

IN THE CIRCUIT COURT OF ST. LOUIS COUNTY
STATE OF MISSOURI

FILED
NOV 02 2011
JOAN M. GILMER
CIRCUIT CLERK, ST. LOUIS COUNTY

DAVID GARAFOLA,

Plaintiff,

vs.

WEBSTER UNIVERSITY,

Defendant.

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Cause No. 11SL-CC00313 TWD

Division No. 8

JOINT MOTION FOR PROTECTIVE ORDER

COME NOW, Plaintiff, David Garafola ("Garafola" or "Plaintiff"), and Defendant, Webster University ("University" or "Defendant"), and respectfully request that the Court enter the Protective Order attached hereto, pursuant to Missouri Rule of Civil Procedure 56.0-1(c), and hereby move for the entry of the attached Protective Order (Attachment A) that has been agreed to by all parties in order to facilitate the exchange of confidential information that may be disclosed in the course of discovery in this litigation. In further support of their motion, the parties state:

1. The parties agree that entry of the attached Protective Order is necessary to protect the privacy of the parties' confidential information as well as confidential personnel information of non-parties, which is a privacy interest that Missouri law recognizes as fundamental. *See State ex rel. Delmar Gardens North Operating LLC v. Gaertner*, 239 S.W.3d 608, 609-12 (Mo. 2007) ("Missouri recognizes a right of privacy in personnel records that should not be lightly disregarded or dismissed."); *State ex rel. Crowden v. Dandurand*, 970 S.W.2d 340, 343 (Mo. banc 1998) ("Employees have a fundamental right of privacy in employment records").

2. The parties agree further that Defendant possesses an interest in preserving the privacy of its employees who are not parties to this action and in preserving the confidentiality of its confidential educational records and business information.

3. The parties agree that the Court should enter the attached proposed Protective Order, which requires that the documents produced and discovery otherwise obtained in this case be used only in connection with the litigation of this case and mandates that each party destroy such Confidential Information be returned to the producing party upon the completion of this case, including any appeals.

WHEREFORE, for the foregoing reasons, Plaintiff and Defendant jointly request that the Court enter the Protective Order attached hereto and grant any further and other relief the Court deems just and proper.

Dated: November 2, 2011

Respectfully submitted,

**Rynearson, Suess, Schnurbusch &
Champion, L.L.C.**

By: *V. Essen by D.C.*
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Attorneys for Plaintiff

Bryan Cave LLP

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Attorneys for Defendant

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PROTECTIVE ORDER

Upon consideration of the Joint Motion for a Protective Order concerning certain information and documents which will or may be provided in the above-referenced matter by plaintiff David Garafola ("Garafola") to defendant Webster University ("University"), by the University to Garafola, and/or by third parties, it appearing to the Court that sufficient cause exists for the issuance of a Protective Order,

IT IS HEREBY ORDERED as follows:

1. The kinds of information and documents that the parties may designate as "Confidential" include student records or information, personnel records or information pertaining to Plaintiff and/or individuals who are not parties to this action, third party documents or information, and documents or information pertaining to bidding processes where competitive or proprietary information of third parties maybe implicated, and any documents which pertain to the historical or actual results of or to the future strategic, geographic, fiscal, or academic planning of the university.

2. In accordance with the provisions set forth below, the Court intends that information and documents produced, obtained or exchanged in the course of this action shall be

used by the party to whom such documents are produced, obtained or exchanged solely for the purpose of this lawsuit and for no other purpose.

3. Any documents produced by or exchanged between Garafola and the University pursuant to discovery requests or pre-trial disclosures and/or any information contained in responses to Interrogatories, Requests for Admissions, and/or Requests for Production of Documents or in any other discovery, including but not limited to deposition testimony and deposition exhibits, which either party believes in good faith is of a proprietary and/or confidential nature, may be designated as "Confidential." All documents and information so designated and all copies thereof (hereinafter referred to collectively as "the Confidential Information"), shall be treated as confidential and shall not be disclosed except as provided in this Order; provided, however, that counsel for the party designating information as Confidential may, in writing and without Court approval, agree to release any of the Confidential Information from the requirements of this Order; and provided further that nothing in this Order shall prevent any party from challenging the designation of any document as Confidential.

4. Any party may designate a document as Confidential pursuant to the terms of this Order by affixing to the first page thereof a stamp with the legend "Confidential" or may, in the alternative, by written notice provided within twenty (20) days of said document's production inform counsel for the non-designating party that the document is to be treated as Confidential Information. All documents shall be treated as Confidential Information during this twenty (20) day period.

