

**IN THE UNITED STATES DISTRICT COURT
FOR THE 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 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 official capacity as Associate Director of the Office of Student Conduct;

Defendants.

Civil Action No.: 5:17-CV-174-C

**PLAINTIFFS' RULE 7(a) REPLY TO DEFENDANTS' ANSWER AND AFFIRMATIVE
DEFENSES TO PLAINTIFFS' SECOND AMENDED COMPLAINT**

COMES NOW, RAJIN PATEL ("Plaintiff" or "Patel"), by and through his attorney of record, Jason J. Bach, Esq., of The Bach Law Group, PLLC, in compliance with this Court's Order of July 11, 2018, and files this Rule 7(a) Reply to Defendants' Original Answer and Affirmative Defenses in Response to Plaintiff's above-captioned Complaint. Mr. Patel respectfully represents as follow:

I. INTRODUCTION AND SUMMARY

1. Mr. Patel matriculated to Texas Tech University ("TTU") as an undergraduate in 2012 and was accepted to TTU's Rawls College of Business (the "College") to complete his Master of Science degree in Accounting in 2016. He took concurrent baccalaureate and graduate

classes in 2016, and during his long tenure at TTU, proved to be an exceptional student who excelled in his courses. He had never faced a prior allegation of academic misconduct or been judged guilty of any wrongdoing.

2. In enrolling in TTU and during the course of his enrollment, Mr. Patel and TTU entered into several contracts via university publications and individual agreements defining both the student's and the College's expectations and obligations for academics, discipline, and miscellaneous elements of university administered programs.

3. Defendant TTU wrongfully dismissed Mr. Patel from its Rawls College of Business after he was falsely accused of plagiarism on the final exam in the graduate school course BLAW 5392 Advanced Business Law ("BLAW"). Remarkably, TTU took no action against fellow BLAW students who were accused of the same conduct.

4. Specifically, Defendant Duane Jones proctored the final exam inconsistently and in violation of his own course testing procedures. Following the exam, Mr. Patel spoke with Defendant William Pasewark, TTU Rawls College of Business Associate Dean of Graduate Programs and Research, expressing concern over the irregularities between exam sessions, including the fact that some students were allowed to use open books and e-notes and that the structure of the exam was strange in that it mimicked the textbook review questions. Less than twenty-four hours after Mr. Patel told Defendant Pasewark about the exam irregularities, Defendant Jones filed an academic integrity incident report against Mr. Patel, alleging that Mr. Patel had accessed the test bank copy during the closed-book exam. During a meeting between Mr. Patel and Dr. Pasewark, Defendant Robert Ricketts, Area Coordinator in Accounting, confirmed that Mr. Jones had alleged cheating against three students, but later stated that there was "solid evidence to suggest one of the individuals was cheating and not enough evidence to bring a case against the other two." He did not name names. Defendant Brittany Todd from the Office of Student Conduct opened an initial investigation into the plagiarism allegations. In line with the investigation, Mr. Patel spoke with Ms. Todd on January 4, 2017, when she immediately accused Mr. Patel of cheating before he had even spoken—she refused to listen to or memorialize Mr.

Patel's statements. At no point during the investigation following this phone call was Mr. Patel offered the opportunity to present evidence in his own defense. Ms. Todd's "Final Investigative Report" addressed NONE of Mr. Patel's concerns or counter-allegations.

5. Mr. Patel was ultimately dismissed from the TTU Rawls College of Business graduate program for his very first misconduct charge, put on deferred suspension until January 2018 in his TTU undergraduate classes and given an F in BLAW. Pursuant to the deferred suspension, TTU further mandated that Mr. Patel pay a penalty related to the plagiarism, admit he plagiarized, and enroll in an Academic Integrity course about plagiarism.

