the evidence and discussed that with Jaeger.

219. On March 10, 2015, Jaeger contacted Reid to find out why information had been withheld from their office. He told Reid he wanted specific information including whether the physical contact was unsolicited, whether permission was given for the physical contact, whether there was harm, and whether Davenport had a history of intimidation in the classroom.

220. On March 12, 2015, Reid responded to Jaeger in a “case follow up report.” Reid wrote that he filed the report prematurely because “time was of the essence.” (not revealing that time was of the essence because Williams was in danger of losing his job for the wrongful termination of Davenport). He admitted that he was still “muddling through several piles of documents.” He falsely claimed that several witnesses had provided information that the contact with CS was unsolicited. He falsely claimed that Davenport acknowledged there was no permission for the physical contact. He admitted

the only harm suffered by CS was quitting her job and leaving school, and feeling threatened and intimidated, after the fact, by members of “Varlo’s army,” a fictional group fabricated by Houser and Reid. He falsely wrote that Davenport had a history of intimidation in the classroom relying upon Beatty’s claim of a 5 to 6 year history of student complaints, knowing that was false and based upon Houser’s false claim that Davenport was on probation since June 2014.

221. Read attached to the “case follow up report” CS’s falsified witness statement, the purported witness statements from TB and WH, as falsified by Houser, a copy of Houser’s falsified “official complaint”, and copies of the two witness statements presented at the FRB by Davenport. Reid falsely discredited the written witness statements claiming, “it should be mentioned that it has been told to me that some of these witnesses are known to be self-described members of ‘Varlo’s army’, (a group of students are very supporting of the suspect in this case).”

222. Reid provided with his “case follow up report” a copy of the FRB hearing. He withheld the syllabi from other institutions as well as the findings of the FRB.

223. On March 15, Williams was making a presentation to a public audience, with the local press present, when a student asked Williams why before firing Davenport “he did not speak to Davenport.”

224. In that presentation, Williams, to give the false appearance to the press that he had complied with policy and presumed Davenport’s conduct was proper and made in good faith, falsely proclaimed that he had spoken with Davenport “three times” before he terminated his employment.

225. Since the termination of Davenport, Williams has falsely told the DSU board of trustees, members of the State Board of higher education, the faculty senate, and numerous faculty and student body members that he relied entirely on information presented at the FRB in deciding to fire Davenport, knowing that this statement was categorically false.

226. On March 16, 2015, Golding met with Reid and told him he wanted statements from the witnesses who were in class. Golding was specific that he did not want interviews to be conducted, but wanted only written statements. Golding did this because he did not trust Reid, who had initially withheld from him any of the information from the witnesses contradicting CS, and because, in the past, Reid had used suggested and coercive interviewing techniques with witnesses that Golding believed led to falsified eyewitness testimony. Golding only wanted “cognitive interviewing” to take place, and he believed Reid would not do that.

227. Recognizing that Golding was suspicious, and wanting to use coercive “suggestive interviewing” techniques of the eyewitnesses, having not yet interviewed one of the witnesses from the class, Reid falsely told Golding that “DSU police have already

interviewed several of the student witnesses in this case,” informing him that he would get the recorded statements to him.

228. Late that afternoon, Reid contacted Williams and told him that Golding wanted an actual investigation conducted and that he would discover that none of the witnesses would corroborate CS claims. Reid told Williams that political pressure needed to be applied to Belnap. They discussed the fact that Belnap had worked on the Board of Trustees of the Dixie Foundation (The charitable arm of DSU) with local businessman and former LDS general authority, Randy Wilkinson, and Rod Savage, a local accountant, who serves on the Board of Trustees of the Dixie Applied Technology College. It was decided that Williams would meet with Savage and Wilkinson to see if they would meet with Belnap to convince him to file charges against Davenport.

229. On or about March 16, 2015, Williams met with Savage and Wilkinson and presented to them as true, numerous false claims regarding Davenport, soliciting their help in recruiting Belnap to file criminal charges against Davenport.

230. That same day, using coercive and suggestive interviewing techniques, Reid and Isaacson started interviewing five of the witnesses who were in class. Reid interrogated RH, SI, EP and CL. Isaacson interrogated TN.

231. Reid made no attempt to contact the other three students from class because he was aware that they had already testified or written statements that nothing untoward happened in class on November 21, 2014 and he did not want this information going to the County attorney’s office.

231. Reid falsely reported that he was not able to contact them, even though he had contact information for them, and made no effort to contact them.

232. Reid did not interview T. B. because he was aware that Houser had fabricated her statement, and he did not want to create a conflict with CS’s written claim of assault.

233. Using the suggestive and coercive interrogation techniques, Reid was unable to obtain any testimony from the witnesses that would corroborate CS’s version of events from the acting class. Reid then falsely documented, in a “supplemental report” he delivered to the prosecution, that the statements were inconsistent and they were self-professed members of a militant student group called “Varlo’s army.” No such group exists, and none of the students ever told Reid they were members of “Varlo’s army.”

234. When Isaacson interrogated TN, TN told Isaacson that some students were poking and messing with a student’s hair, whose name he couldn’t remember, the scene ended and then class ended and that Davenport “did not mess with her hair or poke her.”

235. Isaacson then started addressing TN in an authoritative tone and stated to TN what CS claimed. TN then changed his testimony and agreed with what CS had claimed, and after the interview wrote and signed a statement to that effect, at Isaacson’s direction.

236. On March 18, 2015, Williams contacted Beatty and told him he needed whatever negative information he had on Davenport to submit to the County attorney's office.

237. That same day Beatty responded, knowing that his statements were going to be used to prosecute Davenport, knowing there was nothing in Davenport's personnel file, and without regard to DSU confidentiality policy or the truth, falsely wrote that in the past six and half years, on two or three occasions students had been bullied by Davenport, and that Davenport's reputation on campus was that of a bully.

238. On March 18, 2015, Williams, Savage and Wilkinson met with Belnap in Belnap's office. The three of them made numerous false representations to Belnap regarding Davenport based on the information supplied by Williams trying to convince Belnap to file criminal charges against Davenport.

239. At or about this time, Reid contacted Houser and told him he needed more information to convince prosecutors to file criminal charges against Davenport. Houser informed Reid and Isaacson that Davenport would video tape his students in class as he taught and he doubted the video would demonstrate Davenport using physical resistance techniques.

240. This claim was false. Houser knew Davenport did not record teaching sessions, but only final exams that by their very nature would not depict instruction, because the purpose of a final exam is for the student to demonstrate what they have learned during the semester.

241. Students told Isaacson that Houser's claim was not true, that the only video was of final exam, and there would be no instruction given in the exams.

242. Isaacson relayed this information to Reid. Nevertheless, Reid instructed Isaacson and Houser to review the video on Davenport's hard drive to document that Davenport never used physical resistance techniques in teaching sessions.

243. On March 19, 2015, a group of theater students, upset with the termination of Davenport, met with Williams and informed him there was a surveillance camera in the classroom on the date of the alleged incident in Eccles 156. They asked what that video revealed. One student also asked Williams if he considered information obtained outside the FRB in deciding whether to terminate Davenport.

