

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN**

MELVIN GENE TUCKER II,

Plaintiff,

v.

MICHIGAN STATE UNIVERSITY, TERESA K. WOODRUFF, ALAN HALLER, and BRIAN QUINN, each an employee and member of the Administration of Michigan State University sued in their individual capacities jointly and severally; DIANNE BYRUM, DAN KELLY, SANDY PIERCE, KELLY TEBAY, DENNIS DENNO, RENEE KNAKE JEFFERSON, BRIANNA T. SCOTT, and REMA VASSAR, each a member of the BOARD OF TRUSTEES of Michigan State University, sued in their individual capacities, jointly and severally,

Defendants.

Case No. _____

COMPLAINT AND DEMAND FOR JURY TRIAL

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Plaintiff, Melvin Gene Tucker II, by and through his undersigned attorneys, for his Complaint against the Defendants Michigan State University (“MSU” or “the University”), members of its Board of Trustees (the “Trustee Defendants”) and members of its administration (the “Administration Defendants,” and together with the Trustee Defendants, the “Individual Defendants”) states as follows:

I. NATURE OF THE ACTION

1. This action arises from Defendants’ unlawful termination of Plaintiff’s employment as head coach of the Michigan State Spartans football team in violation of his constitutional rights to due process and equal protection, and in violation of Plaintiff’s employment agreement and other rights under state law. By improperly weaponizing the University’s investigative procedures against Plaintiff, the Defendants have caused, and continue to cause, Plaintiff to experience severe emotional harm and suffering, and have caused hundreds of millions in damages. Moreover, the Defendants’ actions were calculated and intentional – they acted with actual malice and in willful disregard of Plaintiff’s rights, thus warranting a significant award of exemplary and punitive damages.

2. As demonstrated herein, investigation after investigation of the University by governmental and independent investigators has confirmed that, at the time of the Defendants’ unlawful acts against Plaintiff, the leadership of the University routinely engaged in serious acts of misconduct, including manipulating and interfering with the University’s supposedly independent administrative investigation processes – the same processes that the Defendants misused and weaponized against Plaintiff.

3. The well-documented acts of misconduct, recounted in detail in multiple public reports and statements, resulted in deep animosity and mistrust toward and between the

administration's top leadership – including Teresa Woodruff, Brian Quinn and Alan Haller (together the “Administration Defendants”) – and the Board of Trustees leading to multiple resignations (voluntary and forced) of administrators and Board members alike, many accompanied by blistering accusations of wrongdoing and failures to properly administer and supervise the University's sexual harassment investigation process. Indeed, at the time of the illegal actions against Plaintiff, the United States Department of Education's Office of Civil Rights (“OCR”) had just opened yet another investigation of the University's investigative processes.

4. The toxic administrative environment described in the investigation reports, and in the public statements of the leaders themselves, exposed a dysfunctional leadership operating under siege – a leadership in which Trustees and members of the administration, including Woodruff, Quinn, Haller, and members of the Board, cast aside their obligations under the University's Bylaws and under applicable law to act fairly and properly in administering the University's investigative processes, which had been the subject of public criticism for a decade. Instead, the Defendants manipulated and misused those processes to advance their own interests in preserving their positions and reputations while engaging in a course of bad faith conduct designed to decimate the career and reputation of Plaintiff. In this, the Defendants were wildly successful.

5. As the OCR investigation of MSU ramped up, and as the upheaval in the University's administration played out publicly, Plaintiff became the subject of a purported claim of sexual harassment. The claim was false and unfounded, and there was no basis for the University to even exercise jurisdiction to investigate it. However, the Defendants, concerned about the claim becoming public amid yet another federal investigation into the administration, and seeking to maintain tight control over it for their own purposes, initiated and then pursued an unauthorized and deeply flawed “investigation” of the purported claim. Defendants then manipulated the process to create a

pretextual and false basis to terminate Plaintiff's employment and to evade Defendants' significant financial obligation to Plaintiff which, at the time, was more than \$80 million. The Defendants ultimately terminated Plaintiff's contract on transparently pretextual grounds *without first providing Plaintiff a hearing* to confront the false accusation against him, as required under University rules and as a matter of law, in gross violation of Plaintiff's right to due process.

6. Moreover, the Defendants acted against Plaintiff on the basis of his race, destroying the career of one of the most prominent and successful Black head coaches in college football. The actions taken against Plaintiff stand in stark contrast to the manner in which the Defendants treated his white counterparts who, in the face of far more serious allegations, had no such similar action taken against them. Indeed, those coaches continued to coach at MSU with their careers and lucrative compensation packages intact.

7. The Defendants not only wrongfully deprived Plaintiff of his contractual rights, but Woodruff and Haller compounded the profound damage to Plaintiff by issuing public statements regarding the allegations against him, that were false and defamatory, thus further destroying Plaintiff's reputation, his professional standing, and his livelihood. The Defendants' conduct resulted in profound economic and emotional harm to Plaintiff.

8. Why did the Defendants engage in such a brazen violation of Plaintiff's rights and of their obligations under the University's rules and applicable law? There are three principal reasons: (1) they acted against Plaintiff based on self-interest to preserve their positions and images; (2) they acted against him to create a basis to evade the University's substantial contractual obligation to him; and (3) they acted against him because of his race.

9. In the aftermath of the Larry Nassar scandal and other well-publicized scandals and investigations involving the University, Woodruff, Quinn and Haller were fearful that any accusation

involving the University that became public – even one as unfounded as the claim against Plaintiff – would subject the University to unwanted scrutiny and jeopardize their positions with the University. In short, the Individual Defendants acted in their own self-interest to avoid the fate of their predecessors who were dismissed or forced to resign in the aftermath of the Larry Nassar and the other scandals involving the University, including its athletics programs. Plaintiff – a man with an impeccable reputation and who had a long and promising career ahead of him – was the collateral damage caused by the Defendants’ misguided effort to protect the University’s reputation and, by so doing, preserve their image and positions at the top of the University’s administration.

10. Upon information and belief, the University’s General Counsel, Defendant Quinn, with the support of Woodruff and Haller, initiated the investigation against Plaintiff by personally encouraging the claimant, Brenda Tracy, to file a complaint with the University’s Office of Institutional Equity (“OIE”). The OIE – a department of the MSU Office for Civil Rights and Title IX Education and Compliance – is responsible for administering MSU’s Relationship Violence and Sexual Misconduct (“RVSM”) program. Not only was this collaboration with the claimant and her counsel outrageous (especially since, upon information and belief, they indicated to Quinn that they were looking for a quick monetary settlement), but Quinn was fully aware that Tracy’s claim could not properly be brought under the RVSM program, which only provides jurisdiction – what is referred to in the rules as “coverage” – under very limited circumstances where the matter has a close nexus to the University. Because Tracy was unaffiliated with the University (she was a one-time vendor paid to give a single presentation to the football team) and her personal relationship with Plaintiff did not involve the University, no such coverage existed. Plaintiff submitted unopposed expert evidence by the specialist who literally wrote the template for the University’s RVSM policy

confirming that the investigation was unauthorized. The Defendants, however, steadfastly ignored the rules so that the University could retain jurisdiction and control over their improper investigation.

11. With the improper “investigation” in place, the Defendants then interfered in the process to ensure that it reached its pre-determined outcome – the termination of Plaintiff and his contract. In direct contravention of the RVSM rules that prohibit University officials from interfering with what is supposed to be an “independent” investigation of the allegations, upon information and belief, Quinn, as General Counsel, and Haller, in his role as liaison to the OIE, interfered in the process in an improper effort to retain jurisdiction over Tracy’s claims.

12. Upon information and belief, the Administration Defendants personally collaborated with Tracy and her counsel and with the OIE staff to develop a “factual record” designed to support her false claim against Plaintiff. There also is evidence that several Board members – Defendants Renee Knake Jefferson, Dianne Byrum and Brianna Scott – engaged in improper and unauthorized discussions with Tracy and her counsel.

13. In addition, the Administration Defendants thwarted Plaintiff’s efforts to have the OIE pursue critical information from Tracy. As a result, key evidence – text messages that Tracy failed to provide during the OIE investigation, and which exposed her financial agenda and the falsity of her allegations – were not considered as part of the OIE proceeding.

14. When these key exculpatory text messages were finally obtained independently by Plaintiff’s counsel late in the investigatory process – but before a decision was rendered – Plaintiff’s counsel immediately sent a letter to Woodruff and Quinn, and to each of the Trustee Defendants, outlining the substance of that critical material, attaching copies, and requesting that they direct a short pause in the process so that this newly discovered exculpatory evidence could be considered, as required under the applicable rules. However, concerned that this new and exculpatory evidence

would expose their improper actions against Plaintiff and undermine their efforts to terminate his contract, the Defendants refused to pause the investigation to consider the key evidence, and instead pushed the process toward its pre-determined outcome in clear derogation of Plaintiff's rights. In essence, the Defendants ignored and precluded the consideration of the very evidence that proved the falsity of Tracy's allegations.

15. Plaintiff was further prejudiced by Defendants' pursuit of the unauthorized investigation against him when, during the process, Tracy leaked over 1,200 pages of confidential RVSM materials to the national news media. Shortly thereafter, on September 10, 2023, the disclosure of highly personal and private information concerning Plaintiff's relationship with Tracy became the subject of a national media circus when USA Today published one-sided articles adopting Tracy's false allegations against Plaintiff, causing severe and profound damage to Plaintiff. But the Defendants did not care about that. Instead, alarmed by the specter of a public rehash of the University's past scandals the Defendants decided – *literally within hours of the release of the news stories on September 10* – to immediately suspend Plaintiff without pay, without any regard to the facts, due process and in violation of Plaintiff's rights.

16. In doing so, Defendant Haller and Woodruff appeared together at a press conference on September 10, 2023 and publicly defamed Plaintiff by claiming that there were some "new developments" that justified this sudden disciplinary action against Plaintiff. But that was blatantly false – *the Individual Defendants had the "facts" concerning Tracy's purported claim months earlier* – and the defamatory statements by Haller and Woodruff at this press conference severely damaged Plaintiff's reputation and professional standing. The timing of the Defendants' actions speaks for itself. It confirms that the actions taken against Plaintiff were a purely reflexive exercise

in damage control, and were not based on any rational decision-making, let alone considerations of fairness and due process to Plaintiff.

17. Later that same day, Michigan State Governor Gretchen Whitmer, who has the statutory power to investigate and remove MSU trustees, added her voice to the media frenzy, issuing a statement expressing sympathy with the false narrative orchestrated by Tracy and her contacts in the media. Specifically, Governor Whitmer expressed “shock[.]” and “disappoint[ment]” concerning Tracy’s accusation, and stated that she “want[ed] answers” concerning MSU’s handling of Tracy’s claim. One week later, despite the Defendant Haller’s and Defendant Woodruff’s public recognition that they were required, under University policy and under basic concepts of due process, to provide Plaintiff with a hearing before taking further action against him, ***the Defendants sent a notice of intention to terminate Plaintiff’s employment agreement – without providing him the opportunity to address Tracy’s claims at a hearing.*** This time, Defendant Haller tried to justify this action based on “undisputed evidence” that had come to light. But as with their “new developments” claim trotted out at the press conference suddenly announcing Plaintiff’s suspension without pay, Defendants’ contention was a transparently false pretext for their decision to terminate Plaintiff’s contract – a decision that had been made months earlier when Defendants initiated their improper campaign against Plaintiff. Ultimately, Defendants terminated Plaintiff on September 27, 2023 – just two weeks after the outrageous and defamatory press conference.

18. Where was the Board of Trustees when all of this was unfolding? As shown herein, the Board was severely compromised by in-fighting and by outright confrontation with Woodruff and other members of the administration. Moreover, the then-Chair of the fractured Board – Defendant Trustee Dr. Rema Vassar – accused other Board members of improperly communicating with Tracy and her counsel during the purported investigation. At bottom though, the Trustee

Defendants, like the Administration Defendants, were acting to protect their own interests, without regard to their obligations under the Bylaws to act “in accordance with the law and [MSU’s] internal policies and regulations” and their obligation to take “prompt action on urgent . . . personnel matters necessary to the best interests of the University” and its personnel.

19. The Board’s failure to step in to protect Plaintiff from the improper and biased investigation unleashed by Woodruff, Quinn and Haller is especially egregious, as the Board was fully aware that Woodruff and the Office of General Counsel (“OGC”) led by Quinn had a track record of improper conduct, including that they previously had been found to have acted improperly in another high-profile investigation involving actions taken against Dr. Sanjay Gupta, the former Dean of the University’s Eli Broad College of Business (also a man of color). Like Plaintiff, Dr. Gupta was stripped of his position based on a claim that became the subject of an OIE investigation.

20. Concerns about the way Dr. Gupta was treated caused the Board to engage the law firm of Quinn Emanuel Urquhart & Sullivan, LLP (“Quinn Emanuel”) to investigate the Gupta matter and issue a report. The investigation was vehemently opposed by Defendant Woodruff who was primarily responsible for the actions against Gupta (and here, against Plaintiff). The Quinn Emanuel report exposed severe dysfunction in the OIE investigative process, including, as particularly relevant here: misconduct by Woodruff, and by the OGC under Quinn, in interfering in the investigation, including by seeking to have OIE continue to pursue the investigation of Gupta that OIE wanted to close; taking action against Gupta even before the administrative process played out, thus raising due process concerns; and issuing public statements (by Woodruff) that were damaging to Gupta’s reputation.

21. The improper actions taken by Woodruff and by the OGC identified in the Quinn Emanuel report raised multiple red flags for the Trustee Defendants concerning the unfair and improper process Plaintiff was being subjected to by the very same members of the administration who had engaged in similar acts of misconduct. The Board of Trustees was required by law, and under the Bylaws, to take action to ensure that Plaintiff was being treated fairly under the University's administrative processes. However, the Board did not do so. The Trustee Defendants violated multiple obligations imposed on them as further recounted herein.

