



We see the future in you.

January 19, 2021

The Honorable Ralph Northam
Governor of Virginia
P.O. Box 1475
Richmond, Virginia 23218

Certification of Compliance with Code of Virginia § 23.1-401.1

Dear Governor Northam:

Pursuant to Code of Virginia § 23.1-401.1, this letter and the attached documents are being transmitted as evidence of Norfolk State University's compliance with the requirements of Code of Virginia 23.1-401.1(D) (2).

Norfolk State University's Board of Visitors Policy # 33 (2019), *Freedom of Speech and Protection and Campus Space Utilization* outlines the institution's commitment to protecting the rights set forth in the First Amendment of the United States Constitution. The policy also sets forth a process for reporting incidents of disruption of constitutionally protected speech. BOV Policy # 33 has been widely disseminated to members of the University community and is publically accessible via the institution's electronic policy library. The University's *Student Handbook* also outlines student's basic rights of freedom of religion, speech, press, the right to peacefully assemble, and the right to petition. The *Student Handbook* is publicly accessible online.

During the period of December 1, 2019 to present, one case was filed against the University in the Circuit Court of the City of Norfolk, Virginia, which included in part, allegations of violations of plaintiff's rights under the First Amendment to the United States Constitution. A copy of the compliant is attached.

Sincerely,

Javaune Adams-Gaston, Ph.D.
President



**BOV Policy #33 (2019) Freedom of Speech and Expression
and Campus Space Utilization**

Policy Title: Freedom of Speech and Expression and Campus Space Utilization
Policy Type: Board of Visitors
Policy Number: BOV Policy #33 (2019)
Approval Date: May 3, 2019
Responsible Office: Dean of Students
Responsible Executive: Vice President of Student Affairs and Enrollment Management
Applies to: University Community

POLICY STATEMENT

Norfolk State University is committed to creating an environment that fosters the exercise of protected speech and other expressive activity on university property while maintaining an atmosphere free of disruption to the mission of the university. It recognizes that the free expression of ideas and open inquiry are essential in fulfilling its academic mission by embracing rigorous open discourse, and the exploration of ideas. As such, the university has established requirements for use of its property to pursue its academic mission, provide a safe environment, and preserve the functional and aesthetic integrity of the campus. Expression by individuals or groups, as described in this policy is not speech made by, on behalf of, or endorsed by the University.

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BOV Policy #33 (2019) Freedom of Speech and Expression and Campus Space Utilization

General Prohibitions

The U.S. Constitution, its First Amendment, and the Code of Virginia do not protect certain expression. Such expressions include the following, all of which are prohibited by NSU on NSU property: defamation, incitement to unlawful conduct, imminent threats of actual violence or harm, obscenity, fighting words, copyright or trademark violation, criminal or civil harassment, sexual harassment, trespass, and false advertising. The university further prohibits any person from interfering with university and authorized functions, activities, and events and from participating in unlawful conduct on university property. As such, in engaging in expressive activity no person may do any of the following on university property:

1. Obstruct or impede vehicular, bicycle, pedestrian, or other traffic;
2. Obstruct any entrance or exit to any building, assembly space, driveway, parking lot, vehicular path, stairway or walkway or impede entry to or exit from any such area;
3. Disrupt, disturb, or interfere with educational or administrative activities, events, or operations inside or outside any building;
4. Enter into any building or facility or occupy any university property without appropriate authorization;
5. Violate any applicable federal, state, or local law, rule, or ordinance;
6. Fail to comply with any reasonable instruction by university police or any university official acting in the performance of their duty;
7. Cause any threat to the health or safety of any passerby or member of the university community;
8. Obstruct, disrupt, or attempt by physical force to cancel or discontinue speech by any speaker, or the observation of speech by any person intending to see or hear a speaker;
9. Damage university property, including structures, grass, shrubs, trees, or other landscaping;
10. Mark university property, including any vertical or horizontal surface, other than in accordance with written requirements, such as rules for authorized chalking;
11. Use amplified sound, including bullhorns, except as approved in advance under applicable policy and within sound limits that will not disrupt university operations; or
12. Organize or lead any Major Event, as described in this policy without written authorization as set forth in that section.

Use of University Property

University property, including outdoor areas, is designated primarily for use by students, faculty, and staff to advance the educational mission of the university. Any university student or employee may generally use campus spaces in accordance with university policy. However, any other person may use university property for assembly or organized expressive activity only (1) if sponsored or hosted by a member of the university community with authority under an applicable university policy or (2) by reserving a specifically designated area through the process set forth in this policy.



BOV Policy #33 (2019) Freedom of Speech and Expression and Campus Space Utilization

or unreasonable logistical or security challenges. A Major Event is an event, other than an academic course, program, or curriculum approved by the provost, which involves any one of the following risk factors:

1. Expected attendance over 100 persons;
2. Setting with safety concerns (including time and location) based on assessment from the NSU Police;
3. The event is a dance or concert, regardless of how many attendees;
4. Presence of any object or substance requiring review by the Office of Environmental Health and Safety, including but not limited to any animal, open flame, firework, pyrotechnic, or other flammable or hazardous item;
5. Installation of any structure, such as a tent, stage, scaffold, bleacher, bounce house, or carnival- style ride;
6. Alcohol served; or
7. Outdoor amplified sound, including but not limited to bullhorns, Bluetooth speakers, etc.

To request authorization for a Major Event, students should contact the Dean of Students Office for appropriate guidance. Employees and members of the public should contact Conference Services at (757) 823-8901 or visit their [website for complete instructions and forms](#). The process to request us of facilities for an event reservation is described below. (Major events may not be reserved through this process.):

i. Event reservations by students and employees

Students and employees may reserve certain campus facilities or areas by submitting requests online through <https://25live.collegenet.com>. Such requests should be submitted within 10 working days of the planned event to allow sufficient time for logistical support and to otherwise comply with applicable facility requirements.

ii. Event reservations by members of the public

The university has designated certain campus facilities/spaces for use by any person, including members of the general public, by reservation. These facilities/spaces are available by reservation only. Reservations will be granted to members of the general public on a space-available basis and denied only if sufficient space is not available. All request for reservations of space by members of the general public must be made through NSU's Office of Conference Services by calling (757) 823-890. Information is also available on the Conference Services website, which can be accessed by clicking [here](#). Such requests should be submitted at least 10 working days from the date of the planned event.



BOV Policy #33 (2019) Freedom of Speech and Expression and Campus Space Utilization

are also responsible for the content of any signage, pamphlets, or structure that they post, distribute, or erect on campus. Furthermore, the University reminds any organization distributing materials to be aware of laws concerning defamation, obscenity, fair labor practices, etc.

D. Reporting Violations of this Policy

Any suspected violation of this policy shall be promptly investigated by the university, and corrective action will be taken when warranted. Students should report suspected violations to the Dean of Students Office at (757) 823-2152. Faculty and staff should report such violations to the University's Employee Relations Manager at (757) 823-8160.

PUBLICATION

This policy shall be widely published or distributed to the University community. To ensure timely publication and distribution thereof, the Responsible Executive will make every effort to:

- Communicate the policy in writing, electronically or otherwise, to the University community, including current and prospective students, within 14 days of Board of Visitors approval;
- Submit this policy for inclusion in the online Policy Library within 14 days of approval; and
- Educate and train all stakeholders and appropriate audiences on the policy's content, as necessary.

REVIEW SCHEDULE

- Next Scheduled Review: May 2022
- Approval date: Board of Visitors: May 3, 2019
- Revision History: *None – New Policy*

Supersedes: *None New Policy*

RELATED DOCUMENTS

1. NSU Conference Services and Events Policies for Facility Use and Fees Manual
<http://www.nsu.edu/auxiliary-services/forms>
2. Virginia law governing speech on campus, Va. Code § 23.1-900.1
(<https://law.lis.virginia.gov/vacode/23.1-900.1/>)

STUDENT HANDBOOK

2020-2021



NORFOLK STATE
UNIVERSITY

cultivate personal growth and respect the ideas of others. Always open to both unity and diversity, NSU students understand that respect always begins with self and then moves ever outward, creating synergy among fellow Spartans, fellow Americans and all other peoples.

Once a Spartan is fully fitted with his or her armor, he or she is prepared to take on any challenge. A true Spartan always gives back to the Spartan community, contributing unstintingly of his/her time, talent, treasure and service. He or she thus ensures that future generations can sustain the noble legacy of Spartan pride, integrity, engagement, curiosity, excellence, and civility.

UNIVERSITY GUIDELINES GOVERNING STUDENT LIFE

STUDENT RIGHTS AND RESPONSIBILITIES

As a member of the Norfolk State University community, students are entitled to all of the rights and privileges guaranteed to every citizen of the United States and the Commonwealth of Virginia.

Basic Rights: Among these rights include freedom of religion, speech, press, the right to peacefully assemble and the right to petition.

Free Speech and Peaceful Assemblies: NSU students are encouraged to exercise freedom of speech and peaceful assemblies in an effort to preserve, celebrate, and broaden freedom of expression. Students and student organizations are free to discuss questions of interest and to express opinions publicly and privately without penalty. Subsequently, the University serves as an academic community that must maintain a safe and orderly educational environment. Students and student organizations may assemble anywhere on the campus, except inside University buildings, as long as they do not disrupt normal University operations or infringe on the rights of others. Acts of expression may not block entry into University buildings and/or interfere with vehicular or pedestrian traffic. The University does not permit unprotected speech to include defamation, obscenity, and speech that is directed to producing imminent lawless action.

This section will not be interpreted as providing limitations to the right of free speech on campus.

CLASSROOM FREEDOM AND RESPONSIBILITY

1. Students have protection through orderly procedures against prejudicial or capricious academic evaluation. Class performance should be judged solely on academic performance. Faculty members shall not consider it their prerogative to go beyond established academic policy.
2. Students are free to take reasonable exception to data or views offered in any course of study and to reserve judgment about matters of opinion. Students are, however, responsible for learning the course content required for successfully completing the course.
3. Cases of dishonesty in academic work are considered to be serious violations of the University's regulations; therefore, dishonest students risk incurring the penalty of failure in the course and/or dismissal from the University.
4. The academic program of the University is the basis for all college activities; therefore, each student is expected to attend all classes. Class attendance is a requirement for the

SUMMARY

Joseph Covell Brown v. Marcus Porter, et al.

The Plaintiff, Joseph Brown was expelled from Norfolk State University (“NSU”) after making a violent threat by text while he was already on probation because of a violent episode. On June 14, 2019, Brown filed a Complaint in the Circuit Court of the City of Norfolk. He claimed due process and free speech violations (both federal and state claims), two Title IX claims (one based on gender and one based on gender and religion), and breach of contract. The case was removed to District Court on July 18, 2019, by legal counsel representing NSU from the Norfolk District Court to the U.S. District Court for the Eastern District of Virginia. A Motion to Dismiss was granted with prejudice as to the due process claim and with leave to amend as to the remaining counts. Plaintiff filed an Amended Complaint re-pleading his free speech, Title IX claim based on gender, and his breach of contract claim. Plaintiff dropped its Title IX gender and religion claim.

On June 10, 2020, the matter was referred to Judge Krask to conduct necessary hearing and submit to the district court judge proposed findings and recommendations for the disposition of the Motion to Dismiss.

On October 20, 2020, a federal Magistrate Judge filed his report and Recommendation granting the Defendants their Motion to Dismiss in its entirety. The Plaintiff filed objections and the Federal Court Judge reviewed the record in its entirety making a de novo determination.

On December 8, 2020, the Federal District Court Judge overruled the Plaintiff’s objection and adopted and approved in full the findings and recommendations set forth in the Magistrate Judge’s October 20, 2020, Report and Recommendation.

Specifically, the free speech claim against the named Defendants “Porter and Johnson” premised on Plaintiff’s text messages and appeal letter on the grounds of qualified immunity is **DISMISSED WITH PREJUDICE**.

The free speech claim against the named Defendants “Porter and Johnson” premised on Plaintiff’s articles and conversations for failure to state a claim was **DISMISSED WITHOUT PREJUDICE**.

