UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS

PHILLIP BEVERLY, et al.,	)	
	)	
Plaintiffs,	)	Case No. 1:14-CV-04970
	)	
v.	)	Judge Joan B. Gottschall
	)	
WAYNE D. WATSON, et al.,	)	Magistrate Judge Sheila Finnegan
	)	
Defendants.	)	

DECLARATION OF ROBERT CORN-REVERE
IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION

I, Robert Corn-Revere, declare as follows:

1. I am a partner in the Washington, D.C. office of the law firm Davis Wright Tremaine LLP and I have represented Plaintiffs since the inception of this litigation.

2. Plaintiffs filed their Complaint on July 1, 2014. After service of the Complaint on July 21, 2014, counsel for Defendants sought and received an additional month to answer.

3. In August 2014, I initiated settlement discussions with Defendants' counsel in the Illinois Attorney General's Office. As memorialized in subsequent correspondence, a key element of the negotiation was the understanding that no action adverse to Plaintiffs would occur as the parties negotiated. This understanding included the ideas that no sanctions would be imposed on Professors Beverly and Bionaz for their publication of the *CSU Faculty Voice*, no other administrative punishments would be imposed for related speech activities, and restrictions on use of university facilities for Town Hall and other similar events would stop. Ex. A, Ltr from R. Corn-Revere to M. Dierkes (Sept. 4, 2014).

4. On September 12, 2014, the case was referred to Magistrate Sheila Finnegan for settlement conference.

5. On October 1, 2014, I was notified via email that Defendants had retained new counsel. New counsel sought time to confer with their clients before engaging in any settlement discussions, necessitating continuance of a scheduled status hearing on settlement.

6. In late October 2014, new defense counsel sought language for a potential settlement, which I provided promptly via email on October 31 and November 3, 2014. I did not receive any substantive response from Defendants to my proposal.

7. On November 6, 2014, the parties participated in a status conference where defense counsel stated that Plaintiffs' moratorium proposal was too general. The court paused the hearing to allow the parties to discuss revisions, but the parties did not come to an agreement. I suggested that if the parties were to find common ground or a basis for a moratorium, Defendants should put their reasoning and proposed language in writing.

8. On November 17, 2014, Defendants responded with a letter that refused to suggest counter-language for a moratorium and instead sought yet another settlement demand from Plaintiffs. Ex. B, Ltr from L. Freeman to R. Corn-Revere (Nov. 17, 2014).

9. I complied with Defendants' request on December 5, 2014, sending an outline that had been provided to original defense counsel, along with additional materials to facilitate settlement, or at least a standstill. Ex. C, Ltr from R. Corn-Revere to L. Freeman (Dec. 5, 2014).

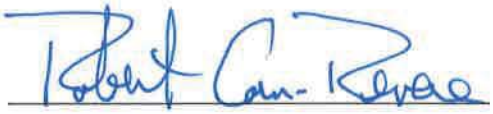
10. The next business day Defendant filed a motion to dismiss.

11. On the same day Plaintiffs filed a response in opposition to Defendants' motion, Plaintiffs also moved for preliminary injunction.

12. After the Court denied Defendants' motion to dismiss, Plaintiffs continued to explore the possibility of a standstill agreement in proceedings before Magistrate Finnegan.

I declare under penalty of perjury that the foregoing is true and correct.

Executed: Washington, D.C.
March 19, 2015



Robert Corn-Revere

UNITED STATES DISTRICT COURT
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PHILLIP BEVERLY, et al.,	)	
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Plaintiffs,	)	Case No. 1:14-CV-04970
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WAYNE D. WATSON, et al.,	)	Magistrate Judge Sheila Finnegan
	)	
Defendants.	)	

DECLARATION OF ROBERT CORN-REVERE
IN SUPPORT MOTION FOR PRELIMINARY INJUNCTION

EXHIBIT LIST

A. Ltr from R. Corn-Revere to M. Dierkes (Sept. 4, 2014)

B. Ltr from L. Freeman to R. Corn-Revere (Nov. 17, 2014)

C. Ltr from R. Corn-Revere to L. Freeman (Dec. 5, 2014)

EXHIBIT A

Davis Wright Tremaine LLP

1919 Pennsylvania Avenue NW
Suite 800
Washington, DC 20006-3401

Robert Corn-Revere
202.973.4225 tel
202.973.4499 fax
bobcornrevere@dwt.com

Via Email and First Class Mail

September 4, 2014

Michael T. Dierkes, Esq.
Deborah Beltran, Esq.
Office of the Illinois Attorney General
100 W. Randolph St., 13th Floor
Chicago, IL 60601

Re: *Beverly v.* Chicago State University Board of Trustees, *et al*., No. 1:14-cv-04970

Dear Mike and Deborah:

I am writing to follow up on our telephone conversation from last week in which I promised to set forth the basic elements of a potential settlement agreement in this case.

As I have mentioned in our telephone conversations, I believe it makes sense for the parties to explore possible grounds for settlement and to avoid expensive and protracted litigation. If that appears to be possible, we would be willing to work with Chicago State University, with the assistance of the Foundation for Individual Rights in Education ("FIRE"), to develop policies that we believe fully respect the constitutional rights of members of the college community while serving the legitimate interests of the administration.

We have been able to accomplish these objectives in other recent cases filed in association with FIRE. In *Van Tuinen v. Yosemite Community College District*, No. 1:13-cv-01630-LJO-SAB (E.D. Cal.), for example, we negotiated new policies and reached a relatively quick settlement agreement without unnecessary litigation in the interim. Likewise, in *Burch v. University of Hawaii System*, No. 1:14-cv-00200-HG-KSC (D. Hawaii), the school agreed to an immediate moratorium on enforcement, and the parties are in the process of negotiating revised policies with the goal of early resolution of the case.

We hope it might be possible in this case as well to reach a negotiated settlement, so I am writing with that goal in mind before we get too immersed in the litigation. At this point it is premature

to set forth the specific terms we would expect to see in a final agreement, but I thought it would be useful to identify the elements we consider essential to any settlement. They include:

- Confirmation that there will be no sanctions imposed on Professors Beverly and Bionaz for their publication of the CSU Faculty Voice (including administrative sanctions cast as other punishments but motivated by their publication and related speech activities). In this regard, we were just informed that Professor Bionaz is being denied a room request for a Student Town Hall on the State of Chicago State University. Such bureaucratic interference with free expression would have to stop.

- Adoption of new policies to modify the CSU anti-cyberbullying and computer use policies that respect the university community's constitutional rights.

- Compensation for Professors Beverly and Bionaz for the violation of their rights.

- Attorney's fees. We think this is an important part of any settlement as a reminder that the cost of unconstitutional policies should not be borne by plaintiffs (as contemplated by the Civil Rights Attorneys Fee Act). We have tried to keep fees relatively low thus far, and they will remain so if we can settle the matter at this early stage of the litigation. At present, accumulated fees come to approximately $39,000, although I noted that you have just filed an answer and a partial motion to dismiss. Obviously, as the litigation continues through motions practice, and if negotiations are drawn out, the fee component of any settlement will increase.

To confirm what I told you in our telephone conversation we will not consider any confidentiality provision as part of a settlement agreement, nor would we agree to any "non-disparagement" provision. We view such provisions as incompatible with the purpose of First Amendment litigation, and understand they would not be permissible under Illinois freedom of information laws in any event.

In light of this information, please let me know if you think it would be possible to open a discussion of potential settlement.

Sincerely,

Robert Corn-Revere

EXHIBIT B

HUSCH BLACKWELL

Lisa Parker Freeman
Attorney

120 South Riverside Plaza, Suite 2200
Chicago, IL 60606-3912
Direct: 312.526.1539
Fax: 312.655.1501
lisa.parkerfreeman@huschblackwell.com

November 17, 2014

Robert Corn-Revere
Davis Wright Tremaine LLP
1919 Pennsylvania Ave., NW
Suite 800
Washington, DC 20006

VIA email (bobcornrevere@dwt.com) and U.S. Mail

Re: *Beverly et al. v. Chicago State University Board of Trustees et al.*
CONFIDENTIAL: For Settlement Purposes

Dear Mr. Corn-Revere:

On behalf of Defendants in the above-referenced litigation, this letter is sent for the purpose of settlement negotiations.

On November 6, 2014, Magistrate Judge Finnegan suggested that counsel for the parties discuss potential settlement. At that time, on behalf of Plaintiffs, you expressed your preference that instead of engaging in substantive settlement discussions, Defendants respond in writing to your email, dated November 3, 2014. The email set forth three conditions suggested by Plaintiffs for a standstill order while the parties discuss settlement of the lawsuit.

Like Plaintiffs, Defendants are interested in pursuing a settlement to resolve this litigation. To expedite this process, we suggest discussing the terms of settlement. Your insistence on an interim standstill order has delayed settlement discussions, though your conditions may be similar to your ultimate settlement demands. To initiate settlement discussions, Defendants request a settlement demand from Plaintiffs, including specific proposals for settlement. In particular, Plaintiffs' Complaint expresses concern regarding the Cyberbullying Policy and Computer Usage Policy of Chicago State University ("CSU"). CSU is open to the possibility of making changes to its policies, but asks Plaintiffs to specify the language within the policies they believe violates their constitutional rights as well as propose revisions to the policies. Without knowing the specifics of Plaintiffs' demands, CSU is put in the impossible position of agreeing to overly broad standstill and/or settlement terms that contradict the law, as well as CSU policies, or foregoing settlement discussion all together.

In closing, the Defendants and CSU further stress that the CSU Faculty Voice blog has been operational since 2009 and Defendants and CSU have no intention of impairing Plaintiffs' ability to continue to exercise their constitutional rights related to the blog.

HUSCH BLACKWELL

We look forward to reviewing Plaintiffs' proposed settlement terms in the hopes of ending this litigation.

Sincerely,

Lisa Parker Freeman

LPF/pp

cc: Douglas McMeyer
Jessica Tovrov

EXHIBIT C

Davis Wright Tremaine LLP

1919 Pennsylvania Avenue NW
Suite 800
Washington, DC 20006-3401

Robert Corn-Revere
202.973.4225 tel
202.973.4499 fax
bobcornrevere@dwt.com

Via Email and First Class Mail

December 5, 2014

Lisa Parker Freeman
Husch Blackwell LLP
120 South Riverside Plaza, Suite 2200
Chicago, IL 60606

Re: ***Beverly et al. v. Chicago State University Bd.of Trustees, et al,***
No. 1:14-cv-04970 (N.D. Ill). (For settlement purposes)

Dear Ms. Freeman,

Thank you for your letter of November 17, 2014 asking for a proposal for a possible settlement of this case. I hope in the meantime you had a pleasant Thanksgiving holiday.

I agree with you that all parties would be best served if we can resolve this matter without protracted litigation, but I cannot agree with your claim that our request for a standstill agreement has somehow delayed the prospect of a settlement. As you have become involved in the case relatively recently, you may not be aware of the fact that I wrote to your predecessor counsel, Mr. Dierkes, on September 4 setting forth our conditions for settlement. A copy of that letter is enclosed as Attachment 1.

In the September 4 letter we set forth four conditions that must be met in order to reach settlement: (1) Confirmation that there will be no sanctions imposed on Professors Beverly and Bionaz for their publication of the CSU Faculty Voice (including administrative sanctions cast as other punishments but motivated by their publication and related speech activities); (2) Adoption of new policies to modify the CSU anti-cyberbullying and computer use policies that respect the university community's constitutional rights; (3) Compensation for Professors Beverly and Bionaz for the violation of their rights; and (4) Attorney's fees. Those four items continue to form the basis of our settlement demand (except the figure for attorneys fees set forth in September is higher now because of the additional work that has been required since then).

We had engaged in what I believed were productive conversations with Mr. Dierkes after the September 4 letter, and at my request he had pledged to send language regarding a potential standstill agreement. However, we then learned just prior to the October 6 status conference that he was being replaced as counsel for the CSU Defendants, a development that put settlement talks on hold. We thus never received Mr. Dierkes' proposal for a standstill agreement, and, as

you indicate in your letter, you are not willing to provide any response to the language that we proposed on November 3 for such an agreement.

In your request for a settlement proposal, you have asked for specific proposed language to address our concerns regarding the CSU Cyberbullying Policy and the Computer Use Policy, a point I will address below. First, however, I return to the threshold question I posed in my letter of September 4 – is CSU prepared to enter a settlement that meets the four conditions set forth in that letter? If not, then I do not see a realistic possibility of a settlement even if CSU makes changes to the two policies at issue.

I raise this threshold question because it appears you dispute the premise that prompted this lawsuit in the first place (as well as the first settlement condition) – that professors Beverly and Bionaz were subjected to retaliatory treatment because of their publication of the CSU Faculty Voice. You write in your November 17 letter that "the CSU Faculty Voice has been operational since 2009 and Defendants and CSU have no intention of impairing Plaintiffs' ability to continue to exercise their constitutional rights related to the blog." This suggests that you see no conflict between the cease and desist letters your clients sent regarding the CSU Faculty Voice (or other actions directed toward the Plaintiffs) and what you believe to be the extent of Plaintiff's constitutional rights. If that is the case, we have a fundamental disagreement about an essential settlement term.