22. Not only did the Defendants trample upon Plaintiff's rights to due process and his contractual rights, but their actions against Plaintiff, who is Black, violated Plaintiff's constitutional right to equal protection. MSU's firing of Plaintiff on purely pretextual grounds stands in marked contrast to the University's handling of public disclosures concerning other high profile MSU coaches who faced accusations that included recruiting violations and a failure to adequately respond to or address serious claims of violence and sexual abuse by members of their respective teams. Unlike Plaintiff, who was suspended without pay and the subject of a press conference by the MSU Athletic Director and Interim President within hours of media stories based on leaked information and flimsy and transparently false grounds, MSU did not take anything close to similar actions regarding allegations against those other coaches and their programs. Instead, they were allowed to keep their contracts and bonuses and continue to coach at MSU.

23. Plaintiff seeks damages against Defendants pursuant to 42 U.S.C. § 1981 for their violation of his constitutional right to equal protection, and the Individual Defendants pursuant to 42 U.S.C. § 1983 for their violation of his right to due process of law. In addition to Plaintiff's claims under federal civil rights laws, Plaintiff also seeks damages against MSU and the Individual Defendants under Michigan state law for breach of contract, defamation, tortious interference with

contractual rights, intentional infliction of emotional distress, aiding and abetting, and violations of Michigan's Elliott-Larsen Civil Rights Act, MCL § 37.2202.

II. JURISDICTION AND VENUE

24. This Court has federal subject matter jurisdiction over Plaintiff's claims pursuant to 42 U.S.C. § 1981 (racial discrimination based on denial of contractual rights) and 42 U.S.C. § 1983 (denial of due process and equal protection under color of state law) pursuant to 28 U.S.C. §§ 1331 and 1343. This Court has supplemental jurisdiction over Plaintiff's state law claims pursuant to 28 U.S.C. § 1367.

25. In addition, this Court has jurisdiction over the claims against Defendant MSU pursuant to its waiver of sovereign immunity and its consent to the jurisdiction of this Court. Section IV(G) of the Amended Employment Agreement ("Employment Agreement") entered into by MSU (executed by Defendant Haller) and Plaintiff as of November 24, 2021, a copy of which is attached hereto as Exhibit A states, in pertinent part as follows:

Governing Law; Consent to Jurisdiction. The laws of Michigan (without giving effect to its conflicts of laws principles) govern all matters arising under and relating to this Agreement. Each party irrevocably submits to the exclusive jurisdiction of the Michigan Court of Claims and the Federal District Court for the Western District of Michigan for the purpose of any suit, action or proceeding or judgment relating to or arising out of this Agreement or the transactions it contemplates . . . Each party irrevocably consents to the jurisdiction of any such court in any such suit, action or proceeding and to the laying of venue of any such suit, action or proceeding brought in such court. . . . and irrevocably waives any claim that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum.

26. The claims asserted by Plaintiff against Defendant MSU arise under and relate to the Employment Agreement and MSU's breach thereof.

27. The Defendants' conduct at issue in this action occurred in East Lansing, Michigan, and thus venue is proper in this District.

III. THE PARTIES

A. Plaintiff

28. Prior to his illegal termination by the Defendants in September 2023, in violation of federal and state law, Plaintiff Melvin Gene Tucker II was the head football coach of the MSU men's football team – one of the most prominent positions in intercollegiate athletics and, indeed, in all of sports.

29. Prior to joining MSU in February 2020, Plaintiff coached football in college and at the professional level for more than 20 years. Among other positions, Plaintiff was the defensive coordinator for the University of Georgia, the defensive backs coach at Ohio State University and for the University of Alabama, and the head coach at the University of Colorado. Plaintiff also coached in the NFL, including as interim head coach for the Jacksonville Jaguars during the 2011 NFL season, and as the defensive coordinator for the Chicago Bears.

30. Plaintiff was universally considered to be a man of impeccable character, who has had an exemplary career and performed at an extremely high level at every position. Based on that performance, on February 12, 2020, MSU recruited Plaintiff from the University of Colorado to be the head coach at MSU. After Plaintiff's great success in his first season at MSU, the Individual Defendants wanted to ensure he stayed there. In November 2021, MSU signed Plaintiff to a ten-year, \$95 million guaranteed contract extension pursuant to which Plaintiff became the highest paid Black coach in college football history, and one of the highest paid coaches in all of college football.

B. Michigan State University

31. Defendant MSU is a public university formed by the Michigan State Legislature. *See* MICH. CONST. art. VIII, § 5. Specifically, MSU was designated as a land-grant university by the Michigan Legislature in 1863 to be the beneficiary of the endowment provided under the Morrill Act (12 Stat. 503 (1862)), as supplemented by subsequent acts of the Congress of the United States.

32. Pursuant to Article VIII, § 5 of the Constitution of the State of Michigan (“Michigan Constitution”), MSU acts through its authorized agents and employees, including principally, the members of its Board of Trustees, and its administrative staff, including its President, its General Counsel and, as relevant here, its Athletic Director.

33. As set forth in further detail herein, MSU, through its administrative staff and Board of Trustees, including the Administration Defendants (as defined) and the Trustee Defendants (as defined), and acting under color of state law, developed and executed a plan to create a pretextual basis to terminate Plaintiff’s Employment Agreement with the University, in violation of Plaintiff’s rights under the U.S. Constitution and state law, and in violation of the express terms of the Employment Agreement.

C. The Administration Defendants

34. Defendants Woodruff, Haller, and Quinn – the Administration Defendants – each are sued herein in their individual capacities, jointly and severally.

(i) Defendant Woodruff

35. Defendant Teresa K. Woodruff, Ph.D., assumed the post of Interim President of MSU on November 4, 2022, after the resignation of President Samuel Stanley, Jr. Prior to her appointment as Interim President, Woodruff had served as Provost of the University since 2020.

36. Woodruff served as Interim President until March 4, 2024, and is currently on the faculty of MSU.

37. Prior to joining MSU, Woodruff was the Director of the Center for Reproductive Science at Northwestern University. It is reported that she left Northwestern in 2020, two months after a petition by Black, Latinx, Indigenous, LGBTQ+ and other students of marginalized identities called for her removal.¹

38. Under authority provided under Article VIII, § 5 of the Michigan Constitution, Woodruff served as the principal executive officer of MSU and as an ex-officio member of the Board of Trustees. MICH. CONST. art. VIII, § 5

39. According to Article 4 of the MSU Board of Trustees Bylaws, as Interim President, Woodruff, in exercising her duties as the principal executive of the University, had authority to “exercise such powers as are inherent in the position in promoting, supporting, and protecting the interests of the University and in managing and directing all its affairs” and was “responsible for all business policies as heretofore enacted or modified or hereafter established subject to the general policies established by the board.”

40. As set forth further herein, Woodruff, acting under color of state law, abused her authority and violated the law by authorizing, developing and executing a plan to unlawfully subject Plaintiff to an improper administrative proceeding and then to unlawfully terminate Plaintiff for the purpose of advancing her interests in protecting her position and image and that of MSU, and those of the other Defendants, and to deprive Plaintiff of his rights under the U.S. Constitution, his rights under Michigan state law, and his contractual property rights under the express terms of the Employment Agreement. Among other things, it is believed that during the

¹ See <https://dailynorthwestern.com/2020/05/07/campus/tgs-dean-teresa-woodruff-to-depart-for-msu-after-25-years-at-northwestern-leaving-behind-a-mixed-legacy/>.

relevant period, Woodruff was actively campaigning to be appointed President of the University and viewed the claim against Plaintiff as a potential impediment to her appointment.

41. Among other things, and as further set forth herein, Woodruff, acting under color of state law, made knowingly false public statements expressly designed to mislead the public and provide cover for her and the other Defendants' illegal actions directed towards Plaintiff.

42. Additionally, upon information and belief, Woodruff actively communicated with the other Defendants and actively implemented and approved the illegal and improper actions directed towards Plaintiff and/or failed to take action to prevent the other Individual Defendants from proceeding with such actions.

(ii) Defendant Haller

43. Defendant Alan Haller has been Vice President and Athletic Director of MSU since September 1, 2021. Haller is a member of MSU's senior administration and is responsible for all aspects of management of the MSU Athletics Department, one of the most high-profile positions at MSU.

44. According to the University's website, Haller "works directly with campus leadership in providing guidance to the department on a wide range of issues, including serving as a liaison to the General Counsel's Office [and] Office of Institutional Equity."

45. As head of the MSU Athletics Department, Haller had responsibility for the men's football team and was directly responsible for overseeing and managing the University's relationship with Plaintiff, the head coach of the men's football team.

46. As set forth in further detail herein, Haller, acting under color of state law, abused his authority and violated the law by authorizing, developing and executing a plan to unlawfully subject Plaintiff to an improper administrative proceeding and then to unlawfully terminate

Plaintiff's employment for the purpose of advancing his interests to protect his position and image and that of MSU, and those of the other Defendants, and to deprive Plaintiff of his rights under the U.S. Constitution and under the Michigan Constitution, his rights under Michigan state law, and his contractual property rights under the express terms of the Employment Agreement.

47. Among other things, and as further set forth herein, Haller, acting under color of state law, made knowingly false public statements expressly designed to mislead the public and provide cover for his and the other Defendants' illegal and improper actions directed towards Plaintiff.

48. Additionally, as liaison to the University's OIE, Haller was obligated to ensure that Plaintiff was treated fairly and equitably in the University's grievance process. As recounted herein, Haller breached his obligations to do so. In addition, upon information and belief, Haller actively communicated with the other Defendants and actively implemented and approved of the illegal and improper actions directed towards Plaintiff and/or failed to take action to prevent the other Defendants from proceeding with such actions.

(iii) Defendant Quinn

49. Defendant Brian Quinn is the Vice President for Legal Affairs and General Counsel at MSU. According to the MSU website, Quinn provides legal advice and representation to the University through its President, Board of Trustees, and administration on a broad array of legal issues, including providing advice on all matters that have legal significance for the University.

50. As set forth in the MSU Bylaws, "the general counsel shall be appointed upon the recommendation of the president and approval of the board and shall serve at the pleasure of the president." The Bylaws further provide that "[t]he general counsel shall attend meetings of the board and render such professional services as are required by it and the officers of the

University” and “shall have authority to execute all legal documents including those required for purposes of litigation and/or court proceedings.”

51. As set forth in further detail herein, Quinn, acting under color of state law, abused his authority and violated the law by authorizing, developing and executing a plan to unlawfully subject Plaintiff to an improper administrative proceeding and then to terminate Plaintiff’s employment for the purpose of advancing his interests in protecting his position and image, and those of the other Defendants, and to deprive Plaintiff of his rights under the U.S. Constitution, his rights under Michigan state law, and his contractual property rights under the express terms of the Employment Agreement.

52. Among other things, upon information and belief, Quinn personally entered into discussions with Tracy and her counsel and directed them to assert a claim with MSU in order to trigger an unauthorized investigation against Plaintiff in violation of the University’s policies and applicable law. This was done to create and maintain a vehicle to develop a false basis to take action against Plaintiff.

53. Upon information and belief, Quinn, as General Counsel, was involved in all aspects of the plan to unlawfully terminate Plaintiff’s Employment Agreement including: authorizing and supporting the improper, flawed and biased investigation of Tracy’s claims; authorizing the false and misleading public statements made by other Defendants; and developing the false and pretextual basis MSU and the Individual Defendants advanced for their unlawful termination of Plaintiff’s contract in September 2023.

D. The Trustee Defendants

54. Pursuant to Article VIII, § 5 of the Michigan Constitution the “trustees of Michigan State University and their successors in office shall constitute a body corporate known as the Board of Trustees of Michigan State University.”

55. The Trustees are publicly elected by Michigan voters and have general supervision over the University and its funds. The Trustees are thus public officials under Michigan law and have special duties to the public associated with their respective positions.

56. The Board consists of eight members elected for staggered eight-year terms. Members serve without compensation. MSU’s Board of Trustees consists of Defendants Dianne Byrum, Dennis Denno, Dan Kelly, Renee Knake Jefferson, Sandy Pierce, Brianna Scott, Kelly Tebay, and Rema Vassar (together, the “Trustee Defendants”) each of whom was a member of the Board at the time of the unlawful conduct alleged herein.

57. The Governor of Michigan has statutory authority to investigate and remove a Trustee “for gross neglect of duty or for corrupt conduct in office, or any other misfeasance or malfeasance therein.” MCL § 168.293. The Governor has authority to appoint Trustees to fill Board vacancies. MCL § 168.294.

58. Pursuant to the Michigan Constitution, the Board “shall have general supervision of [the] institution and the control and direction of all expenditures from the institution's funds.” MICH. CONST. art. VIII, § 5. Under the Board’s Bylaws, it “exercises the final authority in the government of the University.”

59. The Trustee Defendants have the duty to ensure that MSU employees are treated “in accordance with the law and [MSU’s] internal policies and regulations” and they can take

“prompt action on urgent . . . personnel matters necessary to the best interests” of MSU. Board of Trustees Bylaws, Art. VIII.

60. The Board has significant obligations with regard to the University’s financial obligations to employees such as Plaintiff. The Bylaws specify that “[t]he Board, being constitutionally vested with the general supervision of Michigan State University and the control and direction of all its funds, recognizes a vital and crucial institutional responsibility to those with whom it has financial transactions.” *Id.*, Art. XI.

61. The conduct of the Trustee Defendants is further governed by a Code of Ethics and Conduct, which requires the Trustees to uphold the Board’s role as the supervisory and policymaking body of MSU, to properly evaluate the President, and to hold the President and the administration accountable to the Board. The Trustee Defendants have established a Committee on Audit, Risk and Compliance, which is required to review any violations and failure to comply with federal, state and local laws, rules and regulations, and MSU policies.