The Title IX gender discrimination claim against the Commonwealth of Virginia for failure to state a claim was **DISMISSED WITH PREJUDICE** as to the Commonwealth of Virginia.

The Title IX gender discrimination claim against NSU and the Board for failure to state a claim was **DISMISSED WITHOUT PREJUDICE** as to NSU and the Board.

The claim for breach of contract against NSU and the Board for failure to state a claim was **DISMISSED WITHOUT PREJUDICE**.

SUMMARY

Joseph Covell Brown v. Marcus Porter, et al.

Further, the Court ruled that given that the Plaintiff through counsel, had already filed an Amended Complaint, the Court ruled that the Amended Complaint failed to state a claim for relief and the Court denied further leave to amend.

On January 7, 2021, NSU was notified that a Notice to Appeal had been filed by the Plaintiff's counsel.

COMMONWEALTH OF VIRGINIA



NORFOLK CIRCUIT COURT
Civil Division
150 ST. PAUL'S BLVD 7TH FLOOR
NORFOLK VA 23510
(757) 769-8539

Summons

NORFOLK STATE UNIVERSITY
LEGAL OFFICE

2019 JUN 17 4:26

To: NORFOLK STATE UNIVERISTY
PAMELA E BOSTON
UNIVERSITY COUNSEL
700 PARK AVE, STE. 100
NORFOLK VA 23509

Case No. 710CL19006091-00

The party upon whom this summons and the attached complaint are served is hereby notified that unless within 21 days after such service, response is made by filing in the clerk's office of this court a pleading in writing, in proper legal form, the allegations and charges may be taken as admitted and the court may enter an order, judgment, or decree against such party either by default or after hearing evidence.

Appearance in person is not required by this summons.

Done in the name of the Commonwealth of Virginia on, Monday, June 17, 2019

Clerk of Court: GEORGE E. SCHAEFER III

by


CLERK/DEPUTY CLERK

Instructions:

Hearing Official:

Attorney's name: DEANS, ALASTAIR
757-412-9026

COVER SHEET FOR FILING CIVIL ACTIONS
COMMONWEALTH OF VIRGINIA

Case No. _____
(CLERK'S OFFICE USE ONLY)

Norfolk City

Circuit Court

Joseph Covell Brown
PLAINTIFF(S)

v./In re: Marcus Porter, Norfolk State University,
DEFENDANT(S)

Tracci K. Johnson and the Commonwealth of Virginia

I, the undersigned plaintiff defendant attorney for plaintiff defendant hereby notify the Clerk of Court that I am filing the following civil action. (Please indicate by checking box that most closely identifies the claim being asserted or relief sought.)

GENERAL CIVIL

Subsequent Actions

- Claim Impleading Third Party Defendant
 - Monetary Damages
 - No Monetary Damages
- Counterclaim
 - Monetary Damages
 - No Monetary Damages
- Cross Claim
- Interpleader
- Reinstatement (other than divorce or driving privileges)
- Removal of Case to Federal Court

Business & Contract

- Attachment
- Confessed Judgment
- Contract Action
- Contract Specific Performance
- Definue
- Garnishment

Property

- Annexation
- Condemnation
- Ejectment
- Encumber/Sell Real Estate
- Enforce Vendor's Lien
- Escheatment
- Establish Boundaries
- Landlord/Tenant
 - Unlawful Detainer
- Mechanics Lien
- Partition
- Quiet Title
- Termination of Mineral Rights

Tort

- Asbestos Litigation
- Compromise Settlement
- Intentional Tort
- Medical Malpractice
- Motor Vehicle Tort
- Product Liability
- Wrongful Death
- Other General Tort Liability

ADMINISTRATIVE LAW

- Appeal/Judicial Review of Decision of (select one)
 - ABC Board
 - Board of Zoning
 - Compensation Board
 - DMV License Suspension
 - Employee Grievance Decision
 - Employment Commission
 - Local Government
 - Marine Resources Commission
 - School Board
 - Voter Registration
 - Other Administrative Appeal

DOMESTIC/FAMILY

- Adoption
 - Adoption - Foreign
- Adult Protection
- Annulment
 - Annulment - Counterclaim/Responsive Pleading
- Child Abuse and Neglect - Unfounded Complaint
- Civil Contempt
- Divorce (select one)
 - Complaint - Contested*
 - Complaint - Uncontested*
 - Counterclaim/Responsive Pleading
 - Reinstatement - Custody/Visitation/Support/Equitable Distribution
- Separate Maintenance
 - Separate Maintenance Counterclaim

WRITS

- Certiorari
- Habeas Corpus
- Mandamus
- Prohibition
- Quo Warranto



PROBATE/WILLS AND TRUSTS

- Accounting
- Aid and Guidance
- Appointment (select one)
 - Guardian/Conservator
 - Standby Guardian/Conservator
 - Custodian/Successor Custodian (UTMA)
- Trust (select one)
 - Impress/Declare/Create
 - Reformation
- Will (select one)
 - Construe
 - Contested

MISCELLANEOUS

- Amend Death Certificate
- Appointment (select one)
 - Church Trustee
 - Conservator of Peace
 - Marriage Celebrant
- Approval of Transfer of Structured Settlement
- Bond Forfeiture Appeal
- Declaratory Judgment
- Declare Death
- Driving Privileges (select one)
 - Reinstatement pursuant to § 46.2-427
 - Restoration - Habitual Offender or 3rd Offense
- Expungement
- Firearms Rights - Restoration
- Forfeiture of Property or Money
- Freedom of Information
- Injunction
- Interdiction
- Interrogatory
- Judgment Lien-Bill to Enforce
- Law Enforcement/Public Official Petition
- Name Change
- Referendum Elections
- Sever Order
- Taxes (select one)
 - Correct Erroneous State/Local
 - Delinquent
- Vehicle Confiscation
- Voting Rights - Restoration
- Other (please specify)

Damages in the amount of \$ 10,000,000.00 are claimed.

June 14, 2019

DATE

Alastair C. Deans

PRINT NAME

P.O. Box 13915, Chesapeake VA 23325

ADDRESS/TELEPHONE NUMBER OF SIGNATOR

(757) 412-9026

alastaircdeans@gmail.com

EMAIL ADDRESS OF SIGNATOR (OPTIONAL)

PLAINTIFF

DEFENDANT

ATTORNEY FOR

PLAINTIFF
 DEFENDANT

*"Contested" divorce means any of the following matters are in dispute: grounds of divorce, spousal support and maintenance, child custody and/or visitation, child support, property distribution or debt allocation. An "Uncontested" divorce is filed on no fault grounds and none of the above issues are in dispute.

VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF NORFOLK

JOSEPH COVELL BROWN,)
)
Plaintiff,)
)
v.)

No. CP-6001

MARCUS PORTER)
In his individual capacity,)
3341 Argonne Ave.)
Norfolk, Va 23509)
(City of Norfolk))

and)

NORFOLK STATE UNIVERSITY,)
SERVE: Pamela F Boston)
University Counsel)
700 Park Ave. Suite 101)
Norfolk, Va 23509)
(City of Norfolk))

and)

THE BOARD OF VISITORS OF)
NORFOLK STATE UNIVERSITY,)
SERVE: Pamela F Boston)
University Counsel)
700 Park Ave. Suite 101)
Norfolk, Va 23509)
(City of Norfolk))

and)

THE COMMONWEALTH OF VIRGINIA,)
SERVE: Mark Herring)
Attorney General for the)
Commonwealth of Virginia)
900 E. Main St.)
Richmond, Va 23219)
(City of Richmond))

and)



TRACCI K. JOHNSON
In her individual capacity,
9518 3rd Bay St. Unit 125
Norfolk, Va 23518
(City of Norfolk)

Defendants.

COMPLAINT

Plaintiff, Joseph Covell Brown, in support of his Complaint against Marcus Porter, Norfolk State University, the Board of Visitors of Norfolk State University, the Commonwealth of Virginia, and Tracci K. Johnson states the following:

NATURE OF THE ACTION

1. Plaintiff seeks damages for the violation of his due process rights by government officials acting under color of law in clear violation of established standards.
2. Plaintiff seeks damages for the gender discrimination against him by government officials acting under color of law in clear violation of established standards.
3. Plaintiff seeks damages for the violation of his freedom of speech rights by government officials acting under color of law in clear violation of established standards
4. Plaintiff seeks damages for the violation of his due process rights and gender discrimination by government entities.
5. Plaintiff seeks damages for breach of contract.

THE PARTIES

6. Plaintiff Joseph Covell Brown (hereinafter "Brown"), is a citizen and resident of New Jersey.
7. Brown attended NSU as a student from August 2014 through June 2017.
8. Brown is a member of the Muslim faith.

9. Marcus Porter (hereinafter "Porter") was an official at Norfolk State University at all times relevant to this complaint.
10. Upon information and belief, Defendant Porter was the Assistant Director of Student Conduct at Norfolk State University at all times relevant to this complaint.
11. Norfolk State University (hereinafter "NSU"), is a public institution pursuant to Va. Code Sec. §23.1-1900 *et seq.*
12. Defendant NSU receives federal funding.
13. Upon information and belief, Defendant NSU's Federal School Code (also known as its Title IV Institution Code) is 003765.
14. The Board of Visitors of Norfolk State University composes a corporation organized and existing under the laws of the Commonwealth of Virginia, Va. Code §23.1-1900 *et seq.*, under the name and style of "The Visitors of Norfolk State University," formed for the purpose of establishing and maintaining the provisions and duties of NSU's teachers, staff and agents; and at all times relevant to this complaint, maintaining, operating and directing the affairs of NSU (as used herein, the Board of Visitors of Norfolk State University and Norfolk State University are referred to collectively as "NSU").
15. Plaintiff Brown filed a timely notice of claim against the Commonwealth of Virginia (hereinafter "The Commonwealth") as required by Va. Code § 8.01-195.6.
16. Tracci K. Johnson (hereinafter "Johnson") was an official at NSU at all times relevant to this complaint.
17. Upon information and belief, Defendant Johnson was the Dean of Students at all times relevant to this complaint.

18. This Court has jurisdiction over these claims because all transactions and occurrences relevant to this complaint occurred in Norfolk, Virginia.

BACKGROUND

19. In order to pay his tuition at NSU, Plaintiff Brown took, and remains responsible for the repayment of, student loans with interest.

20. In 2015, Plaintiff Brown was placed on disciplinary probation for the 2016 to 2017 academic year.

21. The aforesaid disciplinary probation ended in May of 2017.

22. In June of 2017, Plaintiff Brown was completing the final paperwork for a lucrative study abroad program, to which he had been accepted and intended to undertake during his senior year at NSU.

23. On or about June 14, 2017, Plaintiff Brown was suffering from sciatica in his left hip and could barely walk.

24. NSU routinely publishes its disciplinary procedures online. Those procedures in place during June of 2017 were printed on July 20, 2017 by Plaintiff's counsel and are attached hereto as "Complaint Exhibit 6".

FACTS

25. On or about June 11, 2017, Plaintiff Brown and his roommate Davonte' Smith (hereinafter "Smith") were texting each other.

26. During the aforesaid texting, Brown and Smith were engaged in a conversation about food and dirty dishes in their room.

27. During the aforesaid texting conversation, Brown and Smith were either physically present within the same room or in adjoining rooms.

28. Evidence available to NSU officials indicated that Smith considered the texting conversation to be playful in nature.
29. During this texting conversation, Plaintiff Brown allegedly texted the phrase "Text me again and im breaking your jaw."
30. Upon receipt of the aforementioned text, Smith texted Brown again.
31. Brown did not break Smith's jaw.
32. Three days later, on June 14, 2017, Defendant Porter transmitted a notice to Brown of an alleged violation of the NSU's Code of Student Conduct (a copy of said notice is attached hereto as "Complaint Exhibit 1").
33. Defendant Porter transmitted the aforesaid Notice to Plaintiff Brown via email, at about 4:58 p.m. on June 14, 2017.
34. The aforesaid Notice required Brown to vacate his residence hall no later than 7:00 p.m. on June 14, 2017.
35. Pursuant to the aforesaid notice, Brown was given approximately one hundred and twenty-two minutes to receive the email, read it, pack all of his possessions, find alternative housing, arrange transportation and vacate his dormitory room.
36. At the time the aforesaid notice was transmitted, Brown was working in an administrative office at NSU.
37. When Brown finished work on June 14, 2017, he received the aforesaid notice and barely managed to rush to his dormitory room and successfully vacate it within the cursory deadline.