244. Knowing that the video evidence would demonstrate that CS had fabricated the claim of assault, Williams gave instruction to the maintenance department to remove the surveillance camera from Eccles 156. That camera was removed with no indicia of there ever being a camera in that class remaining. The footage was destroyed, either through routine recycling of the footage, or by Doe defendant(s).

245. Williams, in spite of the fact he had relied almost exclusively on evidence obtained outside the FRB, falsely told the group of students the only information he considered was the audio recording of the FRB and the “evidence” submitted to the FRB.

246. On March 24, 2015, Reid told Williams that the interviews were not successful as he was not able to get the students to reverse their prior testimony or witness statements, excepting TN, whom Isaacson had been able to get to recant. Reid told Williams that he could write his report as persuasively as possible, but doubted Belnap would file the charges once he knew what the other witnesses had said in the interrogations. Reid suggested that Williams contact a member of the DSU Board of Trustees to see if they could convince Belnap to file charges before he provided the eyewitness statements to Golding.

247. On that same date, Williams contacted the chair of the Board of Trustees, Defendant Christina Durham, providing her false information regarding Davenport and requested she meet with he and Belnap to try and convince Belnap to file criminal charges against Davenport. Durham agreed to meet.

248. In the late afternoon/early evening of March 24, 2015, Williams and Durham met with Belnap and provided false information about Davenport trying to convince him to file criminal charges against Davenport. Belnap informed the two that he was going to wait and see what the recommendations were from Jaeger and Golding.

249. On March 25, 2015, Isaacson, knowing that the video taken by Davenport of final examinations had no evidentiary value, filed a supplemental incident report indicating that 266 videos were reviewed from Davenport’s hard drive demonstrating that Davenport “never used physical resistance,” for the sole purpose of trying to convince the prosecutor’s office that Davenport’s claims of routinely using physical resistance in teaching his acting classes was false.

250. On March 26, 2015 Reid, provided to Golding the statements from the witnesses he and Isaacson had interrogated in a document entitled “synopsis and ‘officer opinion,’” where he offered the “opinion” that the statements from EP and RH were not credible because they were members of “Varlo’s army.” He provided Isaacson’s supplemental report with the false claim that the videos demonstrate Davenport did not routinely use physical resistance in teaching acting. He included the false allegations from Beatty about Davenport bullying students. He included the statement from TN which corroborated CS claims without revealing that TN did not corroborate CS’s claims until he was coerced into doing so. He provided the complaint of Houser with the false statements attributed to WH and TB and he withheld the syllabi from other universities demonstrating that physical resistance is routinely used in acting classes.

251. The next day, the Davenport case was staffed by approximately 10 career prosecutors and staff with the Washington County Attorney’s office. They determined there was not probable cause to bring charges against Davenport and recommended against filing criminal charges.

252. That same day, Jaeger called Reid and told him the County Attorney was refusing to prosecute. Reid requested that Jaeger send the file over to the St. George City Attorney's office and refrain from telling the media that the County Attorney's office had denied prosecution. Jaeger did so.

253. Reid then contacted Williams and told him the County Attorney's office was declining prosecution which was "not surprising" given the lack of probable cause. He told Williams that the County Attorney's office agreed to send the case over to St. George City.

254. The information submitted to the St. George City Attorney's was essentially the same as submitted to the County Attorney's office, withholding the same information. On April 1, 2015 Houser notified Reid that TB became aware of what Houser claimed she had said regarding the November 21, 2014 incident in acting class, and that she was denying that she ever made those statements, and that her interview with Houser was coercive in nature.

255. Reid never attempted to contact TB and never informed the city attorney that TB was claiming Houser had lied or coerced her in attributing testimony to her.

256. On April 21, 2015 St. George City, based on the withheld, fabricated and coerced information provided by Reid, filed a criminal information against Davenport, charging one count of simple assault of CS. The case was filed in the Washington County "Justice Court," eventually assigned to Judge Ronald Read, a former St. George City deputy attorney. There was no certificate of probable cause filed. Instead, city attorney Robert Cosson filed an affidavit, without personal knowledge, which was based upon the false statements of CS provided by Reid.

257. On May 6, 2015, in the Justice Court, Davenport filed a Notice of Intent to issue a subpoena to Williams seeking information from the University's whistleblower hotline and emails pertaining to Davenport's firing and criminal investigation.

258. On June 12, 2015, Davenport, in subsequent briefing, alleged the emails and whistleblower information were relevant as DSU President Richard 'Biff' Williams was taking heat in the local press for the termination of Davenport, and "informed *The Daily Spectrum* that 'local law enforcement' was investigating Defendant. . . . However, the only law enforcement investigating Defendant was Don Reid, chief of Police at Dixie State, and direct subordinate of Biff Williams. . . . At some unknown time, emails were sent to Reid from CS and her mother containing the information Reid requested they provide to make the case more palatable for a prosecutor to file. The metadata has been removed from the emails, apparently by Reid, making it impossible to know when the emails were received. It is believed these emails came at the request of Reid to provide cover for the fact it was President Williams who was pushing for the criminal charges to be brought to provide the political cover he needed from the firing of Defendant. . . . It was apparent that Reid had not provided Cosson even a fraction of the documentation he had in his possession."

259. The emails Davenport sought reveal how Williams terminated Davenport without due process and the manner in which the defendants provided false and misleading information to prosecutors, avoided pursuing evidence favorable to Davenport, withheld evidence from prosecutors and manipulated and coerced testimony from eyewitnesses.

260. Recognizing the emails would reveal the illegal conduct of himself and his administration, Williams instructed Carter and Reid to avoid production of the emails at all costs. Carter, agreed to do so, irrespective of Davenport's constitutional rights, and on behalf of DSU objected to issuance of the subpoena.

261. At about that time, Williams, concerned that Christensen might reveal the improprieties in the termination and prosecution of Davenport, arranged to have Christensen take a one-year paid sabbatical, and leave the state, which Christensen did.

262. Concerned that Lewis was providing information to Davenport, Williams forced Lewis to resign under false pretenses in mid August 2015. Williams brought Lewis into a meeting, and falsely informed Lewis' that his students had bullied CS as a result of the assignment Lewis gave them on March 3. He gave Lewis a choice to resign and take one year severance package or be blacklisted. Lewis took the severance and left the state of Utah. (CS had actually moved home 5 days before Lewis' assignment).

263. In August, 2015, with the criminal trial of Davenport being heavily reported in the local press, Williams was facing renewed political pressure for the termination and filing of criminal charges against Davenport. Williams' office contacted the Utah Attorney General's office and arrangements were made for a "due process" lecture to be given to faculty at DSU.

264. In mid August 2015, Utah Assistant Attorney General Greg Soderberg presented a "due process" lecture to the faculty at DSU to allay concerns about Williams having violated Davenport's due process rights. Faculty questioned Soderberg as to whether the president could use evidence outside of the FRB to terminate a faculty member. Soderberg assured faculty that Williams could not "go rogue" and consider evidence "outside the four corners" of the FRB and terminate an employee, the obvious implication that Williams had not done so in terminating Davenport. Soderberg's lecture that Williams could not go "rogue" placated members of faculty concerned about due process violations in Davenport's termination.

