

agreements, irreparable damage to his personal and professional reputation, loss of various professional opportunities, and acute emotional distress.

ANSWER: Defendant admits that Plaintiff purports to bring this action for the relief identified. Defendant further admits, upon information and belief, that she understands that Plaintiff served as President of the College of DuPage located in Glen Ellyn, Illinois, from approximately January 1, 2009, until his termination on October 20, 2015. Defendant denies the remaining allegations in this paragraph.

JURISDICTION AND VENUE

2. Jurisdiction is proper in this Court pursuant to 28 U.S.C. §§ 1331 and 1343, as this action arises under the laws of the United States, specifically 42 U.S.C. § 1983 and the Fourteenth Amendment to the United States Constitution.

ANSWER: Defendant states that the allegations in this paragraph constitute legal conclusions for which no answer is required. To the extent an answer is required, Defendant admits that jurisdiction is proper in this Court.

3. This Court has supplemental jurisdiction over Dr. Breuder's state law claims pursuant to 28 U.S.C. § 1367.

ANSWER: Defendant states that the allegations in this paragraph constitute legal conclusions for which no answer is required. To the extent an answer is required, Defendant admits that this Court currently has jurisdiction over Dr. Breuder's state law claims but Defendant reserves her right to contest the Court's jurisdiction over Dr. Breuder's state law claims based on events that would impact that jurisdiction in the future.

4. Venue is proper under 42 U.S.C. § 2000e-5(f)(3) and 28 U.S.C. § 1391(b) since the events giving rise to the claims asserted herein occurred, and the Defendants conduct business and/or reside, within this District.

ANSWER: Defendant states that the allegations in this paragraph constitute legal conclusions for which no answer is required. To the extent an answer is required, Defendant admits that venue is proper in this District.

THE PARTIES

5. Dr. Breuder is a resident of the Village of Lake Barrington, Illinois. Dr. Breuder served as President of the College of DuPage, located in Glen Ellyn, Illinois, from January 1, 2009 until his wrongful termination on October 20, 2015. Dr. Breuder has served as a college president for thirty-five years. The College of DuPage was his third presidential appointment.

ANSWER: Defendant admits that from January 1, 2009 until his termination on October 20, 2015, Plaintiff served as President of the College of DuPage, located in Glen Ellyn, Illinois. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations (a) that Plaintiff is resident of the Village of Lake Barrington, Illinois, (b) that Plaintiff has served as a college president for thirty-five years, and (c) that the College of DuPage was Plaintiff's third presidential appointment. Defendant denies all remaining allegations in Paragraph 5.

6. Defendant Board of Trustees of Community College District No. 502, DuPage County, Illinois ("Board") is a body politic and corporate organized under the Illinois Public Community Colleges Act, 110 ILCS 805 *et seq.*, which has offices and does business in Glen Ellyn, Illinois. The Board consists of seven duly elected and acting trustees. Those trustees include Kathy Hamilton, Deanne Mazzochi, Frank Napolitano, Charles Bernstein, Erin Birt, Dianne McGuire, and Joseph Wozniak.

ANSWER: Defendant denies that Kathy Hamilton is a trustee of the College of DuPage. Defendant admits the remaining allegations in this paragraph.

7. Defendant Kathy Hamilton ("Hamilton"), named in her official and individual capacity, is a resident of the Village of Hinsdale, Illinois, and currently serves as Chairman of the Board of Trustees of Community College District No. 502, DuPage County, Illinois.

ANSWER: Defendant denies that Kathy Hamilton currently serves as Chairman of the Board of Trustees. Defendant lacks sufficient knowledge to form a belief as to the truth of the remaining allegations in this paragraph, and these allegations are therefore denied.

8. Defendant Deanne Mazzochi ("Mazzochi"), named in her official and individual capacity, is a resident of the Village of Elmhurst, Illinois, and currently serves as Vice Chairman of the Board of Trustees of Community College District No. 502, DuPage County, Illinois.

ANSWER: Defendant denies that she currently serves as Vice Chairman of the Board of

Trustees. Defendant admits that Plaintiff purports to name her in her official and individual capacity, and admits the remaining allegations in this paragraph.

9. Defendant Frank Napolitano (“Napolitano”), named in his official and individual capacity, is a resident of the Village of Bloomingdale, Illinois, and currently serves as Secretary of the Board of Trustees of Community College District No. 502, DuPage County, Illinois.

ANSWER: Defendant lacks sufficient knowledge or information to form a belief as to the truth of Mr. Napolitano’s residency. Defendant admits the remaining allegations in this paragraph.

10. Defendant Charles Bernstein (“Bernstein”), named in his official and individual capacity, is a resident of the Village of Wheaton, Illinois, and currently serves as a Trustee of the Board of Trustees of Community College District No. 502, DuPage County, Illinois.

ANSWER: Defendant lacks sufficient knowledge or information to form a belief as to the truth of Mr. Bernstein’s residency. Defendant admits the remaining allegations in this paragraph.

FACTUAL BACKGROUND

Dr. Breuder’s Employment Contract with the College of DuPage

11. On November 18, 2008, the Board and Dr. Breuder entered into an employment contract which provided that Dr. Breuder would serve as President of the College of DuPage from January 1, 2009 to June 30, 2012 (hereinafter, “Employment Contract”). A true and correct copy of Dr. Breuder’s Employment Contract, including addenda one to three of that contract, is attached hereto as Exhibit A.

ANSWER: Defendant admits that Plaintiff contends that Exhibit A is an employment agreement between the College of DuPage and Plaintiff dated November 18, 2008, and that the document states a term from January 1, 2009, to June 30, 2012. Defendant lacks sufficient knowledge or information to admit or deny the authenticity of Exhibit A and therefore denies that allegation. Defendant denies the remaining allegations in this paragraph to the extent they summarize the contents of the exhibit. The exhibit is a written document that speaks for itself.

12. At various times throughout Dr. Breuder's employment with the College of DuPage, the Board approved the extension of Dr. Breuder's Employment Contract. On March 7, 2014, Dr. Breuder was informed by then-Chairman Erin Birt that the majority of the Board had approved the extension of his Employment Contract to June 30, 2019.

ANSWER: Defendant lacks sufficient knowledge to form a belief as to the truth of the allegations in this paragraph, and these allegations are therefore denied.

13. Dr. Breuder's Employment Contract is a duly authorized and enforceable agreement under the Illinois Public Community Colleges Act (the "Act"). Under Section 3-26 of the Act, the Board has the power "[t]o make appointments and fix the salaries of a chief administrative officer, who shall be the executive officer of the board, other administrative personnel and all teachers." 110 ILCS 805/3-26; *see also* 110 ILCS 805/3-21.

ANSWER: Defendant denies the allegations in this paragraph to the extent they selectively quote or characterize provisions of the Public Community Colleges Act. The Act speaks for itself. Defendant states that the remaining allegations in this paragraph constitute legal conclusions for which no answer is required. To the extent an answer is required, Defendant denies the remaining allegations in this paragraph.

14. Under the authority granted to the Board by the Act, it has been the custom and practice of the Board, since at least the mid-1990s, to enter into successive multi-year contracts with the chief administrative officers (i.e., the president) and other high-ranking administrative personnel. Since the College of DuPage was founded in 1968, five persons (including Dr. Breuder) have served as president of the College. Each president preceding Dr. Breuder served anywhere from a four to a twelve-year term under consecutive multi-year employment contracts, which included, on information and belief, automatic rollover provisions.

ANSWER: Defendant lacks sufficient knowledge to form a belief as to the truth of the allegations in this paragraph, and these allegations are therefore denied.

15. In accordance with the Board's authority under the Act, and the aforementioned customs and practices, Dr. Breuder's Employment Contract, as extended on March 7, 2014, conferred and established in Dr. Breuder a property interest in his continued employment as President of the College of DuPage from January 1, 2009 through June 30, 2019. Thus, the Board could not terminate Dr. Breuder's employment without due process or in contravention of the terms of his Employment Contract.

ANSWER: Defendant denies the allegations of this paragraph.

16. Section G of the Employment Contract sets forth the permissible basis upon which the Board can terminate Dr. Breuder's employment. Section G states that absent mutual agreement, retirement, resignation, mental or physical incapacity, or death, Dr. Breuder can only be terminated for cause. Exh. A § G. Section G defines "cause" as follows:

- i. the President's material failure or refusal to perform his duties hereunder, for any reason other than mental or physical incapacity, after the President has been given at least forty-five (45) days prior written notice of such breach and a reasonable, opportunity to cure such breach;
- ii. the President's material failure to perform the reasonable and legitimate directives of the Board;
- iii. misconduct by the President, outside the scope of his employment by the College hereunder, which is materially detrimental to the reputation of the Board or the College in the community; or
- iv. misconduct by the President, outside the scope of his employment by the College hereunder, which is materially detrimental to the reputation of the President in the community.

Id.

ANSWER: Defendant denies the allegations in this paragraph to the extent that they selectively quote or summarize the contents of Exhibit A. Exhibit A is a written document that speaks for itself. Defendant denies the remaining allegations in this paragraph.

17. Section G of the Employment Contract also sets forth specific procedures that the Board must follow in pursuing Dr. Breuder's termination for cause. Section G.3 states:

The Board's right to terminate this Agreement for Cause pursuant to Section G.1(f) of this Agreement may be exercised by the affirmative vote of at least five (5) of the seven (7) members of the Board in favor of the President's dismissal for Cause and the giving of written notice to the President specifying, in detail, the grounds for such termination. Upon the President's receipt of written notice from Board pursuant to Section G.1(f), the President has the right to appear before all seven (7) members of the Board, at a meeting conducted in executive session, to discuss the breach asserted by the Board and its cure. Where the Board is terminating for cause under G.1(f)(i), and if the breach is not cured prior to the expiration of the cure period provided herein, such termination will be effective upon the expiration of such 45 day cure period and the Board's reaffirmation of the President's dismissal for Cause by an affirmative vote of at least five (5) of its seven (7) members.

Id. § G.3.

ANSWER: Defendant denies the allegations in this paragraph to the extent that they selectively quote or summarize the contents of Exhibit A. Exhibit A is a written document that speaks for itself. Defendant denies the remaining allegations in this paragraph.

18. Section G also provides a remedy in the event the Board terminates Dr. Breuder's employment without cause. Section G.4 states:

In the event of the termination of the President's employment hereunder by the Board without Cause prior to the expiration of the then-current term of this Agreement, the President will be entitled to receive the full amount of the compensation (including the cash equivalent of the SURS contribution described above if SURS does not allow the College to make a SURS contribution) and all benefits that he would have received had this Agreement not been terminated prior to the expiration of the term of this Agreement which expires no earlier than June 30, 2012 but may be extended as provided in this Agreement.

Id. § G.4.

ANSWER: Defendant denies the allegations in this paragraph to the extent that they selectively quote or summarize the contents of Exhibit A. Exhibit A is a written document that speaks for itself. Defendant denies the remaining allegations in this paragraph.

19. Similar to Dr. Breuder's Employment Contract, Board policies applicable to the employment of administrators, including the president, provide that an administrator can only be terminated under certain circumstances. Board Policy No. 15-275 states, in relevant part:

An administrator's employment may be terminated or the administrator not reappointed by:

1. Mutual agreement of the parties.
2. Retirement or resignation of the administrator.
3. Death or mental or physical disability of the administrator which renders the administrator unable to perform his/her essential job duties with or without a reasonable accommodation.
4. A decision by the Board of the Trustees that the financial conditions of the College warrants a reduction in staff or in programs.

5. An overall unsatisfactory performance rating of the employee made prior to the start of the contract year on the official administrative evaluation instrument, together with the recommendation of the President.
6. For cause, including, but not limited to, violation of any College policy, procedure, rule or regulation, or commission of any unlawful act or other inappropriate or unprofessional conduct.

A true and correct copy of Board Policy No. 15-275 is attached hereto as Exhibit B.

ANSWER: Defendant denies the allegations in this paragraph to the extent that they selectively quote or summarize Board Policy No. 15-275. The policy is a written document that speaks for itself. Defendant denies that Board Policy No. 15-275 is attached to Plaintiff's Complaint as Exhibit B, and denies the remaining allegations in this paragraph.

Dr. Breuder's Performance as President of the College of DuPage

20. Pursuant to the Employment Contract, Dr. Breuder assumed his official duties on January 1, 2009. While President of the College of DuPage, Dr. Breuder fully performed his duties professionally and in accordance with the terms of his Employment Contract, Board policies, and all other rules and regulations governing his position.

ANSWER: Defendant admits that Plaintiff began working as President of the College of DuPage on January 1, 2009. Defendant denies the remaining allegations in this paragraph.

21. Dr. Breuder is the fifth president of the College of DuPage. The College of DuPage is the second largest provider of higher education in the State of Illinois behind the University of Illinois. The College of DuPage is the largest single campus community college in the United States outside of the State of California. Almost 30,000 students are enrolled currently at the College of DuPage.

ANSWER: Defendant lacks sufficient knowledge to form a belief as to the truth of the allegations in this paragraph, and these allegations are therefore denied.

22. During his tenure as President of the College of DuPage, Dr. Breuder oversaw and achieved significant improvements, advancements, and accolades for the College, specifically and without limitation:

- a. Dr. Breuder was instrumental in securing the passage of a \$168 million capital referendum in November 2010 that enabled the College to complete renovations and new construction to enhance and modernize the campus.

- b. Dr. Breuder's administration enabled the College to increase its fund balance from under \$60 million to approximately \$200 million during the worst recession since the Great Depression.
- c. Dr. Breuder facilitated the College's receipt of approximately \$25 million in grants during his presidency and helped the College's Foundation increase its assets from under \$10 million to over \$15 million.
- d. Dr. Breuder spearheaded the completion of an approximately \$550 million campus improvement program which added nearly 1.5 million square feet of enhanced and modernized educational space.
- e. The Illinois Community College Board reported that between fall 2010 and 2014, the College's FTE enrollment grew by 6% while the state average for community colleges declined by 13.1 %. During that same period, the College's headcount enrollments increased by 10.3% while the state's average decreased by 11.1%.
- f. A December 2014 Community Pulse Survey showed that District 502 residents overwhelmingly considered the College to have a good image and academic reputation.
- g. A 2014 Noel-Levitz Student Satisfaction Inventory Survey indicated that student satisfaction was higher than reported in any previous student survey.
- h. A 2013 Personnel Assessment of College Environment Survey placed the College in the high Consultative Leadership Range indicating a healthy campus climate and almost tying the all-time high reported in 1999.
- i. Dr. Breuder conceived of and implemented an annual comprehensive strategic long-rang planning process, for which the College received the 2014 Richard Goodman Strategic Planning Award from the Association of Strategic Planning for distinction in the practices of Strategy Development, Implementation and Results.
- j. Dr. Breuder was directly responsible for the College's receipt of the 2013 Illinois Council of Community Colleges Administrators Award for the development of multiple 3+1 on campus baccalaureate completion programs involving five partner universities.
- k. Dr. Breuder was influential in the College's receipt of the Governor's Award for Academic Excellence in serving veterans, making the College the first community college to earn this award from the Illinois Department of Veteran Affairs.
- l. Dr. Breuder was instrumental in the College's receipt of the Illinois Performance Excellence (ILPEX) Bronze Award for Commitment to

Excellence as part of the College's reaffirmation of accreditation process, making the College the sixth community college ever to earn this award.

- m. For each fiscal year from 2009 through 2015, the College received unqualified audit opinions, with no material weaknesses or significant issues, from an external auditor, Crowe Horwath LLP.
- n. The College consistently received the Distinguished Budget Presentation Award and the Certificate of Achievement for Excellence in Financial Reporting from the Government Finance Officers Association.
- o. Dr. Breuder helped ensure the College maintained its Aaa and AAA bond ratings, respectively, from Moody's Investor Services and Standard and Poor.
- p. Dr. Breuder ensured that all eligible College employees will have received an annual salary increase in excess of 3% during his tenure as President. This occurred despite one of the worst economies since the Great Depression and State funding declined to under 10% from the entitled 33%.
- q. The College has added dozens of new programs of study to meet dynamic community needs.
- r. The College has consistently been identified as one of the largest providers of online course offerings among all Illinois community colleges.
- s. Dr. Breuder instituted a number of diversity initiatives at the College, including the creation and implementation of the new Center for Student Diversity.
- t. Dr. Breuder was responsible for the creation of the Presidential and Academic Scholars Program, which dramatically increased the number of high achieving students enrolling at the College.
- u. Dr. Breuder successfully transformed the College's Business and Professional Institute into a highly lucrative and effective Business Solutions Program.
- v. Dr. Breuder oversaw the continuation of a successful Fulbright Scholarship Program, with the *Chronicle of Higher Education* ranking the College as a top producer of Fulbright Scholars.
- w. Dr. Breuder envisioned two companion state-of-the-art facilities, the Homeland Security Education Center and Homeland Security Training Center, both of which are currently being used to train emergency first responders, including fire fighters, EMTs, and law enforcement personnel.
- x. Dr. Breuder conceived of the Star Lake Pavilion, an outdoor venue for summertime concerts and movies that is open to the public at no cost. In its

first season, thousands of community members enjoyed music/family movies under the stars.

- y. Dr. Breuder's team negotiated the Pathways to Engineering Program, which guarantees eligible engineering students admission into the Engineering Program at the University of Illinois-Urbana upon graduation from the College of DuPage.

ANSWER: Defendant denies Plaintiff's characterization of his job performance in this paragraph. Defendant lacks sufficient knowledge to form a belief as to the truth of the remaining allegations in this paragraph, and these allegations are therefore denied.

23. Dr. Breuder has received the following professional recognitions while President of the College: 2015 University at Albany Alumni Association Excellence Award (chosen, but later rescinded due to Defendants' actions), 2014 CASE V CEO of the Year Award, 2013 Illinois Senate recognition for 32 years of leadership in community colleges, 2013 Florida State University College of Education Distinguished Alumni Award, 2013 National Council for Marketing and Public Relations National Pacesetter Award, 2013 Association of Community College Trustees CEO Award, Central Region, and the 2012 DuPage County Fire Chiefs Association Honorary Fire Chief.

ANSWER: Defendant lacks sufficient knowledge to form a belief as to the truth of the allegations in this paragraph, and these allegations are therefore denied.

24. Pursuant to Board Policy No. 15-210, the Board is required to evaluate the College President at the end of each fiscal year and to provide such evaluation to the College President. Over the last five years, Dr. Breuder never received a negative evaluation from the Board relating to his performance as President of the College. Dr. Breuder received no such evaluation for fiscal year 2014 or at any time prior to the events leading up to this lawsuit.