38. Though Brown vacated his dormitory room prior to the deadline, he had to abandon many of his possessions, and was unable to arrange transportation or alternate housing for the evening.

39. With nowhere else to go, Plaintiff Brown spent a restless night in the waiting room of the NSU Campus Police Station, tormented by pain from his sciatica after having to abandon his medications along with other possessions in his dormitory room.

40. On the morning of June 15, 2017, at approximately 8:57 a.m., Defendant Porter transmitted a Second Notice Letter “to schedule a meeting to discuss the investigation of a report...that [Brown] violated section(s) of the Code of Student Conduct.” (a copy of said notice letter is attached hereto as “Complaint Exhibit 2”)

41. The aforesaid Second Notice Letter indicated that the conduct conference would be at the NSU Campus Police Station at 10:00 a.m. on June 15, 2017.

42. At the time the notice email was sent, Plaintiff Brown was still at the NSU Campus Police Station.

43. There is no indication that Brown saw or read the email with the attached Notice Letter during the sixty-three minute interval between transmission and the conduct conference.

44. Upon information and belief, Defendant Porter met Plaintiff Brown at the NSU Campus Police Station around 10:00 a.m. on June 15, 2017.

45. Upon information and belief, Defendant Porter and NSU Campus Police Officers questioned Plaintiff Brown at the NSU Campus Police Station around 10:00 a.m. on June 15, 2017.

46. Upon information and belief, during the aforesaid questioning, Defendant Porter asked Plaintiff Brown if he is Muslim, to which inquiry Brown affirmed that he is.
47. There is no indication that any witnesses were present for the conduct conference.
48. There is no indication that any counsel, support person or advisor was present to speak for or give advice to Brown at the conduct conference.
49. There is no indication that Brown presented any defense at the conduct conference.
50. There is no indication that specific allegations against Brown and the potential consequences were explained to Brown before or during the conduct conference.
51. Plaintiff Brown was not afforded a reasonable opportunity to assess the accusations, formulate a defense, contact counsel, contact witnesses or otherwise prepare for a hearing.
52. On June 15, 2017, the same day as the aforesaid conduct conference, Defendant Porter sent a Resolution Letter to Plaintiff Brown via email, informing Brown that he was being held responsible for “violation of the Code of Student Conduct specifically, No. 20-Threatening Behavior (Probation Violation).” (a copy of this Resolution Letter is attached hereto as “Complaint Exhibit 3”)
53. The aforesaid Resolution Letter informed Brown that he was being expelled.
54. Until receipt of the Resolution Letter, Brown had received no written notice that he was being charged with probation violation.
55. Until receipt of the Resolution Letter, Brown had received no written notice that expulsion was a likely sanction.

56. Pursuant to NSU's posted disciplinary procedures, violations punishable by "expulsion, suspension and/or removal from housing" must be referred by the student conduct officer "to the Student Conduct Board for formal resolution through an administrative hearing."
57. Pursuant to NSU's posted disciplinary procedures, the formal resolution process contains more procedural safeguards to an accused student than does the informal resolution process.
58. Brown did not receive the additional procedural safeguards that should have been afforded to him as a student accused of conduct punishable by "expulsion, suspension and/or removal from housing."
59. It is unlikely that an objectively reasonable fact finder, aware of the context of the texting conversation, would have interpreted the text message in question as a true threat.
60. Expulsion, and all of its attendant consequences, is a disproportionate punishment to the conduct alleged.
61. Throughout the course of the disciplinary proceedings against Brown, Defendant Porter acted as investigator, fact finder and decision maker.
62. Among other reasons, Brown was denied a fair and impartial hearing because Defendant Porter assumed the emphatically separate roles of investigator, fact finder and decision maker during the proceedings.
63. Less than twenty-four hours elapsed between the transmission of notice to Brown and the decision to expel Brown.
64. Plaintiff Brown filed an Appeal Form on June 22, 2017.

65. The grounds for Plaintiff Brown's appeal included: a determination of "whether the conduct conference/hearing was conducted fairly and in conformity with prescribed procedures"; consideration of "new evidence unavailable during the original conduct conference/hearing"; and, consideration of "whether the sanctions imposed were disproportionate to the violation."

66. Plaintiff Brown's appeal letter indicated that a witness had been present during the texting conversation.

67. NSU sent an Appeal Response on June 28, 2017 (attached hereto as "Complaint Exhibit 4") indicating that Plaintiff Brown's appeal was denied.

68. The Appeal Response, dated June 28, 2017, indicated that denial of Brown's appeal was final.

69. NSU's Appeal Response Rationale (attached hereto as "Complaint Exhibit 5") indicates:

- a. that the Appeal Conference was held on June 15, 2017;
- b. that Defendant Johnson was the Appeal Officer at the Appeal Conference; and
- c. that Plaintiff Brown attended the Appeal Conference via email.

70. NSU's Appeal Response Rationale did not address the issue of "whether the conduct conference/hearing was conducted fairly and in conformity with prescribed procedures."

71. NSU's Appeal Response Rationale did not address "new evidence unavailable during the original conduct conference/hearing."

72. NSU's Appeal Response Rationale arguably concluded that expulsion was not disproportionate to the conduct at issue, but only after including references to prior

conduct that was not at issue in the Notice sent by Defendant Porter on June 15, 2017, as well as references to the language and content of Plaintiff Brown's appeal letter.

73. Pursuant to an attorney request for documents, NSU produced a Complainant's statement, signed and dated June 14, 2018¹, more than a year after the incident and almost a year to the day after the conduct conference at which the statement should have been presented.

74. The aforesaid Complainant's statement does not identify Joseph Brown.

75. Pursuant to an attorney request for documents, NSU produced a document titled Investigative Rationale, purportedly from Defendant Marcus Porter's office, which is unsigned and undated.

76. That the aforesaid Investigative Rationale asserts:

- a. that Defendant Porter interviewed Plaintiff Brown at the NSU Campus Police Station on June 15, 2017;
- b. that Plaintiff Brown was told that the text message violated the Student Code of Conduct; and
- c. that Plaintiff Brown was told that the text message violated Brown's disciplinary probation.

77. Brown was humiliated by the expulsion and suffered severe emotional stress as a result.

¹ The statement is handwritten, and dated at the top in handwriting by the Complainant as June 14, 2018. At the bottom, next to the Complainant's signature the Complainant dated his signature as June 14, 2018. Underneath the Complainant's signature, a Conduct Officer believed to be Defendant Marcus Porter signed his name and dated his signature as June 14, 2018.

78. NSU's expulsion of Brown has permanently tarnished his academic record, potentially closing the door on numerous career and educational opportunities, and reducing his future earnings potential.
79. NSU's expulsion of Brown has foreclosed the possibility of an enlightening and career enhancing study abroad program, to which Brown had already applied and been accepted prior to the conduct conference of June 15, 2017.
80. The Defendants' violations of and sheer indifference to Brown's Constitutional rights has shattered Brown's confidence in American ideals.
81. On or about February 19, 2018, Plaintiff Brown travelled from New Jersey to NSU to obtain his transcript.
82. This trip followed multiple failed attempts to obtain his transcript through requests.
83. In February of 2018, Plaintiff Brown was attempting to complete his degree in New Jersey, and thereby mitigate the damage caused to his reputation and future earnings by the Defendants.
84. During the aforesaid trip to NSU, Plaintiff Brown went first to the building occupied by NSU Campus Police to announce his presence and purpose of visit.
85. Brown then went to the registrar's office to obtain his transcript.
86. While in the administrative offices to request his transcript, multiple NSU Campus Police Officers appeared and publicly arrested Brown in full view of several of his friends and former colleagues.
87. NSU Campus Police put Brown in handcuffs and led him out of the registrar's office in full view of several of his friends and former colleagues.

88. Brown was humiliated, denigrated and defamed by this incident and suffered severe emotional stress as a result.
89. NSU Campus Police then transported Plaintiff Brown to the Campus Police Station where they informed him that he was being charged with trespassing and would be turned over to the Norfolk Police Department.
90. Upon information and belief, NSU's expulsion of Brown prompted the actions of NSU Campus Police on February 19, 2018.
91. Upon information and belief, an unidentified NSU official requested that NSU Campus Police arrest Brown on February 19, 2018.
92. NSU Campus Police released Plaintiff Brown after being made aware by both Brown and Brown's attorney that Brown had reported in at the NSU Campus Police building and received permission to visit the registrar's office to obtain his transcript.
93. Shaken and embarrassed, Brown left the NSU campus on February 19, 2018 still without his transcript.
94. The incident rendered worthless an expensive and time consuming trip from New Jersey to Virginia for the purpose of obtaining his transcript.
95. Defendants' expulsion of Brown has caused and continues to cause Brown significant reputational injury, significant professional injury, losses in earnings, substantial losses to future earnings and benefits, significant pain and suffering, medical expenses, embarrassment, anguish and severe emotional distress.
96. Upon information and belief, monies remaining in Brown's student account were not returned before NSU shut down his student account.

COUNT I: DENIAL OF DUE PROCESS IN VIOLATION OF
THE UNITED STATES CONSTITUTION AND THE CONSTITUTION OF THE
COMMONWEALTH OF VIRGINIA.

97. The allegations contained in paragraphs 1 through 96 and all subsequent allegations are adopted and incorporated by reference as if set forth fully in this paragraph.
98. The right to due process is enshrined in the Fourteenth Amendment to the United States Constitution.
99. The right to due process is enshrined in Article 1 Section 11 of the Constitution of the Commonwealth of Virginia.
100. Officials at government funded universities, like Defendants Porter and Johnson, owe a duty to provide students with sufficient due process in disciplinary proceedings.
101. Officials at government funded universities, like Defendants Porter and Johnson, owe a duty to students to follow the university's disciplinary procedures.
102. State sponsored universities, like NSU, owe a duty to students to establish rules and regulations governing disciplinary proceedings in such a way that Constitutional Rights are preserved.
103. NSU's rules and regulations governing disciplinary proceedings are found within its Student Policy Handbook.
104. The Commonwealth owes a duty to students to oversee state sponsored universities, like NSU, and ensure that disciplinary procedures provide sufficient due process.

105. The manner in which Defendant Porter investigated and expelled Brown denied Brown his clearly established due process rights.
106. Furthermore the manner in which Defendant Porter investigated and expelled Brown failed to adhere to NSU's published procedures for disciplinary proceedings.
107. The flippant manner in which Defendant Johnson processed Brown's appeal denied him his clearly established due process rights.
108. Furthermore, Defendant Johnson failed to follow NSU's published procedures governing appeal resolution.
109. Defendants Porter and Johnson are both government officials.
110. At all times relevant to this complaint, Defendants Porter and Johnson were acting under the color of law.
111. Pursuant to 42 U.S.C. § 1983, Defendants Porter and Johnson are liable to Brown.
112. NSU's procedures, even if followed, would have fallen short of the clearly established standards for minimum due process in student discipline hearings.
113. The Commonwealth is likewise responsible for NSU's disciplinary procedures falling below the minimum due process required by the United States Constitution.
114. For these reasons, NSU and the Commonwealth are liable to Brown.
115. Brown has suffered damages as a direct and proximate result of these denials of his Constitutional right to due process.

**COUNT II: DENIAL OF FREEDOM OF SPEECH IN VIOLATION OF
THE UNITED STATES CONSTITUTION AND THE CONSTITUTION OF THE
COMMONWEALTH OF VIRGINIA.**

116. The allegations contained in paragraphs 1 through 114 and all subsequent allegations are adopted and incorporated by reference as if set forth fully in this paragraph.