265. By October 2015, Judge Read had not yet ruled on Davenport's subpoena. On October 28, 2015, Carter, in conjunction with Reid, on behalf of DSU, submitted additional false information to Read to keep the emails from Davenport. The filing included an affidavit executed by Reid.

266. The affidavit of Reid contained two false assertions, that Reid never redacted the metadata from the emails and "at no time was [he] directed to pursue criminal charges against Varlo Davenport by President Williams."

267. On February 10, 2016, Judge Read entered a written order requiring “DSU to provide to the Defendant’s Counsel any information from the Silent Whistleblower hotline pertaining to the Defendant that is related in any way to the events occurring on or about November 21, 2014; and ... to provide to Defendant’s Counsel any tapes, recordings, or notes from witness interviews pertaining to the Defendant that are related in any way to the events occurring on or about November 21, 2014.”

268. At hearing on February 18, 2016, Judge Read further ordered “What I don’t want Mr. Prsbrey [Davenport’s attorney] not to get is information...that would include into this whistle blower hotline stuff pertaining to the events... that needs to be disclosed, and tapes, recordings, notes, and I’m going to expand that to include e-mails or correspondence pertaining to the defendant, that are related in any way to the events occurring on or about November 21st, 2014.

269. On or about February 18, 2016, Carter conferred with Williams. The two discussed the fact there were several thousand emails related to the CS incident and several submissions to the whistleblower site. It was discussed that these emails would reveal the unconstitutional actions of the defendants and it was agreed that Carter would attempt to avoid production of the emails via a surreptitious meeting with Judge Read, wherein he would claim the emails did not exist.

270. On February 25, 2016, Carter, hand delivered to the justice court a single email from Houser to Williams dated February 23 2015 and a single submission to the whistleblower site dated May 6, 2016, which were never docketed for Read to review.

271. On February 28, 2016 Judge Read and Carter had a private meeting, without notice to Davenport or his attorney, wherein Carter falsely represented to Read that the single email was the only email pertaining to events of November 21, 2014, and the single whistleblower document was the only document pertaining to Davenport. The two then colluded in the redaction of the whistleblower document wherein Read would “black out” the email address of the whistleblower, so Davenport would not know who had submitted the email. Read agreed to forward the single email and single whistleblower document to Davenport’s attorneys. The meeting took place in Read’s courtroom and was not docketed.

272. Several days later, Read mailed, via U.S. Mail, the single email and the single whistleblower email to Davenport’s attorneys without explanation of what it was or where it came from, or that the surreptitious meeting between Read and Carter had taken place.

273. As Davenport was unaware that Reid and Carter had a surreptitious meeting wherein they discussed the emails and the whistleblower documents, and was unaware that the two documents had been mailed, his attorneys filed a motion to compel compliance with the Reid’s order seeking to have Williams jailed and found in contempt.

274. In response, Carter discussed the motion with Williams and it was agreed that Carter would reveal the surreptitious conversation he had with Judge Read to avoid any liability from failing to provide the documents in a timely fashion.

275. Based on the admissions made by Carter regarding the ex-parte communication, Davenport's attorneys obtained audio of the meeting between Read and Carter. Based on that audio, Davenport filed a motion for Read to recuse himself as the meeting was a violation of the rules of professional conduct as well as the judicial canons, Read recused himself, making no findings as to why, and Carter never showed up in court again.

276. The case was assigned to Judge Karlin Myers in June 2016.

277. In June 2016, Myers ordered "Dixie State University (hereafter DSU), shall provide to defense counsel all emails, sent, received, or deleted from its servers in native format, from the date of the alleged incident giving rise to the criminal charge, including attachments thereto, metadata, and without redaction, that pertain to the defendant's criminal case and administrative hearing, by June 20, 2016."

278. Assistant Attorney General David Jones entered an appearance, and provided the emails that Carter had been fighting to keep secret for over one year. On or about June 20, 2016, Jones, provided to Davenport approximately 2,000 emails that were responsive to Myers order, which Carter had claimed in his surreptitious meeting with Read, did not exist.

279. The emails revealed to Davenport, for the first time, the daily logs of Reid, communications between defendants Reid, Williams, Beatty, Jarvis, Christensen, Houser and Will Craver and the manner in which Williams terminated Davenport without due process, in violation of DSU policy and the manner in which the defendants provided false and misleading information to prosecutors, avoided pursuing evidence favorable to Davenport, withheld evidence from prosecutors and manipulated and coerced testimony from eyewitnesses.

280. On July 3, 2016, at the insistence of Cosson, Davenport was booked into the Washington County jail based upon the false allegations contained in the affidavit signed by Cosson premised on the false evidence provided Cosson by Reid, namely the false claim that CS was assaulted and there were eyewitnesses to the alleged assault.

281. During the booking process, Davenport was detained against his will for over two hours. During this time, he was in a confined area behind lock bars secured by Washington County Sheriff's deputies. He was not free to leave, he was searched, his mug shot was taken, and subsequently published on the Washington County Sheriff's website. He was fingerprinted before eventually being released.

282. Several thousand people, most of whom reside in Washington County, viewed the photograph of Davenport on the County website and the allegation that he was being charged with assault, tarnishing his reputation.

283. Prior to trial, Judge Myers determined there was no evidence that any of the students in acting class were members “of Varlow’s army” and prohibited any witnesses from making such a reference at the time of trial.

284. As Cossen prepared for trial, he was informed of the withheld, coerced, false and misleading information provided to him by Reid and the other defendants.

285. Davenport was tried in front of a four-person jury in the Washington County Justice Court on July 13 and 14, 2016.

286. Cosson having been made aware of the false and misleading information provided to him by Reid did not call Reid, TB, TN, or Houser or any of the other students to testify with the exception of WH.

287. WH testified that she had no memory of what transpired in class, not recalling any assault taking place.

288. The only other witness Cosson called to testify at trial was CS. Her testimony was inconsistent with her written statement and not credible. She claimed for the first time that the pain she sustained was to her neck even though she had never made a claim of neck injury in any statement she had given to her parents, Beatty, Reid, Houser, Golding, or anyone else. She testified that she never consented to any physical resistance in the acting class, but later admitted that she consented to the physical resistance as she actively pounded on RH’s hands with her fists to try and emote the anger the scene called for. She could not recall having conversations with Golding or Beatty, and therefore was not able to testify whether she told them that she was not hurt in the acting class.

289. Davenport, called seven of the nine students from acting class, who testified that nothing unusual transpired in class on November 21, 2014.

290. Davenport called three expert witnesses, who testified they all had employed physical resistance by tugging on a student’s hair and that was normal pedagogy in acting classes.

291. Davenport, over Cosson’s objection called Reid to testify that he had reviewed video from Eccles 156 and destroyed it or permitted it to be destroyed.

292. Reid, knowing that Williams had the camera in Eccles 156 removed, falsely testified that there was no video to review because there was never a camera in Eccles 156.

