

FILED

NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE

2014 MAY -2 PM 2:55 SUPERIOR COURT DIVISION

DURHAM COUNTY

14 CVS 3075

DURHAM COUNTY, C.S.C.

LEWIS M. McLEOD,

RY )

Plaintiff, )

v. )

VERIFIED COMPLAINT  
JURY TRIAL DEMANDED

DUKE UNIVERSITY, )

Defendant. )

COMES NOW the Plaintiff, Lewis M. McLeod, and for his Complaint against the Defendant, Duke University, alleges as follows:

THE PARTIES

1. Plaintiff LEWIS M. MCLEOD is a citizen and resident of Australia. At all times relevant to this action, Plaintiff was a student at Duke University in Durham, North Carolina.
2. Defendant DUKE UNIVERSITY is an educational institution formed under the laws of North Carolina, with its primary place of business in Durham, North Carolina. Plaintiff is enrolled as a student at Duke University pursuant to an educational contract between Plaintiff and Duke University.

JURISDICTION AND VENUE

3. The Superior Court of Durham County has subject matter jurisdiction over this action because it arises under the common law of North Carolina and the amount in controversy exceeds \$10,000, exclusive of interest and costs.

4. Venue is proper in Durham County because all of the events giving rise to these claims occurred in Durham County.

#### FACTUAL ALLEGATIONS

5. Plaintiff Lewis M. McLeod matriculated to Duke University in the Fall of 2010. He is currently a senior scheduled to graduate in twelve (12) days.

6. Plaintiff has completed all requirements for graduation from the Psychology program at Duke University. His last two (2) exams were Monday, April 28, 2014 (actually taken Tuesday), and Thursday, May 1, 2014.

7. Plaintiff's education at Duke University has cost in excess of \$250,000.

8. A commencement ceremony and conferral of Plaintiff's diploma and degree are scheduled to take place on May 10, 2014.

9. Plaintiff resides at 1106 Burch Avenue, Durham, North Carolina, at a house he shares with other students or recent graduates.

10. Mr. McLeod "walked on" to the varsity soccer team his freshman year at Duke University.

11. Mr. McLeod has been on the Dean's List with Distinction for the last four (4) semesters of his career at Duke University.

12. Since second semester sophomore year, Mr. McLeod has been a straight A student with nine (9) A+'s. See "Exhibit 1," attached hereto and incorporated herein.

13. Since his freshman year at Duke University, Mr. McLeod has taken a course overload every semester.

14. Upon information and belief, Mr. McLeod is the first and only student-athlete to receive six (6) A's in a single semester at Duke University.

15. During his time as a Duke University student, Mr. McLeod has also been a significant volunteer in the Durham community.

16. Mr. McLeod has an immense investment and commitment to his education at Duke University, the Duke University community, and the larger Durham community.

17. Plaintiff has attended Duke University pursuant to a contract between Plaintiff and the University. The contract contains, in part, rules governing conduct for students and rules and procedures governing efforts by the University to discipline students for misconduct. See "Exhibit 2," attached hereto and incorporated herein.

18. Prior to the incident giving rise to this Complaint, Mr. McLeod has never been subject to a University Conduct Board hearing at Duke University.

19. In the early hours of November 14, 2014, Mr. McLeod met Complainant , an eighteen (18) year old Duke University student at Shooters, a bar.

20. November 14, 2014, was the first time Mr. McLeod and Complainant had ever met.

21. While at Shooters, Mr. McLeod did not purchase any alcohol for Complainant , nor did he observe her consuming any alcohol.

22. In fact, Complainant is under the legal age for the purchase or consumption of alcohol.

23. While at Shooters, Mr. McLeod observed no signs that Complainant was inebriated.

24. Mr. McLeod danced with Complainant and conversed with Complainant while at Shooters, and Mr. McLeod did not observe Complainant staggering, slurring her words, or being disoriented.

25. Complainant was at Shooters with some friends. Complainant's friends did not treat Complainant as if she were inebriated or claiming that she was inebriated.

26. When Shooters began to close for the night, Mr. McLeod asked if she wanted to return to his house with him. Frequently students congregate at the house after the local bars are closed. Mr. McLeod asked Complainant to come back to his house to hang out with the expected group.

27. Complainant voluntarily returned to Mr. McLeod's home. She has indicated to investigators that she believed she was going there to have sex.

28. The two traveled to Mr. McLeod's home via a taxi cab that Mr. McLeod hailed from the taxi pool waiting in front of Shooters at closing.