117. The right to free speech is enshrined in the First Amendment to the United States Constitution.

118. The right to free speech is enshrined in Article 1 Section 12 of the Constitution of the Commonwealth of Virginia.

119. As described above, Defendants Porter and Johnson are government officials.

120. Upon information and belief, Defendant Porter's decision to expel Brown was based in part on Brown's Constitutionally protected speech.

121. That Defendant Johnson's decision to deny Brown's appeal was based in part on Brown's Constitutionally protected speech.

122. Pursuant to 42 U.S.C. § 1983, Defendants Porter and Johnson are liable to Brown for these abridgments of his Constitutional right to free speech.

123. Brown has suffered damages as a direct and proximate result of these denials of his Constitutional right to free speech.

COUNT III: GENDER DISCRIMINATION IN VIOLATION OF TITLE IX.

124. The allegations contained in paragraphs 1 through 123 and all subsequent allegations are adopted and incorporated by reference as if set forth fully in this paragraph.

125. Pursuant to Title IX of the Education Act of 1972, schools receiving federal financial assistance like NSU are prohibited from: excluding from participation in, denying benefits of, or otherwise subjecting students like Brown to “discrimination under any education program or activity” on the basis of sex. 20 U.S.C. § 1681 *et seq.*
126. The Commonwealth has a duty to ensure that state supported schools, like NSU, comply with their duties under Title IX of the Education Act of 1972.
127. As described herein, Brown, a male, was investigated and expelled from NSU following a student complaint that Brown violated the student conduct policy with threatening behavior.
128. Over a year prior to Brown’s expulsion, Brown complained to NSU officials that a female student had violated the student conduct policy with threatening behavior.
129. Upon information and belief, no investigation or disciplinary action was ever taken against the aforementioned female student.
130. Upon information and belief, NSU rarely if ever investigates or disciplines females for the conduct Brown was accused of committing.
131. This disparate treatment of genders constitutes gender discrimination in violation of Title IX of the Education Act of 1972.
132. Brown has suffered damages and continues to suffer damage as a direct and proximate result of this disparate treatment.
133. Defendant NSU is liable to Brown under Title IX of the Education Act of 1972 for these damages.
134. The Commonwealth is likewise liable to Brown under Title IX of the Education Act of 1972 for these damages.

**COUNT IV: DISCRIMINATION BASED JOINTLY ON RELIGION AND
GENDER IN VIOLATION OF TITLE IX.**

135. The allegations contained in paragraphs 1 through 134 and all subsequent allegations are adopted and incorporated by reference as if set forth fully in this paragraph.

136. Title IX forbids religiously based discrimination by institutions such as NSU when it is partially based on gender, ethnicity or national origin.

137. Upon information and belief, Defendants Porter and Johnson based the decision to expel Brown in part or in whole upon his religious status as a Muslim.

138. Upon information and belief, Defendants would have been less likely to expel Brown had Brown been of a different religious conviction.

139. Upon information and belief, Defendants' interest in Brown's status as a Muslim during investigation and expulsion proceedings stems from a negative stereotype of Muslim males as being prone to violence.

140. Therefore, upon information and belief, Defendants would have been less likely to expel Brown had Brown been a Muslim female.

141. The aforesaid conduct constitutes gender discrimination by officials at NSU in violation of Title IX of the Education Act of 1972, for which NSU and the Commonwealth are liable

142. Brown has suffered damages and continues to suffer damage as a direct and proximate result of this violation of Title IX of the Education Act of 1972.

COUNT V: BREACH OF CONTRACT

143. The allegations contained in paragraphs 1 through 142 and all subsequent allegations are adopted and incorporated by reference as if set forth fully in this paragraph.

144. A contract, either express or implied, existed between Plaintiff Brown and NSU during the period of Brown's enrollment at NSU.

145. Brown fulfilled his contractual obligations to NSU by paying his tuition, maintaining his grades, and abiding by NSU's policies to the best of his ability and understanding.

146. Upon information and belief, Defendant NSU drafted its disciplinary procedures.

147. The aforesaid disciplinary procedures constitute contractual terms between NSU and students like Brown.

148. Certain procedures, safeguards, and rights contained within NSU's disciplinary procedures constitute contractual rights of NSU's students.

149. NSU breached one or more of Brown's contractual rights during its investigation and expulsion of him in June of 2017.

150. Therefore, NSU is in breach of its contract with Brown.

151. Brown has sustained damages as a result of NSU's aforesaid breach of contract.

152. In addition to the previously stated damages, Brown seeks restitution on the basis of breach of contract.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, by counsel, respectfully requests that this Court enter judgment in his favor and against Defendants, jointly and severally, in an amount of up to TEN MILLION DOLLARS (\$10,000,000.00) as compensatory damages and punitive damages, together with attorney's fees including any expert fees pursuant to 42 U.S.C. Sec. 1988, costs of litigation, and interest from the date of expulsion, and any further relief that this Court may deem appropriate.

A JURY TRIAL IS DEMANDED

Dated: 14 June 2019

Respectfully Submitted



Alastair C. Deans (Va. Bar No. 83167)
P.O. Box 13915
Chesapeake, VA 23325
Telephone: (757) 412-9026
Email: alastaircdeans@gmail.com

Attorney for Plaintiff



NORFOLK STATE UNIVERSITY

Dean of Students Office

700 Park Avenue, Suite 318, Norfolk, Virginia 23504
Tel: (757) 823-2152 Fax: (757) 823-2297
Web: www.nsu.edu

June 14, 2017

Joseph Brown (433929)

15 Chester Ave Apt 2
Irvington NJ 07111

Dear Joseph,

On June 14, 2017, it was reported that you violated the *Code of Student Conduct*, specifically, *No. 20. Threatening behavior whether written or verbal, towards any member of the University community that causes an expectation of injury or implies a threat to cause fear.*

You have the right to have your case heard by a conduct officer through a conduct conference or the Student Conduct Board through a formal hearing. Please contact Marcus Porter at 823-2336 to further discuss. It is the responsibility of the respondent to notify witnesses of the date, time, and location of any conduct proceedings.

In the interests of the health, safety, and welfare of the University community, you have been placed on interim hall removal (effective immediately) pending the outcome of your conduct matter. If you are in the residence halls without permission or a police escort, you will be subject to arrest for trespassing. **You must move out of housing by 7:00pm today, June 14, 2017.**

We recognize that the receipt of this letter may cause some students to experience anxiety. Please examine our website which will provide additional information about the student conduct process to include student rights, possible outcomes, and sanctions. This information can be found at www.nsu.edu/student-affairs/student-judicial/.

Sincerely,

Marcus Porter, Student Conduct Officer

Cc: Dr. Michael Shackelford, Vice President of Enrollment Management and Student Affairs
Tracci Johnson, Dean of Students
Dr. Faith Fitzgerald, Executive Director, Housing & Residence Life
Anthony Tillman, Resident Hall Director, Spartan Suites
Mecca Marsh, Director of Housing Operations, Spartan Suites
University Police, Investigations

COMPLAINT EXHIBIT 1

Norfolk State University—An Equal Opportunity Employer



NORFOLK STATE UNIVERSITY

Dean of Students Office

700 Park Avenue, Suite 307, Norfolk, Virginia 23504

Tel: (757) 823-2152 Fax: (757) 823-2297

Web: www.nsu.edu

June 15, 2017

Joseph Brown,

I am writing to schedule a meeting to discuss the investigation of a report submitted to the Dean of Students Office.

On June 14, 2017, it was reported that you violated the following section(s) of the Code of Student Conduct:

- No. 20- *Threatening Behavior*

I have scheduled a student conduct conference for June 15, 2017, at 10:00 am at the NSU Campus Police Station. If the scheduled time is in direct conflict with a class, please call me at 757-823-2152 to reschedule. At this meeting, you may ask any questions regarding the student conduct process. If you fail to attend, a decision may be reached in your absence. If you are found responsible for the misconduct, a sanction will be issued at that time.

We recognize that the receipt of this letter may cause some students to experience anxiety. Please examine our website which will provide additional information about the student conduct process to include student rights, possible outcomes, and sanctions. This information can be found at www.nsu.edu/student-affairs/student-judicial/.

Sincerely,

A handwritten signature in black ink, appearing to read 'Marcus Porter', is written over a faint, circular stamp or watermark.

Marcus Porter
Student Conduct Officer

COMPLAINT EXHIBIT 2

Norfolk State University—An Equal Opportunity Employer

RESOLUTION

June 15, 2017

Joseph Brown
433929

15 Chester Avenue Apt 2
Irvington, NJ 07111

Dear Joseph,

I have concluded your case of a reported violation of the Code of Student Conduct specifically, *No.20-Threatening Behavior (Probation Violation)*. I have found you responsible. As such, the following sanctions are imposed:

Expulsion: *Effective immediately, you are permanently separated from Norfolk State University.*

**You must notify Norfolk State University Campus Police at 757-823-8102 prior to any campus visits.*

You have five days from the date of this letter to appeal this decision. An appeal form has been attached for your convenience. Please return your appeal to deanofstudents@nsu.edu.

Sincerely,


Marcus Porter
Student Conduct Officer

Cc. Dr. Michael Shackelford, Vice President of Student Affairs and Enrollment Management
Tracci Johnson, Dean of Students
Dr. Faith Fitzgerald, Executive Director, Housing & Residence Life
Anthony Tillman, Resident Hall Director, Housing & Residence Life
Mecca Marsh, Director of Housing Operations, Spartan Suites
Chief Troy Covington, University Police
Cassandra Gwathney, Acting Director of Financial Aid
Mike Carpenter, Registrar
Sandra Riggs, Bursar
Cary Lazarus, SpartanCard Manager
Dr. Vanessa Jenkins, Counseling Center

June 28, 2017

Joseph Brown (0400667)

Subject: Appeal from Disciplinary Sanction

This letter is in response to your appeal from a sanction imposed at a Student Conduct Conference on June 15, 2017. After carefully considering your request, your appeal is denied. This appeal decision is final.

Your sanctions remain as imposed:

-Expulsion: Effective immediately, you are permanently separated from Norfolk State University.

**You must notify Norfolk State University Campus Police at 757-823-8102 prior to any campus visits.*

I wish you the best in your future endeavors.

Sincerely,

Tracci K. Johnson
Dean of Students

Cc: Dr. Michael Shackelford, Vice President of Student Affairs and Enrollment Management
Marcus Porter, Student Conduct Officer
Dr. Faith Fitzgerald, Executive Director, Housing & Residence Life
Anthony Tillman, Resident Hall Director, Housing & Residence Life
Mecca Marsh, Director of Housing Operations, Spartan Suites
University Police, Investigation
Cassandra Gwathney, Acting Director of Financial Aid
Mike Carpenter, Registrar
Sandra Riggs, Bursar
Cary Lazarus, Spartan Card Manager
Dr. Vanessa Jenkins, Counseling

DEAN OF STUDENTS APPEAL RESPONSE RATIONALE

1. Appeal Conference Date: June 15, 2017
2. Meeting Attendee's: Joseph Brown (via email)
3. Appeal Officer: Tracci K. Johnson

SUMMARY OF FACTS

Reason for appeal (what did they check on the form):

- To determine whether the conduct conference/hearing was conducted fairly and in conformity with prescribed procedures.
- To consider new evidence unavailable during the original conduct conference/hearing.
- To consider whether the sanctions imposed were disproportionate to the violation.

Appeal Decision

- Approved
- Approved with revision
- Denied

Rational for appeal revisions:

The student was a threat to the Norfolk State University community. He threatened to break his roommate's jaw. In his previous conduct case he punched someone in the face. Based on the language and content of his appeal letter, I felt that his behavior was volatile and I did not want to compromise the safety of the student body.