293. On July 14, 2016, the jury returned a “not guilty” verdict after approximately an hour of deliberation.

294. Within hours of the jury verdict, Williams drafted and delivered a press release to Jenkins at *The Spectrum* as well as the editor at the *Southern Utah Interdependent*, which was published in print and on line by the former, and on line by the later. The press release was available to virtually every resident of Washington County, and was read by over 10,000 individuals. The italicized portions are false and Williams knew they were false at the time he made the statements:

With the conclusion of the City of St. George vs. Varlo Davenport trial, Dixie State University can now fully comment on the incident that occurred in Davenport's introductory acting class in November 2014 without hindering legal proceedings.

First, Dixie State University would like to acknowledge Davenport's years of service to the institution. During his time at DSU, Davenport made positive contributions to the university's theater program as well as to students' development. However, *the public should be aware that at the time of the incident, Davenport was on probation for aggressive behavior toward a fellow DSU employee. Even though the jury found Davenport not guilty of a misdemeanor charge of assault, the decision to terminate his employment was based on institutional policies and DSU's commitment to keeping students safe.*

Dixie State University did not take part in charges filed against Davenport; that was a decision made by the victim, who was a minor at the time of the incident, and her parents. Dixie State University stands firm by its decision to terminate Davenport's employment at the institution. During Davenport's faculty review hearing, he admitted to pulling the student's hair for a long period of time. Furthermore, Davenport stated that this particular technique is not a typical physical restraint exercise. Student safety is a top priority at Dixie State University, and the institution will not tolerate inappropriate behavior of any kind toward its students.

During the trial, the defense presented evidence of the common practice of physical restraint exercises in acting classes. Defense witnesses stated that while using physical restraint techniques, it is standard to provide students with an explanation of such physical exercises and/or provide descriptions within their syllabi. The defense witnesses added that the restraints are not intended to be traumatic experiences for students and *none of them presented testimony that they had ever pulled a student's hair in the manner that Davenport did.* DSU would like to clarify that Davenport had no mention of such techniques on his class syllabus *nor did he ever provide verbal instructions before pulling the victim's hair or ask for her express consent.*

In the months leading up to the trial, the defense has made numerous false and inflammatory comments to the press and open court that misrepresented the university and its administration. These accusations were an attempt to take the focus off the assault charges and were an attempt at jury nullification.

The defense claimed that DSU did not cooperate with the defense's discovery requests. *However, Dixie State University has cooperated with every request from the court for information. Judge Read did not request emails related to Davenport's administrative hearing, however, Judge Myers did, and the university immediately cooperated. The university believes the defense has abused the court system, particularly by filing a motion of contempt against President Richard B. Williams and calling for his arrest, and issuing subpoenas for the president and several DSU administrators to appear as defense witnesses.* The university is pleased that Judge Myers saw through the unethical approach of the defense by denying the motion and subpoenas.

The grade the student received in Davenport's class also became a point of discussion. Dixie State University cannot directly comment on these accusations, as discussing a student's grades is a violation of The Family Educational Rights and Privacy Act (FERPA). *The university can confirm that no improper actions took place concerning the student's grade. The university can also confirm that the student didn't receive any kind of offers or compensation in relation to the incident.*

DSU is disappointed with the defense's witnesses openly perjuring themselves in court, such as Davenport's family member denying his relationship to the defendant when testifying on his behalf — which was admitted on the audio recordings of the faculty review hearing — and another witness denying personal relationships with Davenport. Additionally, several of the student witnesses stated that Davenport did not pull the student's hair, which directly contradicts the audio recordings of the faculty review hearing and their own written statements.

Dixie State University respects the jury's decision regarding the misdemeanor assault charge, but stands firm by its decision to terminate Davenport's employment at the institution. DSU will always uphold policies and procedures that protect its students, faculty and staff.

295. Williams at the time of publishing the press release knew Davenport was in the process of preparing a lawsuit against DSU for wrongful termination. The press release was used in the process of justifying Davenport's termination and to foreclose other employment opportunities that Davenport may have.

296. Since his termination by DSU Davenport has applied for employment in his area of expertise at numerous universities in at least a dozen states and the District of Columbia. Even though he is qualified, he has been informed that due to the nature of his termination at DSU, he is not employable.

297. On every application for employment that Davenport has made, he has indicated his prior employment as a theater professor at DSU. Each employer where Davenport sought employment contacted DSU regarding his employment there.

298. Williams instructed administration officials at DSU to notify any prospective employers inquiring about Davenport's employment with DSU that he was terminated by DSU for assaulting a student and for violent behavior towards faculty and administration. These statements are categorically false.

299. On every occasion that a prospective employer of Davenport has contacted DSU, DSU officials, consistent with the directive from Williams had informed the prospective employer that Davenport was terminated from DSU for assaulting a student and for violent behavior towards faculty and administration.

300. As a result, Davenport is not employable in academia.

301. The only employment Davenport has been able to obtain is that of a car salesman earning approximately \$1800 per month since October 2015. He did not work from the date of his termination until October 2015.

302. It is anticipated that if Davenport is not employable in a university setting, the highest wage to which he will aspire is that of a car salesman.

303. As a direct result of the actions of the defendants named herein, Davenport has sustained lost wages and benefits to date in the amount of \$167,042.48 plus interest at the legal rate for prejudgment interest.

304. As a direct result of the actions of the named defendants in instituting wrongful criminal proceedings against Davenport, he has sustained damages in expended attorney fees and costs of \$93,000.00, in defending the criminal charges brought against him.

305. As a direct result of the actions of the defendants named herein, Davenport has a loss of future earning capacity and benefits of \$2,171,058.21.

306. As a direct result of the actions of the defendants named herein, Davenport has fallen in arrears in his ability to pay his mortgage. His relationship with friends and family has deteriorated. He does not have the financial ability to pay for routine maintenance of his home. He is not able to pursue his chosen career, for which he expended time and funds for almost 20 years of education. His reputation and good name have been tarnished in the community where he lives, he is unable financially to participate in most of the hobbies and activities he and his family enjoyed such as being able to go on vacation, or provide any financial assistance to his children. He has been emotionally devastated by the actions of these defendants. Davenport has sustained damages as a result of the damage to reputation and good name and emotional stress and mental anguish in the amount of \$5,000,000.00.

307. The conduct of each of the defendants in this lawsuit which harmed Davenport was malicious, recklessly and indifferent in disregard of the Davenport's rights. An

award of \$15,000,000.00 in punitive damages would be appropriate to deter the inappropriate conduct of these defendants.

COUNT I

14TH AMENDMENT PROCEDURAL DUE PROCESS VIOLATION — WRONGFUL TERMINATION, PURSUANT TO 42 U.S.C. § 1983

308. Plaintiff realleges every paragraph contained in this complaint as if fully stated herein.

309. Davenport, as a tenured professor at DSU, had a property interest in his teaching job at DSU guaranteed by procedural due process under the Fourteenth Amendment. *Brenna v. Southern Colo. State College*, 589 F.2d 475, 476 (10th Cir. 1978); see also *Board of Regents v. Roth*, 408 U.S. 564, 576-77 (1972), *Tonkovich v. Kansas Bd. of Regents*, 159 F.3d 504, 517, (10th Cir. Kan. 1998).