29. Other taxis were available in the taxi pool had Complainant wished not to take a taxi with Mr. McLeod to Mr. McLeod's home.

30. When Mr. McLeod and Complainant arrived at his house, one of his housemates, Student 2, witnessed Mr. McLeod and Complainant arriving in the taxi cab and coming into the house.

31. Student 2 did not observe Complainant resisting going into Mr. McLeod's house, or showing signs of confusion or reluctance with regards to her whereabouts.

32. Student 2, who observed Complainant getting out of the taxi, did not observe Complainant staggering, slurring her words, raising her voice, falling, or otherwise showing signs of inebriation. See "Exhibit 3," attached hereto and incorporated herein.

33. When Complainant and Mr. McLeod entered the house, they went to the room of one of Mr. McLeod's housemates, Student 1 , and spoke to him. Student 1 did not observe Complainant staggering, slurring her words, raising her voice, falling, or otherwise showing signs of impairment. See "Exhibit 4," attached hereto and incorporated herein.

34. After stopping at Student 1 's room, Mr. McLeod and Complainant retired to Mr. McLeod's bedroom.

35. Once in Mr. McLeod's bedroom, Complainant voluntarily removed her own clothes and got into Mr. McLeod's bed.

36. Mr. McLeod and Complainant began kissing.

37. Though Duke University policy indicates that consent for sexual activity may be nonverbal, Mr. McLeod expressly asked Complainant if she wanted to have sex. expressly indicated her consent to do so.

38. At Complainant's instruction, Mr. McLeod then put on a condom. He believed, reasonably, that Complainant was consenting to sexual intercourse with a condom.

39. While having sex, Complainant requested that Mr. McLeod remove the condom as it was causing her discomfort. Mr. McLeod obliged this request. He believed, reasonably, that Complainant was consenting to sexual intercourse without a condom.

40. Very shortly after removing the condom and reengaging in intercourse, Mr. McLeod heard a snuffle and suspected that Complainant had begun to cry.

41. Immediately upon suspecting that Complainant may be crying, Mr. McLeod ceased all sexual activity without ejaculating.

42. Mr. McLeod asked Complainant if she was crying and compassionately inquired as to whether something was wrong.

43. Mr. McLeod and Complainant agree that Complainant denied that she was crying and indicated, instead, that she had a cold.

44. Complainant then offered to perform oral sex on Mr. McLeod, which he declined.

45. At no point during their sexual interactions did Complainant ever revoke her consent to sexual activity, or otherwise indicate to Mr. McLeod that she wished to cease any sexual activity.

46. Mr. McLeod did not know or believe, and a reasonable person would not have known or believed, that Complainant was impaired beyond the ability to consent to sexual activity.

47. Complainant requested that Mr. McLeod drive her home to her dormitory.

48. For the first time since meeting Mr. McLeod, Complainant told Mr. McLeod that she had a lot of school work to do for the next day.

49. Mr. McLeod does not drive at all after drinking, even if he is not legally impaired. He told Complainant this and promised to drive Complainant back to her dormitory first thing in the morning.

50. Mr. McLeod then fell asleep.

51. When Mr. McLeod awoke, Complainant was gone. Mr. McLeod learned that she had taken a cab back to her dormitory after he fell asleep.

52. One of Mr. McLeod's housemates, Student 3, encountered Complainant very shortly after she had engaged in sexual intercourse with Mr. McLeod.

53. Around 4:30 a.m. on November 14, 2013, Student 3 was in his bedroom, asleep, when he heard Complainant in the foyer of the house talking on her cell phone to a taxi driver.

54. Complainant did not know the address of the house so Student 3 shouted it to her.

55. Complainant then walked to Student 3's bedroom and asked him to help her find her wallet in Mr. McLeod's room. Complainant was having trouble locating Mr. McLeod's room.

56. The house in which Mr. McLeod resides is confusing in its physical layout, and guests often get lost trying to distinguish the bedrooms from each other as there are many of them and they are all similar to each other.

57. Student 3 left his room and met Complainant face-to-face.

58. Student 3 assisted Complainant with getting her wallet from Mr. McLeod's room.

59. Complainant thereafter left via taxi cab. At no time during Student 3's interactions with Complainant did she seem intoxicated or incoherent, effectively and calmly communicated with Student 3. He did not observe any slurring, staggering or other signs that Complainant was inebriated.