As you are new to the case, it is possible you may not be aware of the background regarding our claims of retaliation beyond those facts set forth at paragraphs 17-43 and 89-93 of the Complaint. While I think the Complaint provides more than enough context for you to understand the need for the first settlement condition, enclosed as Attachment 2 is a copy of a March 4, 2014 letter to President Wayne Watson from the Foundation for Individual Rights in Education that provides additional information. Also, to the extent you think it is fanciful for my clients to be concerned about the possibility of retaliatory actions by the CSU administration, I refer you to the August 28, 2014 memorandum opinion of the Circuit Court of Cook County in *Crawley v. Chicago State University*, a copy of which is enclosed as Attachment 3.

If your clients are willing to enter serious discussions about all of the settlement conditions (including no retaliation, compensation, and attorney's fees) we will be willing to work with you to reform the CSU Cyberbullying and the Computer Use Policies. Your question about our specific concerns regarding those policies is addressed in detail in paragraphs 44-62 and 63-85 of the Complaint. If you can confirm that your clients will engage in good faith negotiations on all of the conditions we raised on September 4, we will propose specific policy changes. Additionally, it would be necessary for CSU to make clear that any anti-harassment policies would have to comply with the standard set forth in *Davis v. Monroe County Bd. of Educ.*, 526 U.S. 629, 652 (1999) and other applicable precedents, that harassing behavior must be specifically confined to actions that are "severe, pervasive, and objectively offensive."

I will be happy to continue this dialogue if you believe we can resolve this matter based on the above considerations. I look forward to discussing this with you, and to working cooperatively toward an amicable resolution of this matter.

Sincerely,

Robert Corn-Revere

Enclosures

cc: Jessica Tovrov
Phillip Beverly
Robert Bionaz

ATTACHMENT 1

Davis Wright Tremaine LLP

1919 Pennsylvania Avenue NW
Suite 800
Washington, DC 20006-3401

Robert Corn-Revere
202.973.4225 tel
202.973.4499 fax
bobcornrevere@dwt.com

Via Email and First Class Mail

September 4, 2014

Michael T. Dierkes, Esq.
Deborah Beltran, Esq.
Office of the Illinois Attorney General
100 W. Randolph St., 13th Floor
Chicago, IL 60601

Re: *Beverly v.* Chicago State University Board of Trustees, *et al*., No. 1:14-cv-04970

Dear Mike and Deborah:

I am writing to follow up on our telephone conversation from last week in which I promised to set forth the basic elements of a potential settlement agreement in this case.

As I have mentioned in our telephone conversations, I believe it makes sense for the parties to explore possible grounds for settlement and to avoid expensive and protracted litigation. If that appears to be possible, we would be willing to work with Chicago State University, with the assistance of the Foundation for Individual Rights in Education ("FIRE"), to develop policies that we believe fully respect the constitutional rights of members of the college community while serving the legitimate interests of the administration.

We have been able to accomplish these objectives in other recent cases filed in association with FIRE. In *Van Tuinen v. Yosemite Community College District*, No. 1:13-cv-01630-LJO-SAB (E.D. Cal.), for example, we negotiated new policies and reached a relatively quick settlement agreement without unnecessary litigation in the interim. Likewise, in *Burch v. University of Hawaii System*, No. 1:14-cv-00200-HG-KSC (D. Hawaii), the school agreed to an immediate moratorium on enforcement, and the parties are in the process of negotiating revised policies with the goal of early resolution of the case.

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- Attorney's fees. We think this is an important part of any settlement as a reminder that the cost of unconstitutional policies should not be borne by plaintiffs (as contemplated by the Civil Rights Attorneys Fee Act). We have tried to keep fees relatively low thus far, and they will remain so if we can settle the matter at this early stage of the litigation. At present, accumulated fees come to approximately $39,000, although I noted that you have just filed an answer and a partial motion to dismiss. Obviously, as the litigation continues through motions practice, and if negotiations are drawn out, the fee component of any settlement will increase.

To confirm what I told you in our telephone conversation we will not consider any confidentiality provision as part of a settlement agreement, nor would we agree to any "non-disparagement" provision. We view such provisions as incompatible with the purpose of First Amendment litigation, and understand they would not be permissible under Illinois freedom of information laws in any event.

In light of this information, please let me know if you think it would be possible to open a discussion of potential settlement.

Sincerely,

Robert Corn-Revere

ATTACHMENT 2

March 4, 2014

President Wayne D. Watson
Chicago State University
Cook Administration Building, 3rd Floor
9501 S. King Drive
Chicago, Illinois 60628

Sent via U.S. Mail and Facsimile (773-995-3849)

Dear President Watson,

As you can see from the list of our Directors and Board of Advisors, FIRE unites civil rights and civil liberties leaders, scholars, journalists, and public intellectuals from across the political and ideological spectrum on behalf of liberty, due process, legal equality, voluntary association, religious liberty, and freedom of speech on America's college campuses. Our website, thefire.org, will give you a greater sense of our identity and activities.

FIRE is deeply concerned by the threat to free speech presented by Chicago State University's (CSU's) egregious attempts to silence a blog published by several CSU faculty members. By insinuating that the contributing faculty members could face discipline for an alleged lack of "civility" in the blog, and by threatening legal action based on dubious intellectual property claims, CSU has demonstrated that it is willing to disregard its moral and legal obligation to uphold the First Amendment in order to stifle criticism and dissent. CSU must immediately end its unconstitutional campaign against dissent on campus, and assure the CSU community that speech critical of administrators and the university will receive the constitutional protection to which it is entitled and will not result in discipline or threats of legal action.

The following is our understanding of the facts; please inform us if you believe we are in error.

Since 2009, CSU Professor Phillip Beverly has published the *CSU Faculty Voice* blog (the "*Faculty Voice*") with seven other CSU faculty members.[1] The *Faculty Voice* is wholly non-commercial and serves as an outlet for the opinions of the contributing faculty members in

[1] *Available at* http://csufacultyvoice.blogspot.com.

170 S Independence Mall W, Suite 510 Philadelphia, PA 19106
phone: 215-717-3473 fax: 215-717-3440
thefire.org

their individual capacities. Articles appearing on the *Faculty Voice* often criticize alleged mismanagement by the CSU administration. The *Faculty Voice* website makes no claim that it is endorsed by, or speaks on behalf of, CSU in any official capacity.

In a letter dated November 11, 2013, CSU Vice President and General Counsel Patrick B. Cage demanded that Beverly "immediately disable [the] Chicago State University Faculty Voice Blog . . . no later than November 15, 2013 in order to avoid legal action." Cage first argued that the *Faculty Voice* "violates [CSU's] values and policies requiring civility and professionalism of all University faculty members." The letter further alleged that the *Faculty Voice* infringes on CSU's trademarks and trade names:

> Your unauthorized use of CSU's trade names and marks in association with your blog has caused, and will continue to cause, confusion. Specifically, your use of the mark falsely denotes association with CSU in that the comments and views posted on the Blog are not those of or endorsed by the University. Further, your use of the mark diminishes the University's brand.

(As of the date of Cage's letter, CSU did not in fact hold any registered trademarks. Three days later, on November 14, 2013, CSU filed three trademark registration applications.)

Prior to Cage's letter, an image of hedges on CSU's campus shaped to form the school's initials appeared at the top of the *Faculty Voice* website, and the words "Chicago State University Faculty Voice" were superimposed on the picture. Subsequent to Cage's November 11 letter, the superimposed words were altered, with "Chicago" appearing as crossed out and replaced by "Crony." The slogan "Where we hire our friends" was added to the image as well.

Wesley Johnson, counsel for the contributors to the *Faculty Voice*, replied to Cage's letter on November 27, 2013, rejecting CSU's ultimatum and demanding that CSU cease its campaign against the site.

On January 3, 2014, the *Faculty Voice* received a letter from Donald Levine, external counsel retained to represent CSU in this matter. The January 3 letter contained new allegations that the *Faculty Voice* was designed to give the impression that it had been authorized or endorsed by the faculty as a whole. The letter also argued that the use of a picture of the CSU hedges violated CSU's intellectual property rights by insinuating that the *Faculty Voice* was endorsed by the university, thus violating the Lanham Act. Levine contended that the alteration of "Chicago" to "Crony" is only evident upon a "closer second inspection." The letter demanded that the *Faculty Voice* cease using CSU's name, as well as any picture of CSU, on the website, and that it place a disclaimer written by counsel for CSU prominently on the page.

Levine's January 3 letter is simply the latest affront in CSU's brazen, shameful campaign to stifle constitutionally protected criticism and dissent on campus. CSU has put the speech

rights of its students and faculty in peril—an unacceptable result at a public institution of higher education.

It has long been settled that the First Amendment applies in full force on public university campuses. *See, e.g.*, *Widmar v. Vincent*, 454 U.S. 263, 268–69 (1981) ("With respect to persons entitled to be there, our cases leave no doubt that the First Amendment rights of speech and association extend to the campuses of state universities."); *Healy v. James*, 408 U.S. 169, 180 (1972) ("[T]he precedents of this Court leave no room for the view that, because of the acknowledged need for order, First Amendment protections should apply with less force on college campuses than in the community at large. Quite to the contrary, the vigilant protection of constitutional freedoms is nowhere more vital than in the community of American schools.") (internal citation and quotation marks omitted).

To be clear: CSU may not discipline or threaten to discipline faculty members for engaging in protected expression simply because the administration has deemed it "uncivil." The principle of freedom of speech does not exist to protect only non-controversial speech; indeed, it exists precisely to protect speech that some members of a community may find controversial, offensive, or disrespectful. The U.S. Supreme Court has explicitly held, in rulings spanning decades, that speech cannot be restricted simply because it offends some, or even many, listeners. *See, e.g.*, *Terminiello v. Chicago*, 337 U.S. 1, 4 (1949) (noting that free speech "may indeed best serve its high purpose when it induces a condition of unrest . . . or even stirs people to anger. Speech is often provocative and challenging. It may strike at prejudices and preconceptions and have profound unsettling effects as it presses for acceptance of an idea."). *See also Papish v. Board of Curators of the University of Missouri*, 410 U.S. 667, 670 (1973) ("[T]he mere dissemination of ideas—no matter how offensive to good taste—on a state university campus may not be shut off in the name alone of 'conventions of decency.'").

The reasoning of U.S. Magistrate Judge Wayne Brazil in *College Republicans at San Francisco State University v. Reed*, 523 F. Supp. 2d 1005 (N.D. Cal. 2007), a case in which the court prohibited the California State University System from imposing a "civility" requirement on students, is particularly instructive on this point. Judge Brazil wrote:

> [A] regulation that mandates civility easily could be understood as permitting only those forms of interaction that produce as little friction as possible, forms that are thoroughly lubricated by restraint, moderation, respect, social convention, and reason. The First Amendment difficulty with this kind of mandate should be obvious: the requirement "to be civil to one another" and the directive to eschew behaviors that are not consistent with "good citizenship" reasonably can be understood as prohibiting the kind of communication that it is necessary to use to convey the full emotional power with which a speaker embraces her ideas or the intensity and richness of the feelings that attach her to her cause. Similarly, mandating civility could deprive speakers of the tools they most need to connect emotionally with their audience, to move their audience to share their passion.

> In sum, there is a substantial risk that the civility requirement will inhibit or deter use of the forms and means of communication that, to many speakers in circumstances of the greatest First Amendment sensitivity, will be the most valued and the most effective.

Id. at 1019. Not only can much expression that lacks "civility" be singularly effective in disseminating a particular message, some messages incorporate a measure of "incivility" or "disrespect" by their very nature. Where the message conveyed levies harsh criticism or accusations of deception or malfeasance, the target of such expression will naturally feel that they have been subjected to uncivil and disrespectful speech. The precedents cited here, and decades of similar holdings, have nevertheless made clear that the First Amendment protects such speech.

Moreover, the *Faculty Voice* is a classic example of the type of speech *most* deserving of the strongest First Amendment protection. Courts have consistently held that a core purpose of the First Amendment is to shield criticism of governmental bodies and public officials from official threat or retribution. *See Ariz. Free Enter. Club's Freedom Fund PAC v. Bennett*, 131 S. Ct. 2806, 2828 (2011) ("[T]here is practically universal agreement that a major purpose of the First Amendment was to protect the free discussion of governmental affairs.") (internal citation and quotation marks omitted); *New York Times Co. v. Sullivan*, 376 U.S. 254, 296–97 (1964) (Black, J., concurring) ("[F]reedom to discuss public affairs and public officials is unquestionably, as the court today holds, the kind of speech the First Amendment was primarily designed to keep within the area of free discussion."). As a public university funded by taxpayer dollars, the operations of CSU and the integrity of its administration are inescapably matters of significant importance to both the CSU community and the taxpaying public. Simply put, CSU may not—consistent with its obligations under the First Amendment—subject faculty members to any discipline or retaliation for engaging in this core protected speech, no matter how "uncivil" or disrespectful the administrators targeted by the *Faculty Voice* find it.