COMPLAINT EXHIBIT 5

Student Conduct

[Home](#) | [About](#) | [Student Conduct Process](#) | [Policies](#) | [Clear All](#) | [Reporting](#) | [FAQ](#) | [Contact Us](#)

► Violations

1. **Abuse of student conduct system** to include but not limited to providing false information during the student conduct process and/or not completing sanctions within allocated time period.
2. **Abuse of safety equipment** to include but not limited to tampering with or engaging fire alarms, extinguishers or smoke detectors.
3. **Acts of dishonesty** to include but not limited to furnishing false information to University officials or forgery of any University document. For academic dishonesty, refer to Academic Dishonesty Procedures.
4. **Alcohol the use, possession or distribution** of alcoholic beverages or paraphernalia.
5. **Computer Misuse**- Refer to Acceptable Use of Technological Resource Policy.
6. **Conduct that threatens or endangers the health or safety of any person including one's self.**

COMPLAINT EX. 6

7. **Gambling** for money, in any form on University property.
8. **Dating Violence**
9. **Domestic Violence**
10. **Drugs the use, possession or distribution** of illegal drugs or misuse of prescription drugs and other controlled substances or drug paraphernalia.
11. **Disruptive behavior** that interferes with University sponsored events/activities; teaching, learning, administration, research; and/or University operations.
12. **Failure to comply** with directions of University employees or law enforcement officers.
13. **Harassment** to include but not limited to bullying/cyber-bullying, intimidation and/or hate crimes.
14. **Hazing**- Hazing includes, but is not limited to any situation which: creates a risk of physical injury; causes embarrassment and/or discomfort; involves harassment and/or humiliation; causes psychological or emotional distress; involves degradation and/or ridicule of an individual or group; involves or includes the willful destruction or removal of public or private property; involves the expectation that new/perspective members will participate in an activity, but full members will not.
15. **Obscene behavior** to include but not limited to public sexual acts or indecent exposure.
16. **Retaliation** against any person or group who makes a complaint, cooperates with an investigation, or participates in the resolution process.
17. **Sexual misconduct** - Refer to BOV Policy # 5 (2014) Sexual Misconduct Policy ; Refer to Admin Policy #
18. **Stalking** is when a person, on more than one occasion, engages in any behavior or conduct directed at another person with the intent to place that other person in reasonable fear of harm, death, criminal sexual assault, or bodily injury to that person or to that person's family or household member. **Cyber-stalking** is form of stalking or harassment that involves the intentional act of using the internet to cause someone emotional distress
19. **Theft** includes the use, removal or possession of University/individual property without entitlement or authorization.
20. **Threatening behavior** whether written or verbal, towards any member of the University community that causes an expectation of injury or implies a threat to cause fear.
21. **Unauthorized access or entry** to any University building.
22. **Unauthorized recording and/or distribution** to include but not limited to pictures, audio or videos of any person without their explicit permission or consent.
23. **Weapons**-Refer to Violence Prevention Policy.
24. **Vandalism** includes but is not limited to destroying or damaging University property or property of another person.
25. **Violence to persons** includes but is not limited to intentionally or recklessly causing harm to any person.
26. **Violating federal, state or local laws** that legitimately affect the University's interest.
27. **Violating any published Board of Visitors or University policies or rules.**

COMPLAINT EX 6
DR 7

► Procedures

Procedures

The below procedures provide a general overview of student conduct proceedings; however, these procedures are flexible based on the severity of the situation.

Any member of the University community may file a report against a student or student organization for violations of the *Code of Student Conduct*. All allegations should be submitted through an online incident report form or student summons (NSU Police Department). The student

conduct officer may act on notice of a potential violation whether a formal report is made.

Students should be aware the criminal (Police) and student conduct (University) processes are separate but may occur concurrently.

Informal Resolution

Step 1. Investigation

Upon receipt of the incident report, a student conduct officer will begin an investigation that will include interviews of the respondent, the complainant and/or others as necessary. Additionally, all documentary and physical evidence will be obtained and reviewed. Upon completion of the investigation, the following may occur:

- The student conduct officer determines there is insufficient information and the case is closed.
- The student conduct officer determines there is sufficient information and proceeds with scheduling a conduct conference (step 2).

Step 2. Notification

The respondent will receive a formal complaint of a violation through written notice. The notice will be delivered by one or more of the following methods: emailed to the student's University-issued account and/or mailed to the permanent address according to the University's record. The letter of notice will include:

- The reported violation(s) citing the *Code of Student Conduct*.
- The date, time, and location of the conference.
- The rights of the respondent.

Step 3. Conference

During the conference, the student conduct officer will present the findings to the respondent. As a result, the following may occur:

- The respondent is found not responsible and the case is closed.
- The respondent accepts responsibility and/or the findings for the violation and the student conduct officer imposes sanctions.
- The respondent denies responsibility and/or rejects the findings for the violation but has the right to appeal the decision and sanctions imposed by the student conduct officer.
- The respondent denies responsibility for the violation and/or rejects the findings and the misconduct could result in expulsion, suspension and/or removal from housing. The student conduct officer will then refer the case to the Student Conduct Board for formal resolution through an administrative hearing.

A respondent placed on interim suspension may request to have their case heard by the conduct officer through a conduct conference or referred to the Student Conduct Board.

The student conduct officer, at his or her discretion, may refer a case to the Student Conduct Board for resolution.

If the respondent fails to attend the conduct conference, the student conduct officer may render a decision based on the evidence available. The respondent will then forfeit their right to appeal the decision and/or sanction(s) imposed by the student conduct officer.

COMPLAINT Ex 6

Formal Resolution

The University has established appropriate student conduct panels to provide hearings concerning reported violations of the *Code of Student Conduct* that could result in expulsion, suspension and/or removal from housing.

1. Notification

A notice will be made in writing and delivered by one or more of the following methods: emailed to the student's University-issued email account; mailed to the permanent address according to the University's record. The letter of notice will include:

- The reported violation(s) citing the *Code of Student Conduct*.
- The date, time, and location of the hearing.
- The rights of the respondent.

2. Hearing

The student conduct officer will schedule a hearing with the student conduct panel no more than ten (10) business dates after the conduct conference. This may be extended when reasonably necessary. If the respondent wishes to request a delay, he/she must notify the student conduct staff within two (2) business days of the scheduled hearing.

The student conduct panel for each hearing will be composed of five (5) members from the University to include employees and students. Each student conduct panel must include at least three (3) students. All members of the student conduct panel will be selected from the student conduct board and participate in mandatory training covering all aspects of the conduct process. Members of the University must apply to become a member of the student conduct board. Students serving must be in good academic standing with no serious conduct violations at the University. All appointments are subject to approval by the dean of students or designee and serve one-year renewable terms.

The Chief Justice or designee will serve as the chair for each hearing panel. The chair of the panel will conduct hearings according to the following guidelines:

- Hearings are closed to the public.
- Hearings are tape-recorded; however, deliberations of the hearing panel will remain private.
- Incidents involving more than one respondent, the panel will jointly conduct a hearing. Separate findings will be made for each respondent. At the discretion of the student conduct officer, individual hearings may be permitted.
- The complainant, respondent and advisors will be allowed to attend the entire portion of the hearing except for the deliberation and findings. Only in cases involving violence or sexual misconduct, as it relates to Title IX, will the complainant be advised of the outcome.
All parties will have the privilege of questioning witnesses. Witnesses will only attend the portion of the hearing in which they are presenting information.
- Advisors are not permitted to speak or participate directly in any student conduct hearing unless permitted by the chair of the panel.
- The panel may only rely on oral and written statements of witnesses and written reports/documents.
- After the hearing, the panel will determine, by majority vote, using a preponderance of the evidence (whether it is more likely than not) the respondent violated the *Code of Student Conduct* and recommend sanctions.

COMPLAINT Ex 6
Dr. L

- The chair of the panel will provide a written summary of testimony, findings of facts (evidence), and rationale for the decision. This report will be sent to the student conduct officer within two (2) business days of the hearing. A written decision will be sent to the respondent within two (2) business days after receiving the hearing panel's report.

If the respondent fails to attend the hearing, the Student Conduct Board may render a decision based on the evidence available. The respondent will then forfeit their right to appeal the decision and/or sanction(s) imposed by the Board.

There are certain times of the year and possible extenuating circumstances that may remove the option of the student conduct panel. During this time, a student conduct officer will adjudicate cases. The option of a student conduct panel may be removed on the following occasions:

1. When the student conduct board is participating in training.
2. When the University is not in session.
3. During the final two weeks of the fall or spring semester.
4. During summer sessions.

► Appeals

Appeal forms may be submitted online by visiting <https://www.nsu.edu/Assets/websites/student-affairs/sa-documents/Student-Conduct-Appeal-Form.pdf>. The basis for the appeal must be one (or more) of the reasons shown above. The notice of appeal must contain, at a minimum, a statement of grounds for appeal and a summary statement of the facts supporting such grounds.

Upon receipt of the appeal, the dean of students* will review and provide a written decision within five (5) business days. The respondent may request a meeting with the dean of students to further discuss the appeal; however, the decision is made based on the written information submitted and is final.

*The vice president for student affairs has designated the dean of students as the appellate officer for student conduct matters.

► Academic Matters

A formal grievance may be filed in the Dean of Students Office. Every attempt is made to ensure that the complainant has sought resolution of the grievance at the appropriate levels.

Grade Appeals

The instructor has the responsibility for evaluating coursework and determining grades; however, the student has the right to appeal a grade believed to be in error. The appeal process may involve the following steps and may be resolved at any level:

- The student confers with the instructor involved.
- The student and instructor (preferably together) confer with the chairperson of the department offering the course.
- The student and instructor (preferably together) confer with the dean of the school in which the department is housed.
- When the above steps do not resolve the issue, the student may initiate a formal written appeal through the Faculty-Student Grievance Committee to the Provost and Dean of Students Office for its review and recommendation.

Appeals should not be taken lightly by either the student or the instructor. The student is responsible for verifying the accuracy of his or her academic records. Grade appeals should be made immediately after the grade in question is received. No appeals will be considered after one year has elapsed or after graduation, whichever is earlier.

Academic Dishonesty

Cases involving academic dishonesty are immediately sent to the Faculty-Student Grievance Committee if the student denies responsibility. If the student accepts responsibility, the instructor may issue an appropriate grade sanction and notify the Dean of Students Office to place the student on probation.

If it is found that sufficient documentation is present to warrant a hearing, the Dean of Students Office will request to convene a hearing with the Faculty-Student Grievance Committee. The Faculty-Student Grievance Committee is comprised of faculty representatives from the schools and colleges.

The panel for each academic dishonesty hearing will be composed of three (3) members to include two (2) faculty and one (1) student. The chair of the panel (non-voting) will conduct the hearing according to the guidelines established for student conduct hearings. The decision of the Faculty-Student Grievance committee is final and cannot be appealed.

► During the Conduct Process

Responsibilities

All students are responsible for being knowledgeable about the information contained in the Code of Student Conduct policy. An electronic version of this policy can be found online at <https://www.nsu.edu/president/policies/index>. Hard copies are available upon request the office for student conduct located in Suite 316, Student Services Center.

University email serves as the official communication with students. It is the responsibility of all students to maintain and monitor their University email regularly to stay abreast of student conduct proceedings.

Rights of the Accused (Respondent)

COMPLAINT EX 6
P. 1

- The right to confidentiality of educational records pursuant to Family Educational Rights and Privacy Act (FERPA) of 1974.
- The right to be informed of the charges against him/her in writing.
- The right to have a support person or advisor present during student conduct proceedings. This person may not actively participate in the hearing but may give advice to the complainant.
- The right to request, in advance, a copy of the incident report.
- The right to call a reasonable number of witnesses. Names of the witnesses must be provided to the Dean of Students Office at least one day prior to the hearing.
- The right not to appear or to remain silent at the hearing. In the event the respondent does not appear at the hearing, after proper notification, the evidence in support of the violation will be presented, considered and adjudicated.
- The right to a fair and impartial hearing.

