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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
LUBBOCK DIVISION**

RAJIN PATEL,	§	
	§	
Plaintiff,	§	
v.	§	
	§	
TEXAS TECH UNIVERSITY; DUANE	§	
JONES, individually and in his official	§	
capacity as adjunct professor; WILLIAM	§	
PASEWARK, INDIVIDUALLY and in his	§	
official capacity as TTU Rawls College of	§	CIVIL ACTION NO. 5:17-cv-174-C
Business Associate Dean of Graduate	§	
Programs and Research; ROBERT	§	
RICKETTS, individually and in his	§	
official capacity as Area Coordinator in	§	
Accounting; and BRITTANY TODD,	§	
individually and in her individual capacity	§	
as Associate Director of the Office of	§	
Student Conduct;	§	
Defendants.	§	

DEFENDANTS' BRIEF IN SUPPORT OF MOTION TO DISMISS

TO THE HONORABLE JUDGE SAMUEL RAY CUMMINGS:

Pursuant to FED. R. CIV. P. 12(b)(1) and FED. R. CIV. P.12(b)(6), Defendants Texas Tech University ("TTU"), and Duane Jones, William Pasewark, Robert Ricketts, and Brittany Todd (collectively, the "Individual Defendants"), file this Brief in Support of Motion to Dismiss against Plaintiff Rajin Patel ("Plaintiff").

I. SUMMARY OF THE ARGUMENT

1. This is a substantive due process, equal protection, and breach of contract case filed by a student at TTU who was disciplined for cheating and plagiarizing answers on a final exam after six of his answers were found to be over 90% word-for-word from the test bank answers. TTU's Office of Student Conduct investigated and substantiated the cheating and plagiarism

allegations against the Plaintiff and, in accordance with the Student Handbook and other TTU policies, provided Plaintiff with written notice and a hearing. Plaintiff had a full and meaningful opportunity to challenge the allegations at his February 10, 2017 panel hearing, during which a panel of two faculty members and one graduate student from the TTU Office of Student Conduct considered Plaintiff's submissions in addition to the Office of Student Conduct's investigative report. After considering all of the evidence, the panel found Plaintiff guilty of cheating and plagiarism, and placed Plaintiff on deferred suspension in addition to other penalties. After finding no procedural or substantive errors and no new information, Plaintiff's subsequent appeal was denied. Instead of taking responsibility for his actions, Plaintiff now attempts to place the blame on everyone but himself—inconsistently asserting that he did not cheat or plagiarize while arguing that his actions should not be considered cheating or plagiarism because another exam session was allegedly allowed to use unpermitted materials.

2. Plaintiff asserts a § 1983 substantive due process claim against TTU and the Individual Defendants (who he claims were connected to the “bias” hearing) in their official capacities, a § 1983 substantive due process claim against the Individual Defendants in their individual capacities, a § 1983 equal protection claim against all Defendants in their individual and official capacities, and a breach of contract claim against TTU.

3. The § 1983 substantive due process and equal protection claims against TTU and the Individual Defendants in their official capacities, and the breach of contract claim against TTU, are plainly barred by sovereign immunity. The § 1983 claims against the Individual Defendants in their individual capacities are barred because Plaintiff's allegations do not meet the “heightened pleading” requirements for overcoming qualified immunity. Moreover, Plaintiff's own pleadings show that he received all the process to which he was entitled, and thus wholly fails to state a

claim. Further, Plaintiff's failure to identify the Defendants from whom injunctive relief is sought or the capacity (official vs. individual) of the Defendants results in the failure to state a claim upon which relief can be granted.

II. BACKGROUND

A. Six of Plaintiff's closed-material final exam essay answers are discovered to be nearly 90% word-for-word from the test bank answers.

4. Plaintiff is a student at TTU's Rawls College of Business who is pursuing his Master of Science degree in accounting. Doc. # 1 at ¶ 14. During the fall 2016-2017 term, Plaintiff was enrolled in the graduate school course BLAW 5392 Advanced Business Law ("BLAW"). *Id.* at ¶ 18. Plaintiff admits in his complaint (the "Complaint") that the BLAW final examination, which he took on December 12, 2016, "followed the structure of past exams and quizzes and was administered electronically to the 100 enrolled students in small groups", and that students "were instructed to bring their own laptops to take the exam and were advised in the syllabus it was a closed-book exam." *Id.* at ¶ 19. Further, although Plaintiff alleges that there were "irregularities between exam sessions", he concedes that the students in his exam session were not allowed to use open books or e-notes. *Id.* at ¶ 25.