6. The Forensic Linguistics Report of expert Alan M. Perlman, Ph.D (the "Perlman Expert Report") makes clear that Mr. Patel did not engage in any form of academic dishonesty during the BLAW final exam. A true and correct copy of the Perlman Expert Report is attached hereto as **Exhibit 1** and is incorporated for all purposes herein by this reference. According to the Perlman Expert Report, and, consistent with Mr. Patel's explanation for his exam answers, "absent empirical evidence (e.g., video) of Plaintiff's copying material from one source and then from another, frantically taking one passage from one page and another from another, as the highlighted material suggests – a complex, cumbersome, and time-consuming process – the simplest explanation, requiring the fewest assumptions is that he did indeed memorize the material."

7. Abundant evidence confirms that students in various other academic disciplines, such as law, medicine, business, and many technical and scientific fields, routinely commit huge amounts of data to memory, as do actors, public speakers, musicians, and other performers. Mr. Patel's feat of memory is thus not unique but nevertheless commendable, and he should be credited with learning all the necessary information.

8. The basic criterion of plagiarism is theft of originality. In no respect did Plaintiff copy original or proprietary material available to no one else. The supposedly copied material was available to everyone in the class. If there were actual evidence of Plaintiff's illicit copying, he would be guilty of nothing more than cheating; however, no such evidence exists. Therefore, there is no cheating—and certainly no plagiarism.

9. After TTU's denial of Mr. Patel's internal appeals of his discharge from the College and protracted communication with TTU attorneys in an attempt to resolve his wrongful treatment, Mr. Patel filed this lawsuit against TTU and the employees who participated in the wrongful denial of his constitutionally guaranteed substantive due process and equal protection rights under 42 U.S.C. § 1983 and for breach of contract.

10. Defendants Jones, Pasewark, Ricketts, and Todd (collectively, the "Individual Defendants") and, together with TTU, the "Defendants") directly participated in Mr. Patel's wrongful dismissal from the College. The Individual Defendants acted in bad faith toward Mr. Patel and have shown a deliberate indifference to the law and Mr. Patel's rights. The Individual Defendants violated an actual, clearly established constitutional right under existing law and their conduct was objectively unreasonable in light of the clearly established law at the time of their conduct.

11. As a result of the Defendants' unlawful conduct, Mr. Patel seeks injunctive relief (i.e., readmission to the College), compensatory damages, and his costs and attorneys' fees.

II. DEFENDANTS' AFFIRMATIVE DEFENSES CANNOT BE SUSTAINED

12. Plaintiff alleges the following facts to demonstrate that the Defendants' pleas of immunity cannot be sustained. For the sake of efficiency, Plaintiff incorporates the Parties, Venue, and General Factual Allegations sections from his Complaint by reference as if fully set forth herein. Plaintiff's Complaint, p. 2-16.

13. Plaintiff seeks recovery for federal constitutional violations under 42 U.S.C. § 1983. Accordingly, he is permitted to obtain relief against the Defendants in their official capacities for injunctive relief and in their individual capacities for damages, attorneys' fees and other relief requested by the Plaintiff in the Complaint. As required by the United States Supreme Court and the United States Court of Appeals for the Fifth Circuit, Plaintiff alleges (1) under existing law, a violation of an actual, clearly established constitutional or federal statutory right, and (2) that each of the Individual Defendants' conduct was objectively unreasonable in the light

of clearly established law at the time of that conduct. *Pearson v. Callahan*, 555 U.S. 223, 231 (2009); *Felton v. Polles*, 315 F.3d 470, 473 (5th Cir. 2002).

A. Nature of the Claims Asserted Against Defendants in their Official Capacities.

14. Plaintiff has sued the Defendants in their official capacities for federal constitutional violations pursuant to 42 U.S.C. § 1983. See First and Third Causes of Action of the Plaintiff's Complaint, pp. 16-19, 22-24.

15. Plaintiff has sued TTU in its official capacity for breach of contract in connection with rights explicitly guaranteed by TTU pursuant to TTU's Student Handbook, Employee Handbook, and the Student Code of Conduct. See Fourth Cause of Action of the Plaintiff's Complaint, pp. 24-26.