310. Davenport, as a tenured professor at DSU, had a procedural due process right to a pretermination hearing under the Fourteenth Amendment with notice of the charges against him, an explanation of the employer's evidence, and an opportunity to present his side of the story before he was fired by Williams/Christensen on December 5, 2014. *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532 (U.S. 1985); *Ambus v. Granite Bd. of Educ.*, 975 F.2d 1555, 1563 (10th Cir. Utah 1992).

311. Davenport, as a tenured professor at DSU had a property and liberty interest in his teaching job, reputation and standing guaranteed by procedural due process under the fourteenth amendment to an impartial and fair process by persons who would sit as fact finders in the disciplinary proceedings against him, without having prejudged the case. See *Board of Regents v. Roth*, 408 U.S. 564, 569, (1972); see also *Goldberg v. Kelly*, 397 U.S. 254, 271 (1970). *Zenith Corp. v. Hazeltine*, 395 U.S. 100, 123 (1969); *Staton v. Mayes*, 552 F.2d 908, 914-915, (10th Cir. Okla. 1977). See also *In Re Murchison*, 349 U.S. 133, 136 (1955).

312. Davenport had a procedural due process right under the 14th amendment to a pre-termination process that would be free of fabricated and withheld evidence. *Pyle v. Kansas*, 317 U.S. 213, 216 (1942), *Brady v. Maryland*, 373 U.S. 83 (1963). See also *Spurlock v. Satterfield*, 167 F.3d 995, 1005-06 (6th Cir. 1999) (rejecting qualified immunity where officers allegedly fabricated evidence and manufactured probable cause; holding that on the basis of Brady and Pyle "[the defendant] cannot seriously contend that a reasonable police officer would not know that such actions were inappropriate and performed in violation of an individual's constitutional and/or statutory rights."); *Newsome v. McCabe*, 256 F.3d 747, 752-53 (7th Cir. Ill. 2001); *Pierce v. Gilchrist*, 359 F.3d 1279, 1298-300 (10th Cir. 2004)

313. Davenport, had a procedural due process right under the Fourteenth Amendment to meaningful notice and a meaningful opportunity to respond to prejudicial ex parte new material considered by the fact finder in the disciplinary proceedings against him. See

Goldberg v. Kelly, 397 U.S. 254, 271 (1970); *Staton v. Mayes*, 552 F.2d 908, 915-916, (10th Cir. Okla. 1977); *Stone v. F.D.I.C.*, 179 F.3d 1368, 1376 (Fed. Cir. 1999).

314. Davenport, had a procedural due process right under the Fourteenth Amendment to a rudimentary statement of the reasons and a fair indication of the evidentiary basis relied on by the decision maker (Williams) regarding his termination, to ensure that prejudicial ex-parte evidence was not used against him. *See Goldberg v. Kelly*, 397 U.S. 254, 271 (1970); *Staton v. Mayes*, 552 F.2d 908, 915-916, (10th Cir. Okla. 1977).

315. Defendants Williams, Reid, Christensen, Houser, and Christensen violated Davenport's due process right to a pretermination hearing by firing him on December 5, 2015, without notice, an explanation of the employer's evidence or an opportunity for Davenport to present his side of the story.

316. Defendants Williams, Reid, Christensen, Houser, and Jarvis violated Davenport's due process right to a fair process by insuring that Williams would prejudge Davenport's case. Williams, based on false information and half-truths provided to him expressed an opinion as to the merits of Davenport's claim, and acted on that opinion causing harm to Davenport prior to the pretermination hearing instructing Christensen to fire Davenport without affording him any process at all. He then subsequently reaffirmed his prior decision. Reid, Christensen, Houser and Jarvis, provided the information to Williams that he relied upon in prejudging Davenport's case. Then, the five of them secreted from Davenport the fact Williams had already prejudged Davenport's case. Williams was also biased and should not have been involved in the case as he was actively, pursuing ex-parte evidence against Davenport and had established a relationship with the alleged victim and her parents which he secreted from Davenport.

317. Williams, Reid, Christensen, Houser, Jarvis and Beatty violated Davenport's right to be free from a process using fabricated evidence and withholding favorable evidence. Reid withheld the existence of the videotape and the fact he knew CS was not truthful with him in order to facilitate Davenport's termination which he understood Houser and DSU wanted. Williams knew what the videotape showed and that CS was not truthful. Beatty and Houser fabricated documentation for submission to Williams and Jarvis and Christensen were actively pursuing false and misleading information for submission to Williams.

318. Defendant Williams, violated Davenport's due process right of meaningful notice and meaningful opportunity to be heard by considering prejudicial ex parte evidence in making the decision to terminate Davenport. Reid, Beatty, Houser, Jarvis, and Christensen violated Davenport's due process rights by providing the ex parte information to Williams and withholding information favorable to Davenport from Williams. All six defendants further violated Davenport's rights by secreted from him that prejudicial ex parte evidence was delivered and considered by Williams, and favorable evidence was withheld.

319. As a direct result of the defendants Williams, Houser, Jarvis, Reid, Christensen and Beatty's violation of Davenport's Fourteenth Amendment procedural due process rights, Davenport has incurred damages as follows:

- a. Lost wages and benefits to date in the amount of \$167,042.48 plus interest at the legal rate.
- b. Loss of future earning capacity and benefits of \$2,171,058.21.
- c. Emotional stress and mental anguish and damage to his reputation and good name in the amount of \$5,000,000.00.
- d. Costs, expert witness fees and attorneys' fees incurred herein, in a yet undetermined amount.

320. The actions of the defendants were malicious, oppressive or in reckless disregard of the plaintiff's rights. As such an award of \$15,000,000.00 in punitive damages is appropriate to deter the defendants from similar acts in the future.

COUNT II

14TH AMENDMENT PROCEDURAL DUE PROCESS VIOLATION — SUBJECTION TO CRIMINAL CHARGES BASED ON FABRICATION OF EVIDENCE, WITHHOLDING OF FAVORABLE EVIDENCE, FAILURE TO ADEQUATELY INVESTIGATE WITHOUT A REASONABLE BASIS FOR PROBABLE CAUSE AND/OR COERCING TESTIMONY, PURSUANT TO 42 U.S.C. § 1983.

321. Plaintiff realleges every paragraph contained in this complaint as if fully stated herein.

322. Davenport had a liberty and property interest protected by procedural due process of the Fourteenth Amendment to be free from a prosecution based on manufactured probable cause, fabricated evidence, coerced eyewitness statements, perjured testimony, failure to investigate without a reasonable basis for probable cause, and withholding of evidence negating his guilt, and which went to the credibility of the witnesses. *Pierce v. Gilchrist*, 359 F.3d 1279, 1293-1300 (10th Cir. 2004) *Anthony v. Baker*, 767 F.2d 657, 662(10th Cir. Colo. 1985) *Norton v. Liddel*, 620 F.2d 1375 (10th Cir. 1980), *Pyle v. Kansas*, 317 U.S. 213, 216 (1942), *Brady v. Maryland*, 373 U.S. 83 (1963); *Clanton v. Cooper*, 129 F.3d 1147, 1152 (10th Cir. 1997).

323. Defendants Reid, Isaacson, Beatty, Houser and Williams violated Davenport's 14th Amendment procedural due process right to be free from a prosecution based upon on manufactured probable cause, fabricated evidence, coerced eyewitness statements, perjured testimony, failure to investigate without a reasonable basis for probable cause, and withholding of evidence negating his guilt, or which went to the credibility of the witnesses.