62. Each of the Trustee Defendants, acting individually and together, under color of state law, violated their obligations as set forth herein, by authorizing, developing and executing a plan to unlawfully subject Plaintiff to an improper administrative proceeding and then to terminate Plaintiff’s employment for the purpose of advancing their interests to protect their positions and image and that of MSU, and those of the other Defendants, and to deprive Plaintiff of his rights under the U.S. Constitution, his rights under Michigan state law, and his contractual property rights under the express terms of the Employment Agreement.

63. Upon information and belief, each of the Trustee Defendants authorized all aspects of the plan to unlawfully terminate Plaintiff’s Employment Agreement including: authorizing and supporting the improper, flawed and biased investigation of Tracy’s claims; authorizing the false

and misleading public statements made by other Defendants; and developing the false and pretextual basis MSU and the Individual Defendants advanced for their unlawful termination of Plaintiff's contract.

64. At all relevant times herein, each of the Trustee Defendants was aware of a report outlining significant deficiencies in the MSU grievance process, as well as improper conduct by Defendants Woodruff and Quinn in interfering with the process in violation of the rules requiring that the process proceed independently, without such interference. In addition, each of the Board members was presented with evidence confirming that, as in past matters, the Administration Defendants were engaging in improper conduct with regard to the investigation involving Plaintiff. Pursuant to their obligations as set forth above, the Trustee Defendants were obligated to take "prompt action" to protect Plaintiff's rights to due process and to a fair and impartial process. The Trustees failed to take *any action* to remedy the situation in violation of their obligations under the Bylaws and under applicable law.

65. Not only did the Board fail to take action to protect Plaintiff, but according to a recent investigative report, Defendant/Trustee Dr. Rema Vassar accused Defendant/Trustees Jefferson, Byrum and Scott of improperly engaging in "outreach and communication with Brenda Tracy and possibly her attorney either directly or through third parties." Accordingly, it appears that Trustees themselves were complicit in the improper actions against Plaintiff.

IV. MSU ADMINISTRATION UNDER SIEGE

66. The violations of Plaintiff's rights by MSU and the Individual Defendants were committed against the backdrop of numerous scandals involving the University, including one of the most, if not the most, horrific sexual abuse scandals that has ever come to light in the United States – the Larry Nassar scandal. In addition, during this period the University was the subject

of multiple investigations by the federal government and by outside independent investigators which exposed astonishing dysfunction in the relationship between the Board and the administration, and clear acts of misconduct by Woodruff and Quinn, including, as relevant here, in interfering and manipulating the University's investigative procedures.

A. The Larry Nassar Scandal

67. As has been widely reported, MSU was found to have turned a blind eye to a decades-long pattern of sexual abuse of female student athletes perpetrated by the disgraced MSU Athletics Department physician Larry Nassar. Due to MSU's failure to act, despite evidence of misconduct and complaints from student athletes about Nassar's sexually abusive acts, Nassar was able to victimize hundreds of MSU students and members of the U.S. gymnastics team dating back to 1997.

68. Nassar was finally terminated from his employment at MSU on September 20, 2016. In late 2017 and early 2018, after being found guilty of multiple counts of sexual abuse in separate cases, Nassar was sentenced to over 100 years in prison. Shortly thereafter, on May 16, 2018, MSU reached a \$500 million settlement with 332 of Nassar's victims.

69. The Nassar scandal sent shockwaves throughout the State of Michigan and beyond. MSU's president at the time, Lou Anna K. Simon, resigned the same day Nassar was sentenced in Ingham County Circuit Court. Shortly thereafter, MSU Athletic Director, Mark Hollis (who presided over the MSU Athletics Department when Nassar was abusing patients and athletes) resigned. Although it has not been alleged that Hollis had direct knowledge of

Nassar's conduct prior to Nassar's arrest, it has been reported that at least six women alerted Athletics Department staff about Nassar's behavior, and no action was taken.²

70. Other MSU administration and staff also were forced to resign in the aftermath of the Nassar scandal.

B. January 2018: The "Outside the Lines" Report Regarding Misconduct in MSU Athletic Programs

71. While the Nassar scandal was unfolding, MSU was rocked by another scandal, this time involving its men's football team and its longtime coach Mark Dantonio.

72. On January 25, 2018, the very same day that Hollis resigned in the aftermath of the Nassar scandal, ESPN posted a report in its online magazine, Outside the Lines, entitled "*Michigan State Secrets Extend Far Beyond Larry Nassar Case*" (the "OTL Report").³

73. The OTL Report includes allegations that "MSU's most-recognizable figures, football coach Mark Dantonio and basketball coach Tom Izzo have had incidents involving their programs." Both Dantonio and Izzo are white.

74. With respect to Dantonio, the OTL Report states that "[s]ince Dantonio's tenure began in 2007, at least 16 MSU football players have been accused of sexual assault or violence against women, according to interviews and public records obtained by Outside the Lines. Even more, Dantonio was said to be involved in handling the discipline in at least one of the cases several years ago."

² <https://www.detroitnews.com/story/tech/2018/01/18/msu-president-told-nassar-complaint-2014/1042071001/>.

³ See https://www.espn.com/espn/story/_/id/22214566/pattern-denial-inaction-information-suppression-michigan-state-goes-larry-nassar-case-espn.

75. On or about February 3, 2020, stories began to surface in the media regarding evidence submitted in a federal lawsuit in which Dantonio previously had been named, alleging that Dantonio knowingly engaged in various recruiting violations.⁴

76. Dantonio quickly announced his resignation as head coach of the MSU football team on February 4, 2020. MSU's then-Athletic Director Bill Beekman called the allegations of recruiting violations "patently false," but said that MSU was investigating the claims.

77. Although Dantonio resigned, he was not suspended or terminated from his employment at MSU. Instead, he was allowed to continue as an advisor in MSU's Athletics Department and was allowed to retain a \$4.3 million bonus payment he had received only weeks earlier in contemplation of his continuing as MSU's head football coach.

78. Moreover, after wrongfully suspending Plaintiff without pay and then terminating Plaintiff's employment as alleged herein, MSU, on September 10, 2023, re-hired Dantonio as an associate head coach of the men's football team.⁵

79. The OTL Report also referenced the MSU men's basketball program and disclosed "never-before-publicized reports of sexual or violent incidents involving members of Izzo's storied basketball program, including one report made against a former undergraduate student-assistant coach who was allowed to continue coaching after he had been criminally charged for punching a female MSU student in the face at a bar in 2010. A few months later, after the Spartans qualified for the 2010 Final Four, the same assistant coach was accused of sexually assaulting a different female student." OTL Report.

⁴ See, e.g., <https://www.washingtonpost.com/sports/2020/02/04/mark-dantonio-steps-down-michigan-state-coach-amid-allegations-recruiting-violations/>; see also <https://www.detroitnews.com/story/sports/college/michigan-state-university/2020/02/18/michigan-state-spartans-mark-dantonio-violate-ncaa-rules/4798101002/>.

⁵ See, e.g., <https://www.freep.com/story/sports/college/michigan-state/2023/09/16/mark-dantonio-michigan-state-harlon-barnett-coach-brenda-tracy-mel-tucker-scandal/70854237007/>.

80. According to the OTL Report, federal civil rights investigators found that a “sexually hostile environment existed for and affected numerous students and staff on campus,” and that MSU’s “failure to address complaints of sexual harassment, including sexual violence, in a prompt and equitable manner caused and may have contributed to a continuation of this sexually hostile environment.” *Id.*

81. In response to the OTL Report, then-Interim President John Engler called it a “sensationalized package of reporting” and though he noted MSU would review the reports, he defended the coaches, Dantonio and Izzo, stating that he hoped “that MSU can respond in full and affirm the integrity and probity that has been the hallmark of these two respected coaches.”

82. On March 19, 2021, during a nationally televised NCAA Tournament game, in a heated exchange Izzo physically grabbed one of his players, Gabe Brown, as the team headed into the locker room.⁶ Izzo laughed off the physical encounter after the game.

83. Upon information and belief, MSU did not investigate Izzo’s physical altercation with Brown or take action against Izzo. Izzo remains head men’s basketball coach at MSU to this day.

C. September 5, 2019: The U.S. Department of Education’s Office of Civil Rights Issues a Report Criticizing MSU’s Leadership and Handling of Harassment Allegations

84. In February of 2018, the U.S. Department of Education’s Office of Civil Rights opened an investigation of the University’s Title IX compliance regarding the employment and conduct of Nassar. A September 5, 2019, report issued by the OCR (“OCR Report”), was deeply critical of the University and its leadership.⁷

⁶ See, e.g., <https://www.youtube.com/watch?v=3p9ywXDIQno>.

⁷ See <https://msu.edu/ourcommitment/assets/documents/OCR-MSU-Agreement-2019.pdf>.

85. Specifically, after discussing the University’s history of failing to properly administer its Title IX procedures, the OCR Report found that the University “failed to promptly and equitably respond to reports and grievances alleging sexual harassment . . . and failed to take appropriate actions reasonably calculated to end harassment, eliminate the hostile environment, and prevent the harassment from recurring.” The OCR Report contains significant findings concerning improper conduct by the University’s administration, including that “Administrators at the highest level of the University—the President and the Provost—had a long and disturbing history of failing to take any effective actions to address what was to become, over the course of 14 years, a torrent of reports and complaint’s about [Dr. William Stempel’s] sexually harassing conduct.”

D. October 2022: The Resignation of President Stanley and the Continued Failure to Properly Administer the University’s Sexual Misconduct Procedures

86. In the aftermath of the Nassar scandal and the resignation of President Simon, the University hired Samuel Stanley Jr. as University President. But Stanley resigned on October 13, 2022, citing severe dysfunction within the ranks of the University’s Board of Trustees, including, as particularly relevant here, its failure to properly oversee the University’s sexual harassment investigation procedures.

87. According to published reports, the acrimony between Stanley and the Trustees (and among the Trustees themselves) stemmed from the failure of the University to comply with certain Title IX compliance protocols in the aftermath of the Nassar scandal, including a requirement that both the President and a Trustee sign an annual certification that they have reviewed all Title IX reports involving sex-based misconduct allegations. Certain Trustees accused Stanley of signing the certification without conducting a complete review of the matters.

88. For example, Trustee Patrick O’Keefe stated publicly that Stanley failed to ensure compliance with MSU offices investigating sexual misconduct. He called the submitted certification document “false” and raised questions about leadership’s honesty and integrity. O’Keefe was further quoted as saying “Numerous deficiencies were noted,” and “the support for the certification (of compliance) was either non-existent or inadequate.”

89. Other Trustees responded emotionally to O’Keefe’s statements. According to a published report, Trustee Brianna Scott, expressed her disagreement and, reportedly in tears, stated that “she doesn’t trust some of her colleagues on the Board, sharing her frustration and occasional desire to ‘break free.’”

90. The foregoing are just examples of the open hostility among the University’s leadership over the way the University was handling or, more accurately not handling, requirements and policies imposed to ensure that the University was properly administering its sexual misconduct investigation procedures.

91. Moreover, the failures of the University’s leadership were also roiling the University community at large. At or about the same time the Board and administration were publicly feuding in the Fall of 2022, the MSU Faculty Senate, its Academic Congress, its University Council and its Associated Students of MSU, all issued votes of no confidence in the Board of Trustees over its failure to properly administer the University’s sexual harassment programs.

E. November 2022: The Federal Government Opens Another Investigation of the University’s Handling of Sexual Misconduct Claims

92. In or about November of 2022, the U.S. Department of Education’s Office of Civil Rights opened yet another investigation into the University’s handling of sexual misconduct

claims. According to published reports, OCR sent a letter to Woodruff seeking information concerning the University's handling of a sexual harassment claim, including whether the University had improperly interfered with the claim. According to published reports, the letter requested that the University provide copies of dozens of documents and communications relating to the case. As alleged further herein, this federal investigation was opened at the very time the Defendants learned of the claim by Tracy and began their improper and unauthorized investigation of Plaintiff.

F. March 2023: The Quinn Emanuel Report Documents the Administration's Interference with the Investigation of Dr. Gupta

93. In 2022, Dr. Sanjay Gupta, the Dean of the University's business school, was stripped of his position by Woodruff (then University Provost) during a highly irregular OIE investigation. The actions of Woodruff and others (including Quinn's Office of General Counsel) raised deep concerns regarding the way Woodruff and Quinn's office improperly interfered in and manipulated the University's investigation of Gupta who, according to Woodruff, had failed to report an act of sexual harassment.

94. At the time Gupta was stripped of his position, Woodruff was actively pursuing the position of University President and it has been alleged that she viewed Gupta as a rival and engineered a process to get rid of him. Gupta, who is a man of color (Indian American) has commenced an action against Woodruff, Quinn, and others alleging multiple violations of his civil rights, including disparate treatment based on his ethnicity.⁸

⁸ Dr. Gupta sued MSU administrators, including Woodruff and Title IX officials, on February 24, 2023. *See, e.g.*, Alex Walters, Former Business Dean Sues Interim President, Top MSU Officials, The State News (Feb. 25, 2023), <https://statenews.com/article/2023/02/former-business-dean-sues-interim-president-top-msu-officials>.

95. On or about November 30, 2022, Trustee Patrick O’Keefe resigned from the Board citing the University’s handling of its sexual harassment policies and called for “answers regarding” the selection of Teresa Woodruff as Michigan State’s interim president who, as Provost, had pushed for Gupta’s ouster.

96. Concerned about these allegations, and about the further upheaval roiling the MSU leadership, in August 2022, the Board engaged the law firm of Quinn Emanuel to investigate the circumstances surrounding the actions taken by Woodruff and Quinn’s office against Gupta. Woodruff vehemently opposed the investigation and reportedly sent a letter to the Board demanding that it terminate the investigation. The Board denied Woodruff’s demand.