ANSWER: Defendant admits that Board Policy No. 15-210 provides for evaluation of the College President to be performed prior to the end of each fiscal year. Defendant lacks sufficient knowledge to form a belief as to the truth of the remaining allegations in this paragraph, and these allegations are therefore denied.

The Board and Dr. Breuder Agree to an Early Termination of the Employment Contract

25. Beginning in or around late 2014, the Board and Dr. Breuder began discussions concerning Dr. Breuder's continued service to the College of DuPage and the Board's preference to terminate Dr. Breuder's employment prior to June 30, 2019.

ANSWER: Defendant lacks sufficient knowledge to form a belief as to the truth of the remaining allegations in this paragraph, and these allegations are therefore denied.

26. Through December 2014 and January 2015, the Board and Dr. Breuder negotiated a fourth addendum to the Employment Contract that provided for early termination of Dr. Breuder's employment in exchange for certain retirement benefits.

ANSWER: Defendant lacks sufficient knowledge to form a belief as to the truth of the remaining allegations in this paragraph, and these allegations are therefore denied.

27. On January 28, 2015, the Board voted on and approved by a vote of six-to-one the fourth addendum to the Employment Contract (hereinafter, the "January 2015 Agreement"). A true and correct copy of the January 2015 Agreement is attached hereto as Exhibit C.

ANSWER: Defendant denies that Exhibit C to Plaintiff's Complaint is a true and correct copy of a fourth addendum to Plaintiff's employment agreement. Defendant lacks sufficient knowledge to form a belief as to the truth of the remaining allegations in this paragraph, and these allegations are therefore denied. Defendant affirmatively states that the Board never took any steps either before April 2015 or prior to the end of the fiscal year to make or otherwise appropriate funds to make the payments indicated in Exhibit C, nor was the applicable fiscal year budget ever amended as required by Board policy to provide for that funding.

28. In relevant part, the January 2015 Agreement provided that Dr. Breuder would continue to serve as President of the College of DuPage until March 30, 2016, on which date it was agreed that Dr. Breuder would retire from his post. In exchange, it was agreed that Dr. Breuder would receive a lump sum payment upon his retirement. *See generally id.*

ANSWER: Defendant denies the allegations in this paragraph as they quote or summarize the contents of the purported employment agreement. The agreement is a written document that speaks for itself. Defendant affirmatively states that Dr. Breuder provided notice to the Board of his intent to retire, without qualification, separate and apart from any payment demand.

29. The January 2015 Agreement also provided that all terms of Dr. Breuder's Employment Contract that were not expressly superseded by the January 2015 Agreement would

remain in effect through March 30, 2016. *Id.* ¶ 4. Such terms included the termination provisions of the Employment Contract.

ANSWER: Defendant denies the allegations in this paragraph as they quote or summarize the contents of the purported employment agreement. The agreement is a written document that speaks for itself.

30. The January 2015 Agreement was a duly authorized and enforceable agreement under Sections 3-26 (cited above) and 3-31 of the Act. Section 3-31 grants the Board authority “[t]o provide for or participate in provisions for insurance protection and benefits for its employees and their dependents, including but not limited to retirement annuities, medical, surgical and hospital benefits, in such types and amounts as shall be determined by the board for the purpose of aiding in securing and retaining the services of competent employees.” 110 ILCS 805/3-31; *see also* 110 ILCS 805/3-30.

ANSWER: Defendant denies the allegations in this paragraph to the extent they selectively quote or characterize provisions of the Public Community Colleges Act. The Act speaks for itself. Defendant denies the remaining allegations in this paragraph, including that the fourth addendum was a duly authorized and enforceable agreement under the Public Community Colleges Act or any other applicable law.

31. In accordance with the Board’s authority under the Act, the January 2015 Agreement conferred and established in Dr. Breuder a property interest in his continued employment from January 28, 2015 through March 30, 2016. The January 2015 Agreement also conferred and established in Dr. Breuder a property interest in all benefits provided for under the Agreement, including the lump sum payment to be made to Dr. Breuder upon his retirement. Thus, the Board could not terminate Dr. Breuder’s employment or rescind the benefits conferred in the January 2015 Agreement without due process or in contravention of the terms of the January 2015 Agreement and the Employment Contract.

ANSWER: Defendant denies the allegations in this paragraph.

Defendant Hamilton Maliciously Tarnished Dr. Breuder’s Professional Reputation and Acted to Interfere With His Contractual and Constitutional Rights Solely For Personal Interests and Political Aspirations

32. Since early 2014, Defendant Hamilton has engaged in a malicious and wrongful scheme to tarnish Dr. Breuder’s professional reputation and, ultimately, to interfere with and deprive Dr. Breuder of his contractual and constitutional rights. That scheme has been motivated not by Defendant Hamilton’s official duties as an elected member of the Board, but rather by her personal interests and political agenda.

ANSWER: Defendant denies the allegations in this paragraph.

33. Defendant Hamilton was elected to serve as a member of the Board in April 2013. Prior to April 2013, Defendant Hamilton never held any elected or political office, nor had any ties to the College of DuPage. Upon her election, Defendant Hamilton told Dr. Breuder and Thomas Glaser, Senior Vice President of Administration, that her motivation for running for the Board was to use the position to attain higher political office. Defendant Hamilton stated that she planned to achieve that goal by finding something wrong with the College, specifically by using her purported experience as a CPA to find irregularities in the College's finances and spending.

ANSWER: On information and belief, Defendant understands that Kathy Hamilton was elected to the Board of Trustees in April 2013. Defendant lacks sufficient knowledge to form a belief as to the truth of the remaining allegations in this paragraph, and these allegations are therefore denied.

34. On information and belief, throughout late-2013 and to this day, Defendant Hamilton has worked closely with her political advisor, Chris Robling, to develop a strategy to advance her personal interests and political agenda. That strategy has been focused on posturing Defendant Hamilton as a "reformist" of the College and discrediting and slandering the former Board and College administration, especially Dr. Breuder, through false claims of unprofessional and unethical conduct, mismanagement, and fraudulent and abusive spending practices.

ANSWER: Defendant lacks sufficient knowledge to form a belief as to the truth of the allegations in this paragraph, and these allegations are therefore denied.

35. In or about May 2014, Defendant Hamilton partnered with the political watchdog organization For the Good of Illinois, founded by Adam Andrzejewski, and devised a plan to use For the Good of Illinois to publicly discredit the professional and ethical conduct of the former Board and College administration.

ANSWER: Defendant lacks sufficient knowledge to form a belief as to the truth of the allegations in this paragraph, and these allegations are therefore denied.

36. On or about May 9, 2014, Defendant Hamilton leaked to Andrzejewski a confidential and privileged email between Dr. Breuder and the Board relating to the potential use of a \$20 million state grant for a proposed Teaching and Learning Center. Defendant Hamilton knew or had been advised that the contents of this email would be sensationalized in a manner to tarnish the professional and ethical credibility of Dr. Breuder and the former Board.

ANSWER: Defendant lacks sufficient knowledge to form a belief as to the truth of the allegations in this paragraph, and these allegations are therefore denied.

37. On May 20, 2014, after receiving information about the May 9 email from Defendant Hamilton, Andrzejewski issued a Freedom of Information Act (“FOIA”) request to the College. Andrzejewski’s FOIA request sought all of Dr. Breuder’s email communications dated from May 6 to May 19, 2014. No other documentation was sought by Andrzejewski’s FOIA request.

ANSWER: Defendant lacks sufficient knowledge to form a belief as to the truth of the allegations in this paragraph, and these allegations are therefore denied.

38. On or about May 22, 2014, Defendant Hamilton invited Andrzejewski to speak at that day’s regular meeting of the Board. During the meeting, Andrzejewski publicly attacked Dr. Breuder’s credibility and ethical fulfillment of his duties as President of the College of DuPage. At the close of his remarks, Andrzejewski stated, “I challenge Dr. Breuder, please leave and do something good for the people of Illinois.” On information and belief, Defendant Hamilton knew of, agreed to, and spoke with Andrzejewski regarding his comments prior to the meeting.

ANSWER: Defendant lacks sufficient knowledge to form a belief as to the truth of the allegations in this paragraph, and these allegations are therefore denied.

39. On or about June 24, 2014, Andrzejewski received a copy of the May 9 email through his FOIA request. Andrzejewski immediately sent the email to the *Chicago Tribune* and also published the email on For the Good of Illinois’ website. The email was sensationalized as evidence of corruption within the College and a “seedy money grab” on the part of Dr. Breuder. On information and belief, Defendant Hamilton knew of, agreed to, or participated directly in Andrzejewski’s distribution and publication of the email.

ANSWER: Defendant lacks sufficient knowledge to form a belief as to the truth of the allegations in this paragraph, and these allegations are therefore denied.

40. On or around June 26, 2014, Defendant Hamilton invited Andrzejewski to speak at that day’s special meeting of the Board. During his public comments, Andrzejewski impugned Dr. Breuder and the former Board for the contents of the May 9 email, describing Dr. Breuder’s statements in the email as “disgusting” and a “concoct[ed] scheme to secure funding.” Andrzejewski further stated, “[W]e know our culture of corruption. This email spells it out and [Dr. Breuder] spells it out to you.” On information and belief, Defendant Hamilton knew of, agreed to, and spoke with Andrzejewski regarding his comments prior to the meeting.

ANSWER: Defendant lacks sufficient knowledge to form a belief as to the truth of the allegations in this paragraph, and these allegations are therefore denied.

41. Defendant Hamilton thereafter capitalized upon the distortion of the May 9 email as a means of furthering her personal interests and political agenda. Starting in July 2014, Defendant Hamilton began participating in interviews and providing commentary to various

media outlets, including the *Chicago Tribune* and the *Daily Herald*, that were focused on wrongfully discrediting the former Board and Dr. Breuder's professional and ethical administration of the College of DuPage.

ANSWER: Defendant lacks sufficient knowledge to form a belief as to the truth of the allegations in this paragraph, and these allegations are therefore denied.

42. On July 10, 2014, Defendant Hamilton penned an op-ed that harshly criticized the former Board and Dr. Breuder regarding the issues underlying the May 9 email. Defendant Hamilton's comments were crafted solely as a means of political gamesmanship, as evidenced by the fact that on May 21, 2014, just outside of the window of Andrzejewski's FOIA request, Defendant Hamilton wrote to Dr. Breuder indicating her support of the Teaching and Learning Center proposed in the May 9 email.

ANSWER: Defendant lacks sufficient knowledge to form a belief as to the truth of the allegations in this paragraph, and these allegations are therefore denied.

43. On August 26, 2014, Defendant Hamilton participated in a radio interview with Andrzejewski on the *Joe Walsh Show* to discuss the May 9 email and other events at the College of DuPage. During the interview, Andrzejewski made several statements that falsely implicated Dr. Breuder with corruption, fraud, and abusive management of the College. Defendant Hamilton indicated support and agreement with Andrzejewski's comments. Defendant Hamilton herself stated that Dr. Breuder "has a fiefdom."

ANSWER: Defendant lacks sufficient knowledge to form a belief as to the truth of the allegations in this paragraph, and these allegations are therefore denied.

44. In December 2014, Defendant Hamilton provided comment for an editorial penned by Andrzejewski and published in the *Huffington Post*. In the editorial, Andrzejewski quoted Defendant Hamilton: "Thanks to the professors, College of DuPage is one of the nation's top community colleges. But the lack of administrative executive ethics has been troubling. Ethical business practices haven't been a part of COD governance for a very long time . . . Therefore, all the groups are helping to squeeze out corrupt practices." Defendant Hamilton's comments were directed at Dr. Breuder.

ANSWER: Defendant lacks sufficient knowledge to form a belief as to the truth of the allegations in this paragraph, and these allegations are therefore denied.

45. On January 22, 2015, during a regular meeting of the Board, Defendant Hamilton stated publicly that the January 2015 Agreement reached between the Board and Dr. Breuder constituted a "golden parachute" and "wanton betrayal of [DuPage County] constituents" and that the College of DuPage should "show Dr. Breuder the door." Defendant Hamilton's comments were coupled by baseless accusations of improprieties and mismanagement by Dr.

Breuder, including a groundless allegation that Dr. Breuder permitted fraudulent and criminal activity to occur at the College. Defendant Hamilton's comments are another example of her political gamesmanship, as these comments were made despite her earlier approval of the January 2015 Agreement during closed meetings of the Board.

ANSWER: Defendant lacks sufficient knowledge to form a belief as to the truth of the allegations in this paragraph, and these allegations are therefore denied.

46. On January 28, 2015, Defendant Hamilton participated in a televised interview on *Chicago Tonight*. During the interview, Defendant Hamilton stated that Dr. Breuder should be "outright fired." Defendant Hamilton supported her opinion by improperly implicating Dr. Breuder in unprofessional and unethical conduct. Defendant Hamilton even attacked Dr. Breuder's personal character, falsely describing Dr. Breuder as "intimidating" and "being very cruel to people in a very unacceptable way."

ANSWER: Defendant lacks sufficient knowledge to form a belief as to the truth of the allegations in this paragraph, and these allegations are therefore denied.

47. Following the events of January 2015, Defendant Hamilton made it her mission to "claw back" Dr. Breuder's January 2015 Agreement and wrongfully terminate his employment through any means possible. Defendant Hamilton's resolve to terminate Dr. Breuder, by any means, can be summed up by a quote published by the *Daily Herald* on March 9, 2015: "Asked about the possibility that an attempt to oust Robert Breuder without pay could provoke a lawsuit that entwines the college in expensive litigation, Hamilton said, 'Let him sue us.'" Defendant Hamilton also has been reported as having a vendetta against Dr. Breuder based on his actions in posting a Board-approved censure of Defendant Hamilton on the Board's website in mid-2014.

ANSWER: Defendant lacks sufficient knowledge to form a belief as to the truth of the allegations in this paragraph, and these allegations are therefore denied.

48. From late-January 2015 through Dr. Breuder's wrongful termination, Defendant Hamilton pursued her mission by continuing to publicly impugn and discredit Dr. Breuder's professional and ethical reputation. Defendant Hamilton not only has falsely accused Dr. Breuder of mismanaging the College, but also has maliciously implicated Dr. Breuder in corruption and fraud. Defendant Hamilton has made these accusations in her official capacity, including in her current position as Board Chairman. Defendant Hamilton's accusations, many of which have been made during public meetings of the Board, have been recorded and published on the Board's website or through external media outlets.

ANSWER: Defendant lacks sufficient knowledge to form a belief as to the truth of the allegations in this paragraph, and these allegations are therefore denied.

49. Defendant Hamilton's accusations were made with negligent and even reckless disregard for the truth, were unreasonable under the circumstances, and were not rationally related to the fulfillment of her official duties or the administration of the College. In fact, when questioned by the *Daily Herald* in June 2015 about the validity of the many accusations charged against Dr. Breuder and his administration of the College, as reported upon by the media, Defendant Hamilton stated that a lot of it was "political" and "an exaggeration." Yet, the Board has based Dr. Breuder's wrongful termination on these political and exaggerated accusations.

ANSWER: Defendant lacks sufficient knowledge to form a belief as to the truth of the allegations in this paragraph, and these allegations are therefore denied.

50. Defendant Hamilton's conduct has resulted in severe damage to Dr. Breuder's professional reputation. Multiple dozens of articles have been published about Dr. Breuder by several media outlets, including the *Chicago Tribune*, *Washington Post*, *USA Today*, and *Inside Public Higher Education*, and many of those articles have portrayed Dr. Breuder as greedy, corrupt, unethical, and unprofessional. Defendant Hamilton instigated such portrayals, and as a result of her wrongful conduct, Dr. Breuder has lost speaking and consulting engagements, was removed from a professional advisory board, and was declined an already-awarded alumni award from his undergraduate alma mater. He also has been shunned from the academic community.

ANSWER: Defendant lacks sufficient knowledge to form a belief as to the truth of the allegations in this paragraph, and these allegations are therefore denied.

Defendant Hamilton Recruits Defendants Mazzochi, Napolitano, and Bernstein to Assist in Pursuing Her Personal and Political Agenda to Terminate Dr. Breuder

51. In or around February 2015, Defendant Hamilton reported to the public and to various media outlets that she intended to achieve her goal of terminating Dr. Breuder's employment by taking over the Board through the upcoming April 2015 elections and then acting to "accelerate" Dr. Breuder's dismissal.

ANSWER: Defendant lacks sufficient knowledge to form a belief as to the truth of the allegations in this paragraph, and these allegations are therefore denied.

52. Throughout February 2015, Defendant Hamilton recruited potential candidates to run for the Board to assist her in terminating Dr. Breuder. By March 2015, Defendant Hamilton had found and began publicly endorsing her slate of candidates: Defendants Mazzochi, Napolitano, and Bernstein. Defendants Mazzochi, Napolitano, and Bernstein ran for election on a "Clean Slate" platform that was primarily focused on "end[ing] Breuder-era corruption" and "claw[ing] back as much of President Breuder's \$763,000 as legally possible."

ANSWER: Defendant admits that she ran for election to the Board of Trustees on a "Clean Slate" platform with Charles Bernstein and Frank Napolitano and that Paragraph 52

contains accurate quotes of portions of opinions included on a campaign website. Defendant further admits that Kathy Hamilton endorsed her run for election to the Board of Trustees. Defendant denies the remaining allegations in this paragraph.

53. Defendant Hamilton used her official position to promote and endorse the so-called “Clean Slate” platform. Defendant Hamilton attended several “Clean Slate” campaigning events in her official capacity and, on information and belief, personally contributed between \$80,000 and \$100,000 to the “Clean Slate” campaign. On March 31, 2015, Defendant Hamilton participated in a televised interview that aired on CLTV’s *Politics Tonight* in which she stated her endorsement of a “slate of candidates” who could help her “clean up” the College of DuPage.

ANSWER: Defendant admits that Kathy Hamilton endorsed Defendant’s run for election to the Board of Trustees. Defendant lacks sufficient knowledge to form a belief as to the truth of the allegations in this paragraph, and these allegations are therefore denied.

54. On April 2, 2015, Defendants Mazzochi, Napolitano, and Bernstein were elected to the Board. Without hesitation, Defendants Mazzochi, Napolitano, and Bernstein used their election to promote the false charges that they had made against Dr. Breuder during their campaigns. On the night of the election, Defendants Mazzochi, Napolitano, and Bernstein issued the following statement to the press: “Tonight, they gave us a clear mandate to clean up the College of DuPage . . . To finally stop the waste, fraud and abuse . . .” Defendant Bernstein separately stated, “In order to do that, we have to stop the corruption . . .”