5. Plaintiff's professor, Defendant Duane Jones ("Jones"), noted that there were no discrepancies in the exam process that day. *Id.* at ¶ 22. However, while grading Plaintiff's exam, Jones realized that a number of Plaintiff's test answers were highly plagiarized. *Id.* at ¶ 24. In fact, as Plaintiff asserts in the Complaint, Jones discovered that six of Plaintiff's essay answers were nearly 90% word-for-word from the answers given in the test bank. *Id.* at ¶ 44. Jones filed an academic incident report against Plaintiff on December 21, 2016 in which his "chief complaint was that [Plaintiff's] test answer to question 8 was 'almost verbatim' to the textbook test bank answers." *Id.* at ¶ 29. In addition, Jones "complained that, because of the similarity, 'the bigger

issue is opening test bank copy (books/notes/internet) during a closed book/closed note exam.”

Id. After Jones informed Plaintiff that his plagiarized answers had been discovered, Plaintiff visited with TTU Rawls College of Business Associate Dean, Defendant Dr. William Pasewark (“Pasewark”), with two of his classmates against whom Jones had also asserted allegations of cheating. *Id.* at ¶ 25. Although Jones also alleged cheating against two other students, it was later determined that there was not enough evidence to bring a case against them because the witnesses who initially accused them of cheating later recanted their story. *Id.* at ¶¶ 27-28.

6. Critically, although recognizing that he knew the course syllabus mandated the exam to be closed-book (*Id.* at ¶¶ 19-20), Plaintiff admits that “a cursory review of the textbook used for the class demonstrates the answer to question 8 can be found *almost verbatim* in the textbook chapter, as an answer to the review question, **on online study guides....**” *Id.* at ¶ 30. Plaintiff also admits that his answer to question 8 was similar to the test bank answers. *Id.* Further, Plaintiff admits that “[t]he textbook and study materials provided many of the answers that appeared on the exam, word for word.” *Id.* at ¶ 45. Even more curious is the fact that, although Plaintiff recognizes that students were not allowed to use any outside sources on the exam and asserts that he did not cheat or plagiarize his answers (*Id.* at ¶¶ 19, 21, 25), he attempts to argue that his actions should not be considered cheating or plagiarism because students in an earlier testing session were “permitted to use their e-text, notes and the internet to complete the exam.” *Id.* at ¶¶ 20, 25, 28.¹

¹ For purposes of a Motion to Dismiss, only Plaintiff’s side of the story as alleged in the Complaint is presented, but should this case proceed further into discovery, the Court will see there are several facts Plaintiff notably misrepresented and/or omitted.

B. TTU's Office of Student Conduct conducts a thorough investigation into complaint that Plaintiff cheated on his final exam and plagiarized his answers.

7. Defendant Brittany Todd ("Todd"), former associate director with the TTU Office of Student Conduct, investigated the allegations against Plaintiff. *Id.* at ¶¶ 31-32. Plaintiff admits that the report generated by the Turnitin plagiarism software used by Todd revealed that his exam answers were "similar, in places, to several other exams turned into the software data mine program". *Id.* at ¶ 37. Todd emailed Plaintiff a copy of her final investigation report and gave him sufficient time to provide additional, contradictory information and to choose between a panel hearing or administrative hearing. *Id.* at ¶ 39. Plaintiff quickly provided Todd with a list addressing information and alleged deficiencies contained in the final investigation report. *Id.* at ¶ 39.