60. Complainant was not upset or emotionally distraught in any way during her interactions with Student 3 very shortly after she had sexual intercourse with Mr. McLeod. There were no signs that she had been crying. See "Exhibit 5," attached hereto and incorporated herein.

61. The next day, Mr. McLeod and Complainant communicated cordially through text messages. She gave no indication to him that she was upset or that she had in any manner been the alleged victim of any sexual misconduct.

62. Shortly thereafter, Mr. McLeod was contacted by the Durham Police who informed Mr. McLeod that Complainant was claiming that he had raped her.

63. Mr. McLeod cooperated fully with the investigation conducted by the Durham Police. Mr. McLeod was not charged with any crime. Upon information and belief, the case was closed due to Complainant's lack of cooperation with the investigation.

64. Mr. McLeod simultaneously became the subject of a Duke University disciplinary action.

65. Duke University imposed a "no contact" order on Mr. McLeod precluding him from having any contact with Complainant

66. In addition to the "no contact" order, Duke University imposed additional conditions upon Mr. McLeod that were in violation of the Contract. Specifically, Mr. McLeod was banned from campus except to attend his classes.

67. Following the imposition of the "no contact" order and the campus ban, Complainant knowingly, falsely, and publicly accused Mr. McLeod of rape, called him a rapist to other Duke University students, and publicly claimed that she was afraid of Mr. McLeod.

68. Despite Complainant's supposed fear of Mr. McLeod, on December 5, 2013, Complainant attended a Sigma Nu Fraternity party knowing that Mr. McLeod was a senior fraternity member and very likely to be there. Mr. McLeod was in fact there, and voluntarily left the event in order to not violate the Duke University "no contact" order, of which Complainant was aware.

69. On January 9, 2014, Complainant attended another Sigma Nu event. This event was held at Mr. McLeod's home where the alleged sexual misconduct took place. Complainant knew or should have known that Mr. McLeod would be present at his own residence. Yet, Complainant showed up at the house and stayed for at least two (2) hours, which forced Mr. McLeod to leave his home in order to comply with the Duke University "no contact" order.

70. On January 13, 2014, four (4) days after attending the Sigma Nu event at Mr. McLeod's house, Complainant lied to the Duke University investigator indicating that she had not been attending Sigma Nu events.

71. Ultimately, Mr. McLeod was charged with "sexual misconduct" by Duke University and subjected to a hearing before the University Conduct Board.

72. Mr. McLeod did not sexually assault Complainant or otherwise commit sexual misconduct in his interactions with Complainant. He believed, and a reasonable person in his position would have believed, that Complainant gave informed consent to all sexual activity between them.

73. He did not believe, and a reasonable person would not have believed, that Complainant was impaired beyond the ability to give consent.

74. Upon information and belief, Complainant expressed a desire to have the Duke University disciplinary charges against Mr. McLeod dropped, Duke University was made aware of this desire, but Duke University would not allow the charges to be dropped and the information was included but not considered by the hearing panel. See "Exhibit 6," attached hereto and incorporated herein.

75. Throughout the disciplinary process, Mr. McLeod was discouraged from seeking legal advice and was expressly told by Duke University employee(s) that he was not permitted to have legal representation.

76. Mr. McLeod received insufficient notice of his hearing under Duke University policy.

77. Mr. McLeod was required to sign a notice of his rights at the hearing. He was denied his request for a copy of the notice of rights, in violation of Federal law (Family Educational Rights and Privacy Act, known as FERPA), until the involvement of legal counsel on his behalf.

78. Upon information and belief, the person assigned by Duke University to be an advisor for Mr. McLeod had never been a part of a hearing in which expulsion was a possible punishment. While well-meaning, this advisor provided Mr. McLeod with no substantial assistance in preparation for or during his hearing.

79. Complainant was the only witness to appear on her behalf at the hearing.

80. The hearing panel was provided with an investigator's reports of statements of other potential witnesses, but those witnesses (some of whom were not even identified in their statements) were not summoned by the hearing panel, were not available for Mr. McLeod to question or rebut their statements, and were not available for the hearing panel to ask questions.

81. The hearing panel had the authority, and should have exercised its authority, to have the witnesses against Mr. McLeod physically appear at the hearing. The failure to do so severely prejudiced Mr. McLeod and violated his rights under the contract.

82. One of the witnesses who provided an anonymous statement, but who did not testify at the hearing, was Student 4, Complainant's best friend. Student 4 simply did not show up at the hearing.