16. The Individual Defendants, as sued in their official capacities, assert Eleventh Amendment and sovereign immunity from all claims to which that defense applies. See Defendants' Original Answer and Affirmative Defenses in Response to Plaintiff's Complaint (the "Answer"), p. 10. Plaintiff reasserts that the Individual Defendants are not entitled to Eleventh Amendment and sovereign immunity in their official capacities with respect to injunctive relief. In the interests of clarity, Plaintiff reasserts that the Individual Defendants are not entitled to Eleventh Amendment and sovereign immunity whatsoever in their individual capacities, and the Individual Defendants have not asserted Eleventh Amendment and sovereign immunity from claims against them in their individual capacities. See Answer, p. 10.

17. TTU, as sued in its official capacity, asserts Eleventh Amendment and sovereign immunity from all claims to which that defense applies. See *id.*

18. Defendants assert limitations to the extent that any of Plaintiff's claims are based upon acts or events which occurred outside of applicable statutes of limitation. See *id.*

19. An action for breach of contract is governed by a four-year statute of limitations. Tex.Civ.Prac. & Rem.Code Ann. § 16.051. Mr. Patel was thus required to, and did, file his lawsuit within four years of the date of which the cause of action accrued, i.e., December 12, 2020.

20. 42 U.S.C. § 1983 does not contain a limitations period so courts apply the forum state's statute of limitations for personal injury claims. *Wallace v. Kato*, 549 U.S. 384, 387, 127 S.Ct. 1091, 1094, 166 L.Ed.2d 973 (2007); *Bd. of Regents v. Tomanio*, 446 U.S. 478, 484–86, 100 S.Ct. 1790, 1795–96, 64 L.Ed.2d 440 (1980); *Stanley v. Foster*, 464 F.3d 565, 568 (5th Cir.2006). In Texas, the limitations period for a personal injury claim is two years. Tex.Civ.Prac. & Rem.Code Ann. § 16.003(a) (West Supp.2012). Mr. Patel was thus required to, and did, file his lawsuit within two years of the date of which the cause of action accrued, i.e., December 12, 2018.

21. Mr. Patel, through his contracts with TTU, had a constitutionally protected property interest in his continued education at TTU Rawls College of Business. Further, he invested significant amounts of money into paying for the education that he completed, strengthening his claim to that interest.

22. Pursuant to his contracts with TTU, Mr. Patel is afforded rights under the Fourteenth Amendment's substantive due process clause that enables this Court to override a postsecondary public university's academic decision where the school's actions were such a substantial departure from accepted academic norms as to demonstrate that they did not actually exercise professional judgment when stripping him of that protected property interest.

23. When viewed against the background of Mr. Patel's entire career at the College, Defendant TTU's expulsion of Mr. Patel after Defendants held a biased disciplinary hearing in which the panel was given a completely one-sided Final Investigative Report was arbitrary and capricious.

24. The Final Investigative Report was an extreme departure from academic norms and had no rational academic basis.

25. Mr. Patel and TTU had entered into several preceding agreements and arrangements during his enrollment, in which both parties performed both rationally and professionally without discord. Defendant TTU cannot claim Mr. Patel would have acted differently here.

26. In this case, TTU could – and should – have allowed Mr. Patel’s hearing to progress organically, where TTU’s academic ruling and sanctions on the basis of his academic conduct would have been supported by court deference to academic decisions.

27. Instead, TTU expelled Mr. Patel after a cursory investigation and biased hearing that excluded any and all information that supported his defense and during which the panelists were not informed that they had the option to find Mr. Patel innocent.

28. TTU’s acceptance and actions to expel Mr. Patel in conjunction with the Individual Defendants’ biased actions were unreasonable and not rationally related to any legitimate educational interest. University policies and contracts permitted substantial recourse for TTU to sanction Mr. Patel fairly, openly, and with appropriate safeguards that were proportionate to the severity of the allegations and to his cumulative conduct history, which was pristine. That TTU chose to rely on deceitful means to achieve certain ends is not justified and constitutes arbitrary, capricious, and irrational professional judgment.

