

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
LUBBOCK DIVISION

FILED

November 09, 2017

KAREN MITCHELL
CLERK, U.S. DISTRICT COURT

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 §
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. §

CIVIL ACTION NO. 5:17-cv-174-C

DEFENDANTS' ORIGINAL ANSWER

TO THE HONORABLE JUDGE SAMUEL RAY CUMMINGS:

Defendants Texas Tech University, Duane Jones, William Pasewark, Robert Ricketts, and Brittany Todd (*collectively*, the “Defendants”) file this Original Answer in response to Plaintiff Rajin Patel’s (“Plaintiff”) Complaint (the “Complaint”) (Dkt. 1).

GENERAL DENIAL

Pursuant to FED. R. CIV. P. 8(b), Defendants deny each and every, all and singular, the allegations contained in the Complaint except for those expressly admitted below. Defendants may not have personal knowledge of the facts expressed in the Complaint and may have relied on individuals with knowledge of relevant facts in forming their answers. Defendants specifically reserve the right to supplement and/or amend their Original Answer in the event they gain personal

knowledge of the facts expressed in Plaintiff's Complaint. These numbered paragraphs correspond to the paragraphs within the body of the Complaint.

INTRODUCTION

Defendants deny the Introduction section of the Complaint in its entirety, except they admit that Plaintiff petitions this Court for redress in the form of injunctive relief, damages, costs and reasonable attorney's fees, and damages for breach of contract.

PARTIES

1. Defendants lack sufficient knowledge to admit or deny this paragraph.
2. Deny that Rawls College of Business is a public education institution, otherwise admit.
3. Denied that Duane Jones is an adjunct professor at TTU, otherwise admit.
4. Admit.
5. Admit.
6. Denied that Brittany Todd is the Associate Director of the Office of Student Conduct, otherwise admit.
7. Admit.
8. Admit.
9. Denied.

VENUE & JURISDICTION

10. Denied.
11. Denied.
12. Admit.
13. Admit that Plaintiff is seeking compensation, but deny that Defendants have

harmed Plaintiff.

GENERAL FACTUAL ALLEGATIONS

14. Admit that Plaintiff matriculated to TTU as an undergraduate in 2012 and was accepted to the Rawls College of Business at the School to complete his Master of Science degree in Accounting in August 2016. Admit Plaintiff took concurrent baccalaureate and graduate classes in 2016. Defendants do not possess knowledge to either admit or deny the remaining allegations in this paragraph.

15. Denied.

16. Admit.

17. Denied.

18. Admit that during the fall 2016-2017 term, Plaintiff was enrolled in the graduate school course BLAW 5392 Advanced Business Law (“BLAW”) with former adjunct professor Duane Jones and that Plaintiff earned 97.7% test average and 96% quiz average before taking the final exam. The remainder of this paragraph is denied.

19. Defendants lack sufficient knowledge to either admit or deny this paragraph.

20. Admit that the closed-book rule applied to Plaintiff’s final exam session, otherwise denied.

21. Admit that Plaintiff took the exam on December 12, 2016. Denied that Plaintiff “did not reference any other prohibited materials to complete the exam and instead relied on his extensive knowledge and skill in studying the textbook, notes, and materials created from his presence in class lecture.” Defendants lack sufficient knowledge to admit or deny the remainder of this paragraph.

22. Admit that Mr. Jones served as the group’s proctor. Defendants lack sufficient

knowledge to either admit or deny the remainder of this paragraph.

23. Admit.

24. Defendants lack sufficient knowledge to either admit or deny this paragraph.

25. Admit that Plaintiff and two of his classmates met with Dr. Pasewark, that Plaintiff told Dr. Pasewark that he did not cheat and instead arrived at his answers by studying, and that Plaintiff and the other two students told Pasewark there were irregularities between exam session, including the fact that some students in the earlier sessions were allowed to use open books and e-notes. Defendants lack sufficient knowledge to either admit or deny the remainder of this paragraph.

26. Denied that Dr. Pasewark “expressed concern about [Plaintiff’s] allegations against Mr. Jones”, otherwise admit.

27. Admit.

28. Admit that charges against the two other students were dropped when a witness to the students’ Google use later recanted. Defendants do not possession sufficient knowledge to either admit or deny the remainder of this paragraph.

29. Admit that Jones filed an academic integrity incident report against Plaintiff on December 21, 2016 at 2:14:10 a.m., that Jones complained that Plaintiff’s test answer to question 8 was “almost verbatim” to the textbook test bank answers and that because of the similarity, “the bigger issue is opening test bank copy (books/notes/internet) during a closed book/closed note exam.” Defendants do not possession sufficient knowledge to either admit or deny the remainder of this paragraph.