8. Plaintiff's panel hearing took place on February 10, 2017 in front of a panel of two faculty members and one graduate student from the Student Conduct Office. *Id.* at ¶ 45. After considering the "available documentation, evidence, reports received from a faculty member, and [Plaintiff's] statement", in addition to Plaintiff's own testimony, the Student Conduct Office found Plaintiff guilty of cheating and plagiarism. *Id.* at ¶¶ 46, 48. Plaintiff was dismissed from the TTU Rawls College of Business graduate accounting program, placed on deferred suspension in his TTU undergraduate classes until January 2018, and received an F in BLAW. *Id.* at ¶ 49. In addition, the Student Conduct Office "further mandated that [Plaintiff] must pay a penalty related to the plagiarism...and must enroll in an Academic Integrity BlackBoard course about plagiarism." *Id.*

9. Plaintiff appealed the panel's decision. *Id.* at ¶ 50. After finding there were no procedural or substantive errors with Plaintiff's hearing and no new information to consider, Plaintiff's appeal was denied on March 7, 2017. *Id.* To date, Plaintiff has failed and refused to

comply with the Student Conduct Office’s penalty. *Id.* at ¶¶ 51-53. Instead of taking responsibility for his actions, he now files this lawsuit and seeks injunctive relief in an effort to place the blame on the Defendants and to skirt the penalties that resulted from his cheating and plagiarism. *Id.* at ¶ 44.

III. ARGUMENT AND AUTHORITIES

A. Motion to Dismiss Standard

10. Federal Rule of Civil Procedure 12(b)(1) authorizes a federal court to dismiss a claim for lack of subject matter jurisdiction. FED. R. CIV. P. 12(b)(1). “Federal courts are courts of limited jurisdiction, and absent jurisdiction conferred by statute, lack the power to adjudicate claims.” *Stockman v. Fed. Election Comm’n*, 138 F.3d 144, 151 (5th Cir. 1998). Accordingly, “[a] case is properly dismissed for lack of subject matter jurisdiction when the court lacks statutory or constitutional power to adjudicate the case.” *Home Builders Ass’n of Miss, Inc. v. Madison*, 143 F.3d 1006, 1010 (5th Cir. 1998) (citation omitted).

11. The party seeking to invoke jurisdiction bears the burden of demonstrating its existence. *See Ramming v. United States*, 281 F.3d 158, 161 (5th Cir. 2001); *Howery v. Allstate Ins. Co.*, 243 F.3d 912, 916 (5th Cir. 2001). “[T]here is a presumption against subject matter jurisdiction that must be rebutted by the party bringing an action to federal court.” *Coury v. Prot*, 85 F.3d 244, 248 (5th Cir. 1996). An action may be dismissed for lack of subject matter jurisdiction pursuant to Rule 12(b)(1) on any of three separate grounds: (1) the complaint standing alone; (2) the complaint supplemented by undisputed facts evidenced in the record; or (3) the complaint, the undisputed facts, and the court’s resolution of disputed facts. *Voluntary Purchasing Groups, Inc. v. Reilly*, 889 F.2d 1380, 1384 (5th Cir. 1989). The court may consider affidavits and other evidence in resolving factual issues relating to jurisdictional questions. *Moran v. Kingdom*

of *Saudi Arabia*, 27 F.3d 169, 172 (5th Cir. 1994). When a Rule 12(b)(1) motion is filed in conjunction with other Rule 12 motions, the court should consider the Rule 12(b)(1) motion before addressing any motion as to the merits. *Ramming*, 281 F.3d at 161.

12. Additionally, “[t]o survive a Rule 12(b)(6) motion, the plaintiff must plead ‘enough facts to state a claim to relief that is plausible on its face.’” *In re Katrina Canal Breaches Litigation*, 495 F.3d 191, 205 (5th Cir. 2007) (quoting *Bell Atlantic Corporation v. Twombly*, 550 U.S. 544 (2007)). “While a complaint attacked by a Rule 12(b)(6) motion to dismiss does not need detailed factual allegations, a plaintiff’s obligation to provide the grounds of his entitlement to relief requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do.” *Twombly*, 550 U.S. at 555 (citations, quotations, and brackets omitted). “Factual allegations must be enough to raise a right to relief above the speculative level, on the assumption that all the allegations in the complaint are true (even if doubtful in fact).” *Katrina Canal*, 495 F.3d at 205 (quoting *Twombly*, 550 U.S. at 555). The Court is not required to conjure up unpled allegations in order to save a complaint, and conclusory allegations or legal conclusions masquerading as factual conclusions will not suffice” *Fernandez-Montes v. Allied Pilots Ass’n*, 987 F.2d 278, 284 (5th Cir. 1993).