ANSWER: Defendant admits that she was elected to the Board of Trustees in April 2015. Defendant admits further that, upon information and belief, Paragraph 54 appears to quote accurately certain opinions expressed by Mr. Bernstein, Mr. Napolitano, and/or Defendant that they reasonably believed to be true. Defendant denies the remaining allegations in this paragraph.

55. Defendant Hamilton seconded Defendants Mazzochi, Napolitano, and Bernstein’s statement, commenting to CBS Chicago on the night of the election: “I am absolutely thrilled. I just feel the community has spoken, and they’ve spoken out against fraud, waste, and abuse; and they’ve spoken for good government.”

ANSWER: Defendant lacks sufficient knowledge to form a belief as to the truth of the allegations in this paragraph, and these allegations are therefore denied.

56. Ironically, since the election, Defendants Hamilton, Mazzochi, Napolitano, and Bernstein, and the “Clean Slate” Political Action Committee have had five complaints filed against them collectively with the State Board of Elections for violations of campaigning disclosure requirements. In addition, on April 2, 2015, the College’s Internal Auditor issued a report finding that Defendant Hamilton’s endorsement of the “Clean Slate” candidates violated the College’s ethics policies, specifically through her participation in prohibited political activity while acting in her official capacity as Vice-Chairman of the Board.

ANSWER: Defendant lacks sufficient knowledge to form a belief as to the truth of the allegations in this paragraph, and these allegations are therefore denied.

Defendants Hamilton, Mazzochi, Napolitano, and Bernstein Immediately Placed Dr. Breuder on Indefinite Administrative Leave

57. On April 28, 2015, Defendants Mazzochi, Napolitano, and Bernstein began their terms as trustees of the Board.

ANSWER: The timing of when Defendants’ terms began is a question of law based upon the date and timing of canvassing within Cook, DuPage and Will counties to which no answer is required. Defendant otherwise denies any allegations in this paragraph.

58. In the late afternoon of April 28, 2015, Dr. Breuder received a letter from Defendants Hamilton, Mazzochi, Napolitano, and Bernstein that directed Dr. Breuder to organize a special meeting of the Board to be convened on April 30, 2015 at 8:00 p.m. The letter included a proposed agenda for the special meeting that listed the following item of new business for approval: “Placement of President Dr. Robert L. Breuder on Paid Administrative Leave; Appointment of Dr. Joseph Collins to Serve as Acting Interim President of the College.” The letter threatened that if Dr. Breuder did not implement the enclosed agenda, disciplinary or other action would be taken against Dr. Breuder. A true and correct copy of the April 28, 2015 letter and the accompanying proposed agenda are attached hereto as Exhibit D.

ANSWER: Defendant admits that Exhibit D purports to be a letter dated April 28, 2015, to Dr. Breuder from Trustees Kathy Hamilton, Deanne Mazzochi, Frank Napolitano, and Charles Bernstein and admits that this paragraph accurately quotes Exhibit D to Plaintiff’s Complaint. Defendant denies the remaining allegations in this paragraph.

59. On April 30, 2015, at approximately 7:20 p.m., an organizational meeting of the Board took place pursuant to Section 3-8 of the Act to elect new officers of the Board. At the organizational meeting, Defendants Hamilton, Mazzochi Napolitano, and Bernstein nominated and voted each other into officer positions. Defendant Hamilton was appointed Chairman. Defendant Mazzochi was appointed Vice Chairman. Defendant Napolitano was appointed

Secretary. Board Trustees Erin Birt, Joseph Wozniak, and Dianne McGuire voted against each of these appointments. A true and correct copy of the minutes of the Board's April 30, 2015 organizational meeting are attached hereto as Exhibit E.

ANSWER: Defendant admits that an organizational meeting of the Board of Trustees took place on April 30, 2015, at which Kathy Hamilton was elected Chairman, Deanne Mazzochi was elected Vice Chairman, and Frank Napolitano was elected Secretary. Defendant admits that Exhibit E purports to be the minutes of the April 30, 2015, organizational meeting. Defendant lacks sufficient knowledge to form a belief as to the truth of the remaining allegations in this paragraph, and these allegations are therefore denied.

60. On April 30, 2015, at approximately 9:03 p.m., the Board began its special meeting pursuant to the agenda pushed through by Defendants Hamilton, Mazzochi, Napolitano, and Bernstein. At the special meeting, a motion was heard to adopt Resolution No. 15-430-2 to immediately place Dr. Breuder on paid administrative leave (which included banning Dr. Breuder from the College) and to appoint Dr. Joseph Collins as Acting Interim President. Defendants Hamilton, Mazzochi, Napolitano, and Bernstein voted in favor of the resolution. All other Board trustees voted against the resolution. The resolution was approved and immediately enforced. True and correct copies of the minutes of the Board's April 30, 2015 special meeting and Resolution No. 15-430-2 are attached hereto as Exhibits F and G, respectively.

ANSWER: Defendant admits that Resolution No. 15-430-2 was passed at the April 30, 2015 Board of Trustees meeting to place Plaintiff on paid administrative leave and appointing Dr. Collins as acting interim President. Defendant admits that she voted in favor of the resolution. Defendant admits that Exhibit F purports to be meeting minutes from the April 30, 2015 Board of Trustees meeting. Defendant denies the remaining allegations in this paragraph.

61. Contemporaneous with the vote on Resolution No. 15-430-2, Defendant Hamilton commented to the public that "The College of DuPage has been through tough times - times marked by extraordinary and continuous denial. Those troubles are not yet over, but the cause of those troubles are." Defendant Hamilton was unmistakably and maliciously referring to Dr. Breuder as the cause of the College's troubles.

ANSWER: Defendant lacks sufficient knowledge to form a belief as to the truth of the allegations in this paragraph concerning comments attributed to Kathy Hamilton. Defendant denies the remaining allegations of this paragraph.

62. The Board's adoption of Resolution No. 15-430-2 violated the January 2015 Agreement, the Employment Contract, and Dr. Breuder's due process rights.

ANSWER: Defendant denies the allegations in this paragraph. Defendant affirmatively states that Plaintiff was paid his usual salary and benefits during this leave period.

63. The Board's adoption of Resolution No. 15-430-2 was not authorized by any contract provision, statute, administrative rule, or Board policy governing Dr. Breuder's employment.

ANSWER: Defendant denies the allegations in this paragraph.

64. The Board lacked any rational basis to adopt Resolution No. 15-430-2, as the circumstances giving rise to the adoption of the resolution were baseless, frivolous, and motivated solely by Defendants Hamilton, Mazzochi, Napolitano, and Bernstein's personal and political agendas.

ANSWER: Defendant denies the allegations in this paragraph.

65. The adoption of Resolution No. 15-430-2 followed months of false accusations and slanderous statements made by Defendants Hamilton, Mazzochi, Napolitano, and Bernstein that charged Dr. Breuder with unprofessional, unethical, and criminal conduct. Defendants Hamilton, Mazzochi, Napolitano, and Bernstein's accusations were made maliciously and with negligent and even reckless disregard for the truth.

ANSWER: Defendant denies the allegations in this paragraph.

66. Defendants Hamilton, Mazzochi, Napolitano, and Bernstein's conduct was unreasonable under the circumstances and was not rationally related to the fulfillment of their official duties or to the administration of the College.

ANSWER: Defendant denies the allegations in this paragraph.

67. At no time prior to the Board's adoption of Resolution No. 15-430-2 was Dr. Breuder afforded any opportunity to respond to the false accusations and slanderous comments underpinning the adoption of the resolution. Nor was Dr. Breuder provided an opportunity to present reasons, either in person or writing, as to why Resolution No. 15-430-2 was inappropriate. In fact, the Board effectively had prohibited Dr. Breuder from being heard or from clearing his name of the accusations charged against him.

ANSWER: Defendant denies the allegations in this paragraph. Defendant further notes that Plaintiff filed his Complaint the day after the Board's resolution, thereby affirmatively waiving his rights by failing to avail himself to and otherwise exhaust his right to any further

post-resolution proceedings or process with the Board.

68. On February 25, 2015, the Board had issued a directive to Dr. Breuder to “not respond, distribute or release any statement and/or communicate orally or in writing with the media until further notice ...” The Board lifted this order on April 2, 2015, but only to permit Dr. Breuder to speak with the College’s public relations consultant. Dr. Breuder remained prohibited from speaking directly to the media and the public until his termination on October 20, 2015.

ANSWER: Defendant lacks sufficient knowledge to form a belief as to the truth of the allegations in this paragraph, and these allegations are therefore denied.

69. The adoption of Resolution No. 15-430-2 under the circumstances had a grossly unfair and damaging effect on Dr. Breuder’s reputation. Since the adoption of Resolution No. 15-430-2, Dr. Breuder has been shunned from the academic community, has been demonized and disparaged throughout the State of Illinois, has had already-awarded awards rescinded, and has been denied professional speaking and consultation opportunities.

ANSWER: Defendant denies the allegations in this paragraph.

Defendants Hamilton, Mazzochi, Napolitano, and Bernstein Also Devised a Plan to Terminate Dr. Breuder in Contravention of Contractual and Constitutional Rights

70. Following the adoption of Resolution No. 15-430-2, the Board, now led by Defendants Hamilton, Mazzochi, Napolitano, and Bernstein, immediately began devising a plan to terminate Dr. Breuder’s employment in violation of his contractual and constitutional rights.

ANSWER: Defendant denies the allegations in this paragraph.

71. On April 30, 2015, Defendants Hamilton, Mazzochi, Napolitano, and Bernstein voted on, and the Board approved by their majority vote, Resolution No. 15-430-5A to retain the law firm Rathje & Woodward, LLC to represent the Board in a variety of matters, including matters related to Dr. Breuder’s employment. *See* Exh. F. Defendants Hamilton, Mazzochi, Napolitano, and Bernstein also voted on, and the Board approved by their majority vote, Resolution No. 15-430-6 to have the law firm Schuyler, Roche & Crisham, P.C. conduct an internal investigation of the College of DuPage. *See* Exh. F.

ANSWER: Defendant admits that the Board of Trustees passed Resolution Nos. 15-430-5A and 15-430-5B on April 30, 2015, to retain Rathje & Woodward, LLC and Schuyler, Roche & Crisham, P.C. Defendant admits that she voted in favor of the resolutions. Defendant lacks sufficient knowledge to form a belief as to the truth of any remaining allegations in this paragraph, and these allegations are therefore denied.

72. Resolution Nos. 15-430-5A and 15-430-6 violated Board Policy Nos. 5-30, 10-60, and 15-25, as well as Illinois Rules of Professional Conduct 1.7, 1.8, and 1.9. These resolutions also had the effect of violating Dr. Breuder's constitutionally protected rights.

ANSWER: Defendant denies the allegations in this paragraph.

73. The impropriety of the Board's retention of Rathje & Woodward is demonstrated, in part, by the fact that on January 27, 2015, Rathje & Woodward filed a lawsuit for injunctive and declaratory relief against the Board in the Illinois Circuit Court for DuPage County. That lawsuit was filed on behalf of For the Good of Illinois, Edgar County Watchdogs, Adam Andrzejewski, Kirk Allen, and John Kraft. The subject matter of the lawsuit related to the lawfulness of the Board's approval of Dr. Breuder's January 2015 Agreement. A true and correct copy of the Complaint filed in this lawsuit is attached hereto as Exhibit H.

ANSWER: Defendant admits that Exhibit H purports to be a copy of the complaint filed against the Board of Trustees. Defendant denies the remaining allegations in this paragraph, and these allegations are therefore denied.

74. The impropriety of Board's retention of Schuyler, Roche & Crisham is evidenced, at least, by Defendant Hamilton's relationship with Daniel Kinsella of Schuyler, Roche & Crisham. Mr. Kinsella has represented Defendant Hamilton in her personal capacity at times relevant to this lawsuit, including with respect to Defendant Hamilton's dealings with the Board. Mr. Kinsella was appointed to lead the investigation authorized by Resolution No. 15-430-6, which was instituted solely to fish for information to support Defendants Hamilton, Mazzochi, Napolitano, and Bernstein's determination to wrongfully terminate Dr. Breuder.

ANSWER: Defendant lacks sufficient knowledge to form a belief as to whether Mr. Kinsella "has represented Defendant Hamilton in her personal capacity at times relevant to this lawsuit, including with respect to Defendant Hamilton's dealings with the Board." Defendant denies the remaining allegations in this paragraph.

75. Defendant Hamilton has admitted that the retention of Rathje & Woodward and Schuyler, Roche & Crisham was meant solely to ensure that the Board would fulfill the political agendas of Defendants Hamilton, Mazzochi, Napolitano, and Bernstein. On May 4, 2015, Defendant Hamilton appeared on *Chicago Tonight* and stated that "the most important thing is not necessarily optics [i.e., the impropriety of these retentions] but solving the problem, ... hiring the right people to solve the problem is the right optics." The "right people" were people who Defendants Hamilton, Mazzochi, Napolitano, and Bernstein believed would do what was necessary to fulfill their determination to wrongfully terminate Dr. Breuder.

ANSWER: Defendant lacks sufficient knowledge to form a belief as to the truth of the

allegations in this paragraph regarding Defendant Hamilton, and these and any other allegations in this paragraph are therefore denied.

76. Since April 30, 2015, the Board, through Mr. Kinsella, has conducted the internal investigation authorized by Resolution No. 15-430-6 akin to a witch-hunt. On one weekend in May 2015, Mr. Kinsella and his team ransacked the office of Dr. Breuder's longtime secretary in search of information that Defendants Hamilton, Mazzochi, Napolitano, and Bernstein could use to support their wrongful efforts to terminate Dr. Breuder. Mr. Kinsella and his team have conducted similar searches of Dr. Breuder's former office and the offices of several other administrative staff.

ANSWER: Defendant admits that she understands that an internal investigation was conducted as authorized by the Board of Trustees by Resolution No. 15-430-6. Defendant denies the remaining allegations in this paragraph.

77. By August 2015, the internal investigation authorized by Resolution No. 15-430-6 had uncovered no evidence or information supporting Dr. Breuder's termination. As a result, the Board was forced to pursue other avenues of terminating Dr. Breuder's employment, including acting to wrongfully void his Employment Contract and related agreements.

ANSWER: Defendant denies the allegations in this paragraph. Defendant affirmatively states that multiple grounds existed to terminate Dr. Breuder's employment, including but not limited to those outlined in a subsequent Board resolution.

78. On August 20, 2015, Defendants Hamilton, Mazzochi, Napolitano, and Bernstein voted on, and the Board approved by their majority vote, a motion to authorize the Board to request that the DuPage County State's Attorney enforce a non-binding Illinois Attorney General opinion, dated July 24, 2015, which opined that the Board's approval of the third addendum to Dr. Breuder's Employment Contract partially violated the Open Meetings Act ("AG Opinion"). A true and correct copy of the minutes from the August 20, 2015 Board meeting are attached hereto as Exhibit I.

ANSWER: Defendant admits that the Board of Trustees passed a motion to authorize a request that the DuPage County State's Attorney enforce the Attorney General's opinion on August 20, 2015 and that she voted in favor of the motion. Defendant admits that Exhibit I purports to be a copy of the minutes from the August 20, 2015 Board of Trustees meeting. Defendant further admits that, upon information and belief, the Illinois Attorney General's

Office opined in its July 24, 2015, opinion that the Board of Trustees violated the Illinois Open Meetings Act when it approved a third addendum to Plaintiff's employment contract with the Board of Trustees in 2011. Defendant lacks sufficient knowledge to form a belief as to the truth of the remaining allegations in this paragraph, and these allegations are therefore denied.

79. On August 21, 2015, Defendant Hamilton wrote to the DuPage County State's Attorney requesting that the State's Attorney issue a binding opinion enforcing the AG Opinion. The purpose of the August 21, 2015 letter was to seek legal authority to void Dr. Breuder's Employment Contract and enable the Board to terminate Dr. Breuder's employment without cause or due process of the law. A true and correct copy of the draft letter approved by the Board on August 20, 2015 is attached hereto as Exhibit J.

ANSWER: Defendant admits that Kathy Hamilton drafted a letter to the DuPage County State's Attorney and that Exhibit J purports to be a copy of that letter. Defendant denies the allegations in this paragraph to the extent they summarize the contents of the letter. The letter is a written document that speaks for itself. Defendant lacks sufficient knowledge to form a belief as to the truth of the remaining allegations in this paragraph, and these allegations are therefore denied.

80. On September 11, 2015, the State's Attorney responded to the August 21 letter and denied the Board's request to enforce the AG Opinion. In denying the request, the State's Attorney provided a detailed analysis of the AG Opinion and the enforceability of actions made in violation of the Open Meetings Act. Pursuant to controlling Illinois law, the State's Attorney determined that the third addendum to Dr. Breuder's Employment Contract was not void due to the violation stated in the AG Opinion. A true and correct copy of the State Attorney's September 11, 2015 letter is attached hereto as Exhibit K.

ANSWER: Defendant admits, upon information and belief, that the State's Attorney responded to Ms. Hamilton on September 11, 2015, and that Exhibit K purports to be a copy of the response. Defendant denies the allegations in this paragraph to the extent they summarize the contents of the letter. The letter is a written document that speaks for itself. Defendant further denies that the State's Attorney's response was made pursuant to controlling Illinois law.

81. Nonetheless, on September 17, 2015, Defendants Hamilton, Mazzochi, Napolitano, and Bernstein then voted on, and the Board approved by their majority vote, a

resolution to declare Dr. Breuder's Employment Contract and all related agreements, including the January 2015 Agreement, void *ab initio*. The Board's resolution was not supported by any contract provision, statute, or other legal authority. A true and correct copy of the Board's resolution to void Dr. Breuder's employment agreements, excerpted from the packet for the September 17, 2015 Board meeting, is attached hereto as Exhibit L.

ANSWER: Defendant admits that the Board passed a motion to declare Plaintiff's employment agreement void *ab initio* on September 17, 2015, and that she voted in favor of the motion and that Exhibit L purports to be a copy of the Board's resolution. Defendant denies the remaining allegations in this paragraph.

82. Immediately preceding the September 17 vote, Defendant Hamilton maliciously commented to the public that Dr. Breuder's employment agreements were an "outrage" and "blatant" attempts to defy the voters. Defendant Hamilton also made several comments signifying that Dr. Breuder had maliciously and unlawfully forced prior Boards into executing his employment agreements. These statements were unreasonably, maliciously, and recklessly made and had no basis in fact or law.

ANSWER: Defendant lacks sufficient knowledge to form a belief as to the truth of the allegations in this paragraph and these allegations are therefore denied.