83. The Duke University investigator did not ask Student 4 whether she found Complainant's claims to be credible.

84. Upon information and belief, had the investigator asked Student 4 this question, or had Mr. McLeod been permitted to question Student 4 as a witness against him, Student 4 would have testified that Complainant's account of the interaction on November 14, 2014, between Complainant and Mr. McLeod, changed many times, and that Student 4 did not find some of the allegations to be credible.

85. The investigation conducted by the Duke University investigator was otherwise insufficient and incomplete.

86. Mr. McLeod is entitled to the names of all witnesses and, under the Contract, anonymous witnesses are not permitted. However, the hearing panel relied heavily on the statements of at least one anonymous witness.

87. According to the Contract, the finding of "responsible" cannot be substantially based on unidentified or non-appearing witnesses. However, in Mr. McLeod's case, the finding of "responsible" was substantially based on both unidentified and non-appearing witnesses in breach of the Contract.

88. Throughout the hearing, Mr. McLeod was told that he would have an opportunity to address Complainant's accusations against him. However, Mr. McLeod was repeatedly denied this opportunity.

89. Mr. McLeod had at least one (1) witness at the hearing who, unbeknownst to Mr. McLeod, was told by a Duke University employee to leave the hearing and go home without testifying.

90. The witness who was not permitted to testify on Mr. McLeod's behalf was Student 1, the last person to have any interaction with Mr. McLeod and Complainant prior to their sexual encounter in Mr. McLeod's bedroom. The denial of testimony from this critical witness severely prejudiced Mr. McLeod and violated his rights to a fair hearing as required by the Contract with Duke University.

91. Likewise, the hearing panel interrupted, ignored, and did not solicit significant testimony from Student 2 and Student 3.

92. Specifically, the hearing panel interrupted Student 2, who observed Mr. McLeod and Complainant getting out of the taxi and coming into Mr. McLeod's home, when began to testify as to his observations with regard to Complainant's demeanor and whether she appeared inebriated. The panel never allowed Student 2 to complete his testimony on this critical point.

93. Student 3, who encountered Complainant very shortly after her sexual encounter with Mr. McLeod, was not questioned by the panel on his observations regarding Complainant's sobriety.

94. The panel also did not question Student 3, the first person to see Complainant, very shortly after intercourse with Mr. McLeod, as to whether Complainant appeared to have been crying or showing other signs of extreme emotional distress.

95. Instead, the hearing panel relied heavily on texts that Complainant sent indicating purported level of distress that were directly contradictory to Student 3's observations of her at exactly the same time.

96. Contrary to the weight of the credible and admissible evidence before it, the hearing panel concluded that Complainant likely did not consent to sexual activity because of her purported "extreme negative emotion during intercourse as well as after intercourse".

97. Instead of questioning Student 3 as to the highly relevant facts of Complainant's sobriety and emotional state, the Hearing Panel questioned regarding his own refusal to turn over his cell phone as part of the investigation of allegations against Mr. McLeod. This line of questioning was irrelevant and prejudicial to Mr. McLeod, as no adverse inference against Mr. McLeod can be drawn from Student 3's exercise of his constitutional rights under the Fourth Amendment. The hearing panel decision to expel Mr. McLeod improperly, and unfairly emphasized this line of questioning and referenced all other students turning over their cell phone as part of the investigation.

98. If in fact all other students did surrender their cell phones as part of the investigation, upon information and belief, Duke University failed to provide to Mr. McLeod all text messages and/or other records obtained through those searches in violation of Federal law, (FERPA) and Duke University policy.

99. In their questions and characterization of testimony during the hearing, hearing panel members mischaracterized and inaccurately stated the testimony that had been given in the hearing.

100. A Duke University student, Student 5, was the boyfriend of Student 4. He was present with Student 4 and Complainant before and during their time at Shooters.

Student 5 submitted a statement to the hearing panel indicating that Complainant “cries wolf” and that her allegations should be taken “with a grain of salt.” The statement from Student 5 was the statement of a fact witness, and should have been given significant weight. However, the hearing panel stated during the hearing that it intended to use the letter from Student 5 as a character reference, such that it would be given only “minimal weight.”

101. Upon information and belief, Duke University adopted a new policy related to sexual assaults requiring expulsion to be the default punishment in sexual assault cases.