324. Reid withheld from the prosecution the existence of the videotape, the syllabi and other information favorable to Davenport. He perjured himself regarding the existence of a video camera in Eccles 156 which would exonerate Davenport. He falsified his reports

as to the credibility of the students in class. He attempted to coerce witnesses into stating an assault took place when it had not. He failed to conduct any investigation that might be favorable to Davenport such as talking to Davenport, soliciting syllabi from other universities, or attempting to contact witnesses he knew would refute CS's claim that Davenport had assaulted CS. He submitted false information to prosecutors that Beatty had a history of bullying students, when he knew Beatty had recanted and there was nothing in Davenport's personnel file. He submitted CS's statement to the prosecution knowing it was false. He lied to Detective Golding so he could try and coerce witness statements from the students. He lied in his affidavit to keep the emails from Davenport. He provided misleading video evidence to the prosecution that Davenport did not use physical resistance in teaching, when he knew the video was not from teaching sessions. He was actively pursuing political avenues to convince prosecutors to file criminal charges against Davenport when he knew there was not probable cause to do so. Houser submitted to the prosecution false statements attributed to TB and WH as well as a falsified complaint.

325. Isaacson coerced a false statement from TN, and provided TN's coerced statement to the prosecution withholding that TN had previously contradicted the coerced statement. He provided the prosecution misleading video evidence that Davenport did not use physical resistance in acting classes.

326. Beatty submitted false documentation to the prosecution claiming Davenport had a history of bullying students.

327. Williams submitted false information to prosecutors, attempting to convince prosecutors to bring wrongful criminal proceedings against Davenport.

328. The actions of these five defendants was deliberate and made knowingly, or deliberately indifferent, that those actions would yield false information and was used to criminally charge Davenport.

329. Based upon the actions of these five defendants, the St. George City Attorney's office was induced into filing criminal charges against Davenport, for which he was acquitted by a jury.

330. As a direct result of the defendants' violation of Davenport's 14th Amendment rights, Davenport has incurred the following damages:

- a. Costs and expenses incurred in defending himself in the Washington County Justice Court of \$93,000.00
- b. Damage to reputation and good name, emotional stress and mental anguish in the amount of \$5,000,000.00.
- c. Costs, expert witness fees and attorneys' fees incurred herein, in a yet undetermined amount.

331. The actions of the defendants were malicious, oppressive or in reckless disregard of the plaintiff's rights. As such an award of \$15,000,000.00 in punitive damages is appropriate to deter the defendants from similar acts in the future.

COUNT III

FIRST AMENDMENT VIOLATION — ACADEMIC FREEDOM AND RETALIATION, PURSUANT TO 42 U.S.C. § 1983.

332. Plaintiff realleges every paragraph contained in this complaint as if fully stated herein.

333. Davenport as a tenured professor had a free speech/freedom of expression right protected under the First Amendment, to employ the teaching methodology and pedagogy that he did, including instructing students in the use of physical resistance, to produce, direct and act in plays of a secular nature, including mature topics, regardless of DSU's demands that the university be ran as a parochial university consistent with LDS tenets. *Keyishian v. Bd. of Regents of Univ. of State of N.Y.*, 385 U.S. 589, 603 (1967); *Anderhurst v. Colo. Mountain Coll. Dist.*, 208 F.3d 908, 913 (10th Cir. 2000) (academic freedom is "a special concern of the First Amendment"); see also *Shelton v. Tucker*, 364 U.S. 479, 487 (1960) ("The vigilant protection of constitutional freedoms is nowhere more vital than in the community of American schools.").

334. This free speech right was a matter of public concern as the students needed to experience the methodology engaged in acting and to explore a far ranging secular experience as they would encounter upon graduation and entering the job market in a fiercely competitive industry, not the singular parochial approach DSU demanded.

335. The free-speech interests involved by Davenport far outweigh any interest DSU may have in promoting the efficiency of its services.

336. The actions against Davenport by the named defendants would chill a person of ordinary firmness to continue to engage in the protected activity.

337. There was no actual disruption to DSU resulting from Davenport's exercise of free speech since he had not directed, produced, or acted in a play at DSU pursuant to the agreement he had with Hansen in the six months prior to his termination.

338. Defendants terminated Davenport's employment, impugned his character and instituted wrongful legal proceedings against him in violation of DSU policy, in violation of the 1st and 14th Amendments, and his contract of employment established by policy, as alleged in this lawsuit which was substantially motivated by Davenport's exercise of free speech/expression as guaranteed under the First Amendment.

339. The actions of each of the named defendants violated Davenport's rights guaranteed under the First Amendment to the Constitution.

340. As a direct result of the defendants' violation of Davenport's first amendment rights, Davenport has incurred the following damages:

- a. Lost wages and benefits to date in the amount of \$167,042.48 plus interest at the legal rate.
- b. Costs and expenses incurred in defending himself in Washington County Justice Court of \$93,000.00
- c. Loss of future earning capacity and benefits of \$2,171,058.21.
- d. Emotional stress and mental anguish, damage to reputation and good name in the amount of \$5,000,000.00.
- e. Costs, expert witness fees and attorneys' fees incurred herein, in a yet undetermined amount.

341. The actions of the defendants were malicious, oppressive or in reckless disregard of the plaintiff's rights. As such an award of \$15,000,000.00 in punitive damages is appropriate to deter the defendants from similar acts in the future.

COUNT IV

14th AMENDMENT PROCEDURAL DUE PROCESS VIOLATION — STIGMA PLUS DOCTRINE, PURSUANT TO 42 U.S.C. § 1983

342. Plaintiff realleges every paragraph contained in this complaint as if fully stated herein.

343. Davenport as a tenured professor had a liberty interest in his good name and reputation and a property interest in his continued employment protected by the procedural due process clause of the 14th amendment. *Workman v. Jordan*, 32 F.3d 475, 480 (10th Cir. 1994) *Guttman v. Khalsa*, 669 F.3d 1101, 1125(10th Cir. 2012); *Gwinn v. Awmiller*, 354 F.3d 1211, 1216 (10th Cir. 2004); *McDonald v. Wise*, 769 F.3d 1202 (10th Cir. 2014). *Nixon v. City & Cnty. of Denver*, 784 F.3d 1364 (10th Cir. 2015)

344. Defendants Williams, Reid, Houser, Jarvis, Christensen, Beatty, and Durham made numerous defamatory statements impugning Davenport's good name, reputation, honor, or integrity as alleged herein.

345. Those statements were false.

346. Those statements occurred in the course of terminating Davenport, or were made to foreclose other employment opportunities.

347. The statements were published.

348. There was an alteration in Davenport's legal status as his employment at DSU was terminated.

349. As a direct result of the defendants' violation of Davenport's 14th Amendment rights, Davenport has incurred the following damages:

- a. Emotional stress and mental anguish, damage to reputation and good name in the amount of \$5,000,000.00.
- b. Costs, expert witness fees and attorneys' fees incurred herein, in a yet undetermined amount.