83. Defendant Mazzochi also made similarly baseless comments prior to the vote. Defendant Mazzochi defended the resolution as being supported by the opinions of the Attorney General, the State's Attorney, and several Illinois legislators who all believed that Dr. Breuder's employment agreements were void due to violations of the Open Meetings Act. Defendant Mazzochi failed to inform the public that only one of Dr. Breuder's employment agreements (the third addendum) was opined to have violated the Open Meetings Act and that the State's Attorney informed the Board that the third addendum was not void due to that violation. Defendant Mazzochi's comments were knowingly and intentionally misleading and maliciously made to rally public support against Dr. Breuder and in favor of the Board's wrongful actions.

ANSWER: Defendant denies the allegations in this paragraph.

84. At the time the Board voted on the resolution, Dr. Breuder remained on forced administrative leave pursuant to Resolution No. 15-430-2, which prohibited Dr. Breuder from visiting the campus and, consequently, from attending any and all Board meetings. As a result, Dr. Breuder was denied his right to be heard, either in person or in writing, on the legality or appropriateness of the resolution. Dr. Breuder also was denied the right to clear his name of the various accusations the Board made against him prior to voting on the resolution.

ANSWER: Defendant admits that, upon information and belief, that Plaintiff was on a leave on September 17, 2015.. Defendant denies the remaining allegations in this paragraph.

85. In addition to the actions described above, the Board proceeded to conduct sham termination proceedings against Dr. Breuder. On August 20, 2015, Defendants Hamilton, Mazzochi, Napolitano, and Bernstein voted on, and the Board approved by their majority vote, a motion to authorize the Board to proceed with termination proceedings of Dr. Breuder. Exh. I.

ANSWER: Defendant admits that a motion to authorize initiation of termination proceedings against Plaintiff was passed by the Board of Trustees on August 20, 2015, and that she voted in favor of the motion. Defendant denies the remaining allegations in this paragraph.

86. Prior to that vote, Board Trustee Dianne McGuire warned that the actions of Defendants Hamilton, Mazzochi, Napolitano, and Bernstein with respect to Dr. Breuder lacked a valid and legal basis. Trustee McGuire's comments were based, in part, on discussions that had taken place during the immediately preceding closed session of the Board. *See id.* Trustee McGuire's comments also are supported by a recording of a January 2015 closed session of the Board, that was leaked to the public in July 2015, which reveals that the Board's then-outside counsel provided an advisory opinion on the legality of terminating Dr. Breuder and advised the Board that there was no legal or factual basis to terminate Dr. Breuder.

ANSWER: Defendant admits that, at the August 20, 2015 regular meeting of the Board of Trustees, Dianne McGuire expressed certain opinions about the reasons for the Board of Trustees' actions with regards to Plaintiff. Defendant denies all remaining allegations in Paragraph 86.

87. On September 17, 2015, Defendants Hamilton, Mazzochi, Napolitano, and Bernstein voted on, and the Board approved by their majority vote, the appointment of Joseph A. Morris to preside over the termination proceedings as the Hearing Officer. Due to controversy over the appointment of Mr. Morris, on September 28, 2015, the Board voted on and approved the appointment of a new Hearing Officer.

ANSWER: Defendant admits that a motion to appoint Joe Morris as an administrator appeal hearing officer was passed at the September 17, 2015, Board of Trustees meeting and that she voted in favor of the motion. Defendant admits that a motion to appoint retired U.S. District Court Judge David Coar as an administrator appeal hearing officer was passed at the September 28, 2015, Board of Trustees meeting. (*See* meeting minutes for September 28, 2015 meeting at http://www.cod.edu/about/board_of_trustees/pdf/minutes/2015sep28_special.pdf, Agenda Item 10). Defendant denies the remaining allegations in this paragraph.

88. The Board's appointment of a Hearing Officer was not intended to provide Dr. Breuder the opportunity to be heard by an impartial tribunal. The Board's resolution appointing a Hearing Officer makes clear that Hearing Officer's only role was to receive evidence during the termination hearing. The Hearing Officer was not intended to have the right or ability to make a recommendation to the Board or to provide any input on the termination decision, as that decision was to remain solely in the hands of the Board. A true and correct copy of the Board's resolution appointing a hearing officer, excerpted from the packet for the September 28, 2015 Board meeting, is attached hereto as Exhibit M.

ANSWER: Defendant admits that Exhibit M purports to be a copy of the Board's resolution appointing a hearing officer at the September 28, 2015 Board meeting. Defendant denies the remaining allegations in this paragraph.

89. In addition to the above, Defendants Hamilton, Mazzochi, Napolitano, and Bernstein attempted to support their wrongful actions by making various false statements during several public Board meetings between May and October 2015 that were intended to impugn Dr. Breuder's credibility, professionalism, and ethics. Such statements falsely charge with mismanagement, misuse of public funds, fraudulent financial and business practices, and corruption. These statements were made maliciously, with negligent and even reckless disregard for their truth, and were not rationally related to the fulfillment of Defendants Hamilton, Mazzochi, Napolitano, and Bernstein's duties as Board trustees. These statements have been recorded and posted on the Board's website and have been reported upon by various media outlets, including the *Chicago Tribune* and the *Daily Herald*.

ANSWER: Defendant lacks sufficient knowledge to form a belief as to the truth of the allegations in this paragraph that relate to the actions or motivations of other individuals. Defendant denies the remaining allegations in this paragraph.

The Board Terminated Dr. Breuder In Violation of His Contractual and Constitutional Rights

90. The Board, led by Defendants Hamilton, Mazzochi, Napolitano, and Bernstein, consciously and deliberately chose not to provide Dr. Breuder with a termination procedure or hearing that complied with the terms of his Employment Contract or even with the basic requirements of due process. In fact, despite the Board's various resolutions indicating that Dr. Breuder would be provided a hearing prior to his termination, the Board ultimately decided to deny Dr. Breuder any hearing or meaningful opportunity to be heard prior to his termination.

ANSWER: Defendant denies the allegations in this paragraph. Defendant affirmatively states that Plaintiff flatly refused to avail himself of the pre-resolution process that the Board offered, including having his attorney present Plaintiff's position on various issues in writing.

Instead, Plaintiff unilaterally took the position that the *only* lawful process would be one in which a majority of the Board (namely Defendants Hamilton, Mazzochi, Napolitano, and Bernstein) could not participate, attempting to prevent them from exercising their rights and carrying out critical duties for which they were elected, namely to participate in the review of allegations of improper conduct by a College administrator and to participate in the good faith determination as to whether that conduct warranted discharge. Defendant further affirmatively states that Plaintiff knowingly failed to avail himself of the due process proceedings available to him and instead chose to file his Complaint in this case the day after the Board resolution of which he complains. By his conduct, Plaintiff affirmatively waived any rights to any further hearing or opportunity to be heard subsequent to the Board's resolution.

91. On August 27, 2015, nearly four months after being forced on administrative leave, the Board sent Dr. Breuder a package of loose documents with a simple cover letter stating that the Board's attorneys could meet with Dr. Breuder the following week. The cover letter provided no explanation of why the documents were being sent, what they represented, or even why the Board's attorneys wanted to meet with Dr. Breuder. A true and correct copy of the August 27, 2015 letter is attached hereto as Exhibit N.

ANSWER: Defendant admits that Exhibit N purports to be a letter dated August 27, 2015. Defendant denies the allegations in this paragraph to the extent they summarize the contents of the letter. The letter is a written document that speaks for itself. Defendant denies the remaining allegations in this paragraph.

92. On August 31, 2015, Dr. Breuder, through his legal counsel, responded to the Board's August 27 letter, requesting the reason for the proposed meeting and informing the Board that Dr. Breuder could not meet with the Board's attorneys the following week. A true and correct copy of the August 31, 2015 letter is attached hereto as Exhibit O.

ANSWER: Defendant admits that Exhibit O purports to be a letter from Plaintiff's legal counsel dated August 31, 2015. Defendant denies the remaining allegations in this paragraph to the extent they summarize the contents of the letter. The letter is a written document that speaks for itself.

93. Dr. Breuder never received a response to his August 31 letter.

ANSWER: Defendant lacks sufficient knowledge to form a belief as to the truth of the allegations in this paragraph and these allegations are therefore denied.

94. On September 24, 2015, the Board sent Dr. Breuder a letter purporting to give him notice of the charges upon which the Board would decide whether to proceed with his termination. A true and correct copy of the September 24, 2015 letter is attached hereto as Exhibit P.

ANSWER: Defendant admits that Exhibit P purports to be a letter to Plaintiff dated September 24, 2015. Defendant denies the remaining allegations in this paragraph to the extent they summarize the contents of the letter. The letter is a written document that speaks for itself.

95. On September 28, 2015, Dr. Breuder, through his legal counsel, responded to the September 24 letter. Dr. Breuder objected to the Board's conduct as being in violation of his due process rights and in breach of the terms of his Employment Contract. Without waiving these objections, Dr. Breuder informed the Board that he would participate in a termination hearing and requested that he and the Board discuss a mutually agreeable date for such a hearing. A true and correct copy of the September 28, 2015 letter is attached hereto as Exhibit Q.

ANSWER: Defendant admits that Exhibit Q purports to be a letter from Plaintiff to Chairman Kathy Hamilton dated September 28, 2015. Defendant denies the remaining allegations in this paragraph to the extent they summarize the contents of the letter. The letter is a written document that speaks for itself. *See* further Response to Paragraph 90, above, which is incorporated by reference herein.

96. On October 1, 2015, the Board, through its legal counsel, responded to Dr. Breuder's September 28 letter. The Board confirmed that it would not comply with the terms of Dr. Breuder's Employment Contract. The Board further stated that Dr. Breuder is not "entitle[d] to the elements of due process." The Board then stated that Dr. Breuder could provide a written response to the Board's charges and that the Board would consider this written response prior to making its final decision. The Board's letter ignored Dr. Breuder's request to schedule a hearing date. A true and correct copy of the October 1, 2015 letter is attached hereto as Exhibit R.

ANSWER: Defendant admits that Exhibit R purports to be a letter to Plaintiff dated October 1, 2015. Defendant denies the remaining allegations in this paragraph to the extent they summarize the contents of the letter. The letter is a written document that speaks for itself.

Defendant further affirmatively states that the letter stated that even assuming that the Board did not have a duty to provide due process on the grounds that the contract in dispute was void *ab initio*, “in the interest of fairness we offer Dr. Breuder the opportunity to provide a response, in writing, to the grounds for termination. The Board will consider any such written response prior to making a final decision.” (Dkt. 1, Complaint Ex. R). Plaintiff was again invited to provide a “written offer of cure or a written response to the grounds for termination.” (*Id.*) No substantive response to the proposed grounds for termination was provided to the Board from Plaintiff or his legal counsel.

97. On October 5, 2015, Dr. Breuder, through his legal counsel, responded to the October 1 letter. Dr. Breuder set forth his objections to the Board’s actions and urged the Board to comply, at the very least, with his constitutional rights. Dr. Breuder requested that the Board specify the procedure for the termination hearing, as it appeared from the October 1 letter that Dr. Breuder would not be permitted to attend the hearing or to present evidence or witnesses to refute the Board’s charges. Dr. Breuder further objected that if all Board trustees were permitted to vote on Dr. Breuder’s termination, the Board’s action would violate Dr. Breuder’s right to be heard by a fair and impartial tribunal. A true and correct copy of the October 5, 2015 letter is attached hereto as Exhibit S.

ANSWER: Defendant admits that Exhibit S purports to be a letter from Plaintiff dated October 5, 2015. Defendant denies the remaining allegations in this paragraph to the extent they summarize the contents of the letter. The letter is a written document that speaks for itself. Defendant affirmatively responds that the letter from Plaintiff’s counsel made no effort to provide any substantive response to the articulated grounds for termination; and made no explanation of how any of the articulated grounds for termination could be cured by Plaintiff. *See* further Response to Paragraph 90, above, which is incorporated by reference herein.

98. On October 12, 2015, the Board, through its legal counsel, responded to the October 5 letter. The Board’s response ignored all of the concerns and objections raised by Dr. Breuder’s October 5 letter. The Board’s letter made clear that Dr. Breuder would not be permitted to attend the Board’s hearing, if one even was intended to occur, and that Dr. Breuder’s only opportunity to respond to or refute the Board’s charges would be through a written letter that had to be sent by October 16, 2015. A true and correct copy of the October 12, 2015 letter is attached hereto as Exhibit T.

ANSWER: Defendant admits that Exhibit T purports to be a letter to Plaintiff's legal counsel dated October 12, 2015. Defendant denies the remaining allegations in this paragraph to the extent they summarize the contents of the letter. The letter is a written document that speaks for itself.

99. On October 16, 2015, Dr. Breuder, through his legal counsel, responded to the October 12 letter. Dr. Breuder again stated his objections to the Board's actions and urged the Board to comply with his basic due process right to a fair hearing by an impartial tribunal. Dr. Breuder made clear that in light of the Board's conduct, and especially the resolve of Defendants Hamilton, Mazzochi, Napolitano, and Bernstein to terminate Dr. Breuder, the Board's offer to "consider a written response from Dr. Breuder prior to making a decision" was not meaningful and did not comply with Dr. Breuder's contractual or constitutional rights. A true and correct copy of the October 16, 2015 letter is attached hereto as Exhibit U.

ANSWER: Defendant admits that Exhibit U purports to be a letter from Plaintiff's legal counsel dated October 16, 2015. Defendant denies the remaining allegations in this paragraph to the extent they summarize the contents of the letter. The letter is a written document that speaks for itself. *See* further Response to Paragraph 90, above, which is incorporated by reference herein. All other allegations in this paragraph are denied.

100. Not less than a few hours after the Board's receipt of the October 16 letter, the Board posted on its website a notice of special meeting to take place on October 20, 2015, at 6 p.m. The Board's proposed agenda, which was simultaneously posted, included as the sole substantive agenda item a "Resolution to Terminate the Employment of the College President." The resolution was attached to the agenda and included all the charges previously listed in the Board's September 24 letter. True and correct copies of the Board's Meeting Notice and Proposed Agenda are attached hereto as Exhibit V.

ANSWER: Defendant admits that Exhibit V purports to be the notice of meeting and agenda for the October 20, 2015, special board meeting. Defendant admits that the notice and agenda were posted to the Board's website and that a resolution to terminate Plaintiff's employment was included on the meeting's agenda. Defendant denies the allegations in this paragraph to the extent that they summarize the contents of the agenda. The agenda is a written document that speaks for itself. Defendant lacks sufficient knowledge to form a belief as to the

truth of the remaining allegations and these allegations are therefore denied. Defendant affirmatively states that by this point, it was clear Plaintiff's position would not change and he would continue to refuse to substantively respond to the allegations against him, or make an offer of cure.

101. On October 20, 2015, Defendants Hamilton, Mazzochi, Napolitano, and Bernstein voted on, and the Board approved by their majority vote, the "Resolution to Terminate the Employment of the College President." Board Trustee Diane McGuire voted against the resolution. Board Trustees Erin Birt and Joseph Wozniak were absent. Contemporaneous with the vote, Defendant Hamilton stated, "We promised to end fraud, waste and abuse at the College of DuPage. By ending this chapter, this board has kept that promise."

ANSWER: Defendant admits that the Board passed a motion to approve the resolution to terminate the employment of the college president at the October 20, 2015, Board of Trustees meeting and that she voted in favor of the motion. Defendant admits that Trustees Erin Birt and Joseph Wozniak were not present at the October 20, 2015, Board of Trustees meeting. Defendant lacks sufficient knowledge to form a belief as to the truth of the remaining allegations and these allegations are therefore denied.

102. The Board's termination of Dr. Breuder resulted in a deprivation of Dr. Breuder's property and liberty interests without due process of the law. The Board's termination of Dr. Breuder was also in violation of the January 2015 Agreement and his Employment Contract.

ANSWER: Defendant denies the allegations in this paragraph.

103. As set forth above, at no time prior to October 20, 2015, did the Board offer Dr. Breuder a hearing or a meaningful opportunity to respond to or refute the charges underlying Dr. Breuder's termination. In fact, despite the various Board resolutions that suggested that a hearing would take place, the Board denied Dr. Breuder's requests for a hearing. That denial occurred despite the fact that the Board, through the actions of Defendants Hamilton, Mazzochi, Napolitano, and Bernstein, had publicly accused Dr. Breuder of unprofessional, unethical, and even criminal conduct during its sham "termination proceedings" and prior to his termination.

ANSWER: Defendant denies the allegations in this paragraph.

104. The Board also denied Dr. Breuder of his right to have his termination decided by a fair and impartial tribunal. Despite the very clear bias of Defendants Hamilton, Mazzochi, Napolitano, and Bernstein, all Board trustees were permitted to vote on Dr. Breuder's

termination. The only Board trustees to vote in favor of Dr. Breuder's termination were Defendants Hamilton, Mazzochi, Napolitano, and Bernstein.

ANSWER: Defendant admits that all Board trustees were permitted to vote on Plaintiff's termination and that she voted in favor of the termination. Defendant denies the remaining allegations in this paragraph. Defendant affirmatively states that, as the documents attached to Plaintiff's own Complaint confirm, the Board repeatedly asked Plaintiff to provide, and Plaintiff refused to provide, an even rudimentary explanation in writing responding to the termination charges. Plaintiff also refused to explain how he would be able to cure any of the identified transgressions, including after the College provided Plaintiff's counsel with a documentary record associated with the charges (*e.g.*, Plaintiff's loss of over \$2 million taxpayer dollars as a consequence of his failure to ensure that Board policy regarding investments was followed; Plaintiff's failure to timely alert the Board once he became aware of the violations; Dr. Breuder's destruction of documents on his College-issued ipad, despite the pending grand jury subpoena and signing a document preservation agreement).

105. The Board's termination of Dr. Breuder was arbitrary, capricious, and unreasonable under the circumstances. Defendants Hamilton, Mazzochi, Napolitano, and Bernstein had decided to wrongfully terminate Dr. Breuder long before October 20, 2015, based solely on their personal interests and political agendas. The charges outlined in the Board's September 24 letter and October 20 resolution are baseless and nothing more than pretext for Defendants Hamilton, Mazzochi, Napolitano, and Bernstein's predetermination to terminate Dr. Breuder.

ANSWER: Defendant denies the allegations in this paragraph.

COUNT I
DUE PROCESS VIOLATION
(Property Interest)

106. Plaintiff incorporates by reference paragraphs 1 through 105 of this Complaint as paragraph 106 of Count I of this Complaint.

ANSWER: Defendant incorporates her answer to each of the foregoing allegations in this Complaint.