5. Confidential Information shall be produced only to counsel of record in this action, each of whom is bound by the terms of this Order.

6. Neither the Confidential Information nor its contents shall be disclosed to any other person without the agreement of the party designating information as Confidential, except that counsel may, without further agreement, disclose the Confidential Information or its contents to the following persons for use solely in connection with this action under the following conditions:

- a. Any party, attorney, legal assistant, or other employee of either party who has a need to handle the Confidential Information under normal office procedure;
- b. Experts or consultants retained by the parties with respect to this action;
- c. Any person from whom testimony has been taken or is reasonably expected to be taken in this action (whether by deposition or at trial);
- d. Plaintiff and any person who is an officer, director, employee, or representative of Defendant (or any one of them), who has a legitimate need to know the contents of Confidential Information in the context of this litigation;
- e. This Court and its staff; and
- f. Any court reporters present in their official capacity at any hearing, deposition, or other proceeding in this action.

7. In the event that a named party in this action (or a named party's representative) shows or gives access to Confidential Information, or information derived therefrom, to a person referred to in subparagraphs 6(b) and 6(c), counsel for that named party shall inform such a person that he or she is bound by the terms of this Protective Order.

8. Either party may also designate a portion of a deposition as Confidential Information by notifying the other party in writing within twenty (20) days of receipt of the

transcript of the portions that are designated Confidential. All depositions shall be treated as Confidential Information during this twenty (20) day period.

9. Confidential Information shall be used solely for the purpose of prosecution or defense of this action, and such documents may be used, consistent with the terms of this Order, in pretrial discovery, motions and at the trial or preparation for trial and any appeals of this action. The use of Confidential Information at trial, in motions or at depositions shall not be deemed a waiver of this Order.

10. This Order has no effect upon, and its scope shall not extend to, any party's use of its own Confidential Information.

11. Producing or receiving materials or otherwise complying with the terms of this Order shall not:

a. Operate as an admission by any party that any particular discovery material contains or reflects any Confidential Information; or

b. Prejudice in any way the rights of any party to object to the production of documents it considers not subject to discovery or otherwise protected from or limited in discovery on the basis of privilege or otherwise; or

c. Prejudice in any way the rights of a party to seek a court determination whether particular discovery materials should be produced; or

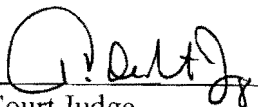
d. Prejudice in any way the rights of a party to apply to the Court for any additional protection with respect to the confidentiality of documents or information as that party may consider appropriate.

12. The Confidentiality provisions of this Order shall survive any settlement, judgment or other disposition or conclusion of this action, and all appeals therefrom unless

otherwise ordered by this Court. At the conclusion of this litigation, including any appeals which may be filed, each party will return to the other all confidential documents, including copies, received from the other during the course of this litigation unless otherwise ordered by this Court.

13. Either party may at any time and for any reason seek modification of this Protective Order. This Protective Order can be modified only by written agreement of the parties or by Order of this Court. Each party reserves the right to object to any party's motion or request to modify this Protective Order.

SO ORDERED:



Circuit Court Judge

Date: _____ 11/2/11

**IN THE CIRCUIT COURT OF ST. LOUIS COUNTY
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DAVID GARAFOLA,

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Cause No. 11SL-CC00313 TWD

Division No. 8

**DEFENDANT'S AMENDED ANSWER TO
PLAINTIFF'S FIRST AMENDED PETITION**

COMES NOW Defendant and by its attorneys, states the following in response to the Plaintiff's First Amended Petition.

COUNT I

1. Defendant is without sufficient knowledge as to the allegations contained in paragraph 1 of Count I of Plaintiff's First Amended Petition and therefore denies the same.
2. Defendant admits the allegations contained in paragraph 2 of Count I of Plaintiff's First Amended Petition.
3. Defendant admits that prior to April 28, 2010, Garafola was employed by Defendant for a period of 12 years on an annual basis by virtue of a non-renewable contract with a term of one-year.
4. Defendant states that it has a number of telephone systems worldwide and at least one or more were under review including the solicitation of bids for upgrades in hardware and software from various vendors in the 2007-2009 time frame; in all other respects Defendant denies the allegations contained in paragraph 4 of Count I of Plaintiff's First Amended Petition.

5. The allegations in paragraph 5 of Count I of Plaintiff's First Amended Petition are too vague and ambiguous to permit a meaningful response and lack sufficient specificity to ascertain the individuals referenced by the allegations in paragraph 5, and, therefore, Defendant denies same.