30. Denied.

31. Denied that Ms. Todd modified Jones’ incident report, otherwise admit.

32. Admit that Plaintiff spoke with Ms. Todd via telephone on January 4, 2017, otherwise denied.

33. Admit that by January 10, 2017, Ms. Todd gathered enough evidence to support academic misconduct charges of cheating and plagiarism against Plaintiff and that Plaintiff chose to proceed with a panel hearing, otherwise denied.

34. Admit that Plaintiff met Ms. Todd in person on January 19, 2017, as part of the pre-hearing process and that Plaintiff's mother accompanied Mr. Patel to the meeting, otherwise denied.

35. Denied.

36. Admit that on January 24, 2017, Ms. Todd sent Plaintiff a copy of the Final Investigation Report, which included all of the documents provided by Duane Jones, notes she had taken during the January 4 and January 19 meetings, and investigation documents she created using Turnitin plagiarism detection analysis to detect plagiarism. Defendants deny the remainder of this paragraph.

37. Denied that "because Ms. Todd entered all 6 of the essay answers combined to be assessed as one, instead of entering each essay response independently into the program, Turnitin reported a false positive plagiarism overall aggregate percentage number", otherwise admit.

38. Denied that "TTU as an institution has been wary to interpret Turnitin results as outright proof of wrongdoing". Admit that https://library.ttu.edu/turnitin/turnitin_faq.php contains the phrases "Faculty can also use Turnitin as a tool to detect possible instances of plagiarism" and "Users of Turnitin must interpret matching text in the Originality Report." Admit that a research team from TTU published a report on Turnitin software, which came out in 2009. Defendants do not possess sufficient knowledge to either admit or deny the remainder of this paragraph.

39. Admit that Plaintiff had more than 48 hours to provide additional, contradictory information and choose between a panel or administrative hearing, and that Plaintiff was sent an email that stated Plaintiff could “address any information contained in the report and make any additional statements or comments related to the investigation.” Admit that the email sent to Plaintiff by Ms. Todd further provided that if Plaintiff chose a panel hearing, Todd would “provide a list of the Panel Members and a script” to the panelists selected. Admit that the letter stated that if Plaintiff failed to respond to the email with additional statements and information and choose a hearing type by January 26, 2017 at 5:00 p.m., Todd would “make a decision in abstentia.”

40. Admit that Plaintiff emailed Ms. Chapman and Ms. Todd regarding evidence that he contended should be included in the report, and that Plaintiff highlighted that the Final Investigation Report was deficient as enumerated in a-e of this paragraph. Defendants deny the remainder of this paragraph.

41. Admit that Plaintiff requested a 30-day extension of the pre-hearing process. Defendants do not possess sufficient knowledge to either admit or deny the remainder of this paragraph.

42. Admit that TTU denied Plaintiff’s request for more time, otherwise denied.

43. Admit that Ms. Todd contacted BLAW students as part of her investigation into Plaintiff’s academic misconduct and forwarded Plaintiff’s email list of concerns to Mr. Jones and Dr. Pasewark, otherwise denied.

44. Denied that “Mr. Jones, faced directly with allegations of his own multiple missteps by Mr. Patel, first tried to minimize his open-book procedural error, but upon being pressed with other witnesses’ statements, admitted he proctored exams unfairly,” and that “Ms. Todd further failed to provide documentation in the Final Investigation Report about this incident, which goes

to [Plaintiff's] accuser's credibility and should have been among the factors considered in the decision to dismiss him." Defendants do not possess sufficient knowledge to either admit or deny that Plaintiff "understood Mr. Jones' disposition from this email to be both angry and frustrated, as well as vindictive." Defendants admit the rest of this paragraph.

45. Admit that Plaintiff's panel hearing took place on February 10, 2017, otherwise denied.

46. Admit that the panel heard that the Final Investigation Report was a thorough, neutral document prepared by an impartial investigator, otherwise denied.

47. Denied.

48. Admit that the Student Conduct Office found Plaintiff cheated and plagiarized on his final exam 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., otherwise denied.

49. Denied that TTU "further mandated that Plaintiff must pay a penalty related to the plagiarism" or "must admit he plagiarized" and that "[Plaintiff's] case was an extreme exception warranting a dismissal for a first-time offense", otherwise admit.

50. Admit.

51. Admit that Plaintiff has been in contact with TTU via attorneys since early March 2017, otherwise denied.

52. Denied that on April 26, 2017, "TTU froze [Plaintiff's] student account because he refused to pay the plagiarism penalty, effectively barring him from his baccalaureate degree progression or even getting a copy of his transcripts" or that Plaintiff was unable to register for fall 2017 classes. Defendants lack sufficient knowledge to either admit or deny the remainder of this

paragraph.