107. Pursuant to the January 2015 Agreement, the Employment Contract, and Board policies, Dr. Breuder has a property interest and present entitlement in his employment as the President of the College of DuPage.

ANSWER: Defendant denies the allegations in this paragraph.

108. Dr. Breuder also has a property interest and entitlement to certain compensation and benefits, including deferred compensation, an agreed upon lump sum payment to be paid upon Dr. Breuder's retirement from the College of DuPage, and other retirement benefits conferred through the January 2015 Agreement and Employment Contract.

ANSWER: Defendant denies the allegations in this paragraph.

109. Under the Fourteenth Amendment to the United States Constitution, Dr. Breuder cannot be deprived of these interests without adequate due process protections, including notice of the charges against him, notice of the evidence upon which the charges will be based, and a chance to present witnesses and confront adverse evidence at fair hearing before an impartial tribunal.

ANSWER: Defendant denies the allegations in this paragraph.

110. Dr. Breuder was entitled to the full range of due process protections prior to his termination because the State of Illinois does not provide adequate post-termination procedures for a person in Dr. Breuder's position. The only state remedy available to Dr. Breuder is a common law *writ of certiorari* or breach of contract action. A common law *writ of certiorari* is inadequate here since the Board denied Dr. Breuder a pre-termination hearing.

ANSWER: Defendant denies the allegations in this paragraph.

111. The Board has deprived Dr. Breuder of his property rights without due process through at least the following actions:

- a. placing Dr. Breuder on forced administrative leave, thereby revoking his right to act as President of the College of DuPage, without providing Dr. Breuder adequate notice, a reasonable basis for the decision, or an opportunity to be heard;
- b. declaring Dr. Breuder's Employment Contract and the January 2015 Agreement void *ab initio*, without providing Dr. Breuder adequate notice, a reasonable basis for the decision, or an opportunity to be heard;
- c. publicly announcing the Board's intention to terminate Dr. Breuder based on false charges of unprofessional, unethical, and even criminal conduct without first providing notice of those charges or an opportunity to refute those charges;
- d. voting on a resolution to conduct a sham and pre-textual termination hearing;

- e. denying Dr. Breuder's requests for a pre-termination hearing that complied with Dr. Breuder's due process rights;
- f. denying Dr. Breuder any meaningful opportunity to be heard or to respond to the Board's charges prior to his termination;
- g. permitting all Board trustees, including trustees who are biased and prejudiced toward Dr. Breuder, to vote on Dr. Breuder's termination;
- h. basing Dr. Breuder's termination on charges that are pre-textual, unsubstantiated, and which do not provide cause for his termination.

ANSWER: Defendant denies the allegations in this paragraph.

112. The Board's actions in terminating Dr. Breuder have deprived him of adequate notice of the evidence upon which the charges against him are based, a chance to present witnesses and evidence at a hearing to refute the charges against him, and the right to be heard by and have his termination decided by an impartial tribunal.

ANSWER: Defendant denies the allegations in this paragraph.

113. The Board's decision to terminate Dr. Breuder was arbitrary, capricious, and unreasonable under the circumstances. Defendants Hamilton, Mazzochi, Napolitano, and Bernstein's decision to terminate Dr. Breuder was malicious, had no reasonable basis in fact, and was motivated solely by their personal interests and political agendas.

ANSWER: Defendant denies the allegations in this paragraph.

114. Defendants Hamilton, Mazzochi, Napolitano, and Bernstein are not entitled to qualified immunity as they acted to deny Dr. Breuder of his constitutional rights while knowing that such rights were owed to Dr. Breuder under clearly established law. Specifically, Defendants knew that Dr. Breuder was entitled, at the very least, to the opportunity to be heard by and to have his termination decided by an impartial tribunal.

ANSWER: Defendant denies the allegations in this paragraph.

115. As a result of Defendants violation of Dr. Breuder's due process rights, Dr. Breuder has suffered substantial injury, including but not limited to the following:

- a. Dr. Breuder has been denied the full value of his Employment Contract and the January 2015 Agreement.
- b. Dr. Breuder will be unable to find or obtain alternative employment opportunities, such as professional consulting engagements or interim presidential appointments.

- c. Dr. Breuder has suffered extreme embarrassment and humiliation, both personally and professionally, and has experienced acute emotional distress.

ANSWER: Defendant denies the allegations in this paragraph.

116. Dr. Breuder is entitled to damages to compensate him for the actual and threatened injuries that have resulted or will result from Defendants' actions described above. Dr. Breuder also is entitled to punitive damages from the individual defendants for their malicious, wanton, and unreasonable conduct.

ANSWER: Defendant denies the allegations in this paragraph.

COUNT II
DUE PROCESS VIOLATION
(Liberty Interest)

117. Plaintiff incorporates by reference paragraphs 1 through 116 of this Complaint as paragraph 117 of Count II of this Complaint.

ANSWER: Defendant incorporates her answer to each of the foregoing allegations in this Complaint.

118. Under the Fourteenth Amendment to the United States Constitution, Dr. Breuder has a liberty interest in employment in a chosen profession and the state cannot deprive Dr. Breuder of that interest without due process. The Board has deprived Dr. Breuder of his occupational liberty interests without due process.

ANSWER: Defendant denies the allegations in this paragraph.

119. Defendants Hamilton, Mazzochi, Napolitano, and Bernstein have made false, slanderous, and stigmatizing statements about Dr. Breuder's professional, ethical, and even moral conduct. Defendants Hamilton, Mazzochi, Napolitano, and Bernstein's statements are not supported by fact and have been made solely for personal and political reasons.

ANSWER: Defendant denies the allegations in this paragraph.

120. Defendants Hamilton, Mazzochi, Napolitano, and Bernstein have made these statements publicly and in their official capacity as elected members of the Board. Defendants Hamilton, Mazzochi, Napolitano, and Bernstein's statements are not protected by any privileges or immunities.

ANSWER: Defendant denies the allegations in this paragraph.

121. Dr. Breuder's liberty interests have been implicated as a result of Defendants Hamilton, Mazzochi, Napolitano, and Bernstein's statements as such statements were made both prior and contemporaneous to actions taken by the Board with respect to Dr. Breuder's

employment. Such employment actions were taken against Dr. Breuder without first permitting Dr. Breuder a meaningful opportunity to clear his name of Defendants Hamilton, Mazzochi, Napolitano, and Bernstein's stigmatizing statements.

ANSWER: Defendant denies the allegations in this paragraph.

122. Dr. Breuder has suffered a loss of professional opportunities central to his profession as a result of Defendants Hamilton, Mazzochi, Napolitano, and Bernstein's stigmatizing statements and the Board's resulting actions against Dr. Breuder. Dr. Breuder has been denied speaking engagements, consultation opportunities, and awards.

ANSWER: Defendant denies the allegations in this paragraph.

123. The actions taken by Defendants against Dr. Breuder have been so malicious and widely published that it is virtually certain that Dr. Breuder will be unable to find alternative employment, such as consulting opportunities or interim presidential appointments, or to engage in activities central to his profession.

ANSWER: Defendant denies the allegations in this paragraph.

124. Dr. Breuder is entitled to damages to compensate him for the actual and threatened injuries that have resulted or will result from the Defendants' actions described above. Dr. Breuder also is entitled to punitive damages from the individual defendants for their malicious and unreasonable conduct.

ANSWER: Defendant denies the allegations in this paragraph.

COUNT III
CONSPIRACY

Against Individual Defendants Only

125. Plaintiff incorporates by reference paragraphs 1 through 124 of this Complaint as paragraph 125 of Count III of this Complaint.

ANSWER: Defendant incorporates his answer to each of the foregoing allegations in this Complaint.

126. Defendants Hamilton, Mazzochi, Napolitano, and Bernstein agreed or reached a mutual understanding to take control of the Board through the April 2015 public election and then to terminate Dr. Breuder in violation of his contractual and constitutional rights.

ANSWER: As to activities occurring prior to Defendants becoming members of the Board, Defendant denies the allegations in this paragraph. As to any activities subsequent to that

date, no answer is required, as this theory of Plaintiff's case was dismissed with prejudice. (*See* Dkt. 100 at 21) ("Breuder's conspiracy claim stemming from Individual Defendants' involvement in tortious interference with contract and defamation relating to statements made at Board meetings (in Count III) are also dismissed with prejudice"). To the extent any further answer is required, Defendant denies the allegations in this paragraph.

127. Defendants Hamilton, Mazzochi, Napolitano, and Bernstein acted in furtherance of that conspiracy by campaigning on a spurious "reformist" platform that was based on malicious and false accusations that Dr. Breuder had committed fraud, abuse, waste, and corruption while President of the College of DuPage. Such false and malicious accusations were knowingly and intentionally made to garner public support for Defendants Hamilton, Mazzochi, Napolitano, and Bernstein and against Dr. Breuder.

ANSWER: As to activities occurring prior to Defendants becoming members of the Board, Defendant denies the allegations in this paragraph. As to any activities subsequent to that date, no answer is required, as this theory of Plaintiff's case was dismissed with prejudice. (*See* Dkt. 100 at 21) ("Breuder's conspiracy claim stemming from Individual Defendants' involvement in tortious interference with contract and defamation relating to statements made at Board meetings (in Count III) are also dismissed with prejudice"). To the extent any further answer is required, Defendant denies the allegations in this paragraph.

128. Defendants Hamilton, Mazzochi, Napolitano, and Bernstein further pursued their conspiracy by agreeing to conduct sham termination proceedings against Dr. Breuder and by agreeing to misrepresent and distort the results and findings of those proceedings to the public in a manner to further vilify Dr. Breuder and to rally public support for their wrongful actions.

ANSWER: No answer is required, as this theory of Plaintiff's case was dismissed with prejudice. (*See* Dkt. 100 at 21) ("Breuder's conspiracy claim stemming from Individual Defendants' involvement in tortious interference with contract and defamation relating to statements made at Board meetings (in Count III) are also dismissed with prejudice"). To the extent any answer is required, Defendant denies the allegations in this paragraph.

129. Defendants Hamilton, Mazzochi, Napolitano, and Bernstein perfected their conspiracy by agreeing to deny Dr. Breuder any meaningful opportunity to be heard or to defend himself against Defendants Hamilton, Mazzochi, Napolitano, and Bernstein's malicious and false accusations, and then to terminate Dr. Breuder in violation of his contractual and constitutional rights.

ANSWER: No answer is required, as this theory of Plaintiff's case was dismissed with prejudice. (*See* Dkt. 100 at 21) ("Breuder's conspiracy claim stemming from Individual Defendants' involvement in tortious interference with contract and defamation relating to statements made at Board meetings (in Count III) are also dismissed with prejudice"). To the extent any answer is required, Defendant denies the allegations in this paragraph.

130. In entering into and carrying out their conspiracy, Defendants Hamilton, Mazzochi, Napolitano, and Bernstein's sole motivation was to further their own personal and political interests, specifically by vilifying the former administration of the College and posturing themselves as saviors of the College and District 502 taxpayers.

ANSWER: As to activities occurring prior to Defendants becoming members of the Board, Defendant denies the allegations in this paragraph. As to any activities subsequent to that date, no answer is required, as this theory of Plaintiff's case was dismissed with prejudice. (*See* Dkt. 100 at 21) ("Breuder's conspiracy claim stemming from Individual Defendants' involvement in tortious interference with contract and defamation relating to statements made at Board meetings (in Count III) are also dismissed with prejudice"). To the extent any further answer is required, Defendant denies the allegations in this paragraph.

131. As a direct and proximate result of Defendants Hamilton, Mazzochi, Napolitano, and Bernstein's conspiracy, Dr. Breuder was denied rights guaranteed to him under the Fourteenth Amended to the United States Constitution. Dr. Breuder also has sustained damages, including the loss of certain income and benefits, irreparable damage to his personal and professional reputation, and acute emotional distress.

ANSWER: As to activities occurring prior to Defendants becoming members of the Board, Defendant denies the allegations in this paragraph. As to any activities subsequent to that date, no answer is required, as this theory of Plaintiff's case was dismissed with prejudice. (*See*

Dkt. 100 at 21) (“Breuder’s conspiracy claim stemming from Individual Defendants’ involvement in tortious interference with contract and defamation relating to statements made at Board meetings (in Count III) are also dismissed with prejudice”). To the extent any further answer is required, Defendant denies the allegations in this paragraph.

132. Dr. Breuder is entitled to damages to compensate him for the actual and threatened injuries that have resulted or will result from Defendants Hamilton, Mazzochi, Napolitano, and Bernstein’s actions described above. Dr. Breuder also is entitled to punitive damages from Defendants Hamilton, Mazzochi, Napolitano, and Bernstein for their malicious and unreasonable conduct.

ANSWER: As to activities occurring prior to Defendants becoming members of the Board, Defendant denies the allegations in this paragraph. As to any activities subsequent to that date, no answer is required, as this theory of Plaintiff’s case was dismissed with prejudice. (*See* Dkt. 100 at 21) (“Breuder’s conspiracy claim stemming from Individual Defendants’ involvement in tortious interference with contract and defamation relating to statements made at Board meetings (in Count III) are also dismissed with prejudice”). To the extent any further answer is required, Defendant denies the allegations in this paragraph.

COUNT IV
BREACH OF CONTRACT
Against Defendant Board Only

133. Plaintiff incorporates by reference paragraphs 1 through 132 of this Complaint as paragraph 133 of IV of this Complaint.

ANSWER: The allegations in this paragraph and all other allegations in this Count are directed toward the Board of Trustees, not the individual defendants, and therefore an answer is not required. (*See* Dkt. 100 at 20-21) (“Breuder’s claim for defamation stemming from statements made by Individual Defendants at Board meetings (in Count VI) ... are also dismissed with prejudice”). To the extent any further answer is required, Defendant denies the allegations in this paragraph.

134. On November 18, 2008, Dr. Breuder and the Board executed an Employment Contract, attached hereto as Exhibit A, by which it was agreed that Dr. Breuder would serve as President of the College of DuPage from January 1, 2009 through June 30, 2012. In exchange for Dr. Breuder's service to the College of DuPage, the Board agreed to compensate Dr. Breuder and provide other benefits as set forth in the Employment Contract.

ANSWER: The allegations in this paragraph are directed toward the Board of Trustees, not the individual defendants, and therefore an answer is not required. To the extent an answer is required, Defendant denies the allegations in this paragraph.

135. At various points throughout Dr. Breuder's tenure as President of the College of DuPage, the Board approved the extension of the Employment Contract. In or around March 7, 2014, the majority of the Board approved an extension of the Employment Contract to June 30, 2019.

ANSWER: The allegations in this paragraph are directed toward the Board of Trustees, not the individual defendants, and therefore an answer is not required. To the extent an answer is required, Defendant denies the allegations in this paragraph.

136. On January 28, 2015, Dr. Breuder and the Board executed a separate agreement governing Dr. Breuder's employment with the College of DuPage. Pursuant to the January 2015 Agreement, attached hereto as Exhibit C, Dr. Breuder agreed, in relevant part, to continue to serve as President of the College of DuPage until March 30, 2016, on which date he would retire. In exchange, the Board agreed, in relevant part, to provide Dr. Breuder a lump sum payment upon his early retirement. The January 2015 Agreement incorporated all terms of the Employment Contract not superseded by the January 2015 Agreement.

ANSWER: The allegations in this paragraph are directed toward the Board of Trustees, not the individual defendants, and therefore an answer is not required. To the extent an answer is required, Defendant denies the allegations in this paragraph.

137. The Board has committed numerous breaches of the January 2015 Agreement, and the incorporated provisions of the Employment Contract, by at least the following actions: placing Dr. Breuder on forced administrative leave and revoking his right to act as President of the College in bad faith and in contravention of the terms of the January 2015 Agreement, the Employment Contract, Board policies, and the law;

- a. unilaterally declaring the January 2015 Agreement and the Employment Contract void *ab initio* in contravention of the terms of the January 2015 Agreement, the Employment Contract, Board policies, and the law;

- b. willingly and knowingly failing to comply with the termination provisions of Dr. Breuder's Employment Contract;
- c. terminating Dr. Breuder without cause and based solely on the personal interests and political agendas of Defendants Hamilton, Mazzochi, Napolitano, and Bernstein;
- d. denying Dr. Breuder of all rights conferred in the January 2015 Agreement and Employment Contract based solely on the personal interests and political agendas of Defendants Hamilton, Mazzochi, Napolitano, and Bernstein.

ANSWER: The allegations in this paragraph are directed toward the Board of Trustees, not the individual defendants, and therefore an answer is not required. To the extent an answer is required, Defendant denies the allegations in this paragraph.

138. At all times relevant hereto, Dr. Breuder has fully performed his duties as President of the College of DuPage. Dr. Breuder also has performed all other obligations set forth in the January 2015 Agreement and Employment Contract. Dr. Breuder is willing, ready, and fully able to continue to perform his duties as President of the College of DuPage for the duration of the January 2015 Agreement.

ANSWER: The allegations in this paragraph are directed toward the Board of Trustees, not the individual defendants, and therefore an answer is not required. To the extent an answer is required, Defendant denies the allegations in this paragraph.

139. As a direct and proximate result of the Board's breaches, Dr. Breuder has sustained damages, including the loss of certain income and benefits, irreparable damage to his personal and professional reputation, and acute emotional distress.

ANSWER: The allegations in this paragraph are directed toward the Board of Trustees, not the individual defendants, and therefore an answer is not required. To the extent an answer is required, Defendant denies the allegations in this paragraph.

140. Dr. Breuder is entitled to damages to compensate him for the actual and threatened injuries that have resulted or will result from the Board's actions described above.

ANSWER: The allegations in this paragraph are directed toward the Board of Trustees, not the individual defendants, and therefore an answer is not required. To the extent an answer is required, Defendant denies the allegations in this paragraph.

COUNT V
TORTIOUS INTERFERENCE WITH CONTRACT
Against Individual Defendants Only

No answer is required as this Count was dismissed with prejudice. (*See* Dkt. 100 at 20).

COUNT VI
DEFAMATION
Against Individual Defendants Only

147. Plaintiff incorporates by reference paragraphs 1 through 146 of this Complaint as paragraph 147 of Count VI of this Complaint.

ANSWER: Defendant incorporates her answers to each of the foregoing allegations in this Complaint.

148. Defendants Hamilton, Mazzochi, Napolitano, and Bernstein acted recklessly and, at times, with actual malice in making false and defamatory statements to the public regarding Dr. Breuder. Defendants Hamilton, Mazzochi, Napolitano, and Bernstein's statements have implicated Dr. Breuder in unprofessional, unethical, and even criminal conduct.