6. The allegations in paragraph 6 of Count I of Plaintiff's First Amended Petition are too vague and ambiguous, particularly the use of the term "firm", to permit Defendant to ascertain the substance of the allegation and, therefore, denies the same. Defendant admits that members of its Board of Trustees are employed and have been employed by entities which are telecommunications providers to some of the University's operations.

7. The allegations contained in paragraph 7 of Count I of Plaintiff's First Amended Petition are so vague and ambiguous that Defendant lacks sufficient specificity from which to make a knowing response, and, therefore, Defendant denies same.

8. The allegations contained in paragraph 8 of Count I of Plaintiff's First Amended Petition are too vague and ambiguous and lack sufficient specificity from which to make a knowing response; therefore, Defendant denies same.

9. Defendant states the allegations in paragraph 9 of Count I of Plaintiff's First Amended Petition are too vague and ambiguous and particularly lack specificity as to time and place to permit a response and, therefore, Defendant denies same.

10. Defendant states the allegations in paragraph 10 of Count I of Plaintiff's First Amended Petition are too vague and ambiguous and lack specificity as to time and place to permit a response and, therefore, Defendant denies same.

11. Defendant admits the former President of the University was compensated consistent with his Employment Agreement and Separation Agreement with the University. In

all other respects, the allegations are too vague and ambiguous to permit a response and, therefore, Defendant denies same.

12. Defendant denies the allegations contained paragraph 12 of Count I of Plaintiff's First Amended Petition.

13. Defendant restates its response to paragraph 12 above.

14. Defendant admits that in the fall of 2009, the Chair of the Board of Trustees, another member of the Board of Trustees, and the then President of the University convened a meeting with members of the faculty and staff on the University premises to discuss several topics. Unless expressly admitted, Defendant denies the allegations in paragraph 14 of Count I of Plaintiff's First Amended Petition.

15. Defendant denies the allegations contained in paragraph 15 of Count I of Plaintiff's First Amended Petition.

16. Defendant denies the allegations contained in paragraph 16 of Count I of Plaintiff's First Amended Petition.

17. Defendant denies the allegations contained in paragraph 17 of Count I of Plaintiff's First Amended Petition.

18. Defendant admits that construction plans for facilities to be utilized for Business School and Science laboratory functions were under consideration in the Fall of 2009. At the same time, additional space had become available in the vicinity of the Webster Groves campus which caused the appropriate University committees to reevaluate space allocation and the pending and proposed construction projects and related planning. Unless expressly admitted, Defendant denies the allegations contained in paragraph 18 of Count I of Plaintiff's First Amended Petition.

19. The allegations contained in paragraph 19 of Count I of Plaintiff's First Amended Petition are too vague and ambiguous and lack specificity as to which contracts in which timeframe to permit Defendant to permit a response and, therefore, Defendant denies same.

20. Defendant states that, in 2009 and 2010, contractorx with which the University had previously done business, and whose officers were member s of the Board of Trustees, submitted bids for construction work. At least one contractor also confirmed it would make a gift to the University. This information came to the attention of the members of the Audit Committee of the Board of Trustees only after Plaintiff was pressed for relevant information and an explanation of certain accounting questions for which he had ultimate responsibility. In all other respects the allegations contained in Paragraph 20 of Count I of Plaintiff's First Amended Petition are too vague and ambiguous and lack sufficient specificity to permit Defendant to more fully respond and, therefore, Defendant denies same.

21. The allegations contained in paragraph 21 of Count I of Plaintiff's First Amended Petition are too vague and ambiguous to permit a response and, therefore, Defendant denies same.

22. Defendant is without sufficient knowledge as to the specific facts asserted by the vague and ambiguous allegations contained in paragraph 22 of Count I of Plaintiff's First Amended Petition and, therefore, Defendant denies same.

23. The allegations contained paragraph 23 of Count I of Plaintiff's First Amended Petition are too vague and ambiguous to permit a knowing response, except to state that Plaintiff's only known complaint to the President of the University regarding members of the Board of Trustees was Plaintiff's stated perception that certain Trustees were too involved in the

oversight of his and other administrator's decisions and actions. Unless expressly admitted, Defendant denies the allegations contained in paragraph 23 of Plaintiff's First Amended Petition.

24. The allegations contained in paragraph 24 of Count I of Plaintiff's First Amended Petition are too vague and ambiguous to permit a response and, therefore, Defendant denies same.

25. Defendant admits the allegations contained in paragraph 25 of Count I of Plaintiff's First Amended Petition and further states the referenced "concern" about student accounts was investigated by Garafola over a period of weeks and months during the fall of 2009.