97. According to published reports, in December 2022, Quinn Emanuel, in a 90-minute closed door session, provided the Board with a verbal report of its investigation results, including a detailed PowerPoint presentation of its findings.

98. Thereafter, on March 31, 2023, Quinn Emanuel issued a report of its investigation (the “Quinn Emanuel Report”), which was made public by the Board. The Quinn Emanuel Report exposed severe dysfunction in the OIE investigative process, including, as particularly relevant here, that: (i) the OIE was not acting independently in violation of the University’s rules; (ii) Woodruff and the OGC led by Quinn, improperly interfered in the investigative process, including, as specifically relevant here, seeking to prevent OIE from closing the investigation of Gupta and assisted the claimant in modifying her complaint; (iii) the University acted against Gupta even before the administrative process played out, thus raising due process concerns; (iv) the investigation against Gupta was sloppy and mistake prone and did not support the vast majority of the actions taken against him; and (v) public statements issued by Woodruff were damaging to Gupta’s reputation.

99. As shown above, the Board was fully aware of the findings of Quinn Emanuel while the very same members of the administration – Woodruff and Quinn – were taking many of the same improper actions against Plaintiff. The Quinn Emanuel Report surely raised multiple red flags with the Board concerning the way Woodruff, Quinn and Haller were improperly pursuing Plaintiff and handling the allegations against him. However, the Board failed to intervene, in violation of its obligations to Plaintiff under the University Bylaws and as a matter of law.

G. October 2023: The Board Commissions Yet Another Investigation Concerning the Board’s Alleged Failure to Comply with its Obligations

100. The dysfunction infecting the Board continued even after the Quinn Emanuel investigation and Report. In October 2023 the Board commissioned yet another investigation, this time by the law firm Miller & Chevalier Chartered, concerning the Board’s alleged failure to comply with its obligations under the Bylaws and under applicable law, resulting in a February 28, 2024 report (the “Miller Chevalier Report”).

101. The investigation was prompted by accusations by Defendant Trustee Brianna Scott that the then-Chair of the Board, Defendant Trustee Dr. Rema Vassar, violated various Board of Trustees policies, including the Board of Trustees Code of Ethics and Conduct, the Board of Trustees Bylaws, and the Board of Trustees Conflict of Interest Policy. Trustee Scott’s accusations led to yet another round of in-fighting and counter-accusations by Trustee Vassar and others.

102. The Miller Chevalier Report provides a deeply troubling retrospective assessment of the University’s fractured leadership during the time period at issue in this action, including with respect to the actions taken against Plaintiff. Indeed, according to the Miller Chevalier Report, Trustee Defendant Vassar – then the Board Chair – accused three Trustees, Defendant Trustees Knake Jefferson, Byrum and Scott, of improperly interfering in the investigation of

Plaintiff by engaging in “outreach to and communication with Brenda Tracy and possibly her attorney either directly or through third parties.” The Miller Chevalier Report and the Quinn Emanuel Report, taken together, show a pattern of MSU leadership acting improperly in connection with University investigations.

103. Moreover, the Miller Chevalier Report paints a picture of MSU leadership that is so fractured and dysfunctional that it would be hard to believe if it were not so well-documented. Among other things, recorded conversations among Trustee Defendants Vassar and Denno, and representatives of student groups, document Vassar and Denno urging the students to use information that Vassar and Denno provided to the students to publicly embarrass Woodruff and other members of the administration.

104. In one such recorded conversation, Trustee Denno stated: “I think the trump card is embarrassing them [referring to the administration]. They do not like to be embarrassed. The Provost and Interim President [Woodruff] are looking for their next jobs; they just don’t want to be embarrassed. They want to come out with no scandals.” Denno goes on to say that the best way to embarrass them is by “press, media . . . They hate that. They hate being publicly embarrassed.” Denno goes on to say: “embarrass [Woodruff] . . . tell her you’re working with the Black Student Alliance, whether you are or not . . . that will terrify her.”

105. During that same recorded conversation, Trustee Vassar chimes in to advise the students that “there’s so many other groups you could partner with to crucify her [Woodruff].” Vassar then reinforces that leaks to the media are the “way to go.” According to Vassar: “Press is the way to go. They smeared me in the press... So, if there is a mechanism, then that is the one.”

106. The references to Woodruff and other members of the administration being concerned for their own interests – primarily protecting their jobs and avoiding public

embarrassment – is fully consistent with the conduct at issue in this lawsuit which, as demonstrated throughout, was largely motivated by the Defendants’ acting to advance their self-interest. Moreover, that the Chair of the Board would advocate the release of knowingly false information to the media to advance her interests – “tell her you’re working with the Black Student Alliance, whether you are or not” – is a shocking example of reprehensible conduct by Defendant Trustee Vassar and Defendant Trustee Denno that confirms that the Trustees have acted in violation of their obligations under the Bylaws and applicable law and, indeed, in violation of any reasonable standards of decency. The Miller Chevalier Report concludes that Trustees Denno and Vassar not only were “condoning incivility and intimidation” but were also acting in express violation of their legal obligations and fiduciary duties.

107. The Miller Chevalier Report goes on to document further dysfunction, including: (1) leaks to the media by Trustees designed to embarrass and intimidate members of the administration or other Trustees; (2) acts of bullying and retaliation by certain Trustees, including by Vassar, which has created an environment of fear amongst administrators; (3) a “fraught relationship between the administration and the Board of Trustees, resulting in the Board of Trustees at times assuming an outsized role at the institution”; and (4) “a fractured Board plagued by distrust and an environment in which colleagues no longer assume positive intent and often act as adversaries.”

108. The issues plaguing the Board are so extreme that Miller Chevalier recommended that the matter be elevated to Governor Whitmer for review pursuant to MCL Section 168.293, which provides the Governor with the power to remove Trustees from office “for gross neglect of duty or for corrupt conduct in office, or any other misfeasance or malfeasance therein.” Defendant

Vassar resigned her position as Chair of the Board shortly after the Miller Chevalier Report was published.

V. DEFENDANTS' ACTIONS AGAINST PLAINTIFF

A. February 2020: Plaintiff Becomes One of the Highest Paid Coaches in College Football

109. After the sudden resignation of Dantonio in February 2020, MSU conducted a search and quickly hired Plaintiff as MSU's head football coach.

110. In consideration of Plaintiff's exemplary performance in the college and pro ranks, and his impeccable reputation, Plaintiff's initial contract at MSU, signed in February 2020, was valued at \$5.5 million annually for six years. At the time of signing, Plaintiff became one of the highest paid head coaches in college football

111. As announced on the MSU website:

“In just his second year in East Lansing in 2021, Tucker led MSU to an 11-2 record, a Top 10 ranking, and a win in the New Year's Six with a victory over ACC Champion and No. 12 Pittsburgh in the Chick-fil-A Peach Bowl. Tucker was named a finalist for National Coach of the Year by multiple organizations, including the American Football Coaches Association, the Paul Bear Bryant Awards, the Football Writers Association of America and the Maxwell Football Club. He was also named the Big Ten Coach of the Year by both the coaches and media and the AFCA Region 3 Coach of the Year. In June 2022, Tucker was named the College Coach of the Year by the National Coalition of Minority Football Coaches. Going from two wins in 2020 to 11 wins in 2021, MSU completed the biggest turnaround in school history (previous: seven-game improvement from 2016 to 2017) and finished the season ranked No. 8 in the AFCA Coaches Poll and No. 9 in The Associated Press Poll. Tucker became the earliest Spartan coach to win double-figure games in a season (previous: Mark Dantonio with 11 wins in his fourth season at MSU in 2010).”⁹

⁹ <https://msuspartans.com/sports/football/roster/coaches/mel-tucker/1059> (last accessed July 29, 2024).

B. November 2021: MSU Signs Plaintiff to a 10-Year Contract Extension

112. In recognition of Plaintiff's exceptional performance and impeccable reputation, as well as the concern that Plaintiff might leave MSU for another position after the season, MSU initiated discussions with Plaintiff in November 2021, during the football season, for a contract extension that would pay Plaintiff more money and ensure he stayed at MSU for many more years.

113. Those discussions resulted in MSU and Plaintiff entering into the November 24, 2021 Employment Agreement establishing the terms and conditions of Plaintiff's employment for MSU. *See* Ex. A.

114. Pursuant to the Employment Agreement, Plaintiff was to continue in his position as head coach of MSU's Men's Intercollegiate Football Team through January 1, 2032 – *i.e.*, for what the Agreement defines as a “ten-year term.” Ex. A, ¶ III(A). Plaintiff was to report to Defendant Haller, who had been appointed as MSU's Athletic Director several months prior to Plaintiff's contract extension, after a long tenure as MSU's Deputy Athletic Director.

115. Pursuant to the Employment Agreement, Plaintiff was to be paid a “Base Salary” of \$5.9 million per year for each year of the ten (10) year term of the Agreement for his services as head football coach, Ex. A, ¶ II(B), as well as “Supplemental Annual Income” and other compensation for a total annual compensation package of approximately \$9.5 million, plus the substantial value of fringe benefits. The Agreement provides that the total compensation is guaranteed, meaning that if the University terminates Plaintiff without cause, it is responsible to pay the outstanding balance of compensation owed to Plaintiff.

116. Termination of the Agreement for cause is strictly limited by Section III(B) (Early Termination; Damages), which provides as follows:

“(i) The university may terminate this Agreement prior to the expiration of its term at any time, for cause, without liability to the

Coach or any other penalty. Cause for such termination includes, without limitation, the following: (a) the Coach materially breaches this Agreement; (b) the Coach is convicted of a crime, other than a minor traffic offense; (c) the Coach engages in any conduct which constitutes moral turpitude or which, in the University's reasonable judgment, would tend to bring public disrespect, contempt, or ridicule upon the University (e.g., material insubordination or impropriety involving a student). Notwithstanding anything to the contrary herein, the University shall not terminate the Coach for cause unless the University has provided the Coach with written notice, specifying the grounds for termination, and afforded the Coach the opportunity to present reasons to the Athletic Director and the University's President as to why he should not be terminated on the grounds stated therein."

117. As described further herein, Defendants improperly invoked the Early Termination Provision to orchestrate the unjustified termination of the Employment Agreement based on transparently false and pretextual grounds.

C. August 2021: Plaintiff and Brenda Tracy Begin a Private Personal Relationship

118. Brenda Tracy is the founder of *Set the Expectation*, an organization which, according to its website, is a nonprofit organization dedicated to ending sexual and interpersonal violence through prevention work with men, advocacy, and engagement with agencies serving survivors and their families.

119. Tracy is not an MSU student nor is she an MSU employee. Rather, in or about July 2021, MSU contracted with Tracy to conduct an education training session at MSU for the men's football team on a single occasion – August 14, 2021 – concerning sexual misconduct prevention. The contract specified a fee of \$10,000 for that one-day program.

120. Following Tracy's visit to MSU for the training program, Plaintiff and Tracy began a consensual and deeply personal relationship. Although Plaintiff was married at the time, he had been estranged and essentially separated from his wife for years. The relationship between Plaintiff and Tracy involved mostly phone calls and text messages, including late-night phone

conversations in which they discussed intimate matters. They had very limited in-person contact. Plaintiff sent Tracy gifts, including a pair of Nike sneakers she had told Plaintiff she wanted, as well as \$200 to Tracy's personal Venmo account. This personal relationship was entirely private and did not involve Tracy's limited one-time engagement for MSU or any other aspect of the University.

121. Evidence obtained by counsel for Plaintiff after Plaintiff's unlawful termination by MSU – i.e., text message communications which Tracy did not disclose to MSU during the investigation of her claims – demonstrates that Tracy was acutely focused on Plaintiff's lucrative November 2021 contract extension and hoped to convince Plaintiff to personally fund her business.

122. Specifically, in a text message on November 26, 2021, days after Plaintiff's contract extension with MSU was announced, Tracy wrote the following to her close friend, confidante and business assistant, Ahlan Alvarado: “[Plaintiff] signed his contract. I cant [sic] even wrap my brain around 95 million. Sheesh . . . Can you imagine around 700k going into your bank account every month. Every month . . . We're gonna make it happen . . . I'm gonna ask him to finance the doc part of it . . . He'll do it.” Upon information and belief, the reference in the message to the “doc part of it” was apparently to promotional literature involving Tracy's organization.

123. Other texts that she did not disclose to MSU during the investigation of her claims further indicate that Tracy was hoping to obtain money for personal expenses.

124. On April 28, 2022, during a lengthy evening phone conversation between Tracy and Plaintiff that lasted 36 minutes, Tracy sent Plaintiff a provocative photo of the two of them from behind in which she was wearing tight leather pants, to, according to Tracy, “lighten” the conversation. Tracy only provided the photo to MSU *after* Plaintiff raised the issue to the OIE Investigator.

125. In the summer of 2022, Plaintiff became concerned that Tracy and/or her assistant Alvarado were making false statements about Plaintiff's marriage. Plaintiff confronted Tracy about this in an August 2022 phone call. Their personal relationship soured, and Plaintiff discontinued his contact with Tracy, thus ending Tracy's ability to acquire money and gifts from Plaintiff.

D. November 2022: Tracy Contacts MSU's General Counsel, Brian Quinn, To Complain About Plaintiff

126. Upon information and belief, unbeknownst to Plaintiff, in November of 2022, Tracy, through her counsel, contacted MSU's General Counsel, Defendant Brian Quinn, and advised him that Tracy intended to pursue a sexual harassment claim against Plaintiff.

127. Upon information and belief, Tracy, through her counsel, told Quinn that she was seeking a financial settlement without having to go to a hearing and inquired whether MSU would make a quick payment to settle the claim.