ANSWER: As to activities occurring during Defendant's service on the Board, no answer is required, as this theory of Plaintiff's case was dismissed with prejudice. (*See* Dkt. 100 at 20-21 ("Breuder's claim for defamation stemming from statements made by Individual Defendants at Board meetings (in Count VI)... [is] also dismissed with prejudice"). As to activities occurring prior to Defendant's service on the Board, Defendant denies the allegations in this paragraph. Defendant affirmatively states that the only statements Plaintiff's Complaint has attributed to Defendant Mazzochi are First Amendment-protected political speech and statements of opinion regarding the College during Plaintiff's tenure regarding "end[ing] Breuder-era corruption" and "claw[ing] back as much of President Breuder's \$763,000 as legally possible" and to "finally stop the waste, fraud and abuse. . ." (Dkt. 1, ¶ 52). Defendant further affirmatively states that prior to the dates of the above statements, many facts had been published regarding Plaintiff and events occurring during the era in which he presided over the College

which serve as examples of waste, fraud and abuse. Any statement about which Plaintiff complains was also true. *See* Counter-Claim ¶¶ 6-81.

149. Defendants Hamilton, Mazzochi, Napolitano, and Bernstein made defamatory statements against Dr. Breuder while knowing the statements were false or while negligently failing to ascertain the truth and validity of the statements.

ANSWER: As to activities occurring during Defendant's service on the Board, no answer is required, as this theory of Plaintiff's case was dismissed with prejudice. (*See* Dkt. 100 at 20-21 ("Breuder's claim for defamation stemming from statements made by Individual Defendants at Board meetings (in Count VI)... [is] also dismissed with prejudice"). As to activities occurring prior to Defendant's service on the Board, Defendant denies the allegations in this paragraph. Defendant affirmatively states that the statements of Hamilton, Mazzochi, Napolitano, and Bernstein were true and were based, at least in part, on well-documented public records documenting Plaintiff's misdeeds, Plaintiff's own email communications and receipts, and reports from audits conducted by the Illinois Auditor General's office and the Higher Learning Commission. *See* Counter-Claim ¶¶ 6-81.

150. Defendants Hamilton, Mazzochi, Napolitano, and Bernstein's defamatory statements are not protected by any absolute privileges, as their conduct was motivated solely by personal and political interests and was not reasonably related or necessary to the fulfillment of their official duties.

ANSWER: As to activities occurring during Defendant's service on the Board, no answer is required, as this theory of Plaintiff's case was dismissed with prejudice. (*See* Dkt. 100 at 20-21 ("Breuder's claim for defamation stemming from statements made by Individual Defendants at Board meetings (in Count VI) ... [is] also dismissed with prejudice"). As to activities occurring prior to Defendant's service on the Board, Defendant denies the allegations in this paragraph.

151. As a result of Defendants Hamilton, Mazzochi, Napolitano, and Bernstein's actions, Dr. Breuder has experienced severe and irreparable damage to his personal and

professional reputation. Dr. Breuder has been denied professional speaking engagements, consultation opportunities, and awards due to Defendants Hamilton, Mazzochi, Napolitano, and Bernstein's actions.

ANSWER: As to activities occurring during Defendant's service on the Board, no answer is required, as this theory of Plaintiff's case was dismissed with prejudice. (See Dkt. 100 at 20-21 ("Breuder's claim for defamation stemming from statements made by Individual Defendants at Board meetings (in Count VI) ... [is] also dismissed with prejudice"). As to activities occurring prior to Defendant's service on the Board, Defendant denies the allegations in this paragraph.

152. Dr. Breuder is entitled to damages to compensate him for the actual and threatened injuries that have resulted or will result from Defendants Hamilton, Mazzochi, Napolitano, and Bernstein's actions described above. Dr. Breuder also is entitled to punitive damages from Defendants Hamilton, Mazzochi, Napolitano, and Bernstein for their malicious and unreasonable conduct.

ANSWER: As to activities occurring during Defendant's service on the Board, no answer is required, as this theory of Plaintiff's case was dismissed with prejudice. (See Dkt. 100 at 20-21 ("Breuder's claim for defamation stemming from statements made by Individual Defendants at Board meetings (in Count VI) ... [is] also dismissed with prejudice"). As to activities occurring prior to Defendant's service on the Board, Defendant denies the allegations in this paragraph.

PRAYER FOR RELIEF

WHEREFORE, Dr. Breuder respectfully requests that this Court:

- A. Award compensatory damages to Dr. Breuder for Defendants' violations of Dr. Breuder's constitutional and common law rights described above;
- B. Award punitive to Dr. Breuder from Defendants Hamilton, Mazzochi, Napolitano, and Bernstein for their violations of Dr. Breuder's constitutional and common law rights described above;
- C. Award compensatory damages to Dr. Breuder for Defendant Board's breaches of the January 2015 Agreement and the Employment Contract described above;

- D. Award compensatory and punitive damages to Dr. Breuder from Defendants Hamilton, Mazzochi, Napolitano, and Bernstein for their intentional interference with Dr. Breuder's contractual rights;
- E. Award compensatory and punitive damages to Dr. Breuder resulting from Defendants Hamilton, Mazzochi, Napolitano, and Bernstein's defamation of Dr. Breuder;
- F. Award costs and attorneys' fees to Dr. Breuder; and
- G. Award all other relief as the Court finds just and equitable.

ANSWER: Defendant denies that Plaintiff is entitled to any of the relief requested in Plaintiff's Prayer for Relief and denies each and every remaining allegation contained in this paragraph.

AFFIRMATIVE DEFENSES

Defendant Mazzochi asserts the following affirmative and other defenses, without assuming the burden of proof for any such defenses that would otherwise rest with Plaintiff. Defendant Mazzochi expressly reserves the right to supplement, amend, modify, or delete any or all of the following defenses, as warranted by discovery or other investigation, or as justice may require.

First Affirmative Defense

Plaintiff's claims against Defendant Mazzochi are barred, in whole or in part, because Defendant Mazzochi is entitled to absolute immunity. At all times relevant to this lawsuit, including those for which Plaintiff is alleging damages, Defendant Mazzochi was acting as an elected official and within her responsibilities as an elected official.

Second Affirmative Defense

Plaintiff's claims against Defendant Mazzochi are barred, in whole or in part, because Defendant Mazzochi is entitled to qualified immunity. At all times relevant to this lawsuit, including those for which Plaintiff is alleging damages, Defendant Mazzochi was acting as an

elected official, and her conduct did not violate clearly established law of which a reasonable person would have known. Moreover, any opinions she expressed about Plaintiff, a public figure, were on matters of great importance to the public, and Defendant Mazzochi reasonably believed those opinions, and/or any factual statements contained within them, to be true.

Third Affirmative Defense

Plaintiff's claims against Defendant Mazzochi are barred, in whole or in part, because Defendant Mazzochi is entitled to immunity under the Local Government and Governmental Tort Immunity Act, 745 ILCS 10/2-201. At all times relevant to this lawsuit, including those for which Plaintiff is alleging damages, Defendant Mazzochi was acting as an elected official or within her discretionary duties as an elected official, and the decision by the Board of Trustees to terminate Plaintiff from his position as President of the College was a discretionary policy determination.

Fourth Affirmative Defense

Plaintiff's claims against Defendant Mazzochi are barred, in whole or in part, because Defendant Mazzochi's non-actionable opinion statements are protected by the First Amendment under *N.Y. Times v. Sullivan*, 376 U.S. 254 (1964) and its progeny. As President of the College of DuPage, Plaintiff was a public figure about whom critical speech, even inaccurate speech, enjoys First Amendment Protection.

Fifth Affirmative Defense

Plaintiff's claim for defamation in Count VI is barred, in whole or in part, by the statute of limitations. Allegedly defamatory statements published more than one year before this suit was commenced are time barred. 735 ILCS 5/13-201.

Sixth Affirmative Defense

Plaintiff's claims are barred, in whole or in part, because Plaintiff engaged in misconduct and mismanagement that constituted cause to terminate Plaintiff from his position as President of College of DuPage under the terms of his employment agreement.

Seventh Affirmative Defense

Plaintiff's claims are barred, in whole or in part, by the doctrines of waiver, estoppel, unjust enrichment, unclean hands, or other equitable considerations.

Eight Affirmative Defense

To the extent Plaintiff has failed to mitigate his damages, such damages must be reduced accordingly. Additionally, to the extent Plaintiff has mitigating income, his alleged damages must be offset by those amounts.

Ninth Affirmative Defense

Plaintiff's claims are barred, in whole or in part, because his employment agreement and all addenda thereto are void *ab initio*.

Tenth Affirmative Defense

Plaintiff's claims are barred, in whole or in part, because he had formulated an intent to retire at least by April 2014; and reiterated that intent without qualification again in January 2015.

Eleventh Affirmative Defense

Plaintiff's claims are barred, in whole or in part, because he has failed to show a nexus between any alleged harm/damages he claims to have suffered, and either (a) statements by Mazzochi; and/or (b) any acts Mazzochi was empowered by law to take, including as a Trustee.

Twelfth Affirmative Defense

To the extent that Plaintiff's claims are subject to the doctrine of after-acquired evidence, any remedy or recovery to which Plaintiff might have been entitled must be denied or reduced accordingly.

Thirteenth Affirmative Defense

Plaintiff's entire Complaint should be dismissed because it was solely filed based upon, and in response to, the Defendants' acts in furtherance of their rights to petition and speech in violation of the Illinois Citizen Participation Act.

Fourteenth Affirmative Defense

An award of punitive damages will violate Defendant Mazzochi's right to due process of law under the Fifth and Fourteenth Amendments to the United States Constitution because: (a) the standard for an award of punitive damages is so vague, indefinite and uncertain that it does not give Defendant Mazzochi adequate notice of the kind of conduct for which she may be liable for punitive damages or the extent of her possible liability; (b) the judge or jury is not provided with constitutionally adequate standards of sufficient clarity, objectivity, and uniformity for determining either the appropriate imposition of an award of punitive damages or the appropriate size of an award of punitive damages; (c) the judge or jury is not instructed in a constitutionally adequate manner on the limits of punitive damages awards imposed by the applicable principles of punishment and deterrence; (d) the judge or jury is not expressly prohibited from awarding punitive damages, or from determining the amount of an award of punitive damages, in whole or in part, on the basis of individually discriminatory characteristics, including without limitation the residence, wealth, and status of Defendant Mazzochi; (e) Defendant Mazzochi may be subjected to punishment based upon the same course of conduct in more than one action; (f) the

judge or jury is permitted to award punitive damages under standards for determining liability for, and the amount of, punitive damages that are vague and arbitrary and that do not define with sufficient clarity the culpable conduct or mental state that makes an award of punitive damages permissible; and (g) an award of punitive damages is not subject to judicial review for reasonableness and furtherance of legitimate purposes on the basis of constitutionally adequate standards of sufficient clarity, objectivity, and uniformity.

Fifteenth Affirmative Defense

Plaintiff's claim for punitive damages is barred to the extent that it seeks the admission into evidence of Defendant Mazzochi's net worth in determining whether punitive damages are to be awarded and/or in what amount they are to be awarded. The admission of net worth data suggests that it is appropriate to award punitive damages based upon Defendant Mazzochi's financial status rather than specific misconduct, and thus has the effect of treating classes of citizens unequally in violation of the Equal Protection Clause of the Fifth and Fourteenth Amendments to the United States Constitution.

Sixteenth Affirmative Defense

The claims of Plaintiff for punitive damages against Defendant Mazzochi cannot be upheld, because any award of punitive damages under the statutes relied upon in the Complaint without bifurcating the trial of all punitive damages would violate Defendant Mazzochi's due process rights guaranteed by the United States Constitution.

Seventeenth Affirmative Defense

Plaintiff's claims are barred, in whole or in part, to the extent that his underlying employment agreement and all addenda thereto lacked adequate consideration; the then-Board lacked the capacity to enter into those instruments for the duration stated; its terms were

unconscionable; and/or were entered into by means of fraudulent inducement or misrepresentation.

Eighteenth Affirmative Defense

In the alternative, even if an enforceable contract existed, Plaintiff's claims are barred, in whole or in part, because Plaintiff breached his underlying employment agreement.

Defendant reserves the right to assert additional affirmative defenses as established by the facts of the case.

WHEREFORE, Defendant, Deanne Mazzochi, prays that Plaintiff's Complaint be dismissed in its entirety with prejudice; that Plaintiff takes nothing by this action; and that Deanne Mazzochi be awarded its reasonable costs and such other relief as this Court deems proper.

DEFENDANT DEANNE MAZZOCHI'S COUNTER-CLAIM AGAINST PLAINTIFF

Jurisdiction & Venue

1. Defendant and Counter-Claim Plaintiff Deanne Mazzochi ("Ms. Mazzochi") is a resident of the Village of Elmhurst, Illinois, and currently serves on the Board of Trustees of Community College District No. 502, DuPage County, Illinois.

2. Plaintiff and Counter-Claim Defendant Robert L. Breuder ("Plaintiff") is a resident of the Village of Lake Barrington, Illinois. Plaintiff served as President of the College of DuPage, located in Glen Ellyn, Illinois, from January 1, 2009 until October 20, 2015.

3. This Court has jurisdiction over Ms. Mazzochi's counter-claim pursuant to 28 U.S. Code § 1367.

4. Venue is proper under 42 U.S.C. § 2000e-5(f)(3) and 28 U.S.C. § 1391(b) since the events giving rise to the claims asserted herein occurred, and Ms. Mazzochi and Plaintiff conduct business and/or reside, within this District.

Introduction

5. Defendant incorporates by reference any and all affirmative allegations set forth by Defendant in response to the allegations in Plaintiff's Complaint as if specifically set forth herein.

6. Plaintiff served as President of the College of DuPage from January 1, 2009, through October 2015. During that time, Plaintiff oversaw an era of waste, fraud, and abuse at the College that caused real harm to the College and, in many cases, direct benefits to Plaintiff and those close to him. For years, Plaintiff ran the College like his own private enterprise, rather than as a taxpayer-funded, public institution. While President, Plaintiff focused his attention on buildings, landscaping, and other amenities that benefited him and those with whom he was close; in the process, he neglected many of the nuts-and-bolts of College administration. He and his friends spent lavishly at the fancy restaurant he ordered built within months of his arrival on campus. He then had the College pick up the tab. His expensive taste was not limited to the food and wine he frequently consumed at the restaurant he had built. Plaintiff oversaw reckless spending in multiple areas of the College, usually without any regard for competitive bidding or other good government principles designed to protect the public fisc.

7. Ultimately, Plaintiff's poor choices led to a no confidence vote by the College faculty. The College also received a harsh audit by the Illinois Auditor General of the College's practices during his tenure. Even more gravely, the Higher Learning Commission placed the College's accreditation on probation after closely scrutinizing the actions of the Plaintiff

administration. All of Plaintiff's missteps were reported on broadly by local and national media, further embarrassing the College. On his way out the door, Plaintiff refused to comply with investigations of his misconduct and instead destroyed evidence.

8. Ms. Mazzochi, as first a concerned citizen, then a candidate for the Board, and finally as an elected Board member, sought to reform the College to ensure that Plaintiff's well-documented misdeeds would be brought to a halt. In retribution for the exercise of Ms. Mazzochi's constitutional rights to speak out about and seek to reform the College, Plaintiff filed the instant action alleging meritless defamation and conspiracy claims against Ms. Mazzochi (and other Board members). Therefore, Ms. Mazzochi brings this Counter-claim under the Illinois Citizen Participation Act to protect her right to petition, speak, associate and otherwise participate in government to obtain favorable government action.

Breuder's Mismanagement of the College

9. In mid-2014, various media outlets and government watchdogs began to expose Plaintiff's shocking mismanagement of the College, as discussed above and as further summarized below. This well-documented media and government watchdog coverage continued through the time leading up to, and including, the April 2015 Board election.

10. Media outlets and government watchdogs broke the news that on May 9, 2014, Plaintiff sent an email to the Board stating that he intended to obtain \$20 million from the State of Illinois for a construction project that did not exist and to get it would pass out political favors along the way. The email stated that the College had the option of telling the Governor of Illinois that it will bank this grant money "until we figure out how to use it and then build something." In other words, as a Government Watchdog put it, Plaintiff sought a "construction

binge on a project [the College] didn't plan for with dollars that a broke state doesn't have." (Ex. 1, Daily Herald, *COD president defends push for state grant money*, July 2, 2014).

11. The full text of Plaintiff's May 9, 2014 e-mail is as follows:

I am in a bit of a quandary.

We have been working with the Governor's Office (seemingly forever) to secure our \$20 million. Initially the money was to be used for our Homeland Security initiative. When we accomplished our Homeland agenda without state funding, we changed the focus to building demolition. With that initiative soon to be history we need an alternative. I needed to identify a project that would help release our state funding. My idea: a Teaching and Learning Center.

Several Board members want to weigh in on the need for such a facility. I have no problem with that; however, not being able to say how we would use the state's money (perhaps no real need) could lessen our chances to break the money loose at this time (the political moon is rising).

A building that focuses on teaching and learning is politically attractive; more so than let's say a student center, PE facility, etc. At COD, general purpose classroom space is our greatest need. (See attached Board agenda item.) A need that will expand with continued enrollment growth. My having to dance around the issue of how we would use the money attenuates our ask. When I introduce Governor Quinn at commencement, I want to help our cause (getting the \$20 million released sooner rather than later) by thanking him for his commitment in front of 3,500 people. There are many voters in our District. Please keep November 4 in mind. The limited state dollars for capital projects will go somewhere in this heightened political season. Why not College of DuPage?

In the attached press release you can see how I have had to dance around how we would use the money. It was a less effective quote than it could have been.

And lastly, who better to know what physical space needs we have than the people who deliver services every day? There is always the option of telling the Governor we want the money, will bank it until we figure out how to use it, and then build something. And is it not better to match money than to provide 100%?

Bottom line: I need some room to breathe on this matter so I can enhance the likelihood we get the \$20 million, soon.

Thanks.