26. Defendant admits that, on or about September 14, 2009, Garafola assumed responsibility for the investigation into the matter which had been reported to him by one of his subordinates in the Finance Department. At some time after, Garafola initiated inquiries and hired an outside investigator for some parts of the investigation, he informed others at the University about the alleged fraud on the University. Unless expressly admitted, Defendant denies the allegations contained in paragraph 26 of Count I of Plaintiff's First Amended Petition.

27. In answer to paragraph 27, Defendant realleges and incorporates its answer to paragraph 26 set forth hereinabove.

28. Defendant admits the allegations contained in paragraph 28 of Count I of Plaintiff's First Amended Petition.

29. Defendant admits that some of the processes in place prior to 2010 permitted some graduate student applicants to be provisionally admitted for University course work subject to later confirmation of transcript records and other pertinent data. As part of the former admissions process some graduate applicants' requests for tuition funds and certain living expenses were also processed subsequent to their applications for admittance to a graduate

program. In one case this process resulted in the fraudulent receipt of funds by an individual in whose Indictment and subsequent prosecution Webster University fully cooperated with federal authorities. Unless expressly admitted, Defendant denies the allegations contained in Paragraph 29 of Count I of Plaintiff's First Amended Petition.

30. Defendant denies the allegations contained in paragraph 30 of Count I of Plaintiff's First Amended Petition.

31. Defendant asserts the allegations contained in paragraph 31 of Count I of Plaintiff's First Amended Petition are too vague and ambiguous as to the alleged time, place, the manner and details of his alleged communication, to permit a response and, therefore, Defendant denies same.

32. In answer to paragraph 32, Defendant realleges and incorporates its answer to paragraph 31 set forth hereinabove.

33. The allegations contained in paragraph 33 of Count I of Plaintiff's First Amended Petition are too vague and ambiguous to permit a response, and, therefore, Defendant denies same.

34. Defendant denies the allegations contained in paragraph 34 of Count I of Plaintiff's First Amended Petition. Defendant further states the University fully cooperated with all the Federal agencies investigating this matter, including without limitation, the Departments of Education, Post Office, and Justice in the course of the government's investigation which had been initiated by employees who reported directly and indirectly to Plaintiff.

35. Defendant denies the allegations contained in paragraph 35 of Count I of Plaintiff's First Amended Petition.

36. Defendant denies the allegations contained in paragraph 36 of Count I of Plaintiff's First Amended Petition. Defendant further states a representative of the Department of Education was informed of the University's investigation and was involved in the same since October of 2009.

37. Defendant is without sufficient knowledge as to the accuracy of the allegations contained in paragraph 37 of Count I of Plaintiff's First Amended Petition, and, therefore, Defendant denies same.

38. Defendant denies the allegations contained in paragraph 38 of Count I of Plaintiff's First Amended Petition.

39. Defendant denies the allegations contained in paragraph 39 of Count I of Plaintiff's First Amended Petition.

40. Defendant admits that from and after the time the investigation of the alleged fraud commenced, various University Departments, including those for whom the Plaintiff had oversight, cooperated in developing more comprehensive checks and balances on the graduate student admissions processes. The latter were reflected in part in an internal auditors report in 2010. Unless expressly admitted, Defendant denies the allegations contained in paragraph 40 of Count I of Plaintiff's First Amended Petition.

41. Plaintiff was informed on or about Friday, April 28, 2010 that his one year Appointment Letter with the University for academic year 2009-2010 would expire at the end of May 2010 and would not be renewed after June the 1st, 2010. Unless expressly admitted, Defendant denies the allegations contained in paragraph 41 of Count I of Plaintiff's First Amended Petition.

42. Defendant denies the allegations contained in paragraph 42 of Count I of Plaintiff's First Amended Petition.

43. Defendant denies the allegations contained in paragraph 43 of Count I of Plaintiff's First Amended Petition.

44. Defendant denies the allegations contained in paragraph 44 of Count I of Plaintiff's First Amended Petition.

45. Defendant denies the allegations contained in paragraph 45 of Count I of Plaintiff's First Amended Petition.

46. Defendant denies the allegations contained in paragraph 46 of Count I of Plaintiff's First Amended Petition.

47. Defendant denies the allegations contained in paragraph 47 of Count I of Plaintiff's First Amended Petition.

48. Defendant denies the allegations contained in paragraph 48 of Count I of Plaintiff's First Amended Petition.

Defendant denies that Plaintiff is entitled to any of the relief sought in the WHEREFORE clause following paragraph 48 of Count I of Plaintiff's First Amended Petition.