102. Mr. McLeod’s notice of charges does not provide notice of being charged with sexual assault.

103. When Mr. McLeod inquired as to whether the hearing panel believed that it was proceeding under the new policy, Duke University refused to respond.

104. Mr. McLeod requested a copy of the policy and any punishment guidelines related to his case, which the University refused to provide. In fact, when Mr. McLeod’s representative asked for a copy of the policy, Dean Stephen Bryan slammed the door in Mr. McLeod’s face and said, “You can get it when you sue us.”

105. Mr. McLeod is entitled to a copy of the punishment guidelines used as part of his hearing under the Family Education Rights and Privacy Act and Duke University policy.

106. Recent publicity, upon information and belief related to Mr. McLeod’s case, suggests that Mr. McLeod was subjected to punishment under the new policy and guidelines to which he has been denied access. See “Exhibit 7,” attached hereto and incorporated herein.

107. A review of precedent files relating to similar allegations against Duke University students prior to this school year, revealed that no similar situated student has been expelled for sexual misconduct.

108. Upon information and belief, another student disciplined under the new policy for allegations of brutal rape was subjected to a three (3) semester suspension.

109. On or about March 4, 2014, the hearing panel rendered its decision that Lewis McLeod was responsible for sexual misconduct and that the punishment would be expulsion. See "Exhibit 8," attached hereto and incorporated herein.

110. Following receipt of the decision of the hearing panel, and in preparation for his appeal, Mr. McLeod requested all of his educational records, to which he is entitled under Duke University policy and FERPA, including any and all records associated with the disciplinary action against him.

111. Mr. McLeod was initially denied those records.

112. Ultimately, and only after the intervention of counsel, Mr. McLeod was provided some of the educational records to which he was entitled but, upon information and belief, Mr. McLeod continues to be denied educational records to which he is entitled.

113. Nonetheless, Mr. McLeod submitted a timely appeal. See "Exhibit 9," attached hereto and incorporated herein.

114. Mr. McLeod was informed on April 8, 2014, that the Appeals Panel was considering his appeal and that Mr. McLeod would have an opportunity to address the Appeals Panel for twenty (20) minutes on April 10, 2014.

115. At the meeting of the Appeals Panel on April 10, 2014, Mr. McLeod was informed that a decision on his appeal would be rendered on April 11 or 12, 2014. However, Mr. McLeod was not notified of a decision on his appeal until more than two (2) weeks later.

116. Late in the evening, on Friday, April 25, 2014, Mr. McLeod was informed via electronic mail that his expulsion was being upheld. See "Exhibit 10," attached hereto and incorporated herein.

117. Mr. McLeod's first exam for this semester, his last semester before graduation, was scheduled for Monday April 28, 2014, the very next school day after his notification on the evening of April 25.

118. Mr. McLeod learned at approximately 4:00 p.m. on Sunday, April 27, 2014, after discussions were held between counsel for Duke University and Mr. McLeod, that Mr. McLeod would be permitted to take his exams the week of April 28, 2014.

119. Mr. McLeod is in the United States on a visa that expires on or about May 11, 2014.

120. Mr. McLeod has accepted a position as a full-time Analyst in the area of Cash Sales Trading. The position begins in mid-July and is contingent on his graduation from Duke University. The job is a prestigious position with substantial financial compensation.

FIRST CAUSE OF ACTION:  
BREACH OF CONTRACT BY DUKE UNIVERSITY

121. Plaintiff incorporates all of the preceding allegations by reference here.

122. Upon Plaintiff's enrollment, Plaintiff and Duke University mutually entered into a contractual relationship ("the Contract"). The specific, certain, and identifiable terms of the contract included the promised procedures that would be applied by Duke University in the event the student was the subject of disciplinary charges.

123. The Contract incorporates The Community Standard and Undergraduate Policies including the specific promised disciplinary procedures, procedural safeguards, appeals process,

and substantive rights of the student, if accused of a violation of the Duke University conduct requirements. The Contract is a binding contract with respect to Duke University's authority to regulate, discipline, punish, sanction, suspend, or expel Plaintiff from Duke University, among other limitations and obligations.