CSU's spurious and meritless allegations of trademark violations likewise fail to justify the university's demands. Rather, these unsupported allegations evince nothing other than a transparent attempt to stifle dissent and criticism of the administration. Foremost, only speech "use[d] in commerce" is subject to liability under the Lanham Act. 15 U.S.C. § 1125(a). The *Faculty Voice* is non-commercial, as it is simply a platform for disseminating the views of its contributors and does not offer anything for sale, much less a product that would compete with CSU.

Furthermore, CSU's contention that the *Faculty Voice* would likely be confused with a university-sponsored or endorsed website strains credibility well past the breaking point. Even a cursory glance at the *Faculty Voice* reveals that it is a personal blog hosted by faculty members speaking in their personal capacities. The URL of the website is a subdomain of a popular free blog hosting service. Any reasonable visitor to the site would immediately understand that an officially sanctioned and endorsed faculty website would instead

appear as a part of CSU's own website and bear a ".edu" top-level domain suffix. Taken together with the *Faculty Voice*'s use of a stock template blog design, it would be nearly impossible for a reasonable person to confuse the *Faculty Voice* with an officially sanctioned university website.

Nor can it reasonably be argued that the inclusion of the image of CSU's "iconic" hedges will create confusion as to whether the *Faculty Voice* is endorsed by the university. Not only does the presence of a solitary picture of a campus landmark on an otherwise obviously non-affiliated website fail to raise any risk of confusion, but the image also includes prominent text disparaging the university by alleging widespread cronyism. It defies logic to assume that visitors to the *Faculty Voice* website will believe the blog to be endorsed or approved by the university when it in fact openly mocks CSU.

Finally, CSU's demand that the *Faculty Voice* cease using the university's name, initials, or any picture of its campus is legally unsupportable. Courts have long held that the First Amendment protects websites that criticize products or businesses, even when they incorporate the target's trademarked name or logo. For example, in *Bally Total Fitness Holding Corp v. Faber*, 29 F. Supp. 2d 1161 (C.D. Cal. 1998), a federal court ruled that Bally Total Fitness could not stop a man from operating a website called "Bally Sucks," which included a modified Bally logo on the front page and used the term "ballysucks" in the URL of the website. The court found that there was no likelihood of consumer confusion, and noted that courts "have rejected this approach by holding that trademark rights may be limited by First Amendment concerns." *Id.* at 1166. Further, the United States Court of Appeals for the Sixth Circuit has held that "any expression embodying the use of a mark not 'in connection with the sale . . . or advertising of any goods or services,' and not likely to cause confusion, is . . . necessarily protected by the First Amendment." *Taubman Co. v. Webfeats*, 319 F.3d 770, 775 (6th Cir. 2003). As the *Faculty Voice* is engaged solely in non-commercial speech that raises no reasonable likelihood of confusion, it is entitled to tell its readers that it is speaking about Chicago State University by using its name and images of its campus.

Our conclusion that CSU is asserting meritless pretextual claims against the *Faculty Voice* in order to stifle criticism is justified by the CSU administration's sordid history in similar matters. Indeed, CSU has exhibited a remarkable pattern of wantonly trampling on the rights of its students and faculty in order to silence dissent and ensure that the administration has complete control over any public narrative related to the university.

In 2011, CSU General Counsel Patrick Cage refused to release certain information pursuant to a Freedom of Information Act request because the *Chicago Tribune* reporter who filed the request had written "negative" articles about CSU in the past. Illinois Attorney General Lisa Madigan ruled against Cage, finding that he had improperly withheld public records. In 2012, CSU again attempted to exert control over how the university is portrayed by requiring faculty and staff to obtain approval for any media interviews, opinion pieces, newsletters, social media, or other communications regarding CSU. After swift public

backlash against such a ham-handed attempt at top-down censorship, CSU was forced to withdraw the policy.

CSU has also recently suffered major losses in court as a result of its disregard for the rights of its campus community. Just two weeks ago, a jury awarded $2.5 million to a former CSU attorney who faced retaliation for refusing to improperly withhold public records regarding your employment and for reporting questionable contracts to the Illinois Attorney General's office. And in August, CSU was ordered to pay over $200,000 in court costs and attorneys' fees after being held liable for retaliating against the student newspaper and its faculty advisor in response to a series of articles critical of the university's administration.

It is remarkable that even after these public, embarrassing, and costly defeats, Chicago State University continues to disregard the basic constitutional rights that it is bound by law to uphold. As a Chicagoland native and resident for more than 28 years, it is particularly distressing for me to witness CSU engaging in an obviously unconstitutional endeavor to silence the free exchange of ideas and political dissent, to the great detriment of not only the CSU community, but also the reputation of the City of Chicago.

Please spare CSU the embarrassment and cost of yet another loss in its repeated and ill-advised battles against the First Amendment. If you have not already done so, we urge you to immediately withdraw your unconstitutional demands to the *Faculty Voice* and to clarify to Chicago State University students and faculty that their First Amendment right to engage in dissent and criticism of the CSU administration will not be infringed upon in the future.

We ask for a response by March 18, 2014.

Sincerely,

Ari Z. Cohn
Program Officer, Legal and Public Advocacy

cc:
Patrick B. Cage, Vice President and General Counsel
Angela Henderson, Interim Provost and Senior Vice President for Academic Affairs
Donald B. Levine, Gonzalez Saggio & Harlan LLP

ATTACHMENT 3

IN THE CIRCUIT COURT OF COOK COUNTY ILLINOIS
COUNTY DEPARTMENT – LAW DIVISION

JAMES CRAWLEY, Plaintiff, v. Chicago State University; WAYNE WATSON, The Board of Trustees of Chicago State University, Defendants.	)	Case No. 10 L 12657 Judge James P. McCarthy

MEMORANDUM OPINION

This cause coming on to be heard as a jury trial commencing February 3, 2014 and ending February 18, 2014 with a verdict in favor of the Plaintiff James Crawley and against the Defendants. This was an employment lawsuit wherein Plaintiff Crawley was seeking damages from the Defendants in connection with his termination from Chicago State University which he alleged was in retaliation for providing FOIA responses and certain contract documents to the Illinois Attorney General's Office. The Plaintiff contends his termination of employment by the Defendants violated the Illinois State Officials and Employees Act, 5 ILCS 430/15-5 (hereinafter referred to as the "Act") and Illinois Whistle Blower Act 740 ILCS 174/5.[1]

The Defendants denied they violated the "Act" and contended that Plaintiff was terminated for cause due to numerous improper financial dealings and misuse of university resources. Furthermore, Defendants asserted that the Plaintiff failed to mitigate his damages that resulted from his termination.

[1] On June 7, 2011, Plaintiff by agreement voluntarily dismissed his claim under the Illinois Whistle Blower Act with leave to replead it in the Illinois Court of Claims and the case proceeded to trial under the alleged violation of the Illinois State Officials and Employees Act.

The parties have filed and briefed several Post-Trial motions:

Defendants filed:

I. Motion for a Judgment Notwithstanding the Verdict, (hereinafter JNOV) based on:

A) The Ethics Act (§ 15-25) does not authorize the award of punitive damages as a remedy;
B) If the Act does authorize punitive damages there was no evidence presented to the jury of actual malice or if there was such evidence it was erroneously admitted by the Court;
C) The Illinois Rules of Professional Conduct ban retaliatory discharge claims by in-house counsel under the Ethics Act as a matter of law;
D) If in-house counsel can sue under the Ethics Act, no reasonable jury could have found that Plaintiff proved that the decision maker who terminated him knew of Plaintiff's meeting with the Attorney General's Office and therefore, that meeting was not a contributing factor in their termination decision;
E) Plaintiff produced no evidence to support a claim against Defendant Watson in his individual capacity.

II. In the alternative, Defendants moved for a New Trial based on:

A) There is no right to a jury trial under the Ethics Act and therefore the Court improperly delegated its fact finding function to the jury;
B) If the Act permitted a jury trial, the case was not tried before an impartial and unbiased jury as evidenced by a particular juror's failure to disclose past and pending lawsuits during voir dire and said lawsuits were a statutory impediment to the prospective juror sitting as a member of the jury;
C) The Court committed prejudicial error by admitting certain evidence and exhibits during the course of the trial;
D) The Court committed "plain" error by allowing two alternate jurors to deliberate with the jury and to sign the verdict form in violation of 735 ILCS 5/2-1106(b).

III. In the alternative to their JNOV and Motion for a New Trial, Defendants also moved for a Remittitur of the punitive damage award as well as a Remittitur of the award of double back pay.

IV. In addition to the Defendant's Post-Trial motions, the Plaintiff has filed Post-Trial Motions on a Petition for Reinstatement and for the Award of Attorney's Fees and costs.

Since the filings of the Post-Trial Motions, a hearing was held on June 18, 2014 and a juror from the trial was questioned under oath as to his voir dire answers and the written answers he provided in the preprinted Jury Information Form.

I.

DEFENDANTS' MOTION FOR JUDGMENT NOTWITHSTANDING THE VERDICT

A Motion for JNOV and a Motion for Directed Verdict are governed by the same rules of law. Maple v. Gustafron, 151 Ill. 2d 445 (1992). The Standard for granting a Judgment N.O.V. is the same as a directed verdict which is a high hurdle. Verdicts ought to be directed and Judgments N.O.V. entered *only* in those cases in which all of the evidence, when viewed in its aspect most favorable to the opponent, so overwhelmingly favors a movant that no contrary verdict based on that evidence could ever stand. See Pedrick v. Peoria & Eastern R.R. Co., 37 Ill. 2d 494, 510 (1967). Because the standard for entry of Judgment N.O.V. is high, Judgment N.O.V. is inappropriate if reasonable minds might differ as to inferences or conclusions to be drawn from the facts presented. See York v. Rush-Presbyterian St. Lukes Medical Center, 222 Ill. 2d 147 (2006), quoting Pasquale v. Speed Products Engineering, 166 Ill. 2d 337 (1995). In making this assessment the court must not substitute its judgment for the jury, nor may it reweigh the evidence or determine the credibility of the witnesses. See Donaldson v. Central Illinois Public Service Co., 199 Ill. 2d 63 (1990). This standard for JNOV is more stringent than the "manifest weight of the evidence" standard for New Trial Motions. Pedrick, supra at 509-510.

Here the Defendant's Motion for Judgment N.O.V. is primarily based in part, on this court's interpretation of the Illinois Ethics Act.[2] When interpreting a statute, courts look to the object of and purpose to be achieved by the statute. Where two or more constructions may be

[2] It should be noted that this is a case of first impression in Illinois State Courts and that the few cases that have dealt with the Act have been in the Federal District Court for the Northern District of Illinois. See Mars v. Folberg, 504 F. Supp. 2d 339 (N.D. Ill. 2007); Mars v. Folberg, 531 F. Supp. 2d 956 (N.D. Ill. 2007).

placed upon a statute, the court should select the construction that makes the statute both useful and logical. People v. Marshall Field & Co., 83 Ill. App. 3d 811 (1st Dist. 1981).

In interpreting a statute, courts are to look to the object and purpose to be served by the statute. Warden v. Byrne, 102 Ill. App. 3d 501 (1st Dist. 1981), (a primary rule in the interpretation and construction of a statute is that the intention of the legislature should be ascertained and given effect); Illinois Tech Assoc. v. Illinois Commerce Commission, 67 Ill. 2d 15. Legislative intent can be ascertained presumably from consideration of the legislative language itself, which affords the best means of its exposition. Tidwell v. Smith, 57 Ill. 2d 271 (1965), Vanderlei v. Heidman, 83 Ill. App. 3d 158 (1980). In determining the legislative intent the court may look to the reason and necessity for the law, the evil to be remedied, and the purpose to be obtained. People v. Marshall Fields & Co., supra. Words used in a statute should be given their plain and ordinary or commonly accepted meaning unless to do so would defeat the legislative intent, Peoria Savings & Loan v. Jefferson Trust & Savings Bank, 81 Ill. 2d 461 (1980), and a statute should be read so that every word has meaning. Schumam v. Kusmarick, 102 Ill. App. 3d 455 (1st Dist. 1981). Moreover the court should not consider that the legislature added language devoid of any operative effect. Courts should attempt to give effect to the expressed intent of the legislature and avoid constructions which will render portions of a statute meaningless, void or superfluous. In re Detention of Lieberman, 201 Ill. 2d 300, 308 (2002), Castello v. Unarco Industries, Inc, 111 Ill. 2d 476 (1986). There is no rule of construction that authorizes a court to declare that the legislature did not mean what the plain meaning of the statute imports. Waste Management v. Environment Protection Agency, 137 Ill. App. 3d 619 (1st Dist. 1985).

In interpreting a statutory provision, courts will not look merely to a particular clause in which general words may be used, but will review it in connection with the whole statute and the objects and policy of the law. Stewart v. Industrial Commission, 115 Ill. 2d 337 (1987). Statutory terms that are not specifically defined should be given their ordinary and popularly understood meaning, and must also be construed with reference to the purposes and objections of the statute. Niven v. Siqueira, 109 Ill. 2d 357 (1985). Where a statutory word or term has a settled, fixed legal meaning or usage it is proper to infer that the legislature intended to incorporate the meaning into the statutes. Board of Education of St. Charles Com. Unit School Dist. No. 303 v. Adelman, 137 Ill. App. 3d 965 (2nd Dist. 1985). In construing a statutory provision not yet judicially interpreted, a court is guided by both the plain meaning of the language in the statute as well as legislative intent. Hettenhausen v. Economy Fire & Casualty Co., 154 Ill. App. 3d 488 (1st Dist. 1987).