350. The actions of the defendants were malicious, oppressive or in reckless disregard of the plaintiff's rights. As such an award of \$15,000,000.00 in punitive damages is appropriate to deter the defendants from similar acts in the future.

COUNT V

CONSPIRACY TO VIOLATE DAVENPORT'S RIGHTS UNDER 42 USC § 1983.

351. Plaintiff realleges every paragraph contained in this complaint as if fully stated herein.

352. Davenport had 1st and 14th Amendment rights guaranteed under the Constitution as alleged in this complaint.

353. The defendants had an express or implied agreement among themselves to deprive Davenport of his constitutional rights under the First and Fourteenth Amendments:

- a. Defendants Williams, Christensen, Reid, Houser, Jarvis and Beatty conspired to violate Davenport's 14th Amendment rights as alleged in Count I.
- b. All 11 named defendants conspired to violate Davenport's 14th Amendment rights as alleged in Count II.
- c. All 11 named defendants conspired to violate Davenport's 14th Amendment rights as alleged in Count III.
- d. All 11 named defendants conspired to violate Davenport's 14th Amendment rights as alleged in Count IV.

354. The defendants did actually deprive Davenport of those rights in the form of overt acts in furtherance of the agreement.

355. As a direct result of the defendants' conspiracy to violate Davenport's 1st and 14th Amendment rights, Davenport has incurred the following damages:

- a. Lost wages and benefits to date in the amount of \$167,042.48 plus interest at the legal rate.

- b. Costs and expenses incurred in defending himself in the Washington County Justice Court of \$93,000.00
- c. Loss of future earning capacity and benefits of \$2,171,058.21.
- d. Emotional stress and mental anguish and damage to his reputation and good name in the amount of \$5,000,000.00.
- e. Costs, expert witness fees and attorneys' fees incurred herein, in a yet undetermined amount.

356. The actions of the defendants were malicious, oppressive or in reckless disregard of the plaintiff's rights. As such an award of \$15,000,000.00 in punitive damages is appropriate to deter the defendants from similar acts in the future.

COUNT VI

BREACH OF IMPLIED CONTRACT (PENDANT UTAH STATE LAW CLAIM)

357. Plaintiff realleges every paragraph contained in this complaint as if fully stated herein.

358. At all times relevant, DSU had a policy manual as referenced herein.

359. The policy manual identified duties, rights and responsibilities that plaintiff, defendants, and other DSU Employees reasonably relied on. Plaintiff and DSU employees expected DSU and defendants to conform to the policy provisions and procedures it outlines in its policy.

360. The language of the policy manual itself, the course of conduct of Davenport's and DSU, and pertinent oral representations indicate intent by DSU and Davenport to rely on the policy.

361. The policy manual, and the parties' reliance on it, established an implied contract enforceable at law.

362. The policy manual established the parties' duties rights and responsibilities. Each of the named defendants owed Davenport the duties as set forth in the policy manual and as referenced in this complaint.

363. There is no clear and conspicuous disclaimer in the policy manual which prevents the employee manuals or other like material from being considered as implied-in-fact contract terms.

364. The Utah governmental immunity does not apply to a breach of contract claim. Under section 63-30-5 of the GIA, governmental entities waive immunity "as to any contractual obligations." Utah Code Ann. § 63-30-5(1).

365. Davenport did what the implied contract required him to do.

366. Each of the named defendants materially breached their duties owed to Davenport under the implied contract established in the policy manual and the parties' course of conduct, by not performing the obligations as required under the following sections of policy:

- a. Williams breached **Policy 101** parties to be bound by policy; 1.1, 1.2, 2, and 3.7, **Policy 103** pertaining to the president; 2.1, 2.2.2, 2.2.3, 2.2.4, 2.2.5, 2.2.6.6, 5.1.2, 5.1.3, 5.1.5, and 5.1.6; **Policy 157** personal conduct, 4.1.1.2; **Policy 304** use and dissemination of information; 1.1, 2.3, 3.2, 3.3, 3.4, and 3.6; **Policy 321** tenured employees; 1.15; **Policy 371** faculty termination; 4.1, 4.1.3, 4.2.3, 4.2.4, 4.4.10, 4.4.12, 4.5.1, 4.5.1.3, and 4.6.1; **Policy 372** corrective and disciplinary action; I, III, 4.1.1, 4.1.2, 4.1.2.1, 5.1, 5.1.1, 6.2, and 6.3; **Policy 632**, faculty responsibilities and academic freedom; 2.18, 3.1, and 3.2; **Policy 633** faculty rights; 3.1.1 and 3.1.1.1.
- b. Christensen breached **Policy 101** parties to be bound by policy; 1.1, 1.2, 2, and 3.7, **Policy 157** personal conduct, 4.1.1.2; **Policy 304** use and dissemination of information; 1.1, 2.3, 3.2, 3.3, 3.4, and 3.6; **Policy 321** tenured employees; 1.15; **Policy 371** faculty termination; 4.1, 4.1.3, 4.2.3, 4.2.4, 4.4.10, 4.4.12, 4.5.1, 4.5.1.3, and 4.6.1; **Policy 372** pertaining to corrective and disciplinary action; I, III, 4.1.1, 4.1.2, 4.1.2.1, 5.1, 5.1.1, 6.2, and 6.3; **Policy 632**, faculty responsibilities and academic freedom; 2.18, 3.1, and 3.2; **Policy 633** faculty rights; 3.1.1 and 3.1.1.1.
- c. Jarvis breached **Policy 101** parties to be bound by policy; 1.1, 1.2, 2, and 3.7, **Policy 157** personal conduct, 4.1.1.2; **Policy 304** use and dissemination of information; 1.1, 2.3, 3.2, 3.3, 3.4, and 3.6; **Policy 321** tenured employees; 1.15; **Policy 371** faculty termination; 4.1, 4.1.3, 4.2.3, 4.2.4, 4.4.10, 4.4.12, 4.5.1, 4.5.1.3, and 4.6.1; **Policy 372** pertaining to corrective and disciplinary action; I, III, 4.1.1, 4.1.2, 4.1.2.1, 5.1, 5.1.1, 6.2, and 6.3; **Policy 632**, faculty responsibilities and academic freedom; 2.18, 3.1, and 3.2; **Policy 633** faculty rights; 3.1.1 and 3.1.1.1.
- d. Houser breached **Policy 101** parties to be bound by policy; 1.1, 1.2, 2, and 3.7, **Policy 157** personal conduct, 4.1.1.2; **Policy 304** use and dissemination of information; 1.1, 2.3, 3.2, 3.3, 3.4, and 3.6; **Policy 321** tenured employees; 1.15; **Policy 371** faculty termination; 4.1, 4.1.3, 4.2.3, 4.2.4, 4.4.10, 4.4.12, 4.5.1, 4.5.1.3, and 4.6.1; **Policy 372** pertaining to corrective and disciplinary action; I, III, 4.1.1, 4.1.2, 4.1.2.1, 5.1, 5.1.1, 6.2, and 6.3; **Policy 632**, faculty responsibilities and academic freedom; 2.18, 3.1, and 3.2; **Policy 633** faculty rights; 3.1.1 and 3.1.1.1.
- e. Durham breached **Policy 101** parties to be bound by policy; 1.1, 1.2, 2, and 3.7, **policy 102** Ethics and Responsibilities 2.1.2, 2.1.5, 2.1.6, 2.1.8, 3.1.3.