B

12. Media outlets and government watchdogs reported Plaintiff's email as evidence of a "seedy little money grab" and an unethical "pay to play" scheme that Plaintiff used to pressure

the Board to fast-track a \$50 million construction project in order to coax \$20 million from the State in exchange for “a political strategy to benefit [then] Governor Quinn.” (Ex. 1); Ex. 2, Chicago Tribune, *Use it or lose it: College of DuPage email exposes the chase for tax dollars*, July 7, 2014; see also Ex. 9, RedState, *Emails Show \$20 Million Pay To Play Scheme Between College of DuPage and Gov. Quinn*, July 1, 2014 (Plaintiff “discussed with board of trustee members the bringing in of Gov. Quinn for this past May’s commencement address as part of the College’s effort to obtain \$20 million in state construction grants and use the appearance to drum up votes for Quinn in his reelection effort against Republican businessman Bruce Rauner”); Ex. 10, For The Good of Illinois, *College of DuPage Pay-To-Play With Governor Quinn – Election Votes For \$20 Million Construction Grant?*, June 28, 2014 (“Political Pressure Applied to College of DuPage (COD) Trustees to Fast Track unplanned \$50 million construction project ahead of Governor Quinn’s commencement address. Repeated emails from COD President Robert Breuder apply pressure to trustees regarding \$20 million in state construction grants”); Ex. 11, Illinois Review, *College of DuPage Prez Accused of Pay-To-Play with Quinn*, July 2, 2014 (reporting that Plaintiff stated to Illinois State Representative Dwight Kay that “It means just like anything else in the State of Illinois, money gets released under different sets of circumstances. You are in the business and you know how it is played.”); Ex. 12, Inside Higher Ed, *Community college president’s leaked email shows plan to trade political support for state funds*, July 25, 2014) (“A leaked email shows a community college president’s attempt to pressure a governor for \$20 million in state funds -- even though the college had already finished the project for which the money was appropriated ... Yet despite accusing his trustee of playing politics, Breuder admitted to doing the same.”); Ex. 13, Lincoln Report, *College of DuPage President Offers Quinn Election Votes for \$20 Million State Grant*, June 28, 2014 (“College of

DuPage President Offers Quinn Election Votes for \$20 Million State Grant”; “Dr. Breuder is asking the board for permission to just make up a project to get the money. In addition Breuder is going to make the commencement speech a political event for Gov. Quinn’s re-election. You can watch Gov. Pat Quinn’s speech from Friday May 16, 2014 and his introduction by Dr. Breuder ... We now know why Breuder heaped 3 minutes of praise on Quinn.”).

13. Faculty, students, and residents all openly criticized Plaintiff and the College for Plaintiff’s actions. As a faculty member stated, “[t]he president’s actions have reached the tipping point that challenges future plans for COD We at the [College] have had our institutional integrity damaged.” (Ex. 6, Chicago Tribune, *Faculty, residents speak out against COD leadership*, July 18, 2014).

14. Plaintiff’s email prompted the Governor’s office to withhold the requested \$20 million. A spokesman for the Governor stated that “Recent news regarding appropriations for the College of DuPage is extremely alarming ... We have no tolerance for any misrepresentation of how funds will be used.” (Ex. 3, Daily Herald, *Email prompts Quinn to withhold \$20 million in funding for COD*, July 3, 2014); (Ex. 6).

15. Around the time of this scandal, a then-Board member, Kathy Hamilton (a current defendant within Plaintiff’s complaint) spoke out against Plaintiff’s strategies and plans contained in his e-mail. In retaliation for her speech, Plaintiff sought a censure of Ms. Hamilton. (Ex. 14, MySuburbanLife, *College of DuPage board votes to censure trustee*, August 22, 2014). Plaintiff initiated a resolution that was characterized in the Chicago Tribune as “a teeny-bopper temper tantrum” by the individual who “deserves most of the credit for embarrassing the college.” *See* (Ex. 15, Chicago Tribune, *A censure for speaking out*, August 27, 2014).

16. Upon information and belief, Plaintiff personally sought to edit the draft censure resolution of Ms. Hamilton. Upon information and belief, Plaintiff further instructed that the censure resolution be posted on the College's website on the pretense that there had been many inquiries from members of the public for information regarding the censure. Upon information and belief, the College did not have such requests; rather, this was part of Plaintiff's continued efforts to try to attack a member of his governing Board.

17. On another occasion, Plaintiff also demanded that the Board's then-chairperson, Erin Birt, remove Ms. Hamilton from the Board's audit committee when Ms. Hamilton began asking questions about the College's audit and internal controls issues.

18. After the grant money-related scandal, public scrutiny of the College exposed even more corruption, waste, fraud and abuse at the College that Plaintiff participated in or was otherwise aware of in his leadership position. In the ensuing months, multiple media outlets revealed the following:

- Plaintiff used College funds to pay over \$10,000 for his membership dues to a private shooting club;
- Plaintiff used College funds to pay fees associated with three global satellite phones he used on exotic hunting trips;
- Plaintiff misused his car allowance;
- Plaintiff used College funds for his personal meals and overnight stays at the College's campus hotel;
- Plaintiff sought reimbursement from the College for various unjustified expenses, ranging from flowers from Hobby Lobby, to air fresheners from Bed, Bath & Beyond;
- Plaintiff plied Board members and other senior managers with wine and gifts in violation of the College's ban on gifts, and creating conflicts of interest;
- Plaintiff used College funds and employee time for campaign events, including for parties for political donors, and made employee performance outcomes conditional upon such campaign work;

- Plaintiff awarded contracts to those who donated to the College and College Foundation – including to architects, general contractors, a lobbyist, etc. – creating a culture of “pay to play”;
- Plaintiff retrofitted a locker room in the new Physical Education Center to one that only he and senior management would have access to, costing the College over \$15,000;
- Even though the College lost \$2.2 million as a result of alleged fraud in a municipal investment fund (“IMET”) in which the College had invested, Plaintiff did not promptly inform the Board about this loss and referred to the loss as no more worrisome than a “pimple on the ass of an elephant”;
- Since 2011, the College had purchased nearly \$200,000 worth of wine and wine accessories for the school’s French restaurant, not including the construction of a wine cellar, which was designated in College’s accounts as “instructional supplies”;
- From its opening until Plaintiff went on leave, he personally charged the school’s French restaurant over \$100,000 for lunches and dinners he hosted. He often dined there and encouraged senior managers to do so too – and to seek reimbursement from the college for the meals and alcohol consumed;
- The school’s French restaurant lost \$560,000 in its first year of operation in 2012; and
- The College spent \$600 million in construction based on a small enrollment spike that reflected a misleading and selective view of enrollment figures.

(Ex. 4, National Review, *This College’s Strategy: Get the Money, Figure out How to Spend It*, August 1, 2014); (Ex. 5, Washington Times, *How a college hid \$95 million in expense like booze, shooting clubs*, October 2, 2014); (Ex. 6); (Ex. 7, Forbes, *\$26 million selfie at Illinois Jr. College*, September 10, 2014); (see also Ex. 16, Edgar County Watchdogs, *Breuder – Bed Bath & Beyond ... way beyond...*, November 26, 2014). See Ex. 17, The Huffington Post, *The Fat Cats at College of DuPage (an Illinois Jr. College)*, November 17, 2014). (“COD’s very own Five Days of Christmas party” spent “\$9,254.63 in gifts, dinners, and alcohol [that] flowed to COD senior managers and trustees,” and noting “[f]or the Senior Management Team and Board of Trustees, the litany of charges reads like an all-you-can-eat country club feast: crab cakes,

gnocchi, scallops, Carpaccio, duck, salmon, bass, matelote, Bavarian cake, and porchetta ... filet mignon, pork chop, toffee pudding sorbets, bread pudding, salmon, potato puree, chicken mousse, French onion, vegetable strudel, halibut, duck breast, steak salad and more ... Corruption is a more appropriate term. Most of these food and alcohol charges flowed through the Imprest hidden payment scheme or other hidden accounting tricks at COD ... Many payments violated the \$75 statutory limit on gift bans, which is also board policy”); *see also* Ex. 18, Edgar County Watchdogs, *Waterleaf Meal Receipts*, Various Dates in 2013 and 2014 (receipts for dinners); *See* Ex. 19, Daily Herald, *Records: Vendors that supported COD borrowing plan got work from school*, July 9, 2015 (“Fundraising efforts began after COD trustees voted on Aug. 9, 2010, to put the referendum question on the ballot. Two weeks later, 83 people -- political donors, vendors, trustees and members of COD’s senior management team -- were invited to a referendum party at a Barrington restaurant. The party cost \$8,445, including \$2,500 for alcohol.” Breuder “used his own credit card to pay the bill. Weeks later, he was reimbursed by the college for \$5,945, which paid for everything except the alcohol. Of the 10 vendors who attended that party, eight ended up contributing to the Supporters of College of DuPage group.”); Ex. 20, Chicago Tribune, *Suburbs, school districts lost millions in alleged investment fraud*, April 10, 2015; Ex. 21, College of DuPage Foundation, *IRS 2013 Form 990*, 2013.

19. Media outlets and government watchdogs further reported that since 2009, the College hid more than \$95 million in expenditures, including Plaintiff’s shooting club dues and satellite phone fees, on more than 82,000 transactions in an accounting strategy that lumped all of these transactions into a few line items, which concealed them even from the Board’s view. (Ex. 5).

20. These “dodgy accounting practices” led the Washington Times to give the College a “golden hammer” award. (Ex. 5). Other outlets found these accounting practices to run contrary to the “spirit of fiscal oversight and good government,” and contrary to the practices at several of COD’s sister community colleges, where the elected boards “receive itemized reports for all spending each month.” (Ex. 22, Daily Herald, *Griffin: College of DuPage spent \$26 million without board security*, September 17, 2014).

21. Upon information and belief, Plaintiff improperly appointed members to the Board of the College Foundation so that he could use the Foundation to avoid spending and internal controls restrictions at the College. (See Ex. 21, College of DuPage Foundation, *IRS 2013 Form 990*, 2013 (discussing expenditures)).

22. In the fall of 2014, the tenured faculty of the College overwhelmingly issued a “No Confidence” vote on Plaintiff. (See Ex. 23, College of DuPage Faculty Association, *Resolution No Confidence in Dr. Robert L. Breuder, President of College of DuPage Declared By The College of DuPage Faculty*, September 10, 2014). The resolution criticized Plaintiff for, among other things: (i) failing to “establish fiscal priorities that are consistent with the College’s mission to educate and a respect for the College’s responsibility to the taxpayers;” (ii) lacking integrity; and (iii) failing to treat everyone with “respect and dignity.”

23. In March 2015, the Chicago Tribune reported that a “DuPage County grand jury has issued three subpoenas” to the College regarding Plaintiff’s spending. (See Ex. 24, Chicago Tribune, *Subpoenas target college president’s spending*, March 31, 2015). Then on April 16, 2015, it reported that “federal prosecutors have opened a wide-ranging criminal investigation” and had also issued federal grand jury subpoenas. (See Ex. 25, Chicago Tribune, *College of DuPage under federal investigation*, April 16, 2015).

24. These numerous misdeeds prompted an investigation by the Higher Learning Commission (an organization tasked with the regional accreditation responsibilities for post-secondary education institutions in the central United States), which identified “circumstances that put into question the ability of College of DuPage to satisfy the Criteria and Core Components” for accreditation. (See Ex. 26, College of DuPage, *Advisory Team Report from visit July 21-22, 2015*, October 12, 2015). Board policy 15-205 expressly obligated the College President to “Maintain accreditation from the Higher Education Commission of the North Central Association of Colleges and Schools,” now known as the Higher Learning Commission.

25. In light of this overwhelmingly negative publicity that Plaintiff’s actions brought to the College, Plaintiff caused the College to conduct a Community Pulse Survey to determine whether the negative publicity would have an effect on voters in April 2015. The College spent approximately \$8,600 on the survey.

26. Plaintiff used the results of the district-wide survey to develop and mail postcards to the entire district. In total, Plaintiff directed the preparation and mailing of four postcards to every resident within the College’s district, at a total cost of \$166,708. It was very unusual for the College to send these types of postcards, because they were sent district-wide and messaged within a month of the upcoming board of trustees’ election. Plaintiff caused a budget transfer from the College’s contingency fund to pay for several of the postcards, and also asked the College Foundation to pay for some of the cost of the postcards.

27. The first postcard, entitled, “Why is COD the Fastest Growing Community College,” was mailed district-wide on March 18, 2015, at a cost to the College of \$41,677. The next postcard was mailed district-wide on April 1, 2015, just six days before the election. Both

postcards attempted to convey to voters that everything was fine at the College and to divert voters' attention from the investigations and media scrutiny that resulted from Plaintiff's failures.

28. Plaintiff continued these misdeeds despite his lavish compensation package which included a base salary of more than \$450,000 in 2014 and 2015, a \$22,000 housing allowance, a \$10,200 car allowance, 56 paid off-days, a paid cell phone, deferred compensation, a retirement annuity, and a Lexus valued at \$40,000. (Ex. 5); (Ex. 8, *College of DuPage's Breuder: 'Bobby Knight of College Presidents'*, February 6, 2015).

29. In 2009, amidst public outrage on the then-Board's vote to extend his contract for a lavish compensation package, Plaintiff rebuffed the outrage stating that his pay was not excessive and that he was "paid for [his] pedigree ..." (See Ex. 27, Chicago Tribune, *College of DuPage: Lame-duck board votes to extend president's contract*, April 22, 2009).

30. Despite these misdeeds, the then-Board in office in January 2015 (Erin Birt; Dianne McGuire; Allison O'Donnell; Joseph Wozniak Jr.; Nancy Svoboda; Kim Savage; Kathy Hamilton) voted 6-1 (with only Kathy Hamilton voting against) to grant Plaintiff a buy-out package of approximately \$763,000. (Ex. 8). The then-Board made no effort to actually appropriate funds for this expenditure.

31. Indicating evidence of a conflict of interest, the Chicago Tribune reported that the night before this Board vote, the College Foundation "picked up a \$312 alcohol tab for a 'board dinner' that included two \$87 bottles of pinot noir, as well as bourbon and vodka." (See Ex. 28, Chicago Tribune, *College of DuPage trustees, administrators bill alcohol to foundation*, April 20, 2015).

32. Upon information and belief, this was not the first instance that Plaintiff was offered an extravagant buy-out package. Media outlets reported that in 2009, the then-Board

sought to buy-out Plaintiff for as much \$2 million. (Ex. 29, Daily Herald, *Former COD trustee: Breuder was offered \$2 million buyout in 2009*, January 25, 2015).

33. Other reports indicated that Plaintiff has a track record of eliciting lavish “retirement” packages. Before he retired as president from Harper College, the board of that institution granted him a \$508,000 retirement package. (Ex. 31, Chicago Tribune, *Harper president to retire*, December 19, 2002); (Ex. 32, Daily Herald, *Robert Breuder’s employment history*, January 23, 2015).

Ms. Mazzochi Sought Election to the Board to Reform Management of The College

34. Prior to entering the April 2015 election for the Board, Ms. Mazzochi had not run for, or been elected to, any public office.

35. Ms. Mazzochi had great affinity for and interest in the College. Ms. Mazzochi was a student there, earning college credits, in the 1990s. Some of her immediate and extended family members had also studied there, earning college credits.

36. As a concerned, private citizen, Ms. Mazzochi followed with alarm the extensive media coverage of Plaintiff’s May 9, 2014 e-mail and subsequent scandals related to Plaintiff’s mismanagement of the College.

37. Following the widespread outrage over Plaintiff’s May 9, 2014 e-mail, Ms. Mazzochi exercised her constitutional prerogative as a concerned citizen in attending and reviewing reports of Board meetings.

38. At those meetings, Ms. Mazzochi directly observed that the Board room was arranged to exclude members of the public, inconsistent with the Open Meetings Act. (Board Policy required the President to comply with the Open Meetings Act). Chairs were routinely reserved to exclude members of the public, forcing most members of the public to watch the

Board meetings on a screen in an “overflow” room across from the Boardroom. Public comment was frequently structured to be at the end of meetings, which in Ms. Mazzochi’s opinion appeared to be designed to discourage citizen participation, including her own.

39. Ms. Mazzochi also conducted her own research on the propriety of Plaintiff’s activities. For example, she discovered that, according to an Illinois Attorney General opinion, the Board lacked the power to censure its members, as Plaintiff and the Board did to then-Board member Kathy Hamilton. (*See Ex. 32, Letter from Attorney General Roland W. Burris to State’s Attorney, Kendall County Honorable Dallas C. Ingemunson, January 31, 1991*). Ms. Mazzochi concluded that Plaintiff was deliberately targeting and bullying Ms. Hamilton.

40. Ms. Mazzochi also discovered a YouTube video of Plaintiff, in which he stated, “I don’t take directives too well, and I always felt that if I went into the military, which I avoided quite frankly, I’d have to go in as a five star general or nothing at all ... I’m just more comfortable leading than I am following.” *See, e.g.,* interview excerpt at For The Good of Illinois YouTube site, *Robert Breuder “Born to Lead” – Disrespects Our Military*, September 16, 2014 available at <https://www.youtube.com/watch?v=RFO8PmPFgvY>).

41. In light of the overwhelming evidence and reports of Plaintiff’s mismanagement of the College that, in her opinion, resulted in corruption, waste, fraud and abuse at the College, Ms. Mazzochi decided to take action to reform the College in the interest of public service. To that end, she decided to run for the position of Board member in the April 2, 2015 election. Ms. Mazzochi sought to speak with not just Kathy Hamilton, but also then-Trustees Erin Birt and Allison O’Donnell.

Ms. Mazzochi Made Statements In Furtherance of Her Reform Platform to Seek a Board Position and Her Official Duties As a Board Member

42. Ms. Mazzochi, along with Mr. Napolitano, and Mr. Bernstein (co-Defendants in Plaintiff's complaint) ran for election on a "Clean Slate" platform that focused on "end[ing] Breuder-era corruption." (the "Platform Statement"). (Dkt. # 1, Para. 52).

43. Prior to April 2, 2015 election, an overwhelming number of reports had been published regarding Dr. Breuder and events occurring during the era in which he presided over the College, which serve as examples of waste fraud, abuse, and corruption, including but not limited to:

- **Waste.** The College lost over \$2 million dollars in the IMET investment scheme during Dr. Breuder's time as College President;
- **Fraud.** It was widely reported that over \$200,000 was stolen from the College by fraud via the College's radio station during Dr. Breuder's time as College President. (See, e.g., Ex. 33, Elmhurst Patch, *Former Campus Radio Engineer Charged with Stealing Over \$200K from College of DuPage*, February 19, 2015); (Ex. 34, Chicago Tribune, *Ex-College of DuPage radio engineer charged with felony theft*, February 20, 2015); ("Prosecutors claim the fraudulent invoices went back to June 2006"). This theft occurred despite the "clean audit" reports referenced in Plaintiff's Complaint. (Dkt. 1, ¶ 22m).
- **Abuse.** Multiple reports as set forth in media and other government watchdog accounts, including pertaining to Dr. Breuder's spending of college funds. See generally Mazzochi Counter-claim allegations, ¶¶ 5-41, incorporated by reference herein. The College of DuPage Faculty Association issued a vote of "No Confidence" in Dr. Breuder, citing, among other things, the "culture of intimidation and threats created by the [President's] management style" leading to a significant increase in formal grievances, arbitrations, and unfair labor practice claims against the College.
- **Corrupt practices.** Multiple outlets reported allegations of "pay-to-play" schemes and outlined what was characterized as a "seedy little money grab" where Dr. Breuder sought \$20 million in state funding via "a political strategy to benefit [then] Governor Quinn." See generally Mazzochi Counter-claim allegations, ¶¶ 5-41, incorporated by reference herein. Karen Hunter Anderson, the Illinois Community College Board's executive director, described Dr. Breuder's behavior in this regard as "not a typical system approach" for appropriations. (See Ex. 12, Inside Higher Ed, Community

college president's leaked email shows plan to trade political support for state funds, July 25, 2014).