Rights of Victims (Complainant)

- The right to have a support person or advisor present during student conduct proceedings. This person may not actively participate in the hearing but may give advice to the complainant.
- The right to be informed of the outcome in cases involving violence and sexual misconduct as it relates to Title IX.
- The right to a fair and impartial hearing.

Rights of Complainant and Respondent (Title IX/Sexual Misconduct)

- Respondents of sexual misconduct have the right to a student conduct hearing and the right to identify and produce witnesses who may have information relevant to the complaint.
- The parties involved may bring an advocate, advisor or support person to any meeting with the student conduct officer/panel.
- Parties involved may present their case before the hearing panel by submitting documents and other relevant evidence.
- It should be noted that while each party will have the opportunity to present his/her case, the student conduct officer has the responsibility to identify and obtain any additional evidence and/or witnesses relevant to the grievance.
- Attorneys will not be permitted to personally participate in University student conduct proceedings.
- Student conduct hearings do not replace or substitute criminal prosecutions and students who choose student conduct hearings are also encouraged to seek justice through the criminal justice system and/or civil courts as appropriate.

Refer to [BOV Policy # 05 \(2015\) Title IX: Sexual Violence, Discrimination, Harassment, and Retaliation](#)

► **Sanctions**

Warning: An official written notice that the student has violated the Code of Student Conduct.

Disciplinary Probation: Disciplinary probation is for a specific length of time. Mandatory conditions may be imposed and may include, but not limited to the following: loss of good standing and/or denial of the privilege to hold a position of leadership or responsibility in any University student organization or activity. If the student is found in violation of the Code of Student Conduct while on disciplinary probation, the University may impose additional sanctions.

Educational Project: The requirement to attend, present or participate in a program related to the violation. It may also require writing reflective papers.

Community Service: The requirement to complete supervised service.

Counseling Referral: The requirement to visit the Counseling Center and complete a screening within five (5) business days of the respondent's conference/hearing. Upon completion of the screening, if any additional services are recommended they must be completed within the timeframe provided by the Counseling Center.

Fine: A sum imposed as a result of an offense; the sum must be reasonable and may be imposed depending on the severity of the violation.

Loss of Privilege: The denial of specified privileges for a designated period of time.

Restitution: The repayment for damage to University property or facilities; payment for damage to the property or person of a member of the University community, guests of the University, and/or other appropriate third parties; repayment of misappropriated or misused University funds. Restitution must be paid by cashier's check or money order. A disciplinary hold will be placed on the respondent's record until payment is made; however, if payment is not made by the end of the semester, the respondent's account will be charged.

University Housing Reassignment: The reassignment to another residential hall as determined by the Office of Housing & Residence Life.

University Housing Visitation Restriction: The loss of privilege to host any guests in the lobby of the student's residence hall and/or individual room.

University Housing Removal: The student's privilege to live or visit any residential hall is permanently revoked.

Suspension: Separation from the University for a specified amount of time. The student will be required to vacate the campus with 24 hours of notification of this action. During the suspension period, the student is not permitted on University property, events or activities.

Expulsion: The permanent separation of a student from the University.

Other Sanctions: Additional sanctions may be designed as deemed appropriate to the offense.

Interim Actions: The Dean of Students or designee may impose restrictions and/or separate a student from the University community pending the outcome of a hearing to protect the interests of the health, safety and welfare of the University community, or to ensure the student's safety and well-being. These actions can include but are not limited to no-contact orders, amending a student's schedule, hall relocation and/or interim suspension. Interim suspension is the temporary separation of a student from the University. If an interim suspension is imposed, the respondent may request a meeting with the dean of students or designee to discuss the interim suspension. The Dean of Students may uphold or lift the interim suspension after meeting with the respondent; however, this decision is final. If the interim suspension is upheld, the respondent will be required to vacate the campus immediately. At the discretion of the dean of students or designee, alternative coursework options may be provided.



[About NSU](#) | [Administration](#) | [Academics](#) | [Research](#) | [Student Life](#) | [Athletics](#) | [Alumni](#) | [Giving to NSU](#) | [Policy Library](#)

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*COMPLAINT EX 6
02 0*

COMMONWEALTH OF VIRGINIA



NORFOLK CIRCUIT COURT
Civil Division
150 ST. PAUL'S BLVD 7TH FLOOR
NORFOLK VA 23510
(757) 769-8539

Summons

NORFOLK STATE UNIVERSITY
LEGAL OFFICE
2019 JUN 17 10 26

To: THE BOARD OF VISITORS OF
NORFOLK STATE UNIVERSITY
PAMELA F BOSTON
UNIVERSITY COUNSEL
700 PARK AVE, STE. 100
NORFOLK VA 23509

Case No. 710CL19006091-00

The party upon whom this summons and the attached complaint are served is hereby notified that unless within 21 days after such service, response is made by filing in the clerk's office of this court a pleading in writing, in proper legal form, the allegations and charges may be taken as admitted and the court may enter an order, judgment, or decree against such party either by default or after hearing evidence.

Appearance in person is not required by this summons.

Done in the name of the Commonwealth of Virginia on, Monday, June 17, 2019

Clerk of Court: GEORGE E. SCHAEFER III

by _____
George E. Schaefer III
(CLERK/DEPUTY CLERK)

Instructions:

Hearing Official:

Attorney's name: DEANS, ALASTAIR
757-412-9026

COVER SHEET FOR FILING CIVIL ACTIONS
COMMONWEALTH OF VIRGINIA

Case No. _____
(CLERK'S OFFICE USE ONLY)

Norfolk City

Circuit Court

Joseph Covell Brown
PLAINTIFF(S)

v./In re:

Marcus Porter, Norfolk State University,
DEFENDANT(S)

Tracci K. Johnson and the Commonwealth of Virginia

I, the undersigned plaintiff defendant attorney for plaintiff defendant hereby notify the Clerk of Court that I am filing the following civil action. (Please indicate by checking box that most closely identifies the claim being asserted or relief sought.)

GENERAL CIVIL

Subsequent Actions

- Claim Impleading Third Party Defendant
 - Monetary Damages
 - No Monetary Damages
- Counterclaim
 - Monetary Damages
 - No Monetary Damages
- Cross Claim
- Interpleader
- Reinstatement (other than divorce or driving privileges)
- Removal of Case to Federal Court

Business & Contract

- Attachment
- Confessed Judgment
- Contract Action
- Contract Specific Performance
- Detinue
- Garnishment

Property

- Annexation
- Condemnation
- Ejectment
- Encumber/Sell Real Estate
- Enforce Vendor's Lien
- Escheatment
- Establish Boundaries
- Landlord/Tenant
 - Unlawful Detainer
- Mechanics Lien
- Partition
- Quiet Title
- Termination of Mineral Rights

Tort

- Asbestos Litigation
- Compromise Settlement
- Intentional Tort
- Medical Malpractice
- Motor Vehicle Tort
- Product Liability
- Wrongful Death
- Other General Tort Liability

ADMINISTRATIVE LAW

- Appeal/Judicial Review of Decision of (select one)
 - ABC Board
 - Board of Zoning
 - Compensation Board
 - DMV License Suspension
 - Employee Grievance Decision
 - Employment Commission
 - Local Government
 - Marine Resources Commission
 - School Board
 - Voter Registration
 - Other Administrative Appeal

DOMESTIC/FAMILY

- Adoption
 - Adoption – Foreign
- Adult Protection
- Annulment
 - Annulment – Counterclaim/Responsive Pleading
- Child Abuse and Neglect – Unfounded Complaint
- Civil Contempt
- Divorce (select one)
 - Complaint – Contested*
 - Complaint – Uncontested*
 - Counterclaim/Responsive Pleading
 - Reinstatement – Custody/Visitation/Support/Equitable Distribution
- Separate Maintenance
 - Separate Maintenance Counterclaim

WRITS

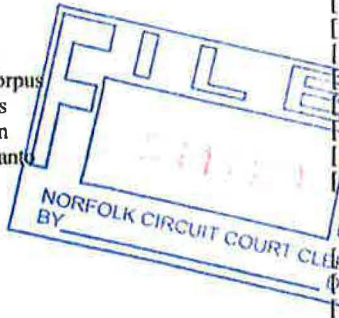
- Certiorari
- Habeas Corpus
- Mandamus
- Prohibition
- Quo Warranto

PROBATE/WILLS AND TRUSTS

- Accounting
- Aid and Guidance
- Appointment (select one)
 - Guardian/Conservator
 - Standby Guardian/Conservator
 - Custodian/Successor Custodian (UTMA)
- Trust (select one)
 - Impress/Declare/Create
 - Reformation
- Will (select one)
 - Construc
 - Contested

MISCELLANEOUS

- Amend Death Certificate
- Appointment (select one)
 - Church Trustee
 - Conservator of Peace
 - Marriage Celebrant
- Approval of Transfer of Structured Settlement
- Bond Forfeiture Appeal
- Declaratory Judgment
- Declare Death
- Driving Privileges (select one)
 - Reinstatement pursuant to § 46.2-427
 - Restoration – Habitual Offender or 3rd Offense
- Expungement
- Firearms Rights – Restoration
- Forfeiture of Property or Money
- Freedom of Information
- Injunction
- Interdiction
- Interrogatory
- Judgment Lien-Bill to Enforce
- Law Enforcement/Public Official Petition
- Name Change
- Referendum Elections
- Sever Order
- Taxes (select one)
 - Correct Erroneous State/Local
 - Delinquent
- Vehicle Confiscation
- Voting Rights – Restoration
- Other (please specify)



Damages in the amount of \$ 10,000,000.00 are claimed.

June 14, 2019

DATE

Alastair C. Deans

PRINT NAME

P.O. Box 13915, Chesapeake VA 23325

ADDRESS/TELEPHONE NUMBER OF SIGNATOR

(757) 412-9026

alastaircdeans@gmail.com

EMAIL ADDRESS OF SIGNATOR (OPTIONAL)

PLAINTIFF

DEFENDANT

ATTORNEY FOR

PLAINTIFF

DEFENDANT

Alastair C. Deans

*"Contested" divorce means any of the following matters are in dispute: grounds of divorce, spousal support and maintenance, child custody and/or visitation, child support, property distribution or debt allocation. An "Uncontested" divorce is filed on no fault grounds and none of the above issues are in dispute.

VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF NORFOLK

JOSEPH COVELL BROWN,)
)
 Plaintiff,)
)
 v.)

No. CU9-60091

MARCUS PORTER)
 In his individual capacity,)
 3341 Argonne Ave.)
 Norfolk, Va 23509)
 (City of Norfolk))

and)

NORFOLK STATE UNIVERSITY,)
 SERVE: Pamela F Boston)
 University Counsel)
 700 Park Ave. Suite 101)
 Norfolk, Va 23509)
 (City of Norfolk))

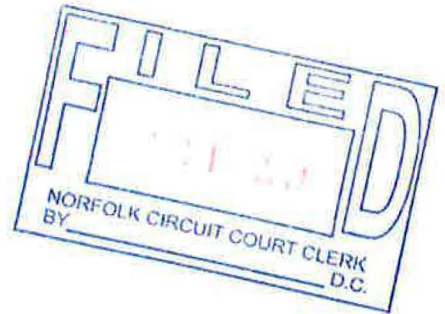
and)

THE BOARD OF VISITORS OF)
 NORFOLK STATE UNIVERSITY,)
 SERVE: Pamela F Boston)
 University Counsel)
 700 Park Ave. Suite 101)
 Norfolk, Va 23509)
 (City of Norfolk))

and)

THE COMMONWEALTH OF VIRGINIA,)
 SERVE: Mark Herring)
 Attorney General for the)
 Commonwealth of Virginia)
 900 E. Main St.)
 Richmond, Va 23219)
 (City of Richmond))

and)



TRACCI K. JOHNSON)
 In her individual capacity,)
 9518 3rd Bay St. Unit 125)
 Norfolk, Va 23518)
 (City of Norfolk))
 Defendants.)