A.

The Language Of The Ethics Act Allows For The Award Of Punitive Damages

Defendants contend that this Court should grant Judgment Notwithstanding the Verdict on the punitive damages award because Section 15-25 of the Ethics Act does not authorize punitive damages as one of the remedies for a violation of the Act.

The Ethics Act provides for some specific compensatory remedies such as reinstatement, two (2) times the back pay, interest on back pay, reinstatement of seniority and fringe benefits rights and payment of costs and reasonable attorney's fees. However, the Act does not limit relief to the enumerated remedies. In fact, the Ethics Act specifically states that the remedies *"are not limited to"* the compensatory remedies enumerated in the statute and *"the State employee may be awarded all remedies necessary...to prevent future violations of the Article."*

Prevention of future violations is clearly within the purview and definition of punitive damages. The basic definition of punitive damages in the Restatement (Second) of Torts (1979) Sec. 908 (i) provides in relevant part that:

> (1) Punitive damages are damages, other than compensatory or nominal damages, awarded against a person…to deter him and others like him from similar conduct in the future.

Under Illinois law, punitive damages are allowed for the deterrence of future misconduct. Kelsay v. Motorola Inc., 74 Ill. 2d 172, 186 (1984).

In light of the language that the "remedies are not limited to the remedies enumerated in the statute" and the *employee may be awarded all remedies…to prevent future violations of this Article* which the General Assembly chose to include in the Ethics Act, it is clear that the General Assembly intended to allow punitive damages as a remedy in the Ethics Act. Such an interpretation would be consistent with the canons of statutory interpretation that the Court should avoid constructions which will render portions of a statute meaningless and that the legislature would not have added language which is devoid of any operative effect. In re Detention of Lieberman, supra, Castello v. Uharco Industries, Inc., supra.

Putting statutory construction aside, whether punitive damages are available in a given case is initially a question of law and extends first to whether the action pleaded would support the award of punitive damages; and secondly, whether the conduct of the defendant could be found to be sufficiently evil, wanton, etc., to justify a punitive damage award. Kinierim v. Izzo, 22 Ill. 2d 73 (1967); Varilete v. Mitchell Engineering Co., 200 Ill. App. 3d 649 (1st Dist. 1990). It was incumbent on Defendants to present a motion on this legal question prior to trial, or at the minimum, at trial. A review of the record reveals no motion to dismiss or summary judgment on the legal issue of whether punitive damages are recoverable under the Ethics Act. Just as where

counsel has an opportunity to object to improper testimony that is prejudicial to him, he may not sit idly by and allow such irregular proceedings to occur without any objection and then seek reversal of an unfavorable result by reason of such irregularities. People v. Ford, 19 Ill. 2d 466 (1960). Herein, Defendants may not sit idly by and not file motions objecting to punitive damages as being unavailable under the "Act" and now after the fact, seek to reverse a punitive damage award assessed them.

It is equally clear that the General Assembly waived statutory immunity in the Ethics Act when the State consented to be sued by a "state employee" in circuit court by explicitly stating that "the circuit courts of this State shall have jurisdiction to hear cases brought under this Article."[3]

Furthermore, as Plaintiff's Response indicates that at the same time that the Legislative enacted the Ethics Act, the Immunity Act was amended in the following manner:

> "Except as provide in the Illinois Public Labor Relations Act, the Court of Claims, and the State Officials and Employee Ethics Act, the State of Illinois shall not be made a defendant or party in any court." 745 ILCS 5/1 (West 2004).

This amendment also specifically reflects the Legislative's intent to exempt Ethics Act lawsuits from sovereign immunity and to allow Ethics Act lawsuits to be filed in the circuit court.

Such an interpretation would be consistent with statutory construction principles that a statute should be read so that every word has meaning and such words should be given their plain, ordinary and commonly accepted meaning. See Schuman v. Husnarrek, supra; Peoria Savings and Loan v. Jefferson Trust & Savings Bank, supra. It would also be consistent with the

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[3] The 2009 Amendment by P.A. 96-555 effective August 18, 2009 added this second sentence in the introductory language. When a statute is amended, it may be presumed that the amendment was made for some purpose and the statute should be construed so as to give effect to the intended purpose. Block v. Office of Secy. of State, ___ Ill. App. 3d ____, 2013 Ill. App. Lexis 227 (5th Dist. 2013) citing Dept. of Transportation v. East Side Development L.L.C., 384 Ill. App. 3d 295, 299 (3rd Dist. 2008).

statutory construction principle that where a statutory word or term has a settled fixed legal meaning or usage it is proper to infer that the legislative intended to incorporate the meaning into the statute. Board of Education of St. Charles Comm. Unity School Dist. No. 333 v. Adelman, supra.

Most importantly, this interpretation of the Act would be consistent with the recent interpretation by the Appellate Court that the State of Illinois has waived immunity with respect to claims under the Ethics Act. See: Block v. Office of Ill. Secy. of State, _____ Ill. App. 3d _____, 2013 Ill. App. LEXIS 227 (5th Dist. 2013) wherein the Appellate Court ruled that the trial court erred in dismissing the Ethics Act parts of Plaintiff's complaint on sovereign immunity grounds.

In light of the aforesaid, it is clear that the State has waived any sovereign immunity and punitive damages are allowed under the Ethics Act.

The allowance of punitive damages in addition to "two (2) times the amount of back pay" is also permissible and does not rewrite the doubling provision of back pay as Defendants argue. Again, the language of the Ethics Act is clear. The list of enumerated compensatory remedies is set forth in the statute and the doubling wage provision is an enumerated provision. In addition to the enumerated compensatory remedies the prefatory lead-in language of the statute, specifically provides that the remedies "are not limited to" the enumerated remedies. Hence, again it is clear that punitive damages are allowable and may be imposed in addition to the enumerated compensatory remedies which include a doubling of wages.

Finally, it should be noted that the Ethics Act was enacted to encourage employees who became aware of government corruption, fraud or misconduct to expose it without fear of retaliation. Thus the inclusion of all these damage provisions was intended to protect the

employee who exposed the misconduct by providing for damages and his/her reinstatement. At the same time, the broad damage provisions (including punitive damages) was intended to punish the employer and to deter any such future misconduct by any governmental entity. Although such damage awards may be substantial, taxpayers, students, etc. eventually pay this bill. However, in light of the many instances of corruption in state government which were the subjects of federal investigation/prosecution, the legislature thought it was wise to pass such legislation to protect employees and allow the payment of such awards as a way of highlighting such corruption to the public who can then hold public officials accountable through the ballot box, appointment or other means. Hence, although it may cost $2,000,000.00 in punitive damages and a substantial amount in compensatory damages, the public has been made aware of questionable misconduct at Chicago State University and the public may hold the responsible officials accountable so as to deter any future misconduct.

B.

Defendants Argue, In The Alternative, Even If Section 15-25 Can Be Read To Authorize Punitive Damages, The Award Must Be Vacated Because There Was No Evidence Of Actual Malice To Support The Award Returned By The Jury, And The Only Evidence Of Malice That Could Have Arguably Supported An Award Was Erroneously Admitted.

Defendants maintain that there was no properly admitted evidence of malice to support a punitive damage award. Without going through all the evidence, if the jury believed Plaintiff's testimony that at end of a FOIA meeting, Defendant President Watson stated that he believed only two moving company bills were responsive to an FOIA request while Plaintiff stated numerous additional pages were responsive and President Watson eventually grabbed Plaintiff's wrist and said "If you read this my way, you are my friend – if you read it the other way you are

my enemy" coupled with Plaintiff's testimony of altered contracts and subsequent termination, there was sufficient circumstantial evidence of malice in light of all the evidence to support a punitive damage award. Furthermore, this was borne out by the fact that the jury took only 30 minutes to reach a verdict which included a punitive damage award. Obviously the Defendants presented testimony which was not consistent with the aforesaid testimony. However, the jury chose to believe Plaintiff's version of the facts rather than Defendants. The credibility of witnesses cannot be considered on a motion for directed verdict or judgment notwithstanding the verdict, as it is the jury's role to assess the credibility of the witnesses and to assign weight to the witnesses testimony. See Maple v. Gustafron, 151 Ill. 2d 445, 452 (1992). Since the jury decided the credibility of the witnesses in Plaintiff's favor, Defendant's alternate argument that there was no evidence of malice to support the award has no merit.

C.

Defendants Assert That Statutory Retaliatory Discharge Claims By In-House Counsel Against Their Employers Are Banned As A Matter Of Illinois Law.[4]

The testimony at trial was quite clear that although the Plaintiff was initially hired as an in-house attorney in 2000 at Chicago State University, his title and daily responsibilities changed significantly in 2008. In 2008, President Pogue promoted the Plaintiff to Associate Vice President of Auxiliary Services in charge of the Jones Convocation Center which was to be a revenue producing endeavor for Chicago State University. Shortly thereafter, Plaintiff left the legal department and moved his office to the Jones Convocation Center and he reported to Dean Justman, the then Vice President of Finance for Chicago State. By mid-2009, he reported to Glen Meeks who was then the Vice President of Finance. In July 2009, in addition to his

[4] The court notes that once again the Defendants have raised an issue of law for the first time in their post-trial motion despite having had over three (3) years before trial to do so.

responsibilities of running the Jones Convocation Center, he also was responsible for responding to Freedom of Information requests submitted to Chicago State. Plaintiff also reviewed and approved all contracts that exceeded $5,000 and for those matters he reported to the legal department.

At the time of his termination in February 2010, Plaintiff's administrative responsibilities at the Jones Convocation Center took up the lion's share of his work responsibilities. Regarding Plaintiff's responding to FOIA Request, a law license is not a pre-requisite for formulating a response to F.O.I.A. requests and often non-attorneys fulfilled that job as is evidenced by Chicago State's current practice of having a non-attorney Barbara Trybula fill that role. As to the review of contracts by the Plaintiff, that was but one step of the contract issuing process utilized at Chicago State at the time in question and not the determining factor in a contract being ultimately approved. Hence, Plaintiff's primary duties or responsibilities were administrative.

Furthermore, the alleged actions of the Plaintiff that formed the basis for his termination involved his administrative duties as the associate Vice President of Auxiliary Services in charge of the Jones Convocation Center and not from his F.O.I.A. or contract review duties. The February 19, 2010 termination letter[5] to Plaintiff specifically states that "effective immediately"… "your services as Assistant Vice President for Auxiliary Operations will terminate for cause", and the three "alleged" grounds for his termination were all derived from his administrative actions at the Convocation Center and were not from F.O.I.A. or contract review work he performed. Even Patrick Cage, the University's General Counsel, acknowledged

[5] The exact relevant wording of the termination letter was: **In accordance with Section 11, Subsection B 4.9 of the Chicago State University Board of Trustees Regulations, you are hereby notified that effective immediately, your services as *Assistant Vice President for Auxiliary Operations* will terminate with cause.** The termination letter makes no reference to Plaintiff's role as an attorney or his legal duties.

that he was planning to have the Plaintiff return to the law department in the spring or late fall of 2010.

The evidence at trial clearly demonstrated that the Plaintiff's responsibilities at the time of his termination were primarily administrative and derived from his managing/operating the convocation center and not from his functions as an in-house counsel. Such evidence of administrative responsibilities distinguishes this case from Balla v. Gambro, 145 Ill. 2d 492 (1991) wherein the Court found that Balla's role as a in house counsel barred his claim. Therefore, this Court finds that the Plaintiff is not precluded from bringing this claim against the Defendants merely because he was an attorney for the university before he was designated as Associate Vice President for Auxiliary Services/Operation and tasked with supervising the Jones Convocation Center operations.

D.

Alternately, If In-House Counsel Could Maintain A Claim Under The Ethics Act, Defendants Argue No Reasonable Jury Could Have Found That Plaintiff Proved That The Decision-Maker(S) Who Were Involved In His Termination Knew That He Had Met With The Attorney General's Office, And For That Reason The Meeting Was Not A Contributory Factor In His Termination.

A review of the trial testimony/evidence reveals that a substantial amount of evidence was in fact presented to the jury from which reasonable jurors could conclude that the decision maker(s) knew of Plaintiff's meeting with the Illinois Attorney General's Office in the last half of 2009. Such evidence included the testimony of Dr. Sandra Westbrook, James Crawley, James Dorger, Dr. Phillip Beverly, John Meehan, Louis Dolce and Jerome Jackson. Other evidence included the various exhibits admitted into evidence by the court. Though President Watson and Patrick

Cage specifically denied any such knowledge, their credibility was at issue and that was within the sole province of the jury to decide. See Maple v. Gustafson, supra at 452, Bentley v. City of Chicago, 79 Ill. App. 3d 1028 (1st Dist. 1979) (Wherein court abused its discretion by granting post trial relief simply because its' assessment of credibility and the jury's assessment differed). The jurors were not required to accept Defendants' denials especially where both witnesses were impeached by the changing of their affidavits submitted in support of Defendant's unsuccessful motion filed in front of a another Judge and then changed such affidavit within days before this trial commenced. The jurors were properly instructed on credibility and that they could use their common sense in evaluating what they saw and heard during the trial. They also were instructed on the concept of circumstantial evidence and how it can be used to prove a fact. As stated earlier, the jury was not obligated to accept Defendants' witnesses as credible or accept Defendants' view of the proofs. The jury viewed Plaintiff and his witnesses as credible and simply accepted Plaintiff's proofs. The Court will not disturb the jury's assessment of credibility and their subsequent verdict. See Maple v. Gustafson, supra, Bentley v. City, supra.