COUNT II

1. Defendant restates and reincorporates by reference herein its answers to paragraphs 1 through 48 and to the final paragraph of Count I of Plaintiff's First Amended Petition, as set forth hereinabove.

2. Defendant states that on April 28, 2010, Plaintiff was informed that his annual Letter of Appointment would not be renewed upon its expiration on May 31, 2010 and that Plaintiff would be paid and compensated in salary and benefits through May 31, 2010. Plaintiff

was subsequently paid two additional months of his salary and benefits as well as all the Vacation and PTO which plaintiff calculated and claimed he was due. Defendant denies any other allegations contained in paragraph 2 of Count II of Plaintiff's First Amended Petition.

3. Defendant denies the allegations contained in paragraph 3 of Count II of Plaintiff's First Amended Petition.

4. Defendant denies the allegations contained in paragraph 4 of Count II of Plaintiff's First Amended Petition.

5. Defendant denies the allegations contained in paragraph 5 of Count II of Plaintiff's First Amended Petition.

6. Defendant denies the allegations contained in paragraph 6 of Count II of Plaintiff's First Amended Petition.

7. Defendant denies the allegations contained in paragraph 7 of Count II of Plaintiff's First Amended Petition.

8. Defendant denies the allegations contained in paragraph 8 of Count II of Plaintiff's First Amended Petition.

9. Defendant admits that, following the departure of its then current President during the 2007- 2008 Academic year, its Board of Trustees, by and through its pertinent committee, began a search for a new President some time during the 2008 calendar year.

10. Defendant denies the interim President immediately expressed an interest in being considered a candidate for the role of President. Only at a later date, after he had participated as a member of the search committee, did he indicate any interest in being considered as a candidate. In all other respects, Defendant denies the allegations contained in paragraph 10 of Count II of Plaintiff's First Amended Petition.

11. Defendant denies the allegations contained in paragraph 11 of Count II of Plaintiff's First Amended Petition.

12. Defendant is without sufficient knowledge as to the allegations contained in paragraph 12 of Count II of Plaintiff's First Amended Petition and, therefore, Defendant denies same.

13. Defendant states the allegations contained in paragraph 13 of Count II of Plaintiff's First Amended Petition are too vague and ambiguous to permit a response and, therefore, Defendant denies same. Answering further, Defendant states that Dr. Elizabeth Stroble, Ph.D., officially assumed the Presidency of the University on or about July 1, 2009.

14. As to the allegations contained in paragraph 14 of Count II of Plaintiff's First Amended Petition, Defendant states that sometime in calendar 2009, the position of Chancellor was created and Dr. Neil George, Ph.D., who had been serving as the interim President of the Defendant, was appointed to that role. As to all other allegations contained in paragraph 14 of Count II of Plaintiff's First Amended Petition, Defendant denies same.

15. Defendant denies the allegations contained in paragraph 15 of Count II of Plaintiff's First Amended Petition.

16. Defendant denies the allegations contained in paragraph 16 of Count II of Plaintiff's First Amended Petition.

17. Defendant is without sufficient knowledge as to the specific allegations contained in paragraph 17 and further that the substance of the filing of an EEOC "complaint" is a confidential matter under the applicable law; therefore, Defendant denies the allegations contained in paragraph 17 of Count II of Plaintiff's First Amended Petition.

18. Defendant denies the allegations contained in paragraph 18 of Count II of Plaintiff's First Amended Petition.

19. Defendant is without sufficient knowledge of the allegations contained in paragraph 19 of Count II of Plaintiff's First Amended Petition and, therefore, denies same.

20. Defendant is without sufficient knowledge of the allegations contained in paragraph 20 of Count II of Plaintiff's First Amended Petition and, therefore, denies same.

21. Defendant admits that Plaintiff received bonuses along with other administrative staff and those bonuses were based in large part on the representations made by Plaintiff himself to his reviewing supervisors in the administration about the quality of his performance. As to any other allegations in paragraph 21 of Count II of Plaintiff's First Amended Petition, Defendant denies same.

22. Defendant denies the allegations contained in paragraph 22 of Count II of Plaintiff's First Amended Petition.

23. Defendant admits that Plaintiff was approximately that age in April 2010 when he was informed that his annual Letter of Appointment which expired on May 31st 2010 would not be renewed.