B. Plaintiff’s claims against TTU and the Individual Defendants in their official capacities are barred by sovereign immunity.

1. The § 1983 claims against TTU and the Individual Defendants in their official capacities are barred.

13. Section 1983 provides a private right of action or damages to individuals who are deprived of “any rights, privileges, or immunities” protected by the Constitution or federal law by any “person” acting under the color of state law. *Stotter v. University of Texas at San Antonio*, 508 F.3d 812, 821 (5th Cir. 2007) (citing 42 U.S.C. § 1983). It is well settled that neither a State

nor its officials acting in their official capacities are “persons” under § 1983. *Will v. Michigan Dept. of State Police*, 491 U.S. 58, 71 (1989). The Fifth Circuit has specifically recognized that state universities, as arms of the state, are not “persons” under § 1983. *Stotter*, 508 F.3d at 821 (citations omitted).

14. TTU is a Texas state entity that is entitled to sovereign immunity. *See Smith v. Texas Tech University*, 398 Fed. Appx. 953 (5th Cir. 2010) (“This Court has noted that Texas Tech University is a state institution that is cloaked with sovereign immunity under the Eleventh Amendment”). Further, Plaintiff’s claims against the Individual Defendants in their official capacities are also considered a suit against the state itself and, accordingly, are also barred by Eleventh Amendment immunity. *See Villanueva v. Texas Tech University*, No. 5:10-CV-186-C, 2010 WL 11465139, at *2 (N. D. Tex. Dec. 17, 2010) (citing *Will v. Mich. Dep’t of St. Police*, 491 U.S. 58, 71 (1989)) (suit against state official in his or her official capacity is also considered suit against the state itself). This immunity has not been waived by either Congress or Texas for claims brought under § 1983. Thus, Plaintiff’s § 1983 claims against TTU and the Individual Defendants in their official capacity are invalid and should be dismissed for lack of subject matter jurisdiction. *See Stotter*, 508 F.3d at 821.

2. The breach of contract claim against TTU is barred.

15. In the event the Court finds that there is a valid, binding contract between TTU and Plaintiff (which TTU denies), Plaintiff’s breach of contract claim against TTU is barred. The Texas Supreme Court has explained that the Texas Legislature has not waived immunity to breach of contract suits. *Gen. Servs. Comm’n v. Little-Tex Insulation Co.*, 39 S.W.3d 591, 594 (Tex. 2001) (“the State does not waive immunity from suit simply by contracting with a private person...Legislative consent to sue is still necessary.”). Accordingly, unless Plaintiff can show

legislative consent to his lawsuit, his breach of contract claim should be dismissed as barred by sovereign immunity. *See Lieu v. Jackson*, No. 4:09-CV-415-A, 2010 WL 342251, at *3 (N.D. Tex. Jan 29, 2010).

C. Plaintiff's claims against the Individual Defendants fail as a matter of law.

16. Government officials who perform “discretionary functions” are entitled to the defense of qualified immunity from suits in their individual capacity. *Harlow v. Fitzgerald*, 457 U.S. 800, 801 (1982). The doctrine of qualified immunity protects government officials sued pursuant to § 1983 “from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.” *Pearson v. Callahan*, 555 U.S. 223, 231 (2009). Indeed, “Qualified immunity is immunity from suit under § 1983 rather than a mere defense to liability.” *Backe v. LeBlanc*, 691 F.3d 645, 648 (5th Cir. 2012) (quoting *Pearson v. Callahan*, 555 U.S. 223, 237 (2009)). Defendants may raise the defense of Qualified Immunity in a 12(b) motion, and when they do so, they are “entitled to dismissal before the commencement of discovery,” unless the plaintiff sufficiently alleges a violation of established law. *See Morgan v. Swanson*, 610 F.3d 877, 882 (5th Cir. 2010, *rev'd on other grounds*, 628 F.3d 705) (citing *Mitchell v. Forsyth*, 472 U.S. 511, 526 (1985)).