- f. Beatty breached **Policy 101** parties to be bound by policy; 1.1, 1.2, 2, and 3.7; **Policy 157** personal conduct, 4.1.1.2; **Policy 304** use and dissemination of information; 1.1, 2.3, 3.2, 3.3, 3.4, and 3.6; **Policy 321** tenured employees; 1.15; **Policy 371** faculty termination; 4.1, 4.1.3, 4.2.3, 4.2.4, 4.4.10, 4.4 .12, 4.5.1, 4.5.1.3, and 4.6.1; **Policy 372** pertaining to corrective and disciplinary action; I, III, 4.1.1, 4.1.2, 4.1.2.1, 5.1, 5.1.1, 6.2, and 6.3; **Policy 632**, faculty responsibilities and academic freedom; 2.18, 3.1, and 3.2; **Policy 633** faculty rights; 3.1.1 and 3.1.1.1.
- g. Johnson breached **Policy 101** parties to be bound by policy; 1.1, 1.2, 2, and 3.7; **Policy 157** personal conduct, 4.1.1.2; **Policy 304** use and dissemination of information; 1.1, 2.3, 3.2, 3.3, 3.4, and 3.6; **Policy 321** tenured employees; 1.15; **Policy 371** faculty termination; 4.1, 4.1.3, 4.2.3, 4.2.4, 4.4.10, 4.4 .12, 4.5.1, 4.5.1.3, and 4.6.1; **Policy 372** pertaining to corrective and disciplinary action; I, III, 4.1.1, 4.1.2, 4.1.2.1, 5.1, 5.1.1, 6.2, and 6.3; **Policy 632**, faculty responsibilities and academic freedom; 2.18, 3.1, and 3.2; **Policy 633** faculty rights; 3.1.1 and 3.1.1.
- h. Reid breached **Policy 101** parties to be bound by policy; 1.1, 1.2, 2, and 3.7; **Policy 157** personal conduct, 4.1.1.2; **Policy 304** use and dissemination of information; 1.1, 2.3, 3.2, 3.3, 3.4, and 3.6; **Policy 321** tenured employees; 1.15; **Policy 371** faculty termination; 4.1, 4.1.3, 4.2.3, 4.2.4, 4.4.10, 4.4 .12, 4.5.1, 4.5.1.3, and 4.6.1; **Policy 372** pertaining to corrective and disciplinary action; I, III, 4.1.1, 4.1.2, 4.1.2.1, 5.1, 5.1.1, 6.2, and 6.3; **Policy 632**, faculty responsibilities and academic freedom; 2.18, 3.1, and 3.2; **Policy 633** faculty rights; 3.1.1 and 3.1.1.
- i. Morris breached **Policy 101** parties to be bound by policy; 1.1, 1.2, 2, and 3.7; **Policy 157** personal conduct, 4.1.1.2; **Policy 304** use and dissemination of information; 1.1, 2.3, 3.2, 3.3, 3.4, and 3.6; **Policy 321** tenured employees; 1.15; **Policy 371** faculty termination; 4.1, 4.1.3, 4.2.3, 4.2.4, 4.4.10, 4.4 .12, 4.5.1, 4.5.1.3, and 4.6.1; **Policy 372** pertaining to corrective and disciplinary action; I, III, 4.1.1, 4.1.2, 4.1.2.1, 5.1, 5.1.1, 6.2, and 6.3; **Policy 632**, faculty responsibilities and academic freedom; 2.18, 3.1, and 3.2; **Policy 633** faculty rights; 3.1.1 and 3.1.1.
- j. Carter breached **Policy 101** parties to be bound by policy; 1.1, 1.2, 2, and 3.7; **Policy 157** personal conduct, 4.1.1.2; **Policy 321** tenured employees; 1.15; **Policy 632**, faculty responsibilities and academic freedom; 2.18; **Policy 633** faculty rights; 3.1.1 and 3.1.1.
- k. Isaacson breached **Policy 101** parties to be bound by policy; 1.1, 1.2, 2, and 3.7; **Policy 157** personal conduct, 4.1.1.2; **Policy 321** tenured employees; 1.15; **Policy 632**, faculty responsibilities and academic freedom; 2.18; **Policy 633** faculty rights; 3.1.1 and 3.1.1.

367. The policy manual of DSU contains an implied covenant of good faith and fair dealing.

368. The breach by the named defendants has damaged Davenport financially. As a direct result of the breach by defendants he has incurred the following damages:

- f. Lost wages and benefits to date in the amount of \$ 167,042.48 plus interest at the legal rate for prejudgment interest.
- g. Costs and expenses incurred in defending himself in Washington County Justice Court of \$93,000.
- h. Loss of future earning capacity and benefits of \$2,171,058.21.
- i. Attorney fees and costs in bringing this action, in a yet undetermined amount

369. The nature of the policies/contract terms breached by defendants pertained to matters of mental concern or solicitude. It was contemplated by the parties that severe emotional distress and mental anguish would almost certainly result from a breach of those terms. As such Davenport is owed damages emotional distress and mental anguish from each of the named defendants.

370. As a result of the defendants' breach, Davenport has fallen in arrears in his ability to pay his mortgage. His relationship with friends and family has deteriorated. He does not have the financial ability to pay for routine maintenance of his home. He is not able to pursue his chosen career in a discipline he loves, for which he expended time and funds for almost 20 years of education. His reputation has been tarnished in his church, his community, his neighborhood and among friends and family, he is unable financially to participate in most of the hobbies and activities he and his family enjoyed such as being able to go on vacation, or provide any financial assistance to his children. He has been emotionally devastated by the actions of these defendants.

371. As a direct result of defendants' breach, Davenport has sustained emotional stress, mental anguish and damage to his good name and reputation in the amount of \$5,000,000.00

372. Each of the named defendants breached the covenant of good faith and fair dealing as their actions purposefully and intentionally acted to destroy or injure Davenport's right to receive the fruits of the contract. As such, Davenport is owed exemplary damages to punish these defendants consistent with law.

373. As a result of Defendant's purposeful and intentional breach of the covenant of good faith and fair dealing, an award of \$15,000,000.00 in punitive damages is appropriate.

PRAYER FOR RELIEF

WHEREFORE, PLAINTIFF REQUESTS THE FOLLOWING:

1. For a declaratory order from this Court, declaring that Defendants' conduct is violative of the First and Fourteenth Amendments.
2. For an injunctive order against defendant Williams reinstating Davenport to position as a tenured professor at DSU.
3. For nominal, compensatory, and punitive damages against each of the Defendants, as set forth in COUNTS I-VI.
4. For an award of costs, expert witness fees and reasonable attorneys' fees, pursuant to 42 U.S.C. § 1988.
5. For any other equitable or legal relief this Court deems just and proper.

DATED this 5th day of January, 2017.

AARON J. PRISBREY, P.C.

/s/ Aaron J. Prisbrey

Aaron J. Prisbrey
Trevor C. Sanders
Attorneys for Plaintiff