44. On the night of the election, April 2, 2015, following the "Clean Slate" candidates' electoral victory, a statement was issued to the press on behalf of the elected Board members: "Tonight, they gave us a clear mandate to clean up the College of DuPage ... To finally stop the waste, fraud and abuse ..." (the "Press Statement").

45. The above statements were statements of opinion, made as part of or in connection with Ms. Mazzochi's successful campaign as a citizen to seek election to a public office – *i.e.*, Board member – in order to reform a public institution – *i.e.*, the College; and/or to the extent they were based on statements of fact, such statements of fact were reasonably believed to be true.

46. Ms. Mazzochi had the right under U.S. and Illinois law to seek public office to reform the College, and to speak about her platform of reform in furtherance of seeking that office.

47. After her election to the Board, during public meetings between May and October 2015, Ms. Mazzochi (along with the other Board members) commented on issues that demonstrated Plaintiff's mismanagement, misuse of public funds, fraudulent financial and business practices, and corruption. Ms. Mazzochi made these statements as part of her duties as a public official – *i.e.*, Board member – in order to inform the public about the Board's efforts to reform a public institution – *i.e.*, the College. ("Board Meeting Statements").

48. Ms. Mazzochi had the right under U.S. and Illinois law to speak about the Board's reform efforts in public Board meetings, in the capacity of an elected Board member.

49. Ms. Mazzochi, having been elected a Board member, had the right under U.S. and Illinois law to institute proceedings to seek a Board vote on placing Plaintiff on administrative leave, on declaring the validity of Plaintiff's employment contract.

50. Ms. Mazzochi, having been elected a Board member, had the right under U.S. and Illinois law to conduct a hearing on terminating Plaintiff's employment.

51. Materials in the public record consisting of: criminal fraud charges brought by the DuPage State's Attorney's office, in which it was alleged that a manager used a fictitious vendor to bill the College over \$400,000; Dr. Breuder's own e-mail communications and expense receipts; subsequent action by IRS to seek penalties against the College for expense practices that occurred during Dr. Breuder's time at the College; and other publicly reported activity from original sources tied directly to Dr. Breuder and/or his management of the College, demonstrate the truth of the facts and Ms. Mazzochi's beliefs and opinions.

52. The Illinois Auditor General's office performed an analysis of the College's performance in a variety of areas, and concluded, for example, that:

- Even though college Administrative procedures required periodic review of the College's investments by the Treasurer's Advisory Committee, the committee never met between January 2013 and November 7, 2014, nearly two years.
- The College could not provide documentation confirming the Board received quarterly investment reports as Board policy requires.
- The College increased its investments in IMET, a local government investment pool, from approximately \$10 million in April 2014 to approximately \$80 million as of September 2014. Board policy limited investments in a single local government investment fund to just 5 percent of its portfolio.
- Over a four-year period during Dr. Breuder's Presidency, the College conducted 3,562 budget transfers involving 34,842 individual transactions for a total of more than \$460 million. The Board was only required to approve one budget transfer during the four-year period reviewed.

- A review of 20 budget transfers found that the need for the transfer was not always clearly documented and that there was not always proper and timely approval by officials.
- Of the 12 building projects totaling \$403.7 million for the period FY2008-FY2015 the auditors reviewed, the College did not maintain a master list for construction contracts; and could not document competitive bidding practices were complied with for multiple contracts.

53. Moreover, the Higher Learning Commission's ("HLC") subsequent October 12, 2015 Team Report observed in addition to various problems associated with media reports involving Dr. Breuder, "Hundreds of receipts obtained through FOIA requests indicate that the Board, President, and senior administrators utilized assigned 'house accounts' at the Waterleaf to expense thousands of dollars in alcohol for lunches, dinners, and after-work events. These charges were separate and apart from College-sponsored community activities hosted by the College (*i.e.*, the 'Community Night' program used to engage community members in dialogue concerning how the College can better support the needs of the community)." (Team Report Visit at 9). Dr. Breuder refused to be interviewed by the HLC. The HLC raised other concerns relating to management of the College during the Breuder era. (*Id.* at 11 ("As far back as the December 19, 2013 Board of Trustees meeting, one Trustee questioned the propriety of such contracts and so-called 'pay for play' implications"))).

54. The final HLC report (December 16, 2015) stated that the College was out of compliance with the HLC requirement that the "institution operates with integrity in its financial, academic, personnel, and auxiliary functions; it establishes and follows policies and processes for fair and ethical behavior on the part of its governing board, administration, faculty, and staff," including for breaches of the College's investment policies; the College's internal auditor had performed multiple audits "about alleged illegal or unethical conduct or violations of College policy to the attention of senior management" under the College's audit plan, and the

College could not document” actions taken in response or that such information was regularly shared with the College Board; “charges for alcohol at the Waterleaf restaurant that violated administrative procedures,” for “monies paid to a former employee” in connection with the radio station; and by the “awarding of non-competitive bid contracts to vendors whose owners were on the College of DuPage Foundation Board....”

55. All of these widely reported documented misdeeds on the part of the Plaintiff further confirmed that the Board Meeting Statements were true.

Plaintiff’s Discharge

56. Ms. Mazzochi, having been elected a Board member, had the right under U.S. and Illinois law to conduct an appropriate hearing and/or proceeding (along with the other Board members) on terminating Plaintiff’s employment.

57. Plaintiff engaged in misconduct and mismanagement that constituted cause to terminate Plaintiff from his position as President of College of DuPage under the terms of his employment agreement.

Other Misdeeds by Plaintiff, Discovered After His Discharge

58. Additionally, while Plaintiff claims he was “instrumental” in securing a \$168 million capital referendum in November 2010, allowing for extensive College renovations and construction, upon information and belief, Plaintiff improperly sought to spend College dollars to unlawfully engage in issue advocacy in favor of the referendum, and spent College employee time and resources to organize and support a political action committee to advocate in favor of the referendum.

59. Similarly, while Plaintiff claims the College increased its fund balance from \$60 to \$200 million, and obtained above average salary increases for personnel while he was

President, upon information and belief, Dr. Breuder repeatedly only achieved those results by raising taxes, raising tuition, securing bond referendum dollars and by artificially inflating budgets. In his quest for funds, Plaintiff supported initiatives to inflate credit hours outside faculty purview, including one that led to the Higher Learning Commission asserting that the “College has inappropriately awarded college credits” and failed to comply with faculty oversight requirements.

60. While Plaintiff claims he was responsible for the College’s receipt of approximately \$25 million in grants and the increase of the College’s Foundation asset by \$5 million, upon information and belief, one or more grants to the College (identified and returned once Dr. Breuder was on leave of absence) involved self-dealing parties. Moreover, the College Foundation asset increases in large part stemmed from (1) an art donation; and (2) Plaintiff’s direction of several pre-existing external donation streams (*e.g.*, the radio station, MAC) to the Foundation.

61. While Plaintiff claims responsibility for the completion of a \$550 million campus improvement program, the Illinois Auditor General identified multiple irregularities with these programs.

62. Plaintiff misappropriated the educational space and resources of the College, including the Waterleaf, for his own, non-educational purposes.

63. While headcount enrollments increased during Plaintiff’s tenure (hardly surprising when new degree programs were sponsored and added by faculty), the Higher Learning Commission’s probation decision for the College included concerns that the “College has inappropriately awarded college credits” and failed to comply with faculty oversight

requirements for the award of college credit, which involved an initiative to artificially increase FTE numbers.

64. To the extent that Plaintiff claims certain surveys yielded favorable responses about the College, upon information and belief, those surveys were issued prior to the widely known media coverage of Dr. Breuder's mismanagement of the College and the full-time faculty's vote of "No Confidence" in Dr. Breuder's leadership.

65. The Higher Learning Commission's probation decision in December 2015 specifically cited the fact that: "The administration of the College did not perform effectively when the faculty took a vote of no confidence, but the administration took no actions to address the concerns that led to the vote, and practices that led to faculty concerns continue unchanged."

66. Upon information and belief, in March 2011, Dr. Breuder became a trustee of the Lincoln Foundation. Upon information and belief, Dr. Breuder executed a conflict of interest form in 2011 that warned it was a conflict of interest for Lincoln Trustees to be involved with the organizations that they represent.

67. Upon information and belief, the Lincoln Foundation changed its name to Illinois Performance Excellence. (*See Ex. 35, Business Wire, The Lincoln Foundation for Performance Excellence changes name to Illinois Performance Excellence (ILPEX, November 29, 2011).*)

68. Upon information and belief, in 2011, Dr. Breuder directed that the College expend funds on "Examiner Training" payable to the Lincoln Foundation/Illinois Performance Excellence. Upon information and belief, Plaintiff also directed that College funds be used to make donations to the organization, and purchase seats/tables at fundraiser events sponsored by the Lincoln Foundation/Illinois Performance Excellence.

69. Upon information and belief, in November 2011, Dr. Breuder asked Tom Glaser what was the level of signatory authority he possessed to approve expenses without Board disclosure/approval.

70. Upon information and belief, Dr. Breuder did not alert the Board of the College of the nature and scope of the Lincoln foundation/Illinois Performance Excellence donations.

71. Upon information and belief, in October 2012, COD then paid this organization to perform an evaluation of the College. When Trustees at the time asked Plaintiff to describe what the organization was and what they do, Plaintiff failed to disclose to these Trustees that Plaintiff was at the time of payments a trustee for this organization. Plaintiff actions demonstrate his repeated pattern of keeping material information necessary to Board oversight secret from the Board, including in instances where Plaintiff was involved in self-dealing.

72. In his Complaint, upon information and belief, Plaintiff attempts to take credit for the work and ideas of others within the College. For example, upon information and belief, the College was originally set to participate in a Department of Education pilot Pathways to Engineering Program during the term of a prior College President, Dr. Sunil Chand. Upon information and belief, Dr. Breuder discouraged adopting Pathways-style programs in favor of “cafeteria-style” programs to artificially increase the number of credit hours students needed to secure their associates degrees.

73. Following Plaintiff’s departure from the College, the Illinois Auditor General found multiple performance deficiencies that occurred during the time when Dr. Breuder was the President of the College. To address those deficiencies, the College retained new financial personnel, a new audit firm and identified and implemented additional internal controls to prevent future abuse, waste and fraud.

74. Upon information and belief, once Moody's and S&P became aware of the financial concerns that took root during the Breuder era, the College's bond ratings were downgraded. Upon information and belief, those bond ratings were only raised once the College's new financial and Presidential leadership were in place.

Plaintiff's Post-Election Attempts To Interfere With Defendant's Rights As A Citizen and Public Official To Reform The College

75. Since the election, Plaintiff has engaged in a pattern of conduct to interfere with Defendant's efforts to reform the College.

76. Board Policy 15-27 requires that an ethics complaint be brought to the attention of the Board member who was the object of the ethics allegation such that the member would have an opportunity to respond to the ethics allegation.

77. Following the election, upon information and belief that Plaintiff requested that an employee initiate an ethics complaint to State Board of Elections rather than initiating a complaint himself which would have required him to comply with Board Policy 15-27.

78. Board Policy No. 5-165, ¶ 1 in effect during Plaintiff's time at the College expressly obligated the President to "promulgate such procedures as may be necessary to maintain the confidentiality of [the Board's closed meeting] verbatim recordings and minutes." Plaintiff failed to promulgate any such policy.

79. Upon information and belief, prior to the April 30 2015 Board Resolution requiring that the Board Secretary alone retain custody of such confidential recordings, not the College President, Plaintiff stored those tapes in a safe in or near his office and possessed the access and ability to leak those confidential recordings.

80. Upon information and belief, prior to commencing leave April 30, 2015: Plaintiff and/or individuals under his direct supervision and control had possession of the Board's January

2015 closed session tape, and Plaintiff, either directly or by others acting on his behalf/at his request, unlawfully disclosed those confidential recording materials. Upon information and belief, the statements and advice Plaintiff alleges exist on the December 18, 2014 closed session tape are not found in the excerpts from the tape released to the public by, *e.g.*, the Daily Herald or other media outlets. (*See Ex. 36, Daily Herald, Inside the College of DuPage meeting to buy out Breuder*, July 31, 2015).

81. Further, Plaintiff sought to thwart Ms. Mazzochi's participation (along with the participation of Hamilton, Napolitano, and Bernstein) in the hearing on Plaintiff's termination by threatening to boycott the hearing if Ms. Mazzochi was present. It was Ms. Mazzochi's right and duty as a Board member to participate in that hearing. When Ms. Mazzochi (and the other Board members) refused to accede to Plaintiff's threat, Plaintiff did not participate in the hearing.

Plaintiff Filed This Lawsuit, Which Contains Meritless Defamation And Conspiracy Allegations Against Ms. Mazzochi, Solely In Retaliation for Ms. Mazzochi's Protected Actions As a Citizen & Board Member

82. On October 21, 2015, Plaintiff filed this lawsuit (the "Lawsuit") in which he alleged that Ms. Mazzochi defamed him when she (allegedly) made or was associated with the Platform Statement, Press Statement and Board Meeting Statements, and that Ms. Mazzochi conspired with co-Defendants Hamilton, Napolitano, and Bernstein to "take control of the Board through the April 2015 public election" and to terminate Plaintiff. (Dkt. # 1, Paras. 54, 89, 147-52, 125-32).

83. Plaintiff's allegation of defamation against Ms. Mazzochi is meritless because any statements Ms. Mazzochi made were true.

84. Plaintiff's allegation of defamation against Ms. Mazzochi is meritless as her statements about Plaintiff were statements of opinion about a public figure on matters of great importance to the public that Ms. Mazzochi reasonably believed to be true.

85. Plaintiff's allegation of defamation against Ms. Mazzochi is meritless because any statements Ms. Mazzochi made as a concerned citizen, candidate for public office, and Board member about a Plaintiff, a public figure, constituted First Amendment protected political speech.

86. Plaintiff's allegation of defamation against Ms. Mazzochi is meritless because statements about Plaintiff were made without malice.

87. Plaintiff's allegation of defamation against Ms. Mazzochi is meritless because any statements Ms. Mazzochi made after her election to the Board are protected under an absolute privilege, as they were statements by a public official made during a public meeting and in connection with the public official's duties.

88. Plaintiff's allegation of defamation against Ms. Mazzochi is meritless because any statements Ms. Mazzochi made are protected under a qualified privilege, as those statements were matters of great importance both to herself a citizen, an elected Board member and overseer of the College, and to the public as taxpayers and users of the College.

89. Plaintiff's allegation of defamation against Ms. Mazzochi is meritless because any statements Ms. Mazzochi made are protected under the Tort Immunity Act, as commenting on matters central to the management and finances of the College is at the heart of a Board member's discretionary duties.

90. Plaintiff's allegation of defamation against Ms. Mazzochi is meritless because any statements Ms. Mazzochi made were published more than one year before the Lawsuit, and

is therefore time-barred under the one-year statute of limitations for defamation actions. 735 ILCS 5/13-201.

91. Plaintiff's allegation of conspiracy against Ms. Mazzochi is meritless because civil conspiracy is not an independent cause of action.

92. Plaintiff's allegation of conspiracy against Ms. Mazzochi is meritless – specifically with regard to his employment “contract” – because Plaintiff had no valid and/or enforceable contract to be breached.

93. Plaintiff's allegation of conspiracy against Ms. Mazzochi is meritless because any actions Ms. Mazzochi took are protected under the Tort Immunity Act, as using Board procedures as a Board member to effect change to the Board and its governance of the College is at the heart of a Board member's discretionary duties.

94. Plaintiff's allegation of conspiracy against Ms. Mazzochi is meritless because, under the intra-corporate conspiracy doctrine, members of the same Board cannot conspire with each other.

95. Because Plaintiff's Complaint alleging claims based upon alleged defamation and conspiracy by Ms. Mazzochi is meritless, Plaintiff's Complaint against her was filed solely in retaliation for Ms. Mazzochi acting to reform the College first, as a private citizen running for election, and second, as a public official executing her duties as a Board member.

COUNT I: VIOLATION OF THE ILLINOIS CITIZEN PARTICIPATION ACT

96. Ms. Mazzochi incorporates by reference paragraphs 1 through 95 of this Counter-claim as paragraph 96 of Count I of this Counter-claim.

97. Ms. Mazzochi's statements and actions, which form the bases for Plaintiff's defamation and conspiracy claims against Ms. Mazzochi, were made in furtherance of her right

to petition, speak, associate and otherwise participate in government to obtain favorable government action.

98. Plaintiff filed his Complaint against Ms. Mazzochi solely in response to and in retaliation for Ms. Mazzochi's statements and actions in furtherance of her constitutional rights.

99. Plaintiff cannot produce clear and convincing evidence – or any evidence, for that matter – that Ms. Mazzochi's statements and actions were *not* genuinely aimed at procuring favorable government action.

PRAYER FOR RELIEF

WHEREFORE, Ms. Mazzochi respectfully requests that this Court:

1. Award compensatory damages to Ms. Mazzochi for Plaintiff's violations of her rights as described above;
2. Award punitive damages to Ms. Mazzochi for Plaintiff's violations of her rights as described above;
3. Award costs and attorneys' fees to Ms. Mazzochi, per 735 ILCS 110/25; and
4. Award all other relief as the Court finds just and equitable.

Respectfully submitted,

DEANNE MAZZOCHI

By: /s/Jody A. Boquist
One of Her Attorneys

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Dated: June 29, 2018

CERTIFICATE OF SERVICE

I hereby certify that on June 28, 2018, I caused copies of the foregoing to be served on all counsel of record by filing electronic copies with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all registered CM/ECF users.

/s/Jody A. Boquist
One of the Attorneys for Deanne Mazzochi