17. “The protection of qualified immunity applies regardless of whether the government official’s error is a mistake of law, a mistake of fact, or a mistake based on mixed questions of law and fact.” *Id* (internal quotations omitted). The Fifth Circuit has emphasized the broad protections of qualified immunity, stating that it “gives ample room for mistaken judgments by protecting all but the plainly incompetent or those who knowingly violate the law.” *DePree v. Saunders*, 588 F.3d 282, 288 (5th Cir. 2009). Following an invocation of qualified immunity, “the burden is on the plaintiff to demonstrate the inapplicability of the defense.” *McClendon v. City of*

Columbia, 305 F.3d 314, 323 (5th Cir. 2002). “Of course, the defendant’s conduct cannot constitute a violation of clearly established law if, on the plaintiff’s version of the facts, there is no violation at all.” *Johnson v. Johnson*, 385 F.3d 505, 525 (5th Cir. 2004).

18. “Heightened pleading in qualified immunity cases requires that plaintiffs rest their complaint on more than conclusions alone and plead their case with precision and factual specificity.” *Nunez v. Simms*, 341 F.3d 385, 388 (5th Cir. 2003). “Because vicarious liability is inapplicable to ... § 1983 suits, a plaintiff must plead that each Government-official defendant, through the official’s own individual actions, has violated the Constitution.” *Ashcroft v. Iqbal*, 556 U.S.129, 129 S. Ct 1937, 1940 (2009). “If reasonable public officials could differ as to whether the defendants’ actions were lawful, the defendants are entitled to immunity.” *Zarnow v. City of Wichita Falls*, 500 F.3d 401, 407-08 (5th Cir. 2007).

1. Plaintiff has failed to bring a valid § 1983 claim against the Individual Defendants in their individual capacities.

19. To state a cause of action under § 1983, the plaintiff “must identify defendants who were either personally involved in the constitutional violation or whose acts are causally connected to the constitutional violation alleged.” *Woods v. Edwards*, 51 F.3d 577, 583 (5th Cir. 1995). Here, Plaintiff has made no factual allegations of what, if any, connection Defendants Jones, Pasewark, or Ricketts had to the February 10, 2017 panel hearing, panel decision, or to Plaintiff’s subsequent appeal. See Doc. #1. Plaintiff does not assert any facts showing Defendants Jones, Pasewark, or Ricketts participated in the panel hearing or the appeal. In addition, with respect to Defendant Todd, Plaintiff merely asserts conclusory, unsubstantiated allegations that Todd “presented her ‘Final Investigation Report,’” to the panel “leaving out all of the information [Plaintiff] provided and other pertinent information supporting his defense.” *Id.* at ¶ 45. However, Plaintiff’s conclusory misrepresentation that Todd somehow prevented the panel from considering

information supporting his defense is wholly contradicted by Plaintiff's own assertion that "the Student Conduct Office found [Plaintiff] guilty by a preponderance of the evidence standard on February 15, 2017, **after considering the...available documentation, evidence**, reports received from a faculty member, **and [Plaintiff's] statement.**" *Id.* at ¶48. Critically, Plaintiff also admits that he was afforded the opportunity to present data that allegedly contradicted Todd's report during the panel hearing. *Id.* at ¶ 46.

20. Moreover, Plaintiff has made no allegation that any Individual Defendant violated "clearly established law" such that every "reasonable official would have understood that what he is doing violates that right." *Ashcroft v. al-Kidd*, 563 U.S. 731, 741 (2011). As a result, it is clear that reasonable public officials could agree that the Individual Defendants' actions were lawful; therefore, the Individual Defendants are entitled to immunity. *See Zarnow*, 500 F.3d at 407-08.

2. Plaintiff fails to establish a substantive due process violation.

21. Plaintiff's claim that the Individual Defendants deprived him of substantive due process likewise fails. In *Regents of University of Michigan v. Ewing*, the Supreme Court held that decisions in the academic setting are subject to "a narrow avenue for judicial review" under a substantive due process standard. *Ewing*, 474 U.S. 214, 227 (1985). Under this narrow standard, "[w]hen judges are asked to review the substance of a genuinely academic decision . . . they should show great respect for the faculty's professional judgment ... [and] ... they may not override it unless it is such a substantial departure from accepted academic norms as to demonstrate that the person or committee responsible did not actually exercise professional judgment." Relying on *Ewing*, the Fifth Circuit in *Wheeler* established that **when an academic decision is not beyond the pale of reasoned academic decision-making, it must be accepted.** *Wheeler v. Miller*, 168 F.3d 241, 249-250 (5th Cir. 1999) (emphasis added).