24. Defendant denies the allegations contained in paragraph 24 of Count II of Plaintiff's First Amended Petition.

25. Defendant denies the allegations contained in paragraph 25 of Count II of Plaintiff's First Amended Petition.

26. Defendant denies the allegations contained in paragraph 26 of Count II of Plaintiff's First Amended Petition.

27. Defendant denies the allegations contained in paragraph 27 of Count II of Plaintiff's First Amended Petition.

28. Defendant denies the allegations contained in paragraph 28 of Count II of Plaintiff's First Amended Petition.

29. Defendant denies the allegations contained in paragraph 29 of Count II of Plaintiff's First Amended Petition.

30. Defendant denies the allegations contained in paragraph 30 of Count II of Plaintiff's First Amended Petition.

Defendant further denies that Plaintiff is entitled to any of the relief prayed for in the WHEREFORE clause stated as a final paragraph to Count II of Plaintiff's First Amended Petition.

AFFIRMATIVE DEFENSES

Comes now Defendant and for its affirmative defenses states the following:

1. As an affirmative defense, Defendant asserts that Plaintiff's First Amended Petition fails to state a claim upon which relief can be granted.

2. As an affirmative defense, Defendant asserts the damages allegedly suffered by Plaintiff has no causal relationship or connection with any act or omission by Defendant in that, to the extent Plaintiff has suffered any damages, Plaintiff's own conduct, actions and omissions, including but not limited to his failure to adequately perform his job duties to the satisfaction of the members of the Audit and Executive Committees of the Board of Trustees, to whom he had a reporting obligation, serve as the sole and proximate cause of such damages.

3. As an affirmative defense, Defendant asserts it reserves the right to assert any additional defenses which discovery or other investigation may reveal to be appropriate.

4. As an affirmative defense, Defendant asserts all action or non-actions of Defendant, including the decision not to renew Plaintiff's employment contract, were based upon legitimate nondiscriminatory reasons, in that, among other things, (1) Plaintiff never engaged in any protected whistle blowing in his capacity as an employee of Defendant, and (2) Defendant's dissatisfaction with Plaintiff's performance and conduct—not any protected activity—supported its decision not to renew Plaintiff's contract. Furthermore, Plaintiff had no legal entitlement to any contract or employment beyond May 31, 2010, the end of the specified term of his now-expired contract.

5. As an affirmative defense, Defendant avers that all of its actions and decisions with respect to the compensation, terms, conditions and privileges of Plaintiff's employment were at all times taken—not for any discriminatory or retaliatory reasons—but in good faith and for legitimate business reasons, including but not limited to the pursuit of sound fiscal policy, the maintenance of integrity and transparency, and the assignment of fair value to Plaintiff's unsatisfactory performance and conduct.

6. As an affirmative defense, Defendant asserts that Plaintiff's claims are barred and/or limited, in whole or in part, because the alleged losses and/or damages, if any, sustained by Plaintiff are too speculative and uncertain in that Plaintiff had no legal entitlement to any contract or employment beyond May 31, 2010; thus, only speculation can support any claim of lost wages that Plaintiff allegedly would have earned but for the allegedly unlawful decision not to renew his contract for some unknown term.

7 As an affirmative defense, Defendant asserts that Plaintiff's claims are barred, in whole or in part, by the doctrines of waiver, estoppel, laches, ratification, consent and unclean hands in that Plaintiff's unsatisfactory performance and conduct—not any protected activity—

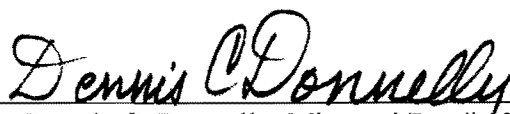
supported its decision not to renew Plaintiff's contract, and Plaintiff voluntarily consented to an Annual Letter of Appointment with a fixed term, which Defendant had no obligation to renew.

8. As an affirmative defense, Defendant asserts that, based on evidence it has acquired since the Defendant's legitimate decision not to renew the Plaintiff's Annual Letter of Appointment when it expired in May 2010, Defendant would have had additional legitimate, non-discriminatory predicates for its actions in non renewal, including but not limited to Plaintiff's mishandling and misappropriation of Defendant's resources for Plaintiff's personal benefit. For example, Plaintiff apparently violated his fiduciary duty and duty of loyalty to Defendant and his obligation to avoid conflicts of interest, when, inter alia , he permitted a personal friend to reside rent-free in a dwelling owned by Defendant and under Plaintiff's control during Plaintiff's employment with Defendant.

WHEREFORE, Defendant Webster University denies that Plaintiff is entitled to any relief as a result of the allegations set forth in Plaintiff's First Amended Petition. Defendant Webster University requests that judgment be awarded in its favor and that it be awarded its costs and disbursements incurred in this action, including attorneys' fees, and such other and further relief as this Court may deem just and proper.