128. Quinn did not immediately advise Plaintiff of the allegations being made against him by Tracy. Instead, upon information and belief, Quinn immediately reported his conversation with Tracy to MSU's administration, including its President, Defendant Woodruff, its Athletic Director, Defendant Haller, and to its then-Board members, the Trustee Defendants named herein.

129. As set forth above, at the time Tracy made her claim, the University's leadership was in turmoil. The Board and the administration were publicly trading accusations of mismanagement and worse – of failure to comply with their respective obligations under the MSU governing documents. Board members and key members of the administration had been resigning amid caustic accusations and counter-accusations. Members of the University's leadership openly described a climate of mistrust and suspicion. In addition to this internal strife, Woodruff and

Quinn had just learned that the U.S. Department of Education's OCR had opened yet another investigation of the University's administrative processes concerning claims of sexual misconduct.

130. The dysfunction at the highest level of the University's leadership resulted in a siege mentality among the individual Board members and members of the administration, with each member concerned primarily with protecting themselves and preserving their positions and their careers.

131. In this toxic climate, the allegations made by Tracy set off alarm bells at the highest levels of MSU's administration – not because of the content of the allegations, but because if they became public the news media would undoubtedly bring up MSU's history of mishandling claims involving its Athletics Department. Desperate to avoid that negative press coverage and public attention (and how that might impact their positions), and without any interest in determining the validity of Tracy's claim – which was and is false – the Individual Defendants quickly devised a plan to prevent the matter from becoming public and to establish a basis to terminate Plaintiff's contract.

132. Upon information and belief, the Defendants developed a plan pursuant to which Tracy's claim would become the subject of a *confidential investigation* pursuant to the University's RVSM Policy, which is administered by the University's OIE. As set forth herein, the Individual Defendants were fully aware that the RVSM process did not cover Tracy's claim because the conduct alleged involved a private relationship unrelated to the University. But the Defendants wrongfully invoked the process in order to keep Tracy's claim under wraps while the Defendants determined how to deal with Plaintiff and the \$80-plus million owed to him on his contract.

133. Upon information and belief, and in furtherance of the plan developed by the Individual Defendants, in or about late November 2022, Quinn contacted Tracy's counsel and

advised that MSU would not make a financial settlement offer, would not apprise Plaintiff or his counsel of the settlement inquiry, and that Tracy should instead file a claim pursuant to the confidential RVSM Policy. Upon information and belief, Quinn specifically advised Tracy's counsel that if Tracy did not institute such a proceeding, MSU would do so on its own accord.

E. December 2022: Tracy Files an Administrative Complaint With MSU

134. On or about December 21, 2022, Tracy filed a formal grievance against Plaintiff under the RVSM Policy ("Complaint"), as instructed by Quinn.

135. At the time Tracy decided to pursue her claim against Plaintiff she was in dire financial straits. In a text message dated December 10, 2022 – eleven days before filing the Complaint – Tracy stated that she "was down to \$5." Tracy did not disclose this text message to MSU.

136. Moreover, the text messages Tracy did not disclose to MSU confirm that Tracy was seeking a quick financial settlement. Specifically, on December 9, 2022, again, just eleven days before filing the Complaint, Tracy wrote: "I'm filing a formal complaint with MSU... [My lawyer] said after that we can let him know that we want to come to an agreement then it doesn't have to go to a hearing or anything unless he wants it to." In an earlier message on September 1, 2022, she stated that "[w]hen they do the money I should make him [referring to Plaintiff] pay me 10k directly[.]"

137. The Complaint describes a personal relationship between Plaintiff and Tracy. It alleges that during that relationship, Plaintiff and Tracy had several telephone communications – all while both parties were away from the MSU campus. Tracy contended that on a number of calls Plaintiff made unwanted comments of a sexual nature and, during a lengthy call on the

evening of April 28, 2022, he masturbated against her consent and made inappropriate comments. This was the 36-minute call referenced, *supra*, ¶ 124.

138. In or about late-December, 2022, Plaintiff was finally advised of Tracy’s claim at a meeting called by Defendants Haller and Quinn and attended by Plaintiff and his counsel. Haller essentially read the claims set forth in Tracy’s Complaint to Plaintiff.

139. What Plaintiff did not know (but Haller, Quinn and the other Individual Defendants did know) was that, upon information and belief, Tracy had already contacted Quinn seeking a quick financial settlement, a request that should have raised a red flag concerning the *bona fides* of Tracy’s claims. But the “facts” were of little concern to the Defendants. All that mattered to them was retaining RVSM jurisdiction over the claim so that they could preserve their options concerning how to deal with Plaintiff and his contract.

F. Plaintiff’s Response to the Complaint

140. On or about, January 30, 2023, Plaintiff, through counsel, submitted a detailed response (“Plaintiff’s Response”) to the Complaint. Plaintiff categorically denied the Complaint’s allegations of misconduct. Specifically, Plaintiff denied that he ever made any unwanted comments and denied Tracy’s characterization of their 36-minute April 28, 2022 phone call. Instead, Plaintiff explained that he and Tracy had been involved in a consensual private relationship and that the conduct Tracy mischaracterized as “unwanted” was consensual “phone sex” between Tracy and Plaintiff. Plaintiff made the obvious point that, if the conduct was unwanted, then Tracy could have easily terminated the phone call, but she did not do so because she was consensually participating in the conduct—which occurred after she sent him the provocative photo on that same call.

141. Plaintiff's Response also pointed out that, as a threshold matter, MSU was required to dismiss Tracy's claim because the allegations were not covered under the RVSM Policy and, therefore, there was no jurisdiction for OIE to investigate the matter.

142. Pursuant to the RVSM Policy, the University's Office for Civil Rights and Title IX Compliance & Education ("MSU OCR") must make an initial assessment of a claim including whether "jurisdiction" or "coverage" exists. RVSM Policy §§ XII(A), (C). In order for there to be coverage the alleged conduct must: (1) constitute sexual harassment or some other prohibited conduct; and (2) have occurred on campus, off-campus in a University sponsored program or activity, off-campus in a program or activity sponsored by a student governing body, or off-campus and outside of a University-sponsored program or activity but which has continuing adverse effects on the campus or on a University-sponsored program or activity. RVSM Policy § XII(E). A complaint "must be dismissed if the conduct alleged does not meet all of the coverage requirements" set forth in the RVSM Policy. RVSM Policy § XII(F)(1)(a).

143. Plaintiff's Response pointed out that Tracy's allegations did not come close to meeting the criteria for jurisdiction. All the key interactions alleged in Tracy's complaint—the April 2022 call and the August 2022 call—failed to meet these two jurisdictional requirements and, therefore, there was no coverage under the RVSM Policy. Specifically, as set forth in Plaintiff's Response, the alleged conduct—all of which constituted private phone calls away from the University – did not occur in a University-sponsored program or activity, nor did it allege prohibited conduct that has a continuing adverse effect on the campus or on a University-sponsored program or activity.

144. Because of this fundamental defect, MSU was "**required**" to dismiss Tracy's Complaint. But rather than doing so, the Defendants, upon information and belief, continued to

pressure the OIE to retain coverage of the matter under the RVSM policy and conduct an investigation pursuant to that policy.

145. Upon information and belief, the Defendants, including Defendant Haller as liaison to the OIE (a department within MSU OCR), were involved in the efforts to retain control over the proceeding against Plaintiff and create a pretext for his termination.

146. Despite the lack of authority to even consider Tracy's complaint, the Defendants rejected Plaintiff's jurisdictional arguments and MSU's OIE initiated a purported "investigation" of Tracy's claims (the "OIE Investigation") in early 2023 under the RVSM policy. MSU appointed an OIE Investigator to conduct the investigation.

G. MSU's Flawed OIE Investigation

147. Even after the opening of an OIE investigation the University is obligated to continue to assess the issue of coverage and must dismiss a complaint if at any time it determines that there is a lack of coverage. RVSM Policy § XII(F). The lack of a jurisdictional basis for the investigation was pointed out repeatedly by Plaintiff throughout the RVSM process.

148. For example, through counsel, Plaintiff presented the OIE Investigator and Defendant Quinn with an expert report by Brett Sokolow of TNG Consulting LLC. Mr. Sokolow has been one of the preeminent experts in the field of university sexual misconduct investigations for more than 25 years and has been involved in more than 1,000 school and campus sexual misconduct cases as an investigator, trainer, consultant, expert, advisor, decision-maker, appeal decision-maker, and Title IX administrator. Mr. Sokolow literally wrote the model policy and templates on which some language in the RVSM Policy is based.

149. Mr. Sokolow concluded that MSU lacked jurisdiction over this private matter, and that the efforts by the Individual Defendants to maintain coverage was unprecedented, stating that

“[t]o my knowledge, no public university has ever attempted or succeeded in claiming such broad jurisdiction for its policies and procedures.”

150. Quinn and the other Individual Defendants were repeatedly advised of the lack of jurisdiction and that MSU was required by RVSM Policy § XII(F)(1) to dismiss Tracy’s complaint and terminate the investigation. However, the Defendants refused to give up their unauthorized “investigation” of Plaintiff. In addition to breaching their obligation to dismiss Tracy’s complaint for lack of coverage, Defendants repeatedly violated other fundamental rights to which Plaintiff was entitled as a matter of law and under the RVSM Policy.

151. For example, the RVSM Policy provides that Plaintiff was entitled to “equitable treatment” in the Investigation and that “[a]ll procedures, rules, and practices adopted as part of the formal grievance process [would] apply equally to both parties.” RVSM Policy § XIII(A)(2). He also was entitled to a process free of “conflicts of interest and bias.” *Id.* § XIII(A)(6).

152. Additionally, under the Policy, Plaintiff was “presumed to be not responsible for the reported conduct ***until a determination regarding responsibility is made at the conclusion of the applicable formal grievance process.***” RVSM Policy § XIII(A)(3). Plaintiff was entitled to a hearing to determine such responsibility, at which Plaintiff was entitled “to ask the other party and any witnesses all relevant questions and follow-up questions, including those challenging credibility” and was entitled to conduct cross-examination “directly, orally, and in real time by the party’s advisor of choice” RVSM Policy § XIII(C)(6) .

153. Moreover, RVSM rules impose substantial obligations on OIE to marshal evidence and to allow for the consideration of newly discovered evidence. Indeed, even after a final determination regarding responsibility has been made, the Defendants “***must re-open the formal***

grievance process” to allow for consideration of newly discovered evidence. RVSM Policy § XIII(G).

154. As demonstrated herein, the process imposed by the Defendants violated each one of these rights and many others. For example, in addition to the fact that the claim should have been dismissed immediately, the OIE Investigator engaged in improper *ex parte* discussions with Tracy and her counsel, and the OIE Investigator refused to follow up on numerous factual issues identified by Plaintiff’s counsel.

155. In addition, the OIE Investigator failed to pursue key evidence that would have demonstrated the falsity of Tracy’s claims and which, if considered, should have resulted in the dismissal of the matter. Indeed, the OIE Investigator permitted Tracy to submit certain text messages and emails she had cherry-picked for production without requiring Tracy to produce her full set of electronic communications with others, including her close friend and business assistant Ahlan Alvarado, with whom she sent many text messages concerning Plaintiff and their relationship. Plaintiff’s counsel repeatedly asked the OIE Investigator as well as Defendant Quinn, to aggressively pursue all available evidence, but they did not do so.

H. The Individual Defendants Were Apprised of Developments During the Investigation

156. The Defendants, including Quinn, Haller and Woodruff, were keeping close tabs on the progress of the purported investigation of Plaintiff and, in fact, were specifically apprised of developments by counsel for Plaintiff at various points in the investigation.

157. In addition, given the role of the Trustees, and Plaintiff’s high-profile position at MSU, upon information and belief, Haller, Quinn and Woodruff reported on developments to the

Trustee Defendants. Accordingly, the Individual Defendants were aware of the factual record in the investigation as it was being developed.

158. By way of example, Defendant Quinn was copied on a lengthy May 22, 2023 letter from Plaintiff's counsel to the University's OIE Investigator summarizing the facts elicited, pointing out the numerous legal and procedural flaws in the investigation, and demanding that the proceeding be dismissed.

159. In addition, Defendant Quinn was copied on lengthy and detailed correspondence concerning the underlying proceedings on June 23, 2023, July 7, 2023 (two letters) and August 4, 2023.

160. Accordingly, the Administration Defendants had complete information concerning the underlying investigation at least as early as the Spring of 2023. And crucially, based on this information, the Individual Defendants were aware that that Plaintiff vigorously disputed Tracy's allegations including her description of the April 28, 2022, phone call as involving "unwanted" sexual activity – the principal basis for the Defendants' improper termination of Plaintiff's contract. As set forth in this correspondence and, indeed, from the outset of the improper OIE Investigation, Plaintiff consistently explained that in the context of their private, personal relationship they had engaged in consensual phone sex. Upon, information and belief, all of this information was shared with the Trustee Defendants.

I. Spring/Summer 2023: Tracy Violates the Confidentiality Policy by Disclosing her Claim to the Media

161. The University's policies provide for confidentiality of the existence of an OIE investigation, the facts and materials underlying any such investigation, and the participants in the investigation (*e.g.*, respondent, complainant, witnesses) to those outside MSU.

162. First, the RVSM Policy clearly states that “[t]he University will seek to protect the privacy of parties in compliance with applicable laws and regulations. The University will keep private the identity of any individual who has made a report or formal complaint of prohibited conduct under this Policy; the identity of any claimant; the identity of any respondent; and the identity of any witness.” RVSM Policy § IX.

163. In addition, RVSM Policy Hearing Procedures § III(D), provides the parties electronic access to the case file, but expressly states that “[n]o copies may be made of the information in the File, including taking pictures or screenshots.”