22. Based on the allegations in Plaintiff's Complaint, even when viewed in the light most favorable to him, Plaintiff has failed to establish a substantive due process violation. "Substantive due process 'bars certain arbitrary, wrongful government actions regardless of the fairness of the procedures used to implement them.'" *Marco Outdoor Adver., Inc. v. Reg'l Transit Auth.*, 489 F.3d 669, n.3 (5th Cir. 2007) (quoting *Zinerman v. Burch*, 494 U.S. 113, 125 (1990)). "[It] requires only that public officials exercise professional judgment, in a nonarbitrary and capricious manner, when depriving an individual of a protected [life, liberty, or] property interest." *Lewis v. Univ. of Tex. Med. Branch at Galveston*, 665 F.3d 625, 631 (5th Cir. 2011) (citing *Tex. v. Walker*, 142 F.3d 813, 819 (5th Cir.1998)). Accordingly, "[t]o establish a violation of substantive due process, 'a plaintiff must prove that (1) he was deprived of a life, liberty, or property interest (2) in an arbitrary or capricious manner.'" *Aragona v. Berry*, No. 3:10-CV-1610-G, 2012 WL 467069, at *7 (N.D. Tex. Feb. 14, 2012) (internal citations omitted).

23. In support of his substantive due process claims, Plaintiff asserts conclusory, unsubstantiated allegations that "Defendants knew that their actions in the conduct of perpetuating a biased investigation and unfair hearing to expel [Plaintiff] denied [Plaintiff] of his constitutional right to substantive due process." Doc. #1 at ¶ 69. However, Plaintiff has provided no facts in support of such bare accusations. Among other things, the Complaint contains no facts indicating the Individual Defendants' intent or otherwise showing the Individual Defendants' conduct was not within the course and scope of their employment obligations. *See, generally, id.* Nor does the Complaint allege that any of the Individual Defendants other than Ms. Todd were involved in the February 10, 2017 panel hearing. *Id.* Further, nothing in the Complaint mentions or otherwise shows that any of the Individual Defendants were involved in the panel's final decision or the Plaintiff's March 7, 2017 appeal. *Id.*

24. Plaintiff has failed to set forth any factual allegations in his Complaint that Defendants Jones, Pasewark, or Ricketts were either personally involved in, or took actions causally connected to, the alleged substantive due process violation for which they could be individually liable under § 1983. *Id.* Specifically, Plaintiff has not shown that Jones, Pasewark or Ricketts took part in the February 10, 2017 panel hearing or in Plaintiff's subsequent appeal. *Id.* Additionally, Plaintiff's own allegations regarding the deferred suspension show that he was afforded two opportunities to contest the allegations against him, both of which he exercised – the first being the Student Conduct Office panel hearing, during which the panel fully considered his submissions and all of the evidence before it in addition to Plaintiff's own testimony, and the second was Plaintiff's appeal of the panel's decision. *Id.* at ¶¶46, 48. The panel's decision was a failing grade, dismissal from the Master of Science Accounting Program, payment of \$50, completion of an Academic Integrity BlackBoard course about plagiarism, and deferred suspension which, as Plaintiff admits in the Complaint, is the standard penalty for first-time offenses. *Id.* at ¶¶ 16, 49. Importantly, the fact that the panel's decision was upheld after Plaintiff appealed clearly shows that the decision against Plaintiff was not arbitrary or capricious, but rather that the panel exercised its professional judgment in reaching its decision to suspend Plaintiff based on consideration of all the information presented, including Plaintiff's own participation at the hearing. *Id.* at ¶¶ 46, 48. Despite Plaintiff's proffered explanations to the student panel for his actions, the ultimate decision to suspend Plaintiff for academic misconduct cannot be viewed as “beyond the pale of reasoned academic decision-making,”; accordingly, his substantive due process claim must be dismissed. *See Wheeler v. Miller*, 168 F.3d at 250 (when an academic decision is not beyond the pale of reasoned academic decision-making, it must be accepted).