E.

There Is No Merit To Defendant's Argument That Plaintiff Produced No Evidence At Trial To Support A Claim Against President Watson In His Individual Capacity As His Duty To Sign Plaintiff's Notice Of Intent To Terminate Existed Solely By Virtue Of His State Employment.

Defendant's argument assumes that Defendant Watson's sole involvement in this case was the mere fact he signed Plaintiff's termination letter on February 19, 2010. However, the totality of the evidence indicates otherwise. The testimony of Watson, Cage, Meehan and Mitchell make it quite clear that in late January 2010, senior management requested that a special audit or

investigation of Plaintiff Crawley and the Convocation Center be opened. It was equally clear that that investigation merely repeated certain record keeping deficiencies noted in the routine June 30, 2009 audit conducted by Meehan and asserted them as the actual charges of abuse/misuse for which Plaintiff was terminated. The timing of the January request by senior management to undertake this investigation, the specific circumstances of the investigation, the failure of Mr. Meehan to speak/interview the Plaintiff before the investigation was completed, the admitted surrounding circumstances, of which there are no records of between admitted senior management of which Watson was a member of and most telling of all, the failure of Watson the President, Cage the General Counsel, and Mitchell the head of Human Resources, to follow the very guidelines/protocol that were in effect at Chicago State University for the termination of an employee provide direct and circumstantial of Watson's involvement. All of the aforesaid evidence is in addition to the testimony about the Watson/Plaintiff FOIA meeting where Watson stated "If you read this my way, you are my friend – if you read it the other way, you are my enemy"[6] which is further evidence to support a claim against Defendant Watson.

President Watson by signing Plaintiff's termination letter on February 19, 2010 participated in, ratified or condoned all of the actions/inactions of his senior management team in their dealings with the termination of Plaintiff Crawley.

Thus Defendants' contention about Watson's lack of involvement is also without merit and certainly not to be found to meet the standard required of a JNOV Post-Trial Motion.

[6] Defendants never adequately explained to the jury how Defendant Watson who was not employed by Chicago State University at the time of the August 2009 FOIA meeting, yet Defendant Watson initiated the FOIA meeting in the President's Office, allegedly issued the threat to Plaintiff and told Plaintiff that Plaintiff should direct any future FOIA responses to Watson before their release, and that Plaintiff should advise Hermeone Hartman as to what documents that Plaintiff was going to release.

II.

DEFENDANTS, IN THE ALTERNATIVE, HAVE MOVED FOR A NEW TRIAL.

The Court should grant a new trial when the verdict is contrary to the manifest weight of the evidence. Mizowek v. DeFranco, 64 Ill. 2d 303, 310 (1976). A verdict is contrary to the manifest weight of the evidence when the opposite conclusion is clearly evident or when the jury's findings prove to be unreasonable arbitrary and not based upon any of the evidence. McClure v. Owens Corning Fiberglas Corp., 188 Ill. 2d 102, 132 (1999).

A.

Defendants Argue That This Court Should Grant A New Trial Because There Was No Right To A Jury Trial Under The Ethics Act And The Ethics Act Only Allows Equitable Remedies

Defendants now argue that they are entitled to a new trial because there was no right to a jury trial and that the remedies enumerated in the Ethics Act are "wholly equitable." Again, Defendants' argument is disingenuous and is belied by their past conduct as demonstrated by the record in this case.

The record shows that Plaintiff filed a complaint seeking any and all damages/remedies provided by the Act. Along with the complaint, Plaintiff filed a jury demand on November 25, 2010. The complaint was filed in the Law Division.

In response to the complaint and throughout the litigation, Defendants filed no motion to dismiss the compensatory and/or punitive damage counts on the theory that the Ethics Act only allows for equitable relief. Defendants filed no motion to transfer the case from the Law Division to the Chancery Division on the theory that Plaintiff is only entitled to equitable relief. It is totally without merit for the Defendants to now present the argument that:

> "The remedies available to Plaintiff here under the Ethics Act are wholly equitable. Specifically, the remedies section provides for (1) reinstatement of the employee to either the same position held before the retaliatory action or to an equivalent position; (2) two times the amount of back pay; (3) interest on the back pay; (4) reinstatement of full fringe benefits and seniority rights; and (5) the payment of reasonable costs and attorneys' fees. 5 ILCS 430/15-25…Because the only remedies available to Plaintiff under the Ethics Act are equitable, there was no right to a jury trial on the Ethics Act claim."

Such argument is also without merit because it ignores the plain language of the Ethics statute which precedes the aforesaid quoted enumerated available compensatory remedies. Defendants ignore the clear language of the statute which provides that the remedies "are not limited" to the remedies enumerated in the Act. Furthermore, Defendants made no objections to the trial court judge that compensatory and/or punitive damages are not available per se under the Ethics Act. For over three years in heated discovery and motion practice, neither side has sought to attack the other's jury demand nor withdraw their own. Finally, Defendants made no objection to any of the compensatory/punitive damage instructions at the jury instruction conference on the basis that compensatory/punitive damage are not available under the Ethics Act and therefore, such instructions would be wholly inappropriate.

Defendants' present argument that there is no right to a jury trial is similarly belied by their past conduct in this case. In response to Plaintiff's jury demand, Defendants did not file a motion to strike the jury demand based on their present argument that there is no right to a jury trial under the Ethics Act. In fact, in response to Plaintiff's complaint/jury demand, Defendants filed their own jury demand. It was not until the Defendant's filed their post-trial motion that this issue was first raised in the case. Even if the court were to assume Defendant's position is well taken, it cannot ignore the fact that the Defendant's sat silent for three plus years after *Defendants* sought a jury trial and only after a jury rendered a verdict unfavorable to the

Defendants did that raise this issue. To permit the tactic of allowing a party to withdraw its jury demand after a jury reached a verdict and to have a new trial would, practically speaking, lead to the absurd result that almost every case would have to be tried twice. Therefore, the Court finds that Defendant's failure to raise this issue in a timely manner was an abandonment, forfeiture or waiver of this position they now present in their post-trial motion and that Defendant's argument is not consistent with the language of the Act.

B.

Alternately, This Case Was Tried Before An Impartial And Unbiased Jury Even Though A Juror Failed To Accurately Answer Certain Voir Dire Questions.

A court may allow a new trial based on false answers given by a juror during voir dire, but only if the moving party suffered prejudice. Pekeldor v. Edgewater Automotive Co., 68 Ill. 2d 136 (1977); Department of Public Works and Bldgs. v. Christenson, 25 Ill. 2d 273, 279-80 (1980); Barton v. Chicago & N.W. Transp. Co., 325 Ill. App. 3d 1005, 1028 (1st Dist. 2001). Trial courts have been consistently upheld in not granting a new trial based on a juror's failure to disclose information on voir dire when there was no prejudice. See: Barton v. Chicago & N.W. Transp. Co., supra at 1030, wherein a new trial was not granted based on a juror's failure to disclose prior or pending litigation where Defendant failed to show prejudice or carry its burden of showing a probability of subconscious bias on the part of the juror; Diaz v. Holly, 275 Ill. App. 3d 1058 (1st Dist. 1995), where a new trial was not granted where a juror stated he had never been a party to a lawsuit yet was a Defendant in two collection actions, but Plaintiff/movant failed to show actual prejudice; Department of Public Works and Bldgs. v. Christenson, supra at 29 where in no new trial was granted when juror had ties with a party and did not disclose them on voir dire because no prejudice shown in that there was no jury

deadlock; Kuzminski v. Waser, 312 Ill. App. 438 (1st Dist. 1942) where in a new trial was not granted when juror did not disclose on voir dire that her husband had a cause of action against the defendant because the defendant was not prejudiced.

Defendants' motion first argues that Juror Antoine Bass' answers were dishonest which is per se prejudicial and if not per se prejudicial, then Defendants must be afforded a hearing.

The Court has found that Juror Antoine Bass' responses were not intentionally dishonest and therefore, not per se prejudicial and allowed the post-trial hearing Defendants requested. The Court further finds that Juror Antoine Bass' responses during that hearing were not dishonest. Antoine Bass provided reasonable credible explanations for his responses to the voir dire questions presented to him.

In regard to his failure on voir dire to disclose that he was a complaining witness, Juror Bass explained that he went to the police because the incident occurred during a school Board Hearing. Juror Bass didn't think he was a complaining witness because the police told him that the accused would, at best, be given an administrative ticket. Juror Bass did not think a court appearance would be required, therefore he didn't believe he was a complaining witness. This is not an unreasonable explanation.

As to the question of whether he was a party to any lawsuit, Juror Bass explained that he understood being a party to a lawsuit required an appearance in court. Since his own bankruptcies and foreclosures matters did not require court appearances, Juror Bass stated he did not think they were responsive to the question. Finally, as to the question as to whether he was presently a party to a pending case, Juror Bass also provided a reasonable response. Juror Bass said that since the lawsuit was against the School Board, he did not consider himself to be a party to a pending case. Juror Bass testified that he was not individually served as a defendant in the

Board lawsuit. Juror Bass testified that he did not intentionally withhold information, and that he answered the questions to the best of his ability at the time.

After observing Juror Bass testifying at the post-trial hearing, this Court finds that Mr. Bass was credible. The totality of his responses at the post-trial hearing explained why he answered the voir dire questions in the manner he did, as well as his answers to the pre-printed Jury Information Form questions which all prospective jurors complete.

Moreover, when given the opportunity to question Mr. Bass during voir dire at trial the Defendant's counsel focused not on any discrepancies that existed between his verbal responses at trial and his written responses on the preprinted Juror Information Form but rather questioned him regarding his experiences in serving on a School Board and if those experiences would prevent him from being fair to either side. The Court does not find that the Defendants sustained their burden of proof of showing prejudice.

Finally, although Juror Bass was the Jury Foreman, the jury consisted of thirteen other unbiased citizens who unanimously ruled in favor of the Plaintiff. More importantly, deliberations did not take long at all. In fact, deliberations were short in that all fourteen jurors decided in approximately one half hours time, that Defendants were liable and should pay compensatory and punitive damages. There simply was no prejudice shown to overturn the jury's verdict in this case.

C.

Defendants Argue This Court Committed Various Prejudicial Trial Errors.

1.

Defendants' Arguments That Allowing The Post-termination Request For An ARDC Investigation Made By The University's General Counsel, Patrick Cage (Plaintiff's Exhibit

No. 47), And The ARDC's Decision Not To Proceed When The ARDC Investigation Requested By The University Was Irrelevant, Prejudicial And Intended To Be Kept Confidential Under Supreme Court Rule 766(A)(1) Have No Merit;

The Court's decision to allow evidence to be presented regarding General Counsel Patrick Cage's post termination complaint against the Plaintiff to the Attorney Registration and Disciplinary Commission for conversion of funds was relevant to several issues in the case. First and foremost, it addressed Defendant's affirmative defense of Plaintiff's failure to mitigate his damages by not securing employment since his termination. Secondly, it was relevant to Plaintiff's claim for punitive damages. (See T.T. 29-339; 347-349). This was addressed and discussed when the Court ruled on Defendant's motion in Limine #21. (T.T. 53-56).

The Court further considered that the probative value far outweighed the prejudice and went on to explain that when Patrick Cage testified at trial he would be given the opportunity to explain his reasoning as to why he filed the ARDC complaint and its resolution, which he did (pages 1243-1246 and 1252-1256 T.T.). Moreover, at no time did the Defendants request or submit to the court a limiting instruction to be given the jury regarding this evidence.

As to the confidentiality contention under SCR 766 a(1), such confidentiality protection is not for the protection of the complainant as Defendant's Motion seems to argue and therefore does not provide a basis for Post-Trial Relief. See In Re Mitan, 119 Ill. 2d 256 (1987). Mitan clearly states that the purpose of the rule is to protect an attorney's reputation for honesty and integrity from the harm that might result if a publicly announced discipline investigation later proved to be without substance. The confidentiality rule provision was not to protect the attorney's accuser/complainant. Here, the Defendant is attempting to use a rule designed to protect the accused to protect the accuser. In addition as discussed in other parts of this

memorandum, all of the asserted reasons for Plaintiff's discharge originated not from any duties he may have performed as an attorney but rather as the Associate Vice President of Auxiliary Services for Chicago State University for the Jones Center which was his primary responsibility at the university when he was discharged. The Court's allowance of the Defendants' complaint to the ARDC is relevant to show intent on the punitive damage claim and to further show why it was difficult for Plaintiff to mitigate his damages by finding another job since most employment applications requested information of prior ARDC complaints.