Respectfully Submitted,

BRYAN CAVE LLP

By: 
Dennis C. Donnelly, Missouri Bar # 19613
Michael P. Burke, Missouri Bar # 22182
Veronica A. Gioia, Missouri Bar# 42223
One Metropolitan Square
211 North Broadway, Suite 3600
St. Louis, Missouri 63102
Telephone: 314-259-2000
Facsimile: 314-259-2020

Attorneys for Defendant
WEBSTER UNIVERSITY

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing was served via U.S. Mail, postage prepaid, on this 27th day of October 2011 to:

Debbie S. Champion
Victor H. Essen, II
RYNEARSON, SUESS, SCHNURBUSCH
& CHAMPION, L.L.C.
1 S. Memorial Drive, Suite 1800
St. Louis, MO 63102

Attorneys for Plaintiff



BY LEAVE

Div 8 10/11/11

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Plaintiff,

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Cause No. 11SL-CC00313 TWD

Division No. 8

**DEFENDANT'S REQUEST FOR LEAVE TO FILE ITS AMENDED ANSWER TO
PLAINTIFF'S FIRST AMENDED PETITION**

COMES NOW Defendant and by its attorneys hereby requests leave of Court to file its
Amended Answer to Plaintiff's First Amended Petition.

Respectfully Submitted,

BRYAN CAVE LLP

*Request Granted
Gilbert J.
J. & D. 11/4/11*

By:

Dennis C. Donnelly

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Michael P. Burke, Missouri Bar # 22182
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211 North Broadway, Suite 3600
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Facsimile: 314-259-2020

*Attorneys for Defendant
WEBSTER UNIVERSITY*

CERTIFICATE OF SERVICE

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Debbie S. Champion
Victor H. Essen, II
RYNEARSON, SUESS, SCHNURBUSCH
& CHAMPION, L.L.C.
1 S. Memorial Drive, Suite 1800
St. Louis, MO 63102

Attorneys for Plaintiff



FILED

OCT 27 2011

JOAN M. GILMER
CIRCUIT CLERK, ST. LOUIS COUNTY

IN THE 21ST JUDICIAL CIRCUIT COURT
COUNTY OF ST. LOUIS
STATE OF MISSOURI

DAVID GARAFOLA,

Plaintiff,

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Defendant.

Cause No: 11SL-CC00313

Division: 8

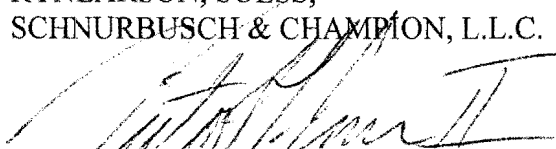
CERTIFICATE OF MAILING

THE UNDERSIGNED HEREBY certifies that the original of *Plaintiff David Garafola's Responses to Defendant Webster University's First Requests for Production of Documents* was sent via U.S. Mail with postage prepaid this 26th day of October 2011 to:

Mr. Dennis C. Donnelly
Mr. Michael P. Burke
Ms. Veronica A. Gioia
One Metropolitan Square
211 North Broadway, Suite 3600
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RYNEARSON, SUESS,
SCHNURBUSCH & CHAMPION, L.L.C.

BY:


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DN 8

IN THE CIRCUIT COURT OF THE COUNTY OF ST. LOUIS
STATE OF MISSOURI

DAVID GARAFOLA,

Plaintiff,

vs.

WEBSTER UNIVERSITY,

Defendant.

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Cause No: 11SL-CC00313

Division: 8

NOTICE OF HEARING

YOU ARE HEREBY NOTIFIED THAT Plaintiff, David Garafola, by and through undersigned counsel, shall call up for hearing his Motion to Strike Defendant Webster University's Affirmative Defenses on October 26, 2011 in Division 8 of the Circuit Court of the County of St. Louis at 9:30 a.m. or as soon thereafter as counsel may be heard at which time you are invited to attend and be heard.

RYNEARSON, SUESS,
SCHNURBUSCH & CHAMPION, L.L.C.

BY: 

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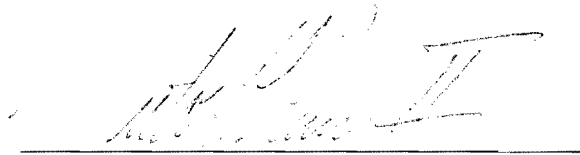
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Certificate of Mailing

The undersigned hereby certifies that a true and accurate copy of the foregoing document was sent via U.S. Mail with postage prepaid this 2nd day of October 2011 to:

Mr. Dennis C. Donnelly
Mr. Michael P. Burke
Ms. Veronica A. Gioia
One Metropolitan Square
211 North Broadway, Suite 3600
St. Louis, Missouri 63102
314-259-2000 / 314-259-2020 (FAX)



A handwritten signature in dark ink, appearing to read "Michael P. Burke", is written over a horizontal line.