D. Plaintiff fails to state a viable Equal Protection claim.

25. Plaintiff fails to properly state a claim for violation of his equal protection rights. An equal protection claim may be “brought by a ‘class of one,’ where the plaintiff alleges that he has been intentionally treated differently from others similarly situated and that there is no rational basis for the difference in treatment.” *Vill. Of Willowbrook v. Olech*, 528 U.S. 562, 564, 120 S. Ct. 1073 (2000).

26. For the same reasons set forth in paragraphs 14-15 above, Plaintiff’s § 1983 claim for violation of his Equal Protection rights against TTU and the Individual Defendants in their official capacities is barred.

27. In support of his Equal Protection claim, Plaintiff alleges that he was “singled out and discriminated against compared to similarly situated individuals” because “Defendants chose not to formalize charges of misuse of materials against two other students in the BLAW final exam despite actually having an eyewitness report their cheating **but who later recanted.**” Doc. #1, at ¶ 79 (emphasis added). Plaintiff also admits in the Complaint that it was determined that there “was solid evidence to suggest one of the individuals [Plaintiff] was cheating and **not enough evidence to bring a case against the other two.**” *Id.* at ¶ 27 (emphasis added). Accordingly, Plaintiff essentially admits in his Complaint that there was in fact a rational basis for the difference in treatment between him and the other two students who were also accused of cheating – unlike Plaintiff, for whom there was solid evidence of cheating and plagiarism – there was not enough evidence to bring a case for cheating or plagiarism against the other two students because the eyewitness who first reported the other two students’ cheating later recanted their story. *Id.* at ¶¶ 27, 79. As a result, Plaintiff’s claim for violation of his Equal Protection rights against the Individual Defendants in their individual capacities must also be dismissed.

E. The Complaint fails to state a claim for injunctive relief.

28. While Plaintiff's Complaint mentions that he is seeking injunctive relief, the only sentence explaining the relief sought merely provides: "Injunctive Relief to reinstate [Plaintiff] as a student in good standing" at TTU. Doc. #1 at p. 26. The lack of specificity prevents both the Court and Defendants from determining whether the injunctive relief sought falls within the *Ex Parte Young* exception to Eleventh Amendment immunity. *Saltz v. Tenn. Dept. of Emp't Sec.*, 976 F.2d 966, 968 (5th Cir. 1992) (The *Ex Parte Young* doctrine carves out an exception to Eleventh Amendment immunity given to state actors acting in their official capacity for suits seeking prospective relief.). In order to meet the exception, "a suit must be brought against individual persons in their official capacities as agents of the state and the relief sought must be declaratory or injunctive in nature and prospective in effect." *Id.* Plaintiff's failure to identify the Defendants from whom injunctive relief and the capacity (official vs. individual) of the Defendants results in the failure to state a claim upon which relief can be granted.

29. Additionally, in light of the analysis set forth above demonstrating that the Individual Defendants are entitled to qualified immunity, even if Plaintiff had set forth permissible forms of prospective injunctive relief under *Ex Parte Young*, his claim for injunctive relief has no merit and should properly be dismissed.

F. Plaintiff's claim for compensatory damages against TTU and the Individual Defendants in their official capacities is barred.

30. To the extent Plaintiff seeks compensatory damages from TTU and the Individual Defendants in their official capacities, such claim is barred. It is black-letter law that a plaintiff cannot sue the State of Texas, its agencies, or agents under § 1983 for monetary damages. *See Will v. Michigan Dep't of State Police*, 491 U.S. 58, 71 (1989).

IV. PRAYER

WHEREFORE, PREMISES CONSIDERED, Defendants Texas Tech University, Duane Jones, William Pasewark, Robert Ricketts, and Brittany Todd respectfully request that this Court grant their Motion to Dismiss thereby dismissing with prejudice all claims asserted by Plaintiff against them. Defendants further request all other relief to which they are justly entitled.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing instrument has been served electronically through the electronic-filing manager on this the 1st day of September, 2017, to:

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/s/ Rola Daaboul
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