For the above reasons, the Court finds no merit to this alleged error raised by Defendants.

2.

Plaintiff's Post-Termination FOIA Request (Exhibit No. 29);

Defendants assert that the Court committed prejudicial error when it admitted Plaintiff Exhibit 29. Exhibit 29 was a fax from the Office of the President Wayne Watson of Chicago State University sent by Dr. Watson's Executive Secretary, Joy Herne to Dr. Watson on July 14, 2010 that contained a June 14, 2010 FOIA Request by the Plaintiff's attorney for certain documents. Admission was sought by Plaintiff counsel during his cross-examination of Dr. Watson. Defense counsel objected by stating "Your Honor with the additional pages…Your Honor, yes. Objection, relevance. Beyond that none." T.T. p. 942.

The Court ruled based on the stated objection of relevance. SCR 401 sets forth the definition of "Relevant Evidence" and states "Relevant Evidence" means evidence having *ANY TENDENCY* (emphasis added) to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence. Plaintiff's Exhibit 29 is relevant to several matters, the most obvious being Plaintiff's damage claims as well as the practice, intent, state of mind and motivation of the Defendants. It was also

circumstantial evidence in light of the date of Watson receiving the letter was also the date that an ARDC complaint was lodged against Plaintiff by Patrick Cage. Such fax in and of itself may not initially appear to be relevant but it is certainly relevant in light of all the other evidence.

3.

The Discipline Received By A University Employee, Yvonne Harris, For Conduct Concerning The University's Failure To Monitor Non-University Funds (Plaintiff's Exhibit No. 28) Was Relevant And Not Prejudicial;

Defendants assert that the Court's ruling allowing the use of Exhibit 28 was irrelevant and prejudicial to its case. The application of the rules and regulations of Chicago State University pertaining to disciplinary matters of its employees was in fact a material part of the case. This material was relevant to show how the application of the rules and regulations as to one Associate Vice President's misconduct was wholly different from Plaintiff Crawley who was also was an Associate Vice President at Chicago State University. Both individuals were in the same employment status at Chicago State University and as such were entitled to have the same disciplinary protocol used in evaluating their conduct. Evidence of the wide disparity in the process and treatment provided the two Associate Vice Presidents by the same "senior management" team is certainly germane to the issues in this case if for no other reason than to rebut the absurd testimony of Patrick Cage, Dr. Watson and Mr. Meehan in explaining their actions/decisions regarding the Plaintiff. Moreover, the nature of the charged misconduct of Ms. Harris was "Perjury" that the senior management took over six (6) months to act upon when Ms. Harris admitted she lied when first questioned. The investigation or lack thereof provided in the Plaintiff's case was far more swift and the subject matter was of far more complex and subtle nature. Hence, the discipline and the process received by a fellow Associate Vice President and

how the Defendants applied the disciplinary rules to her was relevant and not unfairly prejudicial.

4.

Plaintiff's Exhibit Nos. 39 And 40, Taken From The Illinois Auditor General 2009 And 2010 Reports Which Was Used In Cross-Examination And Admitted When They Had Not Been Disclosed In Plaintiff's Rule 213 Answers Was Proper;

This alleged error is totally disingenuous and at best demonstrates the Defendant's attempts to try to create issues that were never raised with the Court or which they agreed to. A cursory review of the trial transcript that pertains to Plaintiff's exhibits 39 and 40 (T.T. 879-901) clearly shows that the only stated basis of Defendants' objection was RELEVANCY. Not once do the words "213" appear in those pages. In fact, substantial parts of exhibits 39 and 40 were in fact agreed upon by the parties, and the Court was asked to address and did so address all of the items that were not agreed upon.

At this stage of the litigation, to assert that the Court committed error by not intuitively divining that there may have been a 213 issue regarding these exhibits is not supported by the record.

That an objection must be timely made and that counsel must state the specific legal grounds for the objection are classic fundamentals of evidence. The failure of a party to object at the earliest possible moment waives or forfeits any error resulting from the admission of that evidence. People v. Outlaw, 388 Ill. App. 3d 1072 (4th Dist. 2009). An objection is adequate only when it is made with sufficient specificity to advise the trial court and opposing counsel of the grounds upon which the challenged proof is sought to be excluded. See Buczyna v. Cuomo and Son Cartage Co., 146 Ill. App. 3d 404 (1st Dist. 1986). Grounds not specified in an objection

are waived. See People v. Miller, 173 Ill. 2d 167 (1996). The Defendants did not make a 213 objection to Plaintiff's Exhibit Nos. 39 and 40 and therefore any such objection was waived and/or forfeited.

5.

The Assertion That The Court Committed Prejudicial Error By Denying Defendants Motion In Limine #33 Has No Merit;

Defendants once again attempt to assert as a court error matters which they themselves were remiss in presenting to the court. Defendants' motion is in effect: 1) an attempt to plead affirmative matters the day before trial, when in fact no such affirmative defense was ever filed or 2) a motion for summary judgment brought on the day before trial.

The Failure to Exhaust an Administration Remedy is an affirmative defense that Defendants have never filed or plead. Failure to plead an affirmative defense prevents the defendant from relying on it. See Avery v. Sabbia, 301 Ill. App. 3d 839 (1st Dist. 1998). A defense to an action is waived/forfeited by a failure to assert it in an answer.

The trial transcript at p. 68 – 76 contains the discussion and the Court's ruling and its rationale on Defendant's Motion in Limine #33. Defense counsel at p. 74 and p. 95 clearly indicates that their motion was designed to interject into the trial an affirmative defense of failure to exhaust administrative remedies. No such defense was ever asserted by the Defendants and Counsel now in post-trial motions is once again seeking to interject an issue that they waived and/or forfeited. Furthermore, Defendants' arguments misconstrue the termination letter and fail to include language that is clearly contained in Plaintiff's Exhibit 6 which is the February 19, 2010 letter (which the Court notes is also not attached as an exhibit to Defendant's post-trial motion). Defendant's argument once again mischaracterizes what the exhibit clearly says, which

is that: "In accordance with Section II, Subsection B4a, of the Chicago State University Board of Trustees Regulations, you are hereby notified that **EFFECTIVE IMMEDIATELY**, (emphasis added) your services as Assistant Vice President for Auxiliary Operations will terminate for cause." Nowhere in that letter does the words intent to terminate appear as Defendants' arguments seem to suggest.

With that tactic, movant further proceeds to revisit and assert an affirmative defense that was not pled in an effort to achieve a new trial by boot strapping that defense into this case. It is yet another disingenuous attempt to manipulate the record in an effort to undo the previous shortcomings of their effort in the defense of their case.

The Defendants were not prejudiced by the Court's ruling on their motion. They were in fact prejudiced however, by the way they chose to deal with the pleading in February 2010 and this Court's ruling merely left them in the same position they elected to be in.

6.

The Court's Refusal To Give The Special Interrogatories Submitted By The Defendants Was Not Error;

Defendants claim that it was error in refusing to give three proposed special interrogatories. The record is clear, the Court declined to give the tendered special interrogatories because they were not in proper form.

A special interrogatory is in proper form if (1) it related to an ultimate issue of fact upon which the rights of the parties depend and (2) an answer responsive thereto would be inconsistent, with some general verdict that might be returned. Simmons v. Garces, 198 Ill. 2d 541, 563 (2002), Vulcan Materials v. Holzhaver, 234 Ill. App. 3d 444 (4th Dist. 1992); Flore v. C.T.A., 12 Ill. App. 3d 71 (1st Dist. 1973). The special interrogatory must: (a) ask a single

question, (b) be simple, unambiguous and understandable and (c) not be repetitive, confusing or misleading. Simmons, 198 Ill. 2d at 563. The interrogatories do not have to cover all elements necessary for a general verdict. Id 563.

Defendants' first proposed interrogatory read:

> "If you find for Plaintiff and against Defendants, do you also find the Plaintiff's act of responding to Phillip Beverly's FOIA request was the sole protected activity he engaged in that was a contributory factor in his discharge?"

Such interrogatory did not ask a single question and was ambiguous, confusing and misleading for a number of reasons. Besides beginning with the phrase "if you find for plaintiff and against the defendant," it becomes more ambiguous and confusing when it asks if the act of a FOIA requested/response was the "sole protected activity" that was a "contributory factor" in his discharge. The usage of the term "sole" protected activity and the term "contributory" in one sentence was confusing and would be misleading to the jury. Proposed Interrogatory No. 1 was therefore not in proper form for the above stated reasons.

Defendants' second proposed interrogatory read:

> "If you find for the Plaintiff and against the Defendants, do you also find that Patrick Cage knew that Plaintiff met with the Illinois Attorney General on September 1, 2009?"

Such interrogatory did not ask a single question and the responsive answer would not necessarily be inconsistent with a general verdict. Again, the interrogatory starts with prefatory language that if you find for Plaintiff. More importantly, an affirmative answer would not necessarily be inconsistent with a general verdict. The jury could have found for the Plaintiff based on other evidence even if they found that Patrick Cage didn't know that Plaintiff met with

the Illinois Attorney General on the specific date of September 1, 2009. Hence, Defendants' Proposed Special Interrogatory No. 2 was also not in proper form.

Defendants' third proposed interrogatory read:

> "If you find for Plaintiff and against Defendants, do you also find that Plaintiff reasonably believed the activities he disclosed to the Illinois Attorney General's office were in violation of an Illinois law, rule or regulation?"

Such interrogatory, again, did not ask a single question. The interrogatory assumes a finding for Plaintiff and then asks multiple questions as to whether the disclosed activities were in violation of Illinois law or a rule or a regulation. Such interrogatory does not ask a single question and is confusing and ambiguous. Defendants' Proposed Interrogatory No. 3 was also not in proper form.

Furthermore, after the Court declined to give the three proposed interrogatories in their tendered form, the Court encouraged the Defendants to refine the interrogatories into an acceptable form. The Defense attorneys failed to take advantage of this opportunity to make any modifications to the proposed interrogatories. (T.T. pg. 1373-1377)

The Court declined to give the tendered special interrogatories because they were not in proper form and therefore that decision was not erroneous.

7.

Allowing The Two Alternate Jurors To Deliberate With The Jury And Sign The Verdict Form Was Not Plain Error;

Defendants now claim that it was plain error for the Court to allow the two alternate jurors to deliberate.

Pursuant to Section 2-1106(b) of the Code of Civil Procedure, generally alternate jurors are discharged at the time the jury retires and the initial twelve jurors chosen proceed to reach a unanimous verdict. In this case, the Court asked each party's attorney if they had any objection to the two alternate jurors being allowed to deliberate and reach a verdict in light of the length of the trial and the willingness of the alternate jurors to fulfill their civic duty and serve as demonstrated by their steadfast presence despite the horrendous weather conditions. Plaintiff's counsel had no objection and Defendants' counsel had no objection to not discharging the two alternate jurors and allowing the two alternate jurors to deliberate to reach a verdict. (T.T. 1170, 1171, 1345, 1346). In light of Plaintiffs' counsels' agreement and in light of Defendants' counsels' failure to object and in fact Defendants' counsels' willingly consenting to allow the two alternate jurors to deliberate, the Court allowed the alternate jurors to deliberate. Defendants cannot now claim that it was error to allow the alternate jurors to deliberate in light of their failure to object and their agreement to allow the alternates to deliberate. Any such purported error was waived/forfeited by their failure to object or by their willing consent to allow the alternates to deliberate. Moreover the concept that a verdict signed by anything but twelve jurors is a defective verdict is absurd in light of the circumstances in this trial as outlined above.

Furthermore, there was no prejudice in allowing the two alternate jurors to deliberate. Since a unanimous jury of fourteen jurors found Defendants liable after a short deliberation, there is no reason to believe that if the alternates were discharged, the remaining twelve jurors would not have done the same. The inclusion of the two alternate jurors was in fact a benefit to the Defendants because mathematically and logically it is far more difficult to unanimously convince fourteen jurors than twelve.

Furthermore, when presented with an opportunity by the court to poll the jury, thereby testing the unimmity of the verdict, Defense counsel declined to so request the Court to do so. (T.T. 1540 and 1542). All of the aforesaid actions by Defense Counsel totally undermine any argument that it was error to allow the two alternate jurors to deliberate.

Finally, Defendants contend in their closing sentence at page 44 of their Memorandum that allowing the two alternates to deliberate was "plain" error. Defendants provide no further explanation how the plain error doctrine so applies.