D-11-11-11

IN THE CIRCUIT COURT OF THE COUNTY OF ST. LOUIS
STATE OF MISSOURI

DAVID GARAFOLA,

Plaintiff,

vs.

WEBSTER UNIVERSITY,

Defendant.

Cause No: 11SL-CC00313

Division: 8

PLAINTIFF'S MOTION TO STRIKE DEFENDANT'S AFFIRMATIVE DEFENSES

COMES NOW Plaintiff David Garafola (hereinafter "Garafola"), and for his Motion to Strike Defendant's Affirmative Defenses, states as follows:

1. On or about September 9, 2011, Defendant Webster University (hereinafter "Webster") filed its Answer to the First Amended Petition in this matter.
2. In that Answer, Webster asserts a number of affirmative defenses to the claims in the First Amended Petition.
3. Under Missouri Rule of Civil Procedure 55.08, "A pleading that set forth an affirmative defense or avoidance shall contain a short and plain statement of the facts showing that the pleader is entitled to the defense or avoidance."
4. Furthermore, under Missouri Rule of Civil Procedure 55.27, "the court may order stricken from any pleading any insufficient defense."
5. The affirmative defenses numbered paragraphs 2, 4, 5, 6, 7, and 8 in Webster's Answer are not sufficiently pled and should be stricken.
6. In paragraph 2 of the affirmative defenses, Webster asserts "the damages allegedly suffered by Plaintiff has no causal relationship or connection with any act or omission by Defendant." Webster pleads absolutely no facts that allow Garafola to determine the basis of

the allegations in paragraph 2. Garafola is simply left to guess at what “act or omission” is at issue and why there is no “causal relationship or connection.” These allegations purely conclusory and insufficient under Missouri’s fact pleading requirements. Therefore, they should be stricken.

7. In paragraph 4, Webster asserts that “all action or non-actions of Defendant were based upon legitimate nondiscriminatory reasons.” Again, this affirmative defense utterly fails to identify with any facts what “action or non-actions” are at issue and what “legitimate nondiscriminatory reasons” justified the “action or non-actions.” Once again, the reader is left guessing what the basis of the affirmative defense is. Therefore, this defense is insufficient and should be stricken.

8. In paragraph 5, Webster asserts “that its actions with respect to the compensation, terms, conditions and privileges of Plaintiff’s employment were at all times taken in good faith and for legitimate business reasons, and not for any discriminatory or retaliatory reasons.” This affirmative defense also leaves the reader to guess at the substance of the allegations. It does not identify Webster’s “actions” and it does not identify the “legitimate business reasons” that supported the unidentified actions. This affirmative defense is similarly insufficient and should be stricken.

9. In paragraph 6, Webster asserts “that Plaintiff’s claims are barred and/or limited, in whole or in part, because the alleged losses and/or damages, if any, sustained by Plaintiff are too speculative and uncertain.” Webster gives no factual basis to support the claim that the damages in this case are “speculative and uncertain.” This affirmative defense should be stricken.

10. In paragraph 7, Webster claims that Garafola's claims are barred by "waiver, estoppel, laches, ratification, consent and unclean hands." Webster pleads absolutely no facts to support this conclusory assertion. Therefore, the defense should be stricken.

11. In paragraph 8, Webster claims that "based on evidence it has acquired..., Defendant would have had additional legitimate, non-discriminatory predicates for its actions in non renewal." Webster again makes no efforts to identify what "legitimate, non-discriminatory predicates" exist or existed. It is merely a conclusion without factual support. The defense should be stricken.

WHEREFORE, Plaintiff David Garafola prays that this Court grants his Motion to Strike Defendant's Affirmative Defenses and enters its Order striking the affirmative defenses contained in paragraphs 2, 4, 5, 6, 7, and 8 of the affirmative defenses in Defendant Webster University's Answer and for such other and further relief this Court deems necessary and proper under the circumstances.

RYNEARSON, SUESS,
SCHNURBUSCH & CHAMPION, L.L.C.

BY:



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The undersigned hereby certifies that a true and accurate copy of the foregoing document was sent via U.S. Mail with postage prepaid this 7th day of October, 2011 to:

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