COMPLAINT

Plaintiff, Joseph Covell Brown, in support of his Complaint against Marcus Porter, Norfolk State University, the Board of Visitors of Norfolk State University, the Commonwealth of Virginia, and Tracci K. Johnson states the following:

NATURE OF THE ACTION

1. Plaintiff seeks damages for the violation of his due process rights by government officials acting under color of law in clear violation of established standards.
2. Plaintiff seeks damages for the gender discrimination against him by government officials acting under color of law in clear violation of established standards.
3. Plaintiff seeks damages for the violation of his freedom of speech rights by government officials acting under color of law in clear violation of established standards
4. Plaintiff seeks damages for the violation of his due process rights and gender discrimination by government entities.
5. Plaintiff seeks damages for breach of contract.

THE PARTIES

6. Plaintiff Joseph Covell Brown (hereinafter “Brown”), is a citizen and resident of New Jersey.
7. Brown attended NSU as a student from August 2014 through June 2017.
8. Brown is a member of the Muslim faith.

9. Marcus Porter (hereinafter "Porter") was an official at Norfolk State University at all times relevant to this complaint.

10. Upon information and belief, Defendant Porter was the Assistant Director of Student Conduct at Norfolk State University at all times relevant to this complaint.

11. Norfolk State University (hereinafter "NSU"), is a public institution pursuant to Va. Code Sec. §23.1-1900 *et seq.*

12. Defendant NSU receives federal funding.

13. Upon information and belief, Defendant NSU's Federal School Code (also known as its Title IV Institution Code) is 003765.

14. The Board of Visitors of Norfolk State University composes a corporation organized and existing under the laws of the Commonwealth of Virginia, Va. Code §23.1-1900 *et seq.*, under the name and style of "The Visitors of Norfolk State University," formed for the purpose of establishing and maintaining the provisions and duties of NSU's teachers, staff and agents; and at all times relevant to this complaint, maintaining, operating and directing the affairs of NSU (as used herein, the Board of Visitors of Norfolk State University and Norfolk State University are referred to collectively as "NSU").

15. Plaintiff Brown filed a timely notice of claim against the Commonwealth of Virginia (hereinafter "The Commonwealth") as required by Va. Code § 8.01-195.6.

16. Tracci K. Johnson (hereinafter "Johnson") was an official at NSU at all times relevant to this complaint.

17. Upon information and belief, Defendant Johnson was the Dean of Students at all times relevant to this complaint.

18. This Court has jurisdiction over these claims because all transactions and occurrences relevant to this complaint occurred in Norfolk, Virginia.

BACKGROUND

19. In order to pay his tuition at NSU, Plaintiff Brown took, and remains responsible for the repayment of, student loans with interest.

20. In 2015, Plaintiff Brown was placed on disciplinary probation for the 2016 to 2017 academic year.

21. The aforesaid disciplinary probation ended in May of 2017.

22. In June of 2017, Plaintiff Brown was completing the final paperwork for a lucrative study abroad program, to which he had been accepted and intended to undertake during his senior year at NSU.

23. On or about June 14, 2017, Plaintiff Brown was suffering from sciatica in his left hip and could barely walk.

24. NSU routinely publishes its disciplinary procedures online. Those procedures in place during June of 2017 were printed on July 20, 2017 by Plaintiff's counsel and are attached hereto as "Complaint Exhibit 6".

FACTS

25. On or about June 11, 2017, Plaintiff Brown and his roommate Davonte' Smith (hereinafter "Smith") were texting each other.

26. During the aforesaid texting, Brown and Smith were engaged in a conversation about food and dirty dishes in their room.

27. During the aforesaid texting conversation, Brown and Smith were either physically present within the same room or in adjoining rooms.

28. Evidence available to NSU officials indicated that Smith considered the texting conversation to be playful in nature.
29. During this texting conversation, Plaintiff Brown allegedly texted the phrase "Text me again and im breaking your jaw."
30. Upon receipt of the aforementioned text, Smith texted Brown again.
31. Brown did not break Smith's jaw.
32. Three days later, on June 14, 2017, Defendant Porter transmitted a notice to Brown of an alleged violation of the NSU's Code of Student Conduct (a copy of said notice is attached hereto as "Complaint Exhibit 1").
33. Defendant Porter transmitted the aforesaid Notice to Plaintiff Brown via email, at about 4:58 p.m. on June 14, 2017.
34. The aforesaid Notice required Brown to vacate his residence hall no later than 7:00 p.m. on June 14, 2017.
35. Pursuant to the aforesaid notice, Brown was given approximately one hundred and twenty-two minutes to receive the email, read it, pack all of his possessions, find alternative housing, arrange transportation and vacate his dormitory room.
36. At the time the aforesaid notice was transmitted, Brown was working in an administrative office at NSU.
37. When Brown finished work on June 14, 2017, he received the aforesaid notice and barely managed to rush to his dormitory room and successfully vacate it within the cursory deadline.

38. Though Brown vacated his dormitory room prior to the deadline, he had to abandon many of his possessions, and was unable to arrange transportation or alternate housing for the evening.

39. With nowhere else to go, Plaintiff Brown spent a restless night in the waiting room of the NSU Campus Police Station, tormented by pain from his sciatica after having to abandon his medications along with other possessions in his dormitory room.

40. On the morning of June 15, 2017, at approximately 8:57 a.m., Defendant Porter transmitted a Second Notice Letter “to schedule a meeting to discuss the investigation of a report...that [Brown] violated section(s) of the Code of Student Conduct.” (a copy of said notice letter is attached hereto as “Complaint Exhibit 2”)

41. The aforesaid Second Notice Letter indicated that the conduct conference would be at the NSU Campus Police Station at 10:00 a.m. on June 15, 2017.

42. At the time the notice email was sent, Plaintiff Brown was still at the NSU Campus Police Station.

43. There is no indication that Brown saw or read the email with the attached Notice Letter during the sixty-three minute interval between transmission and the conduct conference.

44. Upon information and belief, Defendant Porter met Plaintiff Brown at the NSU Campus Police Station around 10:00 a.m. on June 15, 2017.

45. Upon information and belief, Defendant Porter and NSU Campus Police Officers questioned Plaintiff Brown at the NSU Campus Police Station around 10:00 a.m. on June 15, 2017.

46. Upon information and belief, during the aforesaid questioning, Defendant Porter asked Plaintiff Brown if he is Muslim, to which inquiry Brown affirmed that he is.
47. There is no indication that any witnesses were present for the conduct conference.
48. There is no indication that any counsel, support person or advisor was present to speak for or give advice to Brown at the conduct conference.
49. There is no indication that Brown presented any defense at the conduct conference.
50. There is no indication that specific allegations against Brown and the potential consequences were explained to Brown before or during the conduct conference.
51. Plaintiff Brown was not afforded a reasonable opportunity to assess the accusations, formulate a defense, contact counsel, contact witnesses or otherwise prepare for a hearing.
52. On June 15, 2017, the same day as the aforesaid conduct conference, Defendant Porter sent a Resolution Letter to Plaintiff Brown via email, informing Brown that he was being held responsible for “violation of the Code of Student Conduct specifically, No. 20-Threatening Behavior (Probation Violation).” (a copy of this Resolution Letter is attached hereto as “Complaint Exhibit 3”)
53. The aforesaid Resolution Letter informed Brown that he was being expelled.
54. Until receipt of the Resolution Letter, Brown had received no written notice that he was being charged with probation violation.
55. Until receipt of the Resolution Letter, Brown had received no written notice that expulsion was a likely sanction.

56. Pursuant to NSU's posted disciplinary procedures, violations punishable by "expulsion, suspension and/or removal from housing" must be referred by the student conduct officer "to the Student Conduct Board for formal resolution through an administrative hearing."
57. Pursuant to NSU's posted disciplinary procedures, the formal resolution process contains more procedural safeguards to an accused student than does the informal resolution process.
58. Brown did not receive the additional procedural safeguards that should have been afforded to him as a student accused of conduct punishable by "expulsion, suspension and/or removal from housing."
59. It is unlikely that an objectively reasonable fact finder, aware of the context of the texting conversation, would have interpreted the text message in question as a true threat.
60. Expulsion, and all of its attendant consequences, is a disproportionate punishment to the conduct alleged.
61. Throughout the course of the disciplinary proceedings against Brown, Defendant Porter acted as investigator, fact finder and decision maker.
62. Among other reasons, Brown was denied a fair and impartial hearing because Defendant Porter assumed the emphatically separate roles of investigator, fact finder and decision maker during the proceedings.
63. Less than twenty-four hours elapsed between the transmission of notice to Brown and the decision to expel Brown.
64. Plaintiff Brown filed an Appeal Form on June 22, 2017.

65. The grounds for Plaintiff Brown's appeal included: a determination of "whether the conduct conference/hearing was conducted fairly and in conformity with prescribed procedures"; consideration of "new evidence unavailable during the original conduct conference/hearing"; and, consideration of "whether the sanctions imposed were disproportionate to the violation."

66. Plaintiff Brown's appeal letter indicated that a witness had been present during the texting conversation.

67. NSU sent an Appeal Response on June 28, 2017 (attached hereto as "Complaint Exhibit 4") indicating that Plaintiff Brown's appeal was denied.

68. The Appeal Response, dated June 28, 2017, indicated that denial of Brown's appeal was final.

69. NSU's Appeal Response Rationale (attached hereto as "Complaint Exhibit 5") indicates:

- a. that the Appeal Conference was held on June 15, 2017;
- b. that Defendant Johnson was the Appeal Officer at the Appeal Conference; and
- c. that Plaintiff Brown attended the Appeal Conference via email.

70. NSU's Appeal Response Rationale did not address the issue of "whether the conduct conference/hearing was conducted fairly and in conformity with prescribed procedures."

71. NSU's Appeal Response Rationale did not address "new evidence unavailable during the original conduct conference/hearing."

72. NSU's Appeal Response Rationale arguably concluded that expulsion was not disproportionate to the conduct at issue, but only after including references to prior

conduct that was not at issue in the Notice sent by Defendant Porter on June 15, 2017, as well as references to the language and content of Plaintiff Brown's appeal letter.

73. Pursuant to an attorney request for documents, NSU produced a Complainant's statement, signed and dated June 14, 2018¹, more than a year after the incident and almost a year to the day after the conduct conference at which the statement should have been presented.

74. The aforesaid Complainant's statement does not identify Joseph Brown.

75. Pursuant to an attorney request for documents, NSU produced a document titled Investigative Rationale, purportedly from Defendant Marcus Porter's office, which is unsigned and undated.

76. That the aforesaid Investigative Rationale asserts:

- a. that Defendant Porter interviewed Plaintiff Brown at the NSU Campus Police Station on June 15, 2017;
- b. that Plaintiff Brown was told that the text message violated the Student Code of Conduct; and
- c. that Plaintiff Brown was told that the text message violated Brown's disciplinary probation.

77. Brown was humiliated by the expulsion and suffered severe emotional stress as a result.

¹ The statement is handwritten, and dated at the top in handwriting by the Complainant as June 14, 2018. At the bottom, next to the Complainant's signature the Complainant dated his signature as June 14, 2018. Underneath the Complainant's signature, a Conduct Officer believed to be Defendant Marcus Porter signed his name and dated his signature as June 14, 2018.

78. NSU's expulsion of Brown has permanently tarnished his academic record, potentially closing the door on numerous career and educational opportunities, and reducing his future earnings potential.

79. NSU's expulsion of Brown has foreclosed the possibility of an enlightening and career enhancing study abroad program, to which Brown had already applied and been accepted prior to the conduct conference of June 15, 2017.

80. The Defendants' violations of and sheer indifference to Brown's Constitutional rights has shattered Brown's confidence in American ideals.

81. On or about February 19, 2018, Plaintiff Brown travelled from New Jersey to NSU to obtain his transcript.

82. This trip followed multiple failed attempts to obtain his transcript through requests.

83. In February of 2018, Plaintiff Brown was attempting to complete his degree in New Jersey, and thereby mitigate the damage caused to his reputation and future earnings by the Defendants.