124. The Contract also includes the implied terms of good faith and fair dealing.

125. Duke University willfully breached material and specific terms of the Contract with Plaintiff in this action, as alleged above in Factual Allegations, and in Plaintiff's appeal, including for example, violating Plaintiff's following rights under the Contract:

- a. To be informed that he or she is under investigation;
- b. To seek advice from anyone;
- c. To seek advice from a trained advisor who is thoroughly familiar with the conduct process and who is provided by Duke University;
- d. To be given an opportunity to respond to allegations;
- e. To be notified of a hearing at least 120 hours (5 days) in advance (notification will include the time, date, and location of the hearing as well as names of hearing panel members and witnesses);
- f. To challenge any panel member if there is a significant conflict of interest (and, an implied right to be informed of facts giving rise to such a conflict);
- g. To know of and review written evidence and charges presented to the hearing panel at least 120 hours (5 days) in advance;
- h. To be accompanied by an advisor to the hearing;
- i. To have up to two written character statements submitted on his/her behalf that may not specifically address the issue at hand;

- j. To a fair and impartial hearing;
- k. To rebut any witness testimony presented against him;
- l. To present any additional witnesses or information at the hearing (the relevancy of which may be determined by the Board);
- m. To be found responsible only if the evidence shows a policy violation by a preponderance of the evidence; and,
- n. To appeal based on clearly stated grounds (and an implied right to have the appeals process be carried out fairly and in good-faith).

123. Duke University's actions, as described above, violated the express terms of the Contract, particularly regarding hearing procedures,

124. Duke University's actions as described above, and otherwise, violated the implied terms of its contract with Mr. McLeod, to operate in good faith and deal fairly.

125. Plaintiff has complied with all of his obligations under the Contract and is entitled to compliance by Duke University.

126. Plaintiff's signed Verification, and the exhibits attached to this Complaint, show that he is a graduating Senior enrolled at Duke University, that he has completed all requirements for graduation from his program at Duke University, and that Duke University has received tuition and fees in excess of \$250,000. And yet, Duke University now threatens to deny Plaintiff participation in commencement and related activities (such as receiving his diploma or placing a hold on his transcripts), and to deny him the degree he has earned.

127. Defendant's actions are in violation of Plaintiff's express contractual rights.

128. Despite the documented proof that Plaintiff did not violate Duke's conduct standards, and despite the Defendant's clear violations of Plaintiff's rights in the disciplinary

process, Plaintiff has been subjected to expulsion from Duke University. The decision supporting Plaintiff's expulsion was obtained through violations of:

- a. Duke University's express promise to inform the Plaintiff that he is under investigation;
- b. Duke University's express promise to allow Plaintiff to seek advice from anyone;
- c. Duke University's express promise to provide a trained advisor who is thoroughly familiar with the conduct process;
- d. Duke University's express promise to provide Plaintiff with an opportunity to respond to allegations;
- e. Duke University's express promise to notify Plaintiff of a hearing at least 120 hours (5 days) in advance (and the promise that the notification would include the time, date, and location of the hearing as well as names of hearing panel members and witnesses);
- f. Duke University's express promise to allow Plaintiff to challenge any panel member if there is a significant conflict of interest (and, an implied right to be informed of facts giving rise to such a conflict);
- g. Duke University's express promise to allow Plaintiff to know of and review written evidence and charges presented to the hearing panel at least 120 hours (5 days) in advance;
- h. Duke University's express promise to allow Plaintiff to be accompanied at the hearing by a trained advisor who is thoroughly familiar with the conduct process;

- i. Duke University's express promise to allow Plaintiff to have up to two written character statements submitted on his behalf that may not specifically address the issue at hand;
- j. Duke University's express promise to provide Plaintiff with a fair and impartial hearing;
- k. Duke University's express promise to allow Plaintiff to rebut any witness testimony presented against him (and to not be found guilty based on hearsay);
- l. Duke University's express promise to allow Plaintiff to present any additional relevant witnesses or information at the hearing;
- m. Duke University's express promise that the Plaintiff would be found responsible only if the evidence showed a policy violation by a preponderance of the evidence; and,
- n. Duke University's express promise that Plaintiff would have a right to appeal based on clearly stated grounds;
- o. Duke University's implied promise of good-faith.

129. Duke University promised to afford Plaintiff these safeguards and rights in exchange for his payment of tuition and fees well in excess of \$250,000.00 over a four year term, and, his written promise to comply with Duke University's Undergraduate Policies and "Community Standard." These terms are part of the contract between Plaintiff and Defendant, and are published and broadly disseminated not only to all Duke students, faculty, and staff, but also to prospective students and the public at large through the Duke University website.