Under the plain error doctrine the Court may address a forfeited error when the evidence is close, regardless of the seriousness of the error or when the error is serious, regardless of the closeness of the evidence. People v. Span, 2011 Ill. App. (1st) 083037 at 73. The plain error doctrine is set forth in the Supreme Court Rules governing criminal appeals, however the First District has applied it in civil cases "where the act complained of was a prejudicial error so egregious that it deprived the complaining party of a fair trial and substantially impaired the integrity of the judicial process." Wilbourn v. Cavalenes, 398 Ill. App. 3d 837, 856 (2010) quoting In re Marriage of Saheb, 377 Ill. App. 3d 615 (2007). First, there was no error in light of the fact that all attorneys including the Defendants, agreed to allow the alternates to deliberate. Assuming arguendo, that the parties could not waive allowing alternates to deliberate, a Court may address a forfeited error when the evidence is close, regardless of the seriousness of the error. In this case, the evidence was not close. The Defendants' witnesses lacked so much credibility, that the jury only took approximately 30 minutes to reach a verdict for the Plaintiff. The Court's assessment of the credibility of the witnesses does not differ from the jury's assessment. So the evidence in this case was not close so as to warrant this Court to revisit the decision to allow the alternates to deliberate. Further, the Court may address a forfeited error

when the error is serious, regardless of the closeness of the evidence. Here, the allowing of the alternates to deliberate was not anything approaching a serious error prejudicial to the Defendants.[7] As stated earlier, the inclusion of the two alternate jurors was in fact a benefit to the Defendants because mathematically and logically it is more difficult to unanimously convince fourteen jurors than twelve jurors. Finally, allowing the two alternates to deliberate was not "so egregious that it deprived the complaining party [Defendants] of a fair trial and substantially impaired the integrity of the judicial process." The integrity of the judicial process was not impaired at all and the Defendants received a fair trial. Defendant's reference to "plain" error has no merit at all.

III.

THE DEFENDANTS FURTHER URGE THIS COURT TO GRANT A REMITTITUR OF THE JURY'S PUNITIVE DAMAGE AWARD OF $2,000,000.00 AS WELL AS A REMITTITUR OF THE AWARD OF DOUBLE BACK PAY.

A.

Remittitur Of The Punitive Damages Award.

A granting of a remittitur requires that a Plaintiff choose either to retry the case or have the damages reduced to an amount that the Court deems proper. It further requires the Court to indicate some basis in fact for finding that the jury award was in error or excessive. Franz v. Cataco Dev. Corp., 352 Ill. App. 3d 1129 (2nd Dist. 2004); Mikolajczyk v. Ford Motor Co., 374 Ill. App. 3d 646 (1st Dist. 2007). As to the assertion that the punitive damages awarded is excessive, the Court must apply the common law test and the due process test. Gehrett v. Cherpler Corp., 379 Ill. App. 3d 162 (2nd Dist. 2008).

[7] It should be noted that many Federal District Court judges ask trial attorneys to allow alternates to deliberate. Such conduct is not error or prejudicial.

The common law test requires the court to consider: a) the nature and enormity of the wrong, b) the Defendant's financial status and c) the Defendant's potential liability. Then the Court must consider whether the award is the product of passion, partiality, or corruption. In this case as to the nature and enormity of the wrong, the record is replete with instances where Defendant's conduct could reasonably be viewed as actions/steps designed to dredge up or fabricate evidence of misconduct by the Plaintiff in an effort to terminate the Plaintiff and to deliberately disregard their own personnel manual procedures in order to achieve that end without conducting a hearing. Furthermore, the evidence could also be construed as Defendants taking affirmative steps to destroy the Plaintiff's current and future work opportunities, reputation and good name. Finally, the evidence could be construed, that all of the above was compounded by subsequent actions to cover up their true intentions. This jury observed the Defendant's witnesses' demeanor on the stand and the evasive explanations repeatedly offered to justify their actions/inactions that resulted in Plaintiff's termination.

Moreover, there was no evidence presented to suggest the Defendant's actions were done by mistake or inadvertence. In fact, any reasonable fact finder would be quite convinced by the evidence that Defendants went out of their way to crush the Plaintiff.

As to the Defendants' financial status, one only has to look at Plaintiff exhibits 39 and 40, p. 2, which are the financial audit summary report digests of the State of Illinois covering the fiscal years 2008, 2009 and 2010. That review discloses that for the years 2008 the Defendants' net assets were $127,671,334; 2009 net assets were $126,033,731 and 2010 net assets were $134,717,190. Clearly, the Defendants have the economic viability to survive quite handily after satisfying the judgment in this case.

As to the Defendants' potential liability, Plaintiff's exhibit 39 lists the number of faculty/administrative employees as 982 for the year 2009. If one was to assume that 982 (even if Dr. Watson and Patrick Cage) were to be terminated in a like fashion and subsequently sued and were awarded $3,000,000 in compensation each, the total exposure would be less than $30,000,000 or approximately 25% of the Defendant's net assets as of 2009.

After considering the evidence in this case and the above factors, the Court concludes that none of those factors weigh in on the side of the Court granting a remittitur of the punitive damages.

However, the Court must now consider whether the award is the product of passion, partiality or corruption. Gehrett, supra at 180. Upon review of the record, this Court cannot conclude that the jury's award was tainted in any way by passion, partiality or corruption. In fact, the opposite is true. The only rational conclusion is that the jury was diligent, considerate and attentive to the oath they took as jurors and to their evaluation of the evidence and their assessment of the credibility of the witnesses.

Turning now to the Due Process test that the Court is required to consider. There are three guidelines to be examined: 1) the degree of reprehensibility, 2) the disparity between the award and the harm, and 3) the disparity between the award and the comparable civil penalties. The degree of reprehensibility is the most significant of the three functions and requires the court to consider whether the Defendants: (a) acts caused physical harm (which in this case it did not); (b) threatened person's health and safety (here the Plaintiff lost all health and insurance coverage benefits) (c) targeted financially vulnerable persons (here the Plaintiff when deprived of his work income had to exhaust his savings as well as his retirement account and pay early withdrawal penalties on the funds); (d) committed multiple acts of misconduct (here the evidence can be

construed as the jury so did, as being replete with such events) and (e) acted intentionally (here there is no doubt that all of the Defendant's actions were deliberate, intentional and not done inadvertently or negligently).

As to the second factor, the disparity between the award and the harm, or in other words, the ratio of punitive damages to the compensatory damages is also to be considered. The appropriate ratio of punitive damages to compensatory damages is generally considered to be under a two digit ratio. State Farm Mutual Automobile Ins. Co. v. Campbell, 538 U.S. 408 (2003). However, a relatively high ratio may be justified if a particularly egregious act causes relatively little economic damage or an injury that is hard to detect or quantify. International Union of Operating Engineers, Local 150 v. Lowe Excavating Co., 225 Ill. 2d 456 (2006). Here if one considers that the compensatory damages were $480,000, the ratio to the $2,000,000 in punitive damages is 4.16 to 1. If one considers the compensatory damages were $960,000 (2 x 480,000), the ratio to the $2,000,000 in punitive damages is 2.04 to 1. Both those ratios would be marginally lower if one was to include the pre judgment interest that the Ethics Act statute provides for. Either ratio is substantially lower than a two digit ratio that is disfavored by the case law. In this case while the compensatory damages are not small nor are they hard to quantify, they are not insignificant so a relatively high ratio would not be appropriate in this instance. This court considers the ratio of 4.16 to 1 to be well within the established case law parameters for satisfying Due Process concerns especially in light of the fact that there are no similar decisions under the Ethic Act.

The third factor to be considered is the disparity between the award and the comparable civil penalties. As in Gehrett, supra, this factor is not applicable for there are no other civil penalties for Defendant's action.

In this Court's analysis of the Common Law test as well as the Due Process test, the Defendants are not entitled to a remittitur nor is one called for in light of the evidence in this case. The jury's decision on both liability and their considered judgment on the amount of damages that were to be assessed for the Plaintiff were well founded based on the evidence presented to them and most importantly, on the jury's assessment of the credibility of the witnesses. Parties who have requested/exercised their right to a jury trial on all of the issues including damages are entitled to get one. The assessment of damages is primarily a function of the jury and a trial court should not substitute its judgment for that of a jury's. The amount of punitive damages awarded is a matter within the province of the trier of fact. Unless it is clearly excessive, it will not be disturbed. In this case, the Court will not disturb the jury's award of punitive damages.

B.

Defendants Contention That They Are Entitled To A Remittitur Of The Double Back Pay Award Has No Merit.

The Defendants assert that the doubling of the back pay in the compensatory damages award when combined with the jury's award of punitive damages is an impermissible double recovery and therefore improper under the case law.

Both sides agreed that the Ethics statute is quite clear in setting forth the compensatory remedies that are available and that the doubling of the amount of back pay is the second of the five enumerated remedies. When jury instructions were addressed along with the verdict forms, both sides agreed that the jury was not to be instructed that they were to double any amount of back pay awarded and that the Court would make that calculation after the jury returned their verdict if it were necessary. (T.T. p. 1308, 1340). In accordance with the parties' pre-verdict

agreement, the court did so on March 11, 2014. Defendants now seek to have this Court undo that which they agreed to during the jury instruction conference on the basis that it results in a double recovery.

This also is an issue now raised for the first time by the Defendants. Two cases are primarily relied upon by the Defendant in support of their argument. Both cases provide that three (3) times or treble damages are in fact punitive and therefore incompatible with a recovery of punitive damages in the case. However, neither case involves the Ethics Act and both are distinguishable. The Ethics Act provides for a doubling of the compensatory damages and is therefore significantly different from the Tree Cutting Act and Nursing Home Care Reform Act. Moreover, the Ethics Act does not mandate a minimum recovery as does the Nursing Home Care Reform Act nor does it provide for treble damages for mere negligent conduct as does the Nursing Home Care Reform Act. The Wrongful Tree Cutting Act also differs from the Ethics Act in that it only provides for the injured party to receive one distinct element of compensation namely "three times the stump value." It does not have the enumerated compensatory remedies for attorney fees and costs, prejudgment interest, reinstatement of fringe benefits and seniority rights, and reinstatement to the same position as the Ethics Act does. More importantly, the Nursing Home Care Reform Act and Wrongful Tree cutting Act do not contain the language "but not limited to" or "and to prevent further violation of this article", as does the Ethics Act.

All those differences are significant when attempting a comparison of the Acts and such differences minimize the value of comparing the Ethics Act to other legislation. Moreover, each Act was crafted by the legislature with specific purposes sought to be achieved. Compensatory damages are damages in satisfaction of a loss or injury sustained and are intended to make the injured Plaintiff whole. They cover all losses recoverable as a matter of right and includes all

damages/remedies other than punitive/exemplary damages. They also are not restricted solely to the actual loss in time or money and can include such things as pain and suffering, disfigurement, disability or loss of health or character and reputation and sometimes emotional distress. The Ethics Act §15-25 provides for some compensatory remedies that may be included but it expressly states "but are not limited to" those listed. The two (2) times back pay is but one form of compensatory damage available to be utilized in trying to achieve the stated goal of the Act which is to make the employee whole. The Act goes on further to state "and to prevent future violation of this Article." As stated earlier, the latter is a clear indication that punitive damages are also allowed under the "Act"[8] and are to be in addition to the enumerated compensatory damages listed in the statute. Punitive damages while not favored under the law, but are allowed where the circumstances of a wrongful act are accompanied by malice or oppression. Both elements clearly were demonstrated by the Defendants' conduct in dealing with the Plaintiff in this case.

For the following reason, the Defendants request for remittitur of the double back pay is deemed to be without merit and denied.

IV.

PLAINTIFF PETITION FOR REINSTATEMENT AND FOR ATTORNEY FEES AND COSTS.

A.

Plaintiff's Petition For Reinstatement

The Ethics Act enumerates compensatory remedies that the plaintiff may be entitled to. The Court, with the agreement of Plaintiff and Defendants when constructing the verdict forms,

[8] Furthermore, an obvious purpose of the Ethics Act is to encourage individuals to expose corrupt or inappropriate conduct by government actors.

inserted on the verdict form a question that read "should the Plaintiff James Crawley be reinstated to his employment? Yes ___ No ___ (T.T. at p. 1335 etc.). The jury answered that question in the affirmative along with awarding compensatory and punitive damages to the Plaintiff. Consistent with that finding by the jury the Court requested the Parties to submit their respective positions on the Plaintiff being reinstated at Chicago State University.

The Defendants' positions are as follows:

1) That the reinstatement issue should be addressed only after the Court ruled on Defendants Motion for JNOV, New Trial and/or Remittitur.
2) That the Illinois Rules of Professional Conduct bars Plaintiff's return to Chicago State University in any capacity.
3) That the Plaintiff's termination position of Associate Assistant Vice President of Auxiliary Services was eliminated by the University.
4) That no equivalent position currently exists at the University.
5) That if the Plaintiff was to be reinstated, some other employee that held an entirely different position would be displaced.

The Plaintiff's position is that reinstatement was:

1) Part of the jury's verdict in this case. (By the agreement of the parties)
2) Part of the court's order of March 11, 2014
3) A compensatory remedy authorized by the Ethics Act.
4) That the Rules of Professional Regulation are not a bar to reinstatement.
5) The Defendants' unsupported assertion that the job no longer exist and no equivalent job is available is not supported by any evidence.

6) That where reinstatement is not possible the law recognizes the concept of "Front Pay" as an alternative to reinstatement under certain circumstances.

7) That in the alternative, Plaintiff be awarded front pay based on his salary at the time of discharge ($120,000) for 24 months (in 2 years/or a total of $240,000.00).