29. Defendants’ subsequent treatment of Mr. Patel following his expulsion from the Rawls College of Business that demonstrates its decision to permanently separate Mr. Patel was not related to a rational educational purpose of removing an academically deficient or unethical student. TTU continued to offer Mr. Patel participation in TTU undergraduate classes with a sanction fee despite Mr. Patel’s alleged lack of academic integrity; TTU did not restrict Mr. Patel’s completion of undergraduate coursework.

30. TTU’s treatment of Mr. Patel’s baccalaureate status is also arbitrary, capricious, wrongful and designed to guarantee maximum harm upon Mr. Patel’s curriculum vitae. His account is frozen, and he is unable to register for classes, perform at internships, or obtain transcripts, not because he is academically deficient or unethical, but simply because he refuses to admit to false plagiarism charges. By *de facto* forcing Mr. Patel to admit to plagiarism in order to take classes, TTU is attempting to manipulate Mr. Patel to assure he cannot maintain legal action and will be unable to enroll in a Master’s program elsewhere, due to a forced, admitted plagiarism mark on his transcript.

31. As a result of Defendants' official policies, acts, omissions, and practices, Mr. Patel was improperly dismissed from the Master's program and given an unfair undergraduate status on the sole basis of a biased investigation and hearing that denied Mr. Patel due process.

32. As a result of Defendants' official policies, acts, omissions, and practices, Mr. Patel has suffered irreparable harm because he was deprived of his contractual rights to be free from arbitrary, capricious abuse perpetrated by state actors acting on behalf of the state.

33. As a proximate result of the illegal, arbitrary and capricious acts of Defendants, Mr. Patel has suffered and continues to suffer damages academically, financially, and emotionally.

34. Defendants' actions and omissions proximately caused Mr. Patel to suffer, and he continues to suffer damages, including humiliation, severe emotional distress, loss of professional reputation, and permanent professional damage.

35. The acts, conduct, and behavior of Defendants have denied Mr. Patel his substantive due process rights, by reason of which Mr. Patel is entitled to injunctive relief of immediate re-enrollment as a student of the TTU Rawls College of Business Master's program, change of status to good standing in the baccalaureate program, and the termination of any collection actions to correct further suffering.

36. It has been necessary for the Mr. Patel to obtain the services of an attorney to prosecute this action, and he is entitled to an award of attorney's fees and costs of suit incurred herein.

B. Claims Asserted Against Defendants in Their Individual Capacities.

37. Each of the allegations set forth in paragraphs 1 through 36, inclusive, are hereby incorporated by this reference as if realleged fully herein.

38. Plaintiff has sued the Individual Defendants in their individual capacities for federal constitutional violations pursuant to 42 U.S.C. § 1983.

39. The Individual Defendants, as sued in their individual capacities, assert qualified immunity for all claims to which that defense applies. *See Answer, p. 11.*

40. The Individual Defendants in their individual capacities intentionally violated Mr. Patel's constitutional rights under the Substantive Due Process clause of the Fourteenth Amendment. The Individual Defendants knew that their actions in the conduct of perpetuating a biased investigation and unfair hearing to expel Mr. Patel denied Mr. Patel of his constitutional right to substantive due process and, therefore, exceeded the authority granted to them in their official capacities as representatives of TTU, and, thus, are individually and personally liable for any damages incurred by Mr. Patel.

41. Defendant Jones administered the BLAW final exam against his own course policies, allowing certain sessions to test with access to course materials while denying other testing sessions the same opportunity.

42. Defendant Jones proctored the exam in direct line-of-sight from Mr. Patel and admitted after the exam that there were no issues during the testing session.