53. Denied.

FIRST CAUSE OF ACTION

54. Defendants lack sufficient knowledge to either admit or deny this paragraph.

55. Denied.

56. Denied.

57. Denied.

58. Denied.

59. Denied.

60. Admit that TTU continued to offer Plaintiff participation in TTU undergraduate classes and did not restrict Plaintiff's completion of undergraduate coursework, otherwise denied.

61. Denied.

62. Denied.

63. Denied.

64. Denied.

65. Denied.

66. Denied.

67. Denied.

SECOND CAUSE OF ACTION

68. Defendants lack sufficient knowledge to either admit or deny this paragraph.

69. Denied.

70. Denied.

71. Denied.

72. Denied.

73. Denied.

74. Denied.

75. Denied.

THIRD CAUSE OF ACTION

76. Denied.

77. Defendants lack sufficient knowledge to either admit or deny this paragraph.

78. Admit.

79. Denied.

80. Denied.

81. Denied.

82. Denied.

83. Denied.

84. Denied.

85. Denied.

86. Denied.

87. Denied.

88. Denied.

FOURTH CAUSE OF ACTION

89. Defendants lack sufficient knowledge to either admit or deny this paragraph.

90. Denied.

91. Denied.

92. Denied.

93. Denied.

94. Denied.

95. Denied.

96. Denied.

97. Denied.

98. Denied.

99. Denied.

DEMAND FOR JURY TRIAL

This paragraph contains legal conclusions to which no response is required. To the extent an answer is required, it is denied.

RELIEF REQUESTED

Defendants deny that Plaintiff is entitled to the Relief Requested.

AFFIRMATIVE DEFENSES

1. The Eleventh Amendment and sovereign immunity bar any and all of Plaintiff's claims against Defendants Jones, Pasewark, Ricketts, and Todd in their official capacity.

2. The Eleventh Amendment and sovereign immunity bar any and all of Plaintiff's claims against Defendant TTU.

3. Defendants assert the affirmative defense of limitations to the extent that any of Plaintiff's claims are based upon acts or event which occurred outside of applicable statutes of limitation.

4. Defendants assert that Plaintiff failed to mitigate his damages, if any.

5. Plaintiff's claim for exemplary or punitive damages, if any, violates the provisions of the Fourteenth Amendment of the United States Constitution.

6. Plaintiff's alleged losses and damages, if any, are the result of, and directly related to, Plaintiff's own conduct, actions or failure to act, and not of Defendants' conduct, actions or failure to act.

7. All actions taken by Defendants with respect to Plaintiff, if any, were justified, in good faith, and without malice.

8. Defendants deny that Plaintiff has suffered any emotional, psychological, and/or physical damage whatsoever as a result of actions taken by Defendants; and any emotional, psychological or physical condition suffered by Plaintiff is attributable to causes wholly independent of Defendants' actions.

9. Defendants Jones, Pasewark, Ricketts, and Todd assert that they are entitled to qualified immunity in their individual capacities.

10. Defendants reserve the right to raise additional affirmative defenses as they become apparent during the development of this case.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Defendants Texas Tech University, Duane Jones, William Pasewark, Robert Ricketts, and Brittany Todd respectfully request that the Court enter judgment in their favor, and against Plaintiff, holding that Plaintiff take nothing by this action and award Defendants such further relief, at law or in equity, to they may be justly entitled, including costs and attorney's fees.

Respectfully submitted,

KEN PAXTON
Attorney General of Texas

JEFFREY C. MATEER
First Assistant Attorney General

BRANTLEY STARR
Deputy First Assistant Attorney General

JAMES E. DAVIS
Deputy Attorney General for Civil Litigation

ANGELA V. COLMENERO
Chief - General Litigation Division

/s/ Rola Daaboul
ROLA DAABOUL
Attorney-in-Charge
Texas Bar No. 24068473
ERIC A. HUDSON
Texas Bar No. 24059977
Assistant Attorneys General
General Litigation Division
P.O. Box 12548, Capitol Station
Austin, Texas 78711-2548
(512) 936-1322
FAX: (512) 320-0667
rola.daaboul@oag.texas.gov
eric.hudson@oag.texas.gov

COUNSEL FOR DEFENDANTS

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 3rd day of November, 2017, to:

Jason J. Bach
The Bach Law Group, LLC
2802 Flintrock Trace, Suite 255
Austin, Texas 78738

/s/ Rola Daaboul
Rola Daaboul
Assistant Attorney General