164. Despite these policies, at some point during the OIE Investigation, in the spring of 2023, information concerning the OIE Investigation was leaked to the press. The leaked information became the basis for news reports several months later, as further discussed herein.

165. Because of the seriousness of this confidentiality breach, in September 2023 MSU engaged the law firm Jones Day to investigate the source of the leak. Jones Day concluded that there was clear evidence pointing to Tracy and her counsel as the likely source. Specifically, a report issued by Jones Day in December 2023 (“Jones Day Report”) concluded that “Tracy communicated some information related to her complaint against [Plaintiff] and/or the underlying allegations to multiple media outlets . . .”¹⁰

166. Text messages – which upon information and belief Tracy did not disclose to the OIE Investigator – revealed that Tracy spoke with ESPN Reporter Dan Murphy about her allegations in May 2023 while the RVSM Investigation was ongoing. In addition, other evidence demonstrated that Tracy spoke to an unnamed reporter at ESPN. According to the Jones Day

¹⁰ Available at: <https://msu.edu/-/media/assets/msu/docs/issues-statements/12292023-jones-day-report-of-leak-investigation15389320126.pdf?rev=2168cf5b55d840ef834dce6f471e8bb4&hash=6DE49C6CE5C29B2DC81EF989C40A9A1C>.

Report, a May 16, 2023 text message from Tracy states as follows: “I just talked to my new ESPN reporter ... I like him. He said they aren’t going to do anything yet. But obviously if they get tipped off about other outlets or if [Plaintiff] does something they would need to cover it.... I told him I understood the process and all that but that I’m also trying to get through the school process without public input.”

167. Upon information and belief, Tracy’s communications to the media were the basis for Freedom of Information Act (“FOIA”) requests to MSU by multiple media outlets issued in or about July of 2023, specifically seeking information concerning a claim of sexual harassment against Plaintiff.

168. When the FOIA requests became known to counsel representing Plaintiff in the OIE Investigation, counsel immediately contacted MSU to demand an investigation into the source of the leak, and to document the clear prejudice being done to Plaintiff and his ability to defend himself in the already-flawed OIE Investigation process. Again, Defendants Quinn and Haller were copied on this correspondence.

169. On two occasions – on August 2, 2023, and August 25, 2023 – Plaintiff, through counsel, demanded that the Defendants implement measures to investigate the source of the leak and ensure that there were no further breaches of the University’s confidentiality policies that could result in Plaintiff’s identity becoming known to the public and prejudice to Plaintiff.

170. Defendants ignored Plaintiff’s requests to investigate the leak of information regarding the OIE process. The Defendants’ failure to take immediate action in response to Plaintiff’s request resulted in disclosure of further information to the media which caused severe damage to Plaintiff as set forth herein. In fact, Defendants only initiated an investigation of the leak on or about September 12, 2023 *after Tracy complained*.

J. September 10, 2023: The Media Reports on Tracy’s Sexual Misconduct Claims Against Plaintiff Using the Confidential OIE Records Tracy Disclosed

171. On September 10, 2023, the claims against Plaintiff became the subject of national media attention when USA Today published an article entitled “*Michigan State Football Coach Mel Tucker Accused of Sexually Harassing Rape Survivor.*”¹¹ This was the first media article discussing Tracy’s allegations, which had not been publicly reported on because of the purportedly confidential OIE investigation process.

172. The article discloses that Tracy had provided the press with a large portion of the confidential OIE Investigation file, thereby undermining the confidentiality of the OIE Investigation and the administrative process while it was pending and before any hearing. Specifically, the article states that while USA Today “typically does not identify people who allege sexual harassment . . . ***Tracy agreed to be identified and shared more than 1,200 pages of case documents***” with the USA Today reporter.

173. Not surprisingly given Tracy’s involvement in its publication, the USA Today Article provided a one-sided description of the evidence that was designed to generate public support for Tracy’s account and to inflict maximum damage to Plaintiff.

174. Indeed, within hours of the publication of the initial article, USA Today published a follow up article entitled, “*In The Michigan State Story, Brenda Tracy Is The Believable One. Not Coach Mel Tucker.*”¹² It is hard to imagine a more orchestrated and one-sided rendition of the claims being alleged against Plaintiff. And it is worthy to note that, according to the author of that article, he (the author) had known Tracy for several years.

¹¹ <https://www.usatoday.com/story/news/investigations/2023/09/10/michigan-state-football-coach-sexual-harassment-claim/70679703007/>

¹² <https://www.usatoday.com/story/sports/columnist/mike-freeman/2023/09/10/michigan-state-coach-mel-tucker-isnt-believable-brenda-tracy-is/70818026007/>.

175. But the Defendants cared nothing about the damage being inflicted on Plaintiff, nor about the deprivation of his right to a confidential and fair investigative process. Instead, the Defendants were alarmed that that the USA Today articles once again made MSU's history of failing to properly deal with sexual abuse allegations the subject of national media attention. Specifically, the September 10, 2023 USA Today article includes the following:

“Adding to the uncertainty, the institution tasked with sorting out the facts *[MSU] is perhaps best known for missing repeated opportunities to stop one of the most prolific sexual abusers in American history. For nearly two decades, Michigan State leaders failed to act on complaints against Larry Nassar, the disgraced former U.S.A. Gymnastics and campus physician accused of sexually assaulting more than 300 female athletes under the guise of medical treatments. He has been sentenced to a minimum of 100 years in prison.* Amid its efforts to rebuild trust among students, employees, alumni and the East Lansing community, Michigan State's leaders must now decide whether the face of its prestigious football program is guilty of sexually harassing one of the country's most influential advocates against gender-based violence.

176. Upon information and belief, the publication of the USA Today articles, and specifically, its direct reference to the Nassar scandal and MSU's history of failing to address claims of sexual misconduct, raised alarms at the highest levels of the University.

177. Upon information and belief, Defendants Quinn, Woodruff, Haller and the Trustee Defendants decided that swift action needed to be taken against Plaintiff in order to create the impression that MSU, and the Individual Defendants themselves, unlike their predecessors (many of whom were forced to resign in the aftermath of Nassar), were taking decisive action to address a purported claim of sexual harassment. The Defendants decided that such action needed to be taken even though the administrative process was still underway and even though Plaintiff had not been afforded a hearing to address Tracy's allegations, as he was entitled to under the RVSM

Policy, and as a matter of law. Plaintiff's rights to due process were simply not part of the MSU agenda. As such, those rights were trampled.

K. September 10, 2023: MSU's Press Conference and Suspension of Plaintiff Without Pay Despite the Ongoing Administrative Process and Lack of Hearing

178. The immediate media frenzy caused by Tracy's leak of confidential investigative information had its desired effect. Within hours of the publication of USA Today's initial article, Defendants Woodruff and Haller appeared together at a hastily arranged press conference on September 10, 2023 to announce that "with the support of University leadership" the Defendants were suspending Plaintiff from his position of head coach of the men's football team without pay.

179. Haller claimed that the decision to suspend Plaintiff was based on "new developments" that had come to light.¹³ However, when asked specifically by a member of the media, "what changed to make you take action now given what you knew before?" Haller could point to nothing. Instead, he responded: "Yeah Matt, we're always evaluating, um, interim measures were in place, and those interim measures have been updated. Initially there was no contact with the complainant, and then also increased oversight from me of the program but also the coach, so um it's an ongoing process and we update those interim measures as we receive information." *Id.*

180. Haller's non-response is a model of obfuscation and double-speak. In truth, there was no "new development" beyond the facts the Individual Defendants knew about months earlier. The only actual "new development" was that, due to no fault of Plaintiff (and in fact, due directly to Tracy's release of more than a thousand pages of confidential OIE investigative material to the media), MSU's history of mishandling claims of sexual misconduct was once again thrust into the

¹³ <https://www.wzzm13.com/video/sports/local-sports/michigan-state-university-press-conference-announcing-suspension-of-mel-tucker/69-adfba6d9-131b-4805-8a75-9477f7f66564>.

national spotlight. The fact that Plaintiff categorically denied Tracy's contentions was irrelevant as far as the Defendants were concerned.

181. Haller's false public statement that there were "new developments" that supported the University's sudden decision to suspend Plaintiff without pay had a devastating effect on Plaintiff, as it constituted a statement that "the leadership" of the University had a basis to believe, based on new information, that Plaintiff had engaged in recent serious misconduct that required the immediate "interim" measure of suspending Plaintiff without pay during the football season and separating him from the football program.

182. In addition to Haller's false contention that the suspension of Plaintiff was based on "new developments," Haller also stated repeatedly that the suspension was an "interim measure," that "the process was not complete" and that the "University's objective has been and remains focused on conducting a fair, thorough, and unbiased investigation, and allowing the processes to play out." He emphasized again, that "[t]he University's formal conclusion of the investigation will occur when final decision processes are complete. I want to emphasize again, this investigation is not complete."

183. Defendant Woodruff then took her turn at the podium. She stated at the outset that the actions taken against Plaintiff "comes with the full weight of my support" and also thanked the Board of Trustees "for their engagement with me today." She then reiterated Haller's reference to "new developments" that came to light which "can impact the case and the community" and that the decision "to place [Plaintiff] on an unpaid leave is equally necessary and appropriate for today's circumstances." Woodruff stated that "[t]hese actions are not taken lightly, and I know AD Haller is making them in support of the individuals impacted." Thus, like Haller, Woodruff stated that the "new developments" justified immediately separating Plaintiff from the football team.

184. In obvious response to the USA Today article's focus on MSU's history of scandals involving its athletics program, Woodruff stated that the allegations that were made public in the media are not indicative of MSU reverting to the "MSU of old." Specifically, Woodruff stated in part as follows:

"In the *MSU of today*, when any report comes into the University, it is appropriately and rigorously reviewed. In the *MSU of today*, our investigative processes are fair and thorough. In the *MSU of today*, in all cases, we continually review interim measures to ensure appropriate actions are taken, so this morning's news *might sound like the MSU of old*. It was not. It is not, because an independent, unbiased investigation is and continues to be conducted. . . It is not the MSU of old because we maintain the confidence of the claimant and the respondent, while respecting the claimant and respondent's right to share their story. It is not because of the further action we take today."

185. Like Haller, Woodruff emphasized that the ***"investigative process is not complete and has not been referred to the [Athletic Director] or the University. That process will not be complete until there is a hearing and a final decision."***

186. Woodruff's statements were intended to give the appearance of a fair process for Plaintiff when, in truth and in fact, the process was anything but fair and the outcome was predetermined. And by drawing a distinction between the "MSU of today" and the "MSU of old," Woodruff lumped Plaintiff together with Nassar and his horrific conduct that MSU allowed to persist. Woodruff's association of Plaintiff and the "MSU of old" was a false characterization designed to harm Plaintiff. In addition, Woodruff's reference to "new developments," her statement that "we continually review interim measures to ensure appropriate actions are taken," and her reference to the purported "impact" of the alleged conduct, reinforced Haller's false contention that some new information created a basis to take such drastic and immediate action against Plaintiff. Moreover, Woodruff's repeated reference to the "MSU of today" and her attempt

to create the impression that the University had moved past its scandal-plagued past, makes unmistakably clear that the Defendants decided to prioritize protection of the University and the Defendants themselves without regard to the rights of Plaintiff.

187. The statements by Haller and Woodruff that the investigation was not complete, and that Plaintiff would be provided an opportunity to address Tracy's claims at a hearing also were knowingly false. As far as the Defendants were concerned, the so-called investigation was over. Plaintiff was collateral damage in the wake of Defendants' plan to protect the image of MSU's athletics program at his expense.

188. The public statements by Haller and Woodruff were all the more harmful coming only hours after the publication of the USA Today article, as they conveyed that the Defendants had a substantial basis to believe – before any hearing – (a) that Tracy's account of the events set forth in the article was true, and (b) that there was a basis to disbelieve Plaintiff's contention that none of the conduct alleged was unwanted and that it all occurred within the confines of a close personal relationship and was fully consensual.

189. The public statements made by Haller and Woodruff which, upon information and belief, were authorized by the other Individual Defendants – *i.e.*, the “University leadership” referenced by Haller and the Trustees referenced by Woodruff – were knowingly false and made with flagrant disregard for the facts. In addition, they were made with actual malice and with the intent to harm Plaintiff in violation of his constitutional, statutory, and contractual rights. Simply put, Haller and Woodruff's improper and unlawful actions on September 10, 2023 – done with authorization and support from the University leadership – were devastating to Plaintiff's reputation.

L. September 10, 2023: Statements by Michigan Governor Gretchen Whitmer

190. On the evening of September 10, 2023, Governor Gretchen Whitmer issued a statement demanding accountability with respect to Tracy’s claim against Plaintiff. Seemingly taking Tracy’s false narrative at face value, Governor Whitmer issued the following statement: “As a survivor, I’m shocked. As a Spartan, I’m disappointed. As Governor, I want answers . . . I know the pain that so many feel when allegations like this come to light because I live it too. It’s retraumatizing. MSU holds a special place in so many of our hearts—which is what makes this hurt more.” The statement goes on to say: “We deserve to know when the university knew about these allegations and why they made the decisions they did. We need to ensure that one of our state’s flagship universities, one that carries so much weight around the world, is learning from the past and not recreating it.”

191. Upon information and belief, the statements made by Governor Whitmer were a contributing factor in the Defendants’ decision to terminate Plaintiff’s employment, as set forth further herein.

M. September 11, 2023: Plaintiff’s Statement to the Media

192. Shortly after the USA Today articles were published, Plaintiff tried to respond to the one-sided and unfair attack on his reputation, and the unlawful actions of the Defendants, by releasing a written statement (the “Statement”) to the media. A copy of Plaintiff’s Statement is attached hereto as Exhibit B.