The Defendants in their reply contested each of Plaintiff's assertions and requested the Court to decline to reinstate the Plaintiff. Both parties agree that the Ethics Act clearly sets forth some of the compensatory remedies that are available to make whole a prevailing plaintiff. Both sides further agreed that the question of reinstatement was to be submitted to the jury on the verdict form. Both sides also agreed that after a verdict was reached by the jury the Court would, depending on the verdict, deal with the issue of reinstatement if necessary. Once the verdict was reached, the Court requested that the parties provide written submissions on their respective positions on the matter. The jury verdict was memorialized in the February 18, 2014 order. A later order of March 11, 2014 set a briefing schedule for the Defendant's post-trial motions as well as the issues of attorney fees and costs and reinstatement. The second order of March 11, 2014 entered judgment in the amount of $1,020,000.00 in compensatory damages which was inclusive of prejudgment interest @ 5% on $480,000.00 only for 4 years and punitive damages in the amount of $2,000,000.00 in favor of the Plaintiff and against the Defendants. That order continued to state that the issues of attorney's fees and costs, as well as, reinstatement was taken under advisement.

The jury made a factual finding that in order to fully compensate the Plaintiff, in addition to the back pay damages awarded, that the Plaintiff was to be reinstated to his position at Chicago State University. The evidence the jury was provided regarding the Plaintiff's title at the University was "Assistant Vice President for Auxiliary Services/Operation of the Jones

Convocation Center" and in addition to the duties of that position, he also was responsible for F.O.I.A. requests and the review of Chicago State University contracts that exceeded $5,000.00 in value. As discussed elsewhere in this memorandum, the F.O.I.A. responsibilities are not required to be fulfilled by attorneys and in fact, currently are done by non-attorneys at Chicago State University. For that reason as well as the other evidence presented at trial, the court rejects once again Defendants' assertion that the Illinois Rules of Professional Conduct are a bar to Plaintiff being reinstated to Chicago State University as an Assistant Associate Vice President in a department other than the Legal Department.

Defendant's further assert (without any evidentiary basis) that the Plaintiff's old position as Assistant Associate Vice President was eliminated, no equivalent position currently exists, and furthermore, that reinstatement would mean that some other employee that had an entirely different position would have to be displaced. The latter assertion on its face tends to be somewhat contradictory to Defendant's statement that no equivalent position exists at Chicago State University. That assertion is also of dubious value as demonstrated by Plaintiff's exhibit 39, The Illinois Auditor General report for 2009, which states that as of the 2009 school year Chicago State had 982 employees. Therefore, for the above stated reasons the Court rejects Defendants' position that reinstatement should not be awarded to the Plaintiff.

Besides reinstatement, Plaintiff has requested that if in fact an equivalent position does not exist or cannot be found that he, in the alternative be awarded Front Pay covering two years at the salary of $120,000.00 that he was receiving when discharged in February 2010.

The concept of Front Pay is of relatively recent origin as a remedy and has had limited application and those were primarily in Federal Court cases brought under Federal Statutes.

This Court has not found an Illinois Court case that defines "Front Pay". See Cursce v. Wisconsin Central, LTD, 961, N.E. 2d 296, (1st Dist. 2011), Tremble v. Peoplease Corp., No. 1-11 – 3174, 2012 Ill. App. Unpub. At 2 (1st Dist. Dec. 4, 2012). However, in Chas. A Stevens and Co. v. The Illinois Human Rights Commission, 196 Ill. App. 3d 748 (1st Dist. 1990) which was an age discrimination case the Court stated:

> "Front pay is a remedy available to compensate an individual who has been wronged by an employer's violation of the Age Discrimination in Employment Act."

Federal cases have provided a definition of Front Pay and can be considered persuasive authority by this court.[9]

In Pollard v. E.I. du Pont de Nemours & Co., 543 U.S. at 846 (2001), which was a Title VII case the U.S. Supreme Court held that:

> front pay is simply money awarded for lost compensation during the period between judgment and reinstatement or in lieu of reinstatement. For instance, when an appropriate position for the plaintiff is not immediately available without displacing an incumbent employee, courts have ordered reinstatement upon the opening of such a position and have ordered front pay to be paid until reinstatement occurs. See, e.g., Walsdorf v. Board of Comm'rs., 857 F. 2d 1047, 1053-1054 (CA5 1988); King v. Staley, 849 F. 2d 1143, 1145 (CA8 1988). In cases in which reinstatement is not viable because of continuing hostility between the plaintiff and the employer or its workers, or because of psychological injuries suffered by the plaintiff as a result of the discrimination, courts have ordered front pay as a substitute for reinstatement. See, e.g., Gotthardt v. National R.R. Passenger Corp., 191 F. 3d 1148, 1156 (CA9 1999); Fitzgerald v. Sirloain Stockade, Inc., 624 F. 2d 945, 957 (CA10 1980).

[9] Although, an Illinois state court is generally not bound to follow federal case law, Barton v. Chicago and N.W. Transp. Co., 325 Ill. App. 2d 1005, 1028 (1st Dist. 2001) such federal decisions can provide guidance and act as persuasive authority. Reichert v. Board of Fire and Police Com'rs of City of Collinsville, 288 Ill. App. 3d 834 (5th Dist. 2009); Lamar Whiteco Outdoor Corp. v. City of West Chicago, 355 Ill. App. 3d 352 (2nd Dist. 2005); Eickmeyer v. Blietz Organization Inc., 284 Ill. App. 3d 134 (1st Dist. 1996).

In another Title VII case, Williams v. Pharmacia, Inc., 137 F.3d 944, 952 (7th Cir. 1998), the Seventh Circuit Court of Appeals gave a detailed explanation of the distinction between "front pay" and "lost future earnings." The Court in Williams held that:

> [f]ront pay in the Title VII context is best understood as 'a monetary award equal to the gain [the plaintiff] would have obtained if reinstated'. Tobey v. Extel/JWP, Inc., 985 F.2d 330, 332 (7th Cir. 1993); *see also* Avitia Metropolitan Club of Chicago, Inc., 49 F.3d 1219, 1232 (7th cir. 1995) (describing front pay as 'a substitute for reinstatement'). Generally, front pay is awarded as a substitute remedy only when reinstatement is inappropriate, such as when 'there [is] no position available or the employer-employee relationship [is] pervaded by hostility.' McNeil v. Economics Lab, Inc., 800 F.2d 111, 118 (7th Cir. 1986), cert. denied, 481 U.S. 1041…(1987), *overruled on other grounds*, Coston v. Plitt Theatres, Inc., 860 F.2d 834, 836 (7th Cir. 1988).
> Title VII explicitly authorize reinstatement as an equitable remedy; front pay is the functional equivalent of reinstatement because it is a substitute remedy that affords the plaintiff the same benefit (or as close an approximation as possible) as the plaintiff would have received had she been reinstated. As the equivalent of reinstatement, front pay falls squarely within the statutory language authorizing 'any other equitable relief.'

The Ethics Act is clear that a state employee may be awarded all remedies necessary to make the employee whole and the remedies are not limited to those enumerated in the statute. From the materials and arguments provided to the Court by the parties, as well as the jurors input on the verdict form, the Court finds that:

1) Mr. Crawley is entitled to be reinstated to an equivalent position at Chicago State University, or in the alternative, to an award of Front Pay effective as of the date of this Order;

2) This finding by the Court is to be stayed pending the resolution of any appeals in this case;

3) After appeal, if necessary, a hearing is to be held wherein the Defendants will be required to present testimony and other credible evidence to support the position they have stated in their brief as to why reinstatement is not feasible. Based on the evidence produced at trial in this case, the Court will not accept affidavits in lieu of live testimony on behalf of the Defendants;
4) After appeal, if necessary, a hearing is to be held wherein the Plaintiff will be required to present testimony and evidence in support of its request for an award of Front Pay;
5) After said hearing, a decision shall be made by the court on the feasibility of either reinstatement or Front Pay if the parties cannot reach an agreement.

B.

Plaintiffs Request For Attorney's Fees And Costs

The Ethics Act list suggested compensatory remedies that a prevailing plaintiff may be entitled to in order to make the Plaintiff whole. One such enumerated remedy is Attorney's Fees and Costs. The Court directed the Parties to submit their respective position on the award of Attorney Fees and costs. Surprisingly, the Defendant did not contest the Plaintiff's right to such fees as they did other of the compensatory remedies afforded by the Ethics Act that were designed to make the Plaintiff whole. Defendant did however, object to the attorney fees requested based on the hourly rates sought by Plaintiff's attorneys, and on the basis that some of the hours sought to be charged by the attorneys were duplicative. Defendant also objected to $173.05 of the total of $1,667.05 in costs which Plaintiff sought to recover.

The party seeking to recover attorney fees and costs must present the Court with sufficient evidence to enable the Court to make a decision on their reasonableness. In this case Plaintiff's

attorney has submitted their own affidavits as well as others and the Laffey Matrix in support of their requested hourly rate. They also have submitted a detailed listing of activities and the amount of time spent on each activity. The Court upon reviewing said materials is satisfied that it has received information sufficient to make its decision.

In making its decision, the Court has taken into consideration the following criteria: the time and labor needed to perform the activities, the risks, novelty and difficulty of the subject matter, the attorney's skill and proficiency, the attorney's management of the case, the usual attorney charges in the community as well as the results achieved for the client as well as the deficiency asserted by the Defendants especially the reliability of the Laffey Matrix.

Upon consideration of the materials submitted in support of the billable rates of the attorneys, the Court has concluded that a fair and reasonable hourly rate for an attorney of Ms. Pavlov's experience is $300.00 per hour and for an attorney of Mr. Pinelli experience is $475.00 per hour.

Upon review of the submitted activity logs and the hours attributed to those efforts, the Court finds that there was some duplicative activities for which payment was sought. Namely attendance for the two attorneys at the Deposition of Mr. Cage, Mr. Jackson, Mr. Beverly, Mr. Watson, Ms. Mitchell, Mr. Dolce and Mr. Dorger. The Court did not deem the attendance of two attorney's at the Plaintiff's deposition to be duplicative given the importance of it. Hence, the time sought by Ms. Pavlaw is reduced for the depositions of Patrick Cage (2 hours), Mr. Jackson 3 hours, Mr. Beverly 2.75 hours, Mr. Watson 2 hours or a total of 9.75 hours.

Mr. Pinelli's time is reduced for the deposition of Ms. Mitchell's 2.5 hours, Mr. Dolce's 1.5 hours and Mr. Dorger's 1.5 hours or a total of 5.5 hours.

Therefore, the Court reduces Ms. Pavlov hours from the 340 hours requested to 330.25 hours and the Court reduces Mr. Pinelli hours from the 463.25 hours requested to 457.75 hours. The

Court declines to reduce the costs the Plaintiff's requested as it determined they were fair, necessary, reasonable, and related to the advancement of the litigation.

The Court has determined that fair and reasonable attorney hours and fees are:

Ms. Pavlov is 330.25 hours x $300.00 per hour or $99,075.00
Mr. Pinelli is 457.75 hours x $475.00 per hour or $217,431.25

and awards said amount along with the costs of $1,667.05 to the Plaintiff for a total of $318,173.33 in attorney fees and costs.

CONCLUSION

With the exception of the attorney fee relief enumerated above, Defendants' Post-Trial Motions are denied. The Plaintiff's Requested Attorney's Fees and Costs and Request for Reinstatement or in the Alternative Front Pay are granted for the reasons set forth in this Memorandum Opinion.

Dated: August 28, 2014

Entered: James P. McCarthy
Judge James P. McCarthy

ENTERED
JUDGE JAMES P. McCARTHY-1685
AUG 28 2014
DOROTHY BROWN
CLERK OF THE CIRCUIT COURT
OF COOK COUNTY, IL
DEPUTY CLERK

IN THE CIRCUIT COURT OF COOK COUNTY ILLINOIS
COUNTY DEPARTMENT – LAW DIVISION

JAMES CRAWLEY,	)	
	)	
Plaintiff,	)	
	)	**Case No. 10 L 12657**
v.	)	
	)	**Judge James P. McCarthy**
Chicago State University; WAYNE WATSON, The Board of Trustees of Chicago State University,	)	
	)	
Defendants.	)	

ENTERED
JUDGE JAMES P. McCARTHY-1685
AUG 28 2014
DOROTHY BROWN
CLERK OF THE CIRCUIT COURT
OF COOK COUNTY, IL
DEPUTY CLERK

Order

For the reasons stated in the Memorandum Opinion of today's date, the Court being fully informed by the Parties on all the issues raised in their briefs as well as their arguments, the Court:

1. Denies Defendant's Motion for Judgment NOV;
2. Denies Defendant's Motion for a New Trial;
3. Denies Defendant's Request for Remittitur of the Punitive Damages;
4. Denies Defendant's Request for Remittitur of the Doubling of Back Pay.

As to the Plaintiffs' Motions for Reinstatement and Attorney's Fees and Costs:

1. Reinstatement, or in the alternative front pay, is granted and enforcement stayed pending appeal and the actions being taken that are set forth in the memorandum opinion order when and if appropriate;
2. Attorney Fees and Costs are granted and the Court awards the Plaintiff a total of $318,173.33 against the Defendants.

Dated: August 28, 2014 Entered: James P. McCarthy
Judge James P. McCarthy