130. As a direct and proximate result of Duke University's deprivations of Plaintiff's contractual rights to the specified procedural and substantive safeguards Duke University promised to Plaintiff, Duke University has determined to expel Plaintiff from the University, denying him a degree he has earned with a stellar academic record. Plaintiff has been or will be improperly expelled from Duke University.

131. Plaintiff continues to suffer irreparable harm and has suffered damages in an amount to be determined by a jury.

132. Plaintiff has exhausted his contractual appeal rights under Duke University policy.

133. Any additional efforts by Plaintiff to appeal his expulsion within the University would be futile and would be inadequate to prevent immediate irreparable injury to Plaintiff.

SECOND CAUSE OF ACTION:

INJUNCTIVE RELIEF AGAINST DUKE UNIVERSITY

134. Plaintiff incorporates all of the preceding allegations by reference here.

135. Plaintiff, pursuant to N.C. Gen. Stat. § 1-A-1, Rule 65, and N.C. Gen. Stat. §1-485, seeks temporary, preliminary, and permanent injunctive relief enjoining Defendant from expelling or involuntarily withdrawing Plaintiff from Duke University, negatively altering Plaintiff's status as a student enrolled in the University, interfering with Plaintiff's participation in commencement and related events, denying him a degree or placing a hold on any request for the issuance of Plaintiff's transcripts. In support of the injunctive relief sought, Plaintiff has filed a motion for a temporary restraining order, signed Verification of this Complaint, and other

materials, including Plaintiff's appeal to Duke University's Appellate Board. Plaintiff incorporates by reference those materials as though fully set forth here.

136. Duke University's conduct deprives or will deprive Plaintiff of his clearly established contractual rights and will tend to render any judgment in the litigation ineffectual.

137. Plaintiff will suffer irreparable harm if the University is not enjoined from denying Plaintiff rights during the pendency of this lawsuit.

WHEREFORE, Plaintiff prays the Court for an Order preliminarily enjoining Duke University and anyone acting on its behalf from involuntarily withdrawing Plaintiff from Duke University, refusing his participation in the Commencement ceremony and related activities, denying him his diploma or degree, placing a hold on any request for the issuance of Plaintiff's transcripts, and any other act or omission authorized by any purported involuntary withdrawal, suspension, expulsion, disciplinary hold, or other negative alteration of Plaintiff's status as a student enrolled at Duke University.

#### PRAYER FOR RELIEF

WHEREFORE, to redress the injuries caused by Defendant's conduct as alleged herein, and to prevent irreparable injury to Plaintiff, Plaintiff hereby requests the following relief:

A. Temporary, preliminary, and permanent injunctive relief enjoining Duke University from involuntarily withdrawing Plaintiff, expelling Plaintiff, denying Plaintiff his earned diploma or otherwise continuing to subject Plaintiff to disciplinary proceedings.

B. Compensatory damages in an amount to be established at trial as compensation for past and future economic loss, physical harm, emotional trauma, loss of privacy, loss of reputation, loss of education, and expenses;

C. Damages in an amount to be established at trial to punish Defendant for outrageous conduct pursued out of actual malice, and reckless and callous disregard of, and deliberate indifference to Plaintiff's rights, to discourage Defendant from engaging in similar conduct in the future, and to deter others similarly situated from engaging in similar misconduct in the future.

D. Attorneys' fees, expert fees, and costs authorized by state and federal law, including attorneys' fees;

E. The reasonable and customary costs and expenses incurred in connection with the prosecution of this action;

F. Pre-judgment and post-judgment interest; and

G. All other and further relief the Court deems just and proper.

Respectfully submitted on this, the 2<sup>nd</sup> day of May, 2014, by:

SCHWARTZ & SHAW, P.L.L.C.



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STATE OF NORTH CAROLINA

VERIFICATION

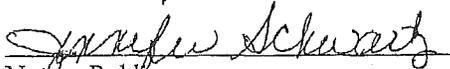
COUNTY OF DURHAM

Lewis M. McLeod, being duly sworn, deposes and says that he is the Plaintiff in the foregoing action, that he has read the foregoing MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION (N.C. Gen. Stat. 1A-1, Rule 65) and is familiar with the contents thereof, that the same is true of his own knowledge except as to those matters as may therein be alleged upon information and belief, and as to those matters he believes them to be true.



\_\_\_\_\_  
Lewis M. McLeod

Sworn and subscribed before me, this  
2 day of May, 2014.

  
\_\_\_\_\_  
Notary Public

My Commission Expires: 4/20/15

(Notary Seal)