193. Plaintiff again categorically denied the allegations of harassment and again stated that the event at the heart of her allegations – what Tracy described as Plaintiff engaging in unwanted activity during a telephone call – “was an entirely mutual, private event between two

adults living at opposite ends of the country.” He pointed out that “never once during the 36 minutes did she object in any manner, much less hang up the phone.”

194. Plaintiff’s Statement pointed to other facts that cast severe doubt on her claim, including that Tracy never raised her claim with anyone for more than four months after the allegedly offending incident, and instead continued to communicate with Plaintiff normally. Plaintiff noted that it was only after he and Tracy had a falling out (after Plaintiff complained that Tracy and her assistant were spreading rumors about Plaintiff’s marriage) that Tracy decided to file her claim.

N. September 27, 2023: Defendants Terminate Plaintiff’s Employment Before Providing a Hearing on Tracy’s Claims

195. On September 18, 2023 – one week after the publication of the USA Today Articles – Defendant Haller sent Plaintiff a letter providing “notice of the University’s intent to terminate” the Employment Agreement (the “Termination Notice”). A copy of the Termination Notice is attached hereto as Exhibit C.

196. Despite the public assurances made by Defendants Haller and Woodruff just one week earlier that the process was “not complete,” and that the University intended to have the process “play out” at a “hearing,” Haller now asserted that no such hearing was necessary. Instead, the Termination Notice stated that in the course of the investigation process, the “University amassed a body of undisputed evidence of misconduct that warrants termination for cause.”

197. The Termination Notice invoked the Early Termination provision of the Employment Agreement (Section III(B)(1)) and contends that there is undisputed evidence that Plaintiff engaged in conduct “involving moral turpitude” or that would “tend to bring public disrespect, contempt, or ridicule upon the University.”

198. Defendant Haller's statement that there was "undisputed evidence" to support Plaintiff's termination without providing him with his right to hearing is demonstrably false. And the Termination Notice was designed solely to create a pretextual basis to terminate Plaintiff's employment in violation of his constitutional, statutory, and contractual rights, including the right to a hearing, which Haller and Woodruff publicly stated was necessary.

199. On September 25, 2023, Plaintiff, through counsel, sent Haller a lengthy letter in response to the Termination Notice. A copy of the "Response Letter" is attached as Exhibit D. The Response Letter established, in painstaking detail, that each and every allegation that Haller and MSU rely upon for their unlawful termination of Plaintiff's Employment Agreement based on "undisputed facts" was and had been hotly disputed.

200. Accordingly, Defendants purported to fire Plaintiff before affording him an opportunity to challenge Tracy's account was completely unfounded and in direct violation of the RVSM rules guaranteeing Plaintiff the right to a live hearing and providing him with a presumption of non-responsibility. Moreover, the Response Letter demonstrated that the allegations at issue, even if they were true (which they are not) did not rise to the level of moral turpitude or any other "for cause" criteria as a matter of law.

201. Just two days later, on September 27, 2023, Haller, ignoring the fact that the entire basis of MSU's termination of Plaintiff was shown to be false, sent a letter confirming that the Defendants were terminating Plaintiff's Employment Agreement for cause. A copy of the "Termination Letter" is attached hereto as Exhibit E.

202. In the letter, Haller stated that "it is decidedly unprofessional . . . to flirt, make sexual comments, and masturbate while on the phone with a University vendor." But Haller ignored the fact that: (a) Tracy was not a University vendor at the time of the personal relationship

given that she was hired and paid for a single one-time training session completed in August 2021; and (b) contrary to Tracy's false narrative, Plaintiff contended that he and Tracy were involved in a private, personal relationship and that all of the conduct Haller referenced – the flirting, the sexual comments and the sexual activity – was fully consensual and not unwanted as Tracy alleged. Thus, according to Plaintiff, the conduct between Plaintiff and Tracy occurred in the context of a deeply personal relationship between consenting adults that could not possibly constitute moral turpitude or any other basis for termination. In truth, Plaintiff was terminated from his position solely because Tracy – emboldened by the improper investigation – revealed confidential and intimate details of their relationship to the national news media and caused a media frenzy with her false allegations.

203. The termination of Plaintiff's employment by the Defendants was based on (a) the Individual Defendants' fear of negative publicity and public attention, (b) their self-interest in maintaining their image and positions, and (c) the Defendants' related decision to simply accept Tracy's version of events even though they were vigorously disputed by Plaintiff, the administrative process was still ongoing, and Plaintiff had not been provided an opportunity to challenge Tracy's allegations at a hearing.

204. MSU's termination of Plaintiff was unlawful and was done solely to protect the University based on pretextual grounds.

O. October 2023: Plaintiff Obtains Text Messages That Tracy Failed to Provide to MSU

205. Even though Defendants had already terminated Plaintiff's employment – the most severe discipline available – they nevertheless decided to proceed with a purported “hearing” under the RVSM Policy on or about October 5, 2023.

206. The hearing was simply after-the-fact window dressing designed to provide cover for Defendants' illegal termination of Plaintiff.

207. The hearing deprived Plaintiff of due process. For example, the proceeding did not provide for testimony by witnesses under oath and, in fact, because Tracy was not affiliated with MSU (a requirement for the proceeding in the first place), there were no negative consequences for Tracy's failure to tell the truth. In addition, there was no direct questioning of hearing witnesses (only the resolution officer was permitted to ask questions) a hallmark of any fair proceeding with live testimony, and the resolution officer excluded witnesses that Plaintiff sought to call, including an expert on the RVSM policy, Sokolow (*see, supra*, ¶¶ 148-49).

208. Plaintiff, who was suffering from a serious medical condition at the time, was unable to attend the hearing. On September 20 and 25, 2023, Plaintiff requested a short adjournment of the hearing due to his medical condition. The Defendants ignored Plaintiff's adjournment request and the hearing proceeded as scheduled.

209. Shortly before the hearing was set to begin, counsel for Plaintiff came into possession of a trove of text messages Tracy failed to provide to investigators which exposed the falsity of her claims against Plaintiff and her financial motivation to make the false claims and extract a quick payout. They were provided to counsel by the husband of Ms. Tracy's close friend and confidant, Ahlan Alvarado.

210. Specifically, several months before the hearing, in or about June 2023, Ms. Alvarado was in a serious car accident. She was hospitalized and, tragically, she passed away shortly thereafter on June 19, 2023.

211. Upon information and belief, while Ms. Alvarado was hospitalized after the accident, and then again after her death, Tracy appeared at her home and asked her relatives for access to Ms. Alvarado's phone and computer.

212. Upon information and belief, Ms. Alvarado's relatives thought that Tracy's efforts to access Ms. Alvarado's electronic devices were unseemly, and they suspected that it was being done so that Tracy could delete her communications with Ms. Alvarado, which undermined Tracy's claims against Plaintiff. Accordingly, Ms. Alvarado's relatives, through counsel, contacted counsel for Plaintiff and provided them with access to Ms. Alvarado's text messages.

213. The messages that Tracy failed to produce from MSU undermined many of the core contentions underlying her claims against Plaintiff and confirmed that her complaint was motivated by her desire for financial gain. These messages include some of the messages discussed herein in which Tracy states that "she was down to \$5" in her bank account at the time she filed her complaint, that she was filing her complaint against Plaintiff in an effort "to come to an agreement" and to "make [Plaintiff] pay me 10k directly," and that she viewed Plaintiff's contract extension with MSU as a source of "financ[ing]" for her organization.

214. In addition to the text messages, a new witness came forward and provided an affidavit indicating that the sexual conduct that occurred during the April 28, 2022, phone call was, as Plaintiff has contended, fully consensual.

215. Upon review of the material, on October 5, 2023, counsel for Plaintiff sent a letter to *Woodruff, Quinn, and all the members of the Board of Trustees* summarizing the new evidence and providing copies of the text messages and the witness statement. Plaintiff's counsel pointed out that that the new evidence confirmed what Plaintiff had been contending all along – that Plaintiff did not engage in misconduct with Tracy, the investigation was fatally flawed, and that

Plaintiff had not been provided any semblance of due process. The letter requested that the Defendants contact Plaintiff's counsel so that the unfair situation, including Plaintiff's improper termination, could be addressed further. None of the Defendants responded.

216. Given the lack of a response, on October 19, 2023, Plaintiff's counsel sent another letter, this time to the OIE resolution officer assigned by Defendants to conduct the hearing on Tracy's claim. Plaintiff's counsel advised the resolution officer of the new evidence and further advised that Tracy's organization had gone to state court and obtained an *ex parte* temporary restraining order preventing the release of Tracy's text messages to prevent the full story from coming out.

217. Pursuant to the RVSM Policy, Plaintiff's counsel requested that the OIE resolution officer "keep the record open and delay making a determination until after we are able to provide you with these text messages." Again, the Defendants refused to delay the hearing or to consider any of the critical evidence that exposed the falsity of Tracy's claim.

218. Given the restrictions imposed by the OIE resolution officer engaged by MSU, the lack of due process in the proceedings, and the failure to consider the newly-discovered text messages, the "hearing" orchestrated by Defendants resulted in its pre-determined outcome – a finding in favor of Tracy on her claims that Plaintiff engaged in unwanted sexual harassment.

219. The farcical after-the-fact "hearing" does not in any way legitimize Defendants' unlawful actions as alleged herein. To the contrary, it was simply the last act in a series of many specifically designed to deprive Plaintiff of his constitutional, statutory and contractual rights.

VI. CLAIMS FOR RELIEF

COUNT I

42 U.S.C. §1983 – Fourteenth Amendment Procedural Due Process Property and Liberty Interests

(as against the Individual Defendants)

220. Plaintiff repeats and realleges the foregoing paragraphs as if fully set forth herein.

221. The Fourteenth Amendment to the United States Constitution provides that no state shall “deprive any person of life, liberty, or property, without due process of law.”

222. Fourteenth Amendment due process protections are required in higher education disciplinary decisions at public institutions.

223. Plaintiff had a property interest in his 2021 Employment Agreement and in having the Defendants comply with its terms.

224. Plaintiff was entitled to notice and a meaningful opportunity to be heard prior to the deprivation of his property interest.

225. Plaintiff has a protected liberty interest in his good name, reputation, honor, and integrity of which he cannot be deprived absent due process.

226. Plaintiff is entitled to process commensurate with the allegations and the discipline imposed and consequences he was facing.

227. As detailed above, the Individual Defendants undertook to subject Plaintiff to an improper, sham investigation that was designed from the inception to create a vehicle for the Defendants to retain jurisdiction over the claim against him so that the Defendants could create a pretextual basis to deprive Plaintiff of his rights.

228. The Individual Defendants also deprived Plaintiff of his property interests by assisting in the termination of his employment without due process by creating a pretextual basis to summarily fire him without a pre-termination hearing once Tracy’s claims became public due to her unauthorized disclosure of confidential OIE Investigation information to the media.

229. The after-the-fact hearing was stage-managed by the Individual Defendants and was a farce, as the Defendants had already imposed the most drastic sanction available to them – termination of Plaintiff’s employment – before the hearing was conducted.

230. Moreover, the purported hearing was specifically designed by the Individual Defendants, in cooperation with the OIE resolution officer they engaged, to suppress evidence that would have exposed the false basis for the unlawful conduct engaged in by the Individual Defendants.

231. Indeed, in direct contravention of the University’s policies and applicable law, the Defendants refused to allow Plaintiff to introduce important evidence that had recently come to light which directly undermined Plaintiff’s allegations and, if fairly considered, would have resulted in dismissal of Tracy’s claim.

232. In addition, Defendants Woodruff and Haller knowingly and voluntarily, or at the very least, with reckless disregard for the truth, made false statements concerning Plaintiff, including that evidence was “undisputed” and that his sudden suspension without pay and termination were based on “new developments.”

233. The false statements made by Defendants Woodruff and Haller were, upon information and belief, fully authorized by Defendant Quinn and by the Trustee Defendants.

234. For these reasons, and those set forth herein, the Individual Defendants actively and voluntarily participated in the violation of Plaintiff’s constitutional rights. The Individual Defendants knew that Plaintiff has a clearly established right to due process, and a reasonable person would know that this conduct would violate Plaintiff’s due process rights.

235. The Individual Defendants violated Plaintiff's due process rights both pre-termination and post-termination. The Individual Defendants did not afford Plaintiff meaningful notice and opportunity to be heard prior to adverse personnel actions, or post-termination.

236. The Trustee Defendants and the Administration Defendants each violated their respective obligations under the MSU Bylaws, which, in addition to the obligations that exist as a matter of law, required the administrators and Trustees to protect Plaintiff's rights and provide him with full and fair process in the face of the allegations against him. The Trustee Defendants had the duty to ensure that MSU employees are treated "in accordance with the law and [MSU's] internal policies and regulations," but they did not do so with respect to Plaintiff.

237. As a direct and proximate result of the Defendants' unlawful actions, Plaintiff has suffered, continues to suffer, and will suffer irreparable harm, injury, and damages, including but not limited to the loss of his position as Head Coach, loss of future employment opportunities, mental and emotional distress, humiliation and embarrassment, and loss of personal and professional reputation.

COUNT II

42 U.S.C. §1983 Conspiracy– Fourteenth Amendment Procedural Due Process Property and Liberty Interests (as against the Individual Defendants)

238. Plaintiff repeats and realleges the foregoing paragraphs as if fully set forth herein.

239. As detailed above in Count I, the Individual Defendants undertook together to subject Plaintiff to an improper, sham investigation that was designed from the inception to create a vehicle for MSU and the Individual Defendants to retain jurisdiction over the claim against him so that the Individual Defendants could create a pretextual basis to deprive Plaintiff of his rights.

240. For these reasons, and those set forth herein, the Individual Defendants agreed upon, and actively and voluntarily participated in a plan to violate Plaintiff's constitutional rights.