43. Defendant Jones knowingly, arbitrarily, and capriciously accused Mr. Patel of plagiarism without any actual evidence solely in order to expel Mr. Patel because Mr. Patel spoke out about BLAW testing inadequacies.

44. Defendant Pasewark was aware of the irregularities between the exam sessions and further understood that Mr. Patel had arrived at his exam answers through diligent study, preparation, and memorization.

45. Defendant Pasewark blatantly disregarded his promise to Mr. Patel that the inconsistent testing procedures would be considered as part of TTU's decision to press charges against Mr. Patel.

46. Defendant Todd ratified Defendant Jones' acts by omitting pertinent details to Mr. Patel's defense in her Final Investigative Report in an attempt to improperly dismiss Mr. Patel without any rational basis. In addition, Defendant Todd committed violations related to the investigation and hearing that were arbitrary and capricious.

47. Defendant Ricketts knew of similar allegations against two other students but did nothing to ensure that Mr. Patel's allegations were properly investigated.

48. Defendants Pasewark and Ricketts knew of and were in a position to stop Jones' and Todd's actions but did nothing and, in fact, contributed to the problem by allowing other students to get away with worse actions without impunity.

49. The Individual Defendants acted under color of law in violating the Fourteenth Amendment, as described herein in violation of 42 U.S.C. § 1983.

50. As a result of the Individual Defendants' acts, omissions, and practices, Mr. Patel was improperly dismissed despite the absence of any evidence of him cheating or plagiarizing.

51. The Individual Defendants have shown a deliberate indifference to the law and to Mr. Patel's constitutional rights.

52. The Individual Defendants, under the color of law, violated Mr. Patel's right to substantive due process by exercising their power without reasonable justification.

53. The Individual Defendants' conduct was objectively unreasonable in light of clearly established law at the time of their conduct.

54. The Individual Defendants were either personally involved in the constitutional violations or were causally connected to the constitutional violations.

55. The Individual Defendants understood what they were doing violated the law or they should have understood what they were doing violated the law under the circumstances.

56. The Individual Defendants did not act in good faith toward Mr. Patel. Specifically, they acted in bad faith when they dismissed Mr. Patel from the College as described herein, in falsely accusing Mr. Patel of plagiarism, in failing to conduct a neutral and unbiased investigation, and in failing to properly interpret and apply Defendant TTU's policies and procedures.

57. A reasonably prudent individual, under the same or similar circumstances, could not have believed that his or her conduct was justified based on the information he or she possessed when the conduct occurred.

58. As a result of the individual acts, omissions, and practices of the Individual Defendants, Mr. Patel has suffered irreparable harm because he was deprived of his contractual

rights to be free from arbitrary, capricious abuse perpetrated by state actors acting on behalf of the state.

59. As a proximate result of the illegal, arbitrary and capricious acts of the Individual Defendants, Mr. Patel has suffered and continues to suffer damages academically, financially, and emotionally.

60. The actions and omissions of the Individual Defendants proximately caused Mr. Patel to suffer, and he continues to suffer, damages, including, humiliation, severe emotional distress, loss of professional reputation, and permanent professional damage.

61. The acts, conduct, and behavior of the Individual Defendants in acting to deny Mr. Patel his constitutionally guaranteed rights were performed knowingly, intentionally, oppressively, and maliciously, by reason of which Mr. Patel is entitled to compensatory and punitive damages against Defendants in their individual capacities.

III. PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests this Court grant the relief requested in Plaintiff's Complaint, that this Court deny and overrule the Defendants' affirmative defenses based upon the material facts alleged herein with particularity establishing that Defendants' pleas of immunity cannot be sustained, and that the Court grant Plaintiff such other and further relief to which they may show themselves justly entitled.

DATED this 23rd day of July, 2018.

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CERTIFICATE OF SERVICE

I hereby certify that on the 23rd day of July, 2018, a true and correct copy of the foregoing pleading was served upon each party to this action via the Court's electronic case filing system, as follows:

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