Defendants knew that Plaintiff had a clearly established right to due process, and a reasonable person would know that their conduct would violate Plaintiff's due process rights.

241. The Individual Defendants shared in the objective to deprive Plaintiff of his clearly established rights.

242. Each of the Individual Defendants committed overt acts in furtherance of the conspiracy that caused injury to Plaintiff, including: asserting jurisdiction over a claim that fell outside the RVSM policy coverage; assisting in and supporting the sham and improper investigation; summarily suspending Plaintiff without pay and soon thereafter terminating Plaintiff without a hearing; assisting in and supporting a farcical, post-termination hearing; refusing to consider critical evidence that undermined Tracy's claims; and making false statements concerning the process.

243. The overt acts may be deemed to be attributed to each of Individual Defendants as part of their conspiracy to violate Plaintiff's rights.

244. As a direct and proximate result of the Individual Defendants' unlawful actions, Plaintiff has suffered, continues to suffer, and will suffer irreparable harm, injury, and damages, including but not limited to the loss of his position as Head Coach, loss of future employment opportunities, mental and emotional distress, humiliation and embarrassment, and loss of personal and professional reputation.

COUNT III

42 U.S.C. § 1981 – Fourteenth Amendment Equal Protection Rights (as against MSU and the Individual Defendants)

245. Plaintiff repeats and realleges the foregoing paragraphs as if fully set forth herein.

246. The Fourteenth Amendment to the United States Constitution provides that no state shall "deny to any person within its jurisdiction the equal protection of the laws."

247. Fourteenth Amendment equal protection rights apply in higher education disciplinary decisions at public institutions.

248. Plaintiff, who is Black, is a member of a protected class.

249. As alleged herein, MSU and the Individual Defendants caused Plaintiff to suffer an adverse employment action, including his suspension without pay and the termination of his employment.

250. As alleged herein, there was no legitimate basis for the actions taken against Plaintiff by MSU and the Individual Defendants.

251. As alleged herein, Plaintiff was treated differently from similarly situated white coaches and employees of MSU who were not subjected to similar investigations in the face of serious accusations of misconduct involving their teams and themselves, similar public statements and press conferences by MSU leadership regarding allegations against them, or the harsh, disproportionate, unfair and improper actions taken against Plaintiff.

252. The Individual Defendants and MSU actively and voluntarily participated in the violation of Plaintiff's equal protection rights by treating Plaintiff, who is Black, differently from white personnel in the MSU Athletics Department.

253. MSU and the Individual Defendants knew that Plaintiff had a clearly established right to equal protection, and a reasonable person would know that failing to treat Plaintiff in the same way as similarly situated personnel under federal and state law and MSU policies would violate Plaintiff's equal protection rights.

254. As a direct and proximate result of MSU's and the Individual Defendants' unlawful actions, Plaintiff has suffered, continues to suffer, and will suffer irreparable harm, injury, and damages, including but not limited to the loss of his position as Head Coach, loss of future

employment opportunities, mental and emotional distress, humiliation and embarrassment, and loss of personal and professional reputation.

COUNT IV

Breach of Contract

(as against Defendant MSU)

255. Plaintiff repeats and realleges the foregoing paragraphs as if fully set forth herein.

256. As detailed above, Plaintiff had a valid employment contract under Michigan law with MSU pursuant to his Employment Agreement.

257. Under the terms of the Employment Agreement, MSU was obligated to compensate Plaintiff for a ten-year term and his employment could only be terminated for cause under very limited circumstances as set forth in the Early Termination Provision.

258. MSU noticed its intent of termination under the Early Termination Provision just days after the publication of the one-sided September 10, 2023, USA Today article concerning Tracy's allegations against Plaintiff. Thereafter, MSU terminated the Employment Agreement on September 27, 2023.

259. MSU improperly invoked the Early Termination Provision of the Employment Agreement to orchestrate the unjustified termination of the Employment Agreement based on transparently false and pretextual grounds.

260. This improper invocation of the Early Termination Provision was a breach of Defendant's obligations under the Employment Agreement.

261. Contrary to MSU's demonstrably false and pretextual statements, Plaintiff did not engage in conduct that constitutes moral turpitude or any of the other bases for dismissal under the Employment Agreement's Early Termination provision relied upon by MSU. Instead, in wrongfully terminating the Employment Agreement MSU relied upon information regarding

Plaintiff's private relationship that had become public due to Tracy's improper release of confidential OIE investigative information to the media. Such investigative information would never have existed had MSU not improperly forced the matter into the RVSM process where no coverage existed.

262. Plaintiff performed all his obligations under the Employment Agreement.

263. As a direct, proximate, and natural result of MSU's breach, Plaintiff suffered foreseeable damages, as Plaintiff has been deprived of his position and salary for a term of years contemplated by the Employment Agreement.

COUNT V

Tortious Interference with Contractual Relations (as against the Individual Defendants)

264. Plaintiff repeats and realleges the foregoing paragraphs as if fully set forth herein.

265. Plaintiff had a valid employment agreement under Michigan law with MSU pursuant to his 2021 Employment Agreement.

266. As detailed above, MSU and the Individual Defendants improperly invoked the Early Termination Provision of the Employment Agreement without a proper basis.

267. The Individual Defendants planned, promoted and assisted in MSU's breach of Plaintiff's Employment Agreement in order to protect MSU and the MSU athletics program, protect their image and retain their positions with the University, and to assist MSU in evading its financial responsibilities to Plaintiff, as further alleged herein.

268. The Individual Defendants conspired to create a false predicate for such action, by spearheading the improper OIE investigation to keep the Tracy claims out of the media and retain authority to discipline Plaintiff. Once Tracy's claims and the illegitimate investigative materials

were made public by Tracy herself, the Individual Defendants further conspired to establish a pretextual basis to terminate Plaintiff's contract without a hearing.

269. Namely, Defendants Haller and Woodruff made false statements concerning "new developments" in the OIE matter and "undisputed facts" to push forward with Plaintiff's termination under the Early Termination Provision, despite there being no new developments and Plaintiff's vociferous denials of Tracy's allegations.

270. The Individual Defendants conspired to cause the breach of Plaintiff's valid contract for the improper purpose of attempting to protect themselves and save themselves and MSU from unwanted negative media and public attention in the wake of several scandals involving the athletic department and to protect their own positions with the University.

271. Upon information and belief, each of the Trustee Defendants was aware of the effort to terminate Plaintiff's Employment Agreement and approved and participated in the effort to terminate Plaintiff's employment.

272. Plaintiff suffered damages as a result of the tortious interference with his contract, including but not limited to loss of income, damage to his personal and professional reputation, and extreme emotional harm.

COUNT VI

Defamation

(as against Woodruff and Haller)

273. Plaintiff repeats and realleges the foregoing paragraphs as if fully set forth herein.

274. Defendants Woodruff and Haller each made false and defamatory statements concerning Plaintiff, or authorized, advanced or participated in the making of such false statements, as more particularly set forth herein.

275. Haller and Woodruff made false and defamatory statements to the public at the September 10, 2023 press conference announcing Plaintiff's sudden suspension without pay, including that "new developments" supported their drastic and immediate employment actions against Plaintiff, which statements were knowingly false. That statement was meant to and did give the impression that Plaintiff had engaged in further misconduct requiring immediate disciplinary action to separate him from the football program before any hearing.

276. Upon information and belief Defendant Quinn and members of the Board of Trustees authorized the release of the false and defamatory statements made by Woodruff and Haller.

277. The false and defamatory statements made by Defendants Haller and Woodruff were not privileged communications and were made to third parties, including the press.

278. Haller's and Woodruff's false statements were defamatory *per se* because they were designed to, and did, impugn Plaintiff's reputation and employment status.

279. Defendant Haller and Woodruff made such false statements intentionally and/or recklessly without regard to the truth, knowing that the statements were false, and/or acted with malice toward Plaintiff in making them in order to impugn Plaintiff.

280. As a direct and proximate result of Haller's and Woodruff's actions, Plaintiff has suffered, continues to suffer, and will suffer irreparable harm, injury, and economic damages, including but not limited to the loss of his position as head coach, loss of future employment opportunities, damage to his personal and professional reputation, and severe emotional distress.

COUNT VII

Aiding and Abetting

(as against Quinn and the Trustee Defendants)

281. Plaintiff repeats and realleges the foregoing paragraphs as if fully set forth herein.

282. Each of the Defendants included in this Count VII authorized the false and misleading statements made by Haller and Woodruff concerning Plaintiff at the September 10, 2023 press conference.

283. The authorized statements – which were represented as having been approved by the highest level of the MSU administration and Board of Trustees – were made to a third party, the press.

284. The authorized statements were made to the press with the patent intention of harming Plaintiff and creating a false predicate to thereafter terminate his agreement.

285. As a direct and proximate result of Defendants' actions, Plaintiff has suffered, continues to suffer, and will suffer irreparable harm, injury, and economic damages, including but not limited to loss of future employment/financial opportunities, and loss of personal and professional reputation.

COUNT VIII

Intentional Infliction of Emotional Distress (as against all Defendants)

286. Plaintiff repeats and realleges the foregoing paragraphs as if fully set forth herein.

287. Defendants' actions detailed at length above constitute extreme and outrageous conduct that exceed all possible bounds of decency, and were atrocious, and intolerable in a civilized community.

288. As detailed above, the Defendants undertook to subject Plaintiff to an improper, biased, and sham investigation that was designed from the inception to create a vehicle for the Defendants to retain jurisdiction over Tracy's claims so that the Defendants could control the investigation and create a pretextual basis to terminate Plaintiff.

289. The false and misleading statements made by Defendants Woodruff and Haller at the September 10, 2023 press conference with the authorization of the Individual Defendants, and the public announcement of Plaintiff's immediate suspension without pay, were designed to protect the Individual Defendants and MSU, knowing the severe damage they were causing to Plaintiff personally and professionally.

290. Moreover, Defendants created a pretextual basis to summarily fire Plaintiff without a pre-termination hearing once the Tracy claims became public due to her improper disclosure of confidential OIE investigation information to the media.

291. The after-the-fact hearing was managed by the Individual Defendants and was a farce, as the Defendants had already imposed the most drastic sanction available to them – termination of Plaintiff's employment – before the hearing was conducted.

292. This conduct was undertaken to protect their interests at Plaintiff's expense and constituted a conspiracy to deprive Plaintiff of his ability to earn a living.

293. The purported hearing was specifically designed by the Defendants, in cooperation with the resolution officer they engaged, to exclude evidence that would have exposed the false basis for the unlawful conduct engaged in by the Defendants.

294. Defendants Woodruff and Haller knowingly and voluntarily, or at the very least, with reckless disregard for the truth, made false statements concerning Plaintiff, including that evidence was "undisputed" and that his suspension without pay and subsequent termination was based on "new developments" as further alleged herein.

295. Defendants Woodruff's and Haller's false and misleading statements to various press outlets concerning Plaintiff that intentionally impugned his reputation and integrity without any basis in fact, shock the conscience.

296. Defendants acted with intent to cause harm toward Plaintiff or have shown a reckless disregard for the consequences of their actions.

297. Defendants inflicted emotional distress so severe that no reasonable person could be expected to endure it.

298. Plaintiff has suffered in the face of false accusations and statements impugning him without a meaningful opportunity to set the record straight.

299. Defendants' outrageous conduct is the direct cause of Plaintiff's severe emotional distress.

COUNT IX

Violations of Elliott-Larson Civil Rights Act (as against all Defendants)

300. Plaintiff repeats and realleges the foregoing paragraphs as if fully set forth herein.

301. The Elliott-Larson Civil Rights Act prohibits discriminatory employment practices against protected classes.

302. Plaintiff, who is Black, is a member of a protected class.

303. As alleged herein, Plaintiff suffered an adverse employment action, including his suspension without pay and termination of his employment.

304. As alleged herein, there was no legitimate basis for the actions taken against Plaintiff.

305. As alleged herein, Plaintiff was treated differently from white coaches and employees of MSU who were not subjected to similarly harsh, improper and unlawful conduct in the face of allegations much more serious than those at issue herein.

306. The Individual Defendants and MSU, acting through its authorized agents, including the Individual Defendants, actively and voluntarily participated in the violation of

Plaintiff's equal protection rights by treating Plaintiff, who is Black, differently from white personnel in the MSU Athletics Department, including Dantonio and Izzo.

307. MSU and the Individual Defendants knew that Plaintiff has a clearly established right to be free from racial discrimination, and a reasonable person would know that failing to treat Plaintiff in the same way as similarly situated personnel under state law and MSU policies would violate the Elliott-Larson Civil Rights Act.

308. As a direct and proximate result of the Defendants' unlawful actions, Plaintiff has suffered, continues to suffer, and will suffer irreparable harm, injury, and damages, including but not limited to the loss of his position as head coach, loss of future employment/financial opportunities, mental and emotional distress, humiliation and embarrassment, and loss of personal and professional reputation.

VII. RELIEF REQUESTED

Plaintiff demands judgment against Defendants as follows:

1. Awarding Plaintiff compensatory, economic, and noneconomic damages in whatever amount Plaintiff is found to be entitled;
2. Awarding Plaintiff damages for all losses sustained to date as a result of Defendants' violations of their contractual obligations to Plaintiff;
3. Awarding Plaintiff damages for loss of future earnings;
4. Awarding Plaintiff exemplary and/or punitive damages in whatever amount Plaintiff is found to be entitled;
5. Awarding Plaintiff interest, costs, reasonable attorneys' fees, and expert witness fees; and

6. Awarding to Plaintiff such other and further relief as the Court deems proper and just.

VIII. JURY DEMAND

Plaintiff Mel Tucker, by and through his attorneys, demands a trial by jury of all of the issues in this cause that are so triable.

Dated: July 31, 2024

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* *Application for Admission Forthcoming*

** *Application for Admission Pending*