84. During the aforesaid trip to NSU, Plaintiff Brown went first to the building occupied by NSU Campus Police to announce his presence and purpose of visit.

85. Brown then went to the registrar's office to obtain his transcript.

86. While in the administrative offices to request his transcript, multiple NSU Campus Police Officers appeared and publicly arrested Brown in full view of several of his friends and former colleagues.

87. NSU Campus Police put Brown in handcuffs and led him out of the registrar's office in full view of several of his friends and former colleagues.

88. Brown was humiliated, denigrated and defamed by this incident and suffered severe emotional stress as a result.
89. NSU Campus Police then transported Plaintiff Brown to the Campus Police Station where they informed him that he was being charged with trespassing and would be turned over to the Norfolk Police Department.
90. Upon information and belief, NSU's expulsion of Brown prompted the actions of NSU Campus Police on February 19, 2018.
91. Upon information and belief, an unidentified NSU official requested that NSU Campus Police arrest Brown on February 19, 2018.
92. NSU Campus Police released Plaintiff Brown after being made aware by both Brown and Brown's attorney that Brown had reported in at the NSU Campus Police building and received permission to visit the registrar's office to obtain his transcript.
93. Shaken and embarrassed, Brown left the NSU campus on February 19, 2018 still without his transcript.
94. The incident rendered worthless an expensive and time consuming trip from New Jersey to Virginia for the purpose of obtaining his transcript.
95. Defendants' expulsion of Brown has caused and continues to cause Brown significant reputational injury, significant professional injury, losses in earnings, substantial losses to future earnings and benefits, significant pain and suffering, medical expenses, embarrassment, anguish and severe emotional distress.
96. Upon information and belief, monies remaining in Brown's student account were not returned before NSU shut down his student account.

COUNT I: DENIAL OF DUE PROCESS IN VIOLATION OF
THE UNITED STATES CONSTITUTION AND THE CONSTITUTION OF THE
COMMONWEALTH OF VIRGINIA.

97. The allegations contained in paragraphs 1 through 96 and all subsequent allegations are adopted and incorporated by reference as if set forth fully in this paragraph.

98. The right to due process is enshrined in the Fourteenth Amendment to the United States Constitution.

99. The right to due process is enshrined in Article 1 Section 11 of the Constitution of the Commonwealth of Virginia.

100. Officials at government funded universities, like Defendants Porter and Johnson, owe a duty to provide students with sufficient due process in disciplinary proceedings.

101. Officials at government funded universities, like Defendants Porter and Johnson, owe a duty to students to follow the university's disciplinary procedures.

102. State sponsored universities, like NSU, owe a duty to students to establish rules and regulations governing disciplinary proceedings in such a way that Constitutional Rights are preserved.

103. NSU's rules and regulations governing disciplinary proceedings are found within its Student Policy Handbook.

104. The Commonwealth owes a duty to students to oversee state sponsored universities, like NSU, and ensure that disciplinary procedures provide sufficient due process.

105. The manner in which Defendant Porter investigated and expelled Brown denied Brown his clearly established due process rights.
106. Furthermore the manner in which Defendant Porter investigated and expelled Brown failed to adhere to NSU's published procedures for disciplinary proceedings.
107. The flippant manner in which Defendant Johnson processed Brown's appeal denied him his clearly established due process rights.
108. Furthermore, Defendant Johnson failed to follow NSU's published procedures governing appeal resolution.
109. Defendants Porter and Johnson are both government officials.
110. At all times relevant to this complaint, Defendants Porter and Johnson were acting under the color of law.
111. Pursuant to 42 U.S.C. § 1983, Defendants Porter and Johnson are liable to Brown.
112. NSU's procedures, even if followed, would have fallen short of the clearly established standards for minimum due process in student discipline hearings.
113. The Commonwealth is likewise responsible for NSU's disciplinary procedures falling below the minimum due process required by the United States Constitution.
114. For these reasons, NSU and the Commonwealth are liable to Brown.
115. Brown has suffered damages as a direct and proximate result of these denials of his Constitutional right to due process.

**COUNT II: DENIAL OF FREEDOM OF SPEECH IN VIOLATION OF
THE UNITED STATES CONSTITUTION AND THE CONSTITUTION OF THE
COMMONWEALTH OF VIRGINIA.**

116. The allegations contained in paragraphs 1 through 114 and all subsequent allegations are adopted and incorporated by reference as if set forth fully in this paragraph.

117. The right to free speech is enshrined in the First Amendment to the United States Constitution.

118. The right to free speech is enshrined in Article 1 Section 12 of the Constitution of the Commonwealth of Virginia.

119. As described above, Defendants Porter and Johnson are government officials.

120. Upon information and belief, Defendant Porter's decision to expel Brown was based in part on Brown's Constitutionally protected speech.

121. That Defendant Johnson's decision to deny Brown's appeal was based in part on Brown's Constitutionally protected speech.

122. Pursuant to 42 U.S.C. § 1983, Defendants Porter and Johnson are liable to Brown for these abridgments of his Constitutional right to free speech.

123. Brown has suffered damages as a direct and proximate result of these denials of his Constitutional right to free speech.

COUNT III: GENDER DISCRIMINATION IN VIOLATION OF TITLE IX.

124. The allegations contained in paragraphs 1 through 123 and all subsequent allegations are adopted and incorporated by reference as if set forth fully in this paragraph.

125. Pursuant to Title IX of the Education Act of 1972, schools receiving federal financial assistance like NSU are prohibited from: excluding from participation in, denying benefits of, or otherwise subjecting students like Brown to “discrimination under any education program or activity” on the basis of sex. 20 U.S.C. § 1681 *et seq.*

126. The Commonwealth has a duty to ensure that state supported schools, like NSU, comply with their duties under Title IX of the Education Act of 1972.

127. As described herein, Brown, a male, was investigated and expelled from NSU following a student complaint that Brown violated the student conduct policy with threatening behavior.

128. Over a year prior to Brown’s expulsion, Brown complained to NSU officials that a female student had violated the student conduct policy with threatening behavior.

129. Upon information and belief, no investigation or disciplinary action was ever taken against the aforementioned female student.

130. Upon information and belief, NSU rarely if ever investigates or disciplines females for the conduct Brown was accused of committing.

131. This disparate treatment of genders constitutes gender discrimination in violation of Title IX of the Education Act of 1972.

132. Brown has suffered damages and continues to suffer damage as a direct and proximate result of this disparate treatment.

133. Defendant NSU is liable to Brown under Title IX of the Education Act of 1972 for these damages.

134. The Commonwealth is likewise liable to Brown under Title IX of the Education Act of 1972 for these damages.

**COUNT IV: DISCRIMINATION BASED JOINTLY ON RELIGION AND
GENDER IN VIOLATION OF TITLE IX.**

135. The allegations contained in paragraphs 1 through 134 and all subsequent allegations are adopted and incorporated by reference as if set forth fully in this paragraph.

136. Title IX forbids religiously based discrimination by institutions such as NSU when it is partially based on gender, ethnicity or national origin.

137. Upon information and belief, Defendants Porter and Johnson based the decision to expel Brown in part or in whole upon his religious status as a Muslim.

138. Upon information and belief, Defendants would have been less likely to expel Brown had Brown been of a different religious conviction.

139. Upon information and belief, Defendants' interest in Brown's status as a Muslim during investigation and expulsion proceedings stems from a negative stereotype of Muslim males as being prone to violence.

140. Therefore, upon information and belief, Defendants would have been less likely to expel Brown had Brown been a Muslim female.

141. The aforesaid conduct constitutes gender discrimination by officials at NSU in violation of Title IX of the Education Act of 1972, for which NSU and the Commonwealth are liable

142. Brown has suffered damages and continues to suffer damage as a direct and proximate result of this violation of Title IX of the Education Act of 1972.

COUNT V: BREACH OF CONTRACT

143. The allegations contained in paragraphs 1 through 142 and all subsequent allegations are adopted and incorporated by reference as if set forth fully in this paragraph.

144. A contract, either express or implied, existed between Plaintiff Brown and NSU during the period of Brown's enrollment at NSU.

145. Brown fulfilled his contractual obligations to NSU by paying his tuition, maintaining his grades, and abiding by NSU's policies to the best of his ability and understanding.

146. Upon information and belief, Defendant NSU drafted its disciplinary procedures.

147. The aforesaid disciplinary procedures constitute contractual terms between NSU and students like Brown.

148. Certain procedures, safeguards, and rights contained within NSU's disciplinary procedures constitute contractual rights of NSU's students.

149. NSU breached one or more of Brown's contractual rights during its investigation and expulsion of him in June of 2017.

150. Therefore, NSU is in breach of its contract with Brown.

151. Brown has sustained damages as a result of NSU's aforesaid breach of contract.

152. In addition to the previously stated damages, Brown seeks restitution on the basis of breach of contract.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, by counsel, respectfully requests that this Court enter judgment in his favor and against Defendants, jointly and severally, in an amount of up to TEN MILLION DOLLARS (\$10,000,000.00) as compensatory damages and punitive damages, together with attorney's fees including any expert fees pursuant to 42 U.S.C. Sec. 1988, costs of litigation, and interest from the date of expulsion, and any further relief that this Court may deem appropriate.

A JURY TRIAL IS DEMANDED

Dated: 14 June 2019

Respectfully Submitted



Alastair C. Deans (Va. Bar No. 83167)
P.O. Box 13915
Chesapeake, VA 23325
Telephone: (757) 412-9026
Email: alastaircdeans@gmail.com

Attorney for Plaintiff

June 14, 2017

Joseph Brown (433929)

15 Chester Ave Apt 2
Irvington NJ 07111

Dear Joseph,

On June 14, 2017, it was reported that you violated the *Code of Student Conduct*, specifically, *No. 20. Threatening behavior whether written or verbal, towards any member of the University community that causes an expectation of injury or implies a threat to cause fear.*

You have the right to have your case heard by a conduct officer through a conduct conference or the Student Conduct Board through a formal hearing. Please contact Marcus Porter at 823-2336 to further discuss. It is the responsibility of the respondent to notify witnesses of the date, time, and location of any conduct proceedings.

In the interests of the health, safety, and welfare of the University community, you have been placed on interim hall removal (effective immediately) pending the outcome of your conduct matter. If you are in the residence halls without permission or a police escort, you will be subject to arrest for trespassing. **You must move out of housing by 7:00pm today, June 14, 2017.**

We recognize that the receipt of this letter may cause some students to experience anxiety. Please examine our website which will provide additional information about the student conduct process to include student rights, possible outcomes, and sanctions. This information can be found at www.nsu.edu/student-affairs/student-judicial/.

Sincerely,

Marcus Porter, Student Conduct Officer

Cc: Dr. Michael Shackelford, Vice President of Enrollment Management and Student Affairs
Tracci Johnson, Dean of Students
Dr. Faith Fitzgerald, Executive Director, Housing & Residence Life
Anthony Tillman, Resident Hall Director, Spartan Suites
Mecca Marsh, Director of Housing Operations, Spartan Suites
University Police, Investigations

COMPLAINT EXHIBIT 1



NORFOLK STATE UNIVERSITY

Dean of Students Office

700 Park Avenue, Suite 307, Norfolk, Virginia 23504

Tel: (757) 823-2152 Fax: (757) 823-2297

Web: www.nsu.edu

June 15, 2017

Joseph Brown,

I am writing to schedule a meeting to discuss the investigation of a report submitted to the Dean of Students Office.

On June 14, 2017, it was reported that you violated the following section(s) of the Code of Student Conduct:

- No. 20- *Threatening Behavior*

I have scheduled a student conduct conference for June 15, 2017, at 10:00 am at the NSU Campus Police Station. If the scheduled time is in direct conflict with a class, please call me at 757-823-2152 to reschedule. At this meeting, you may ask any questions regarding the student conduct process. If you fail to attend, a decision may be reached in your absence. If you are found responsible for the misconduct, a sanction will be issued at that time.

We recognize that the receipt of this letter may cause some students to experience anxiety. Please examine our website which will provide additional information about the student conduct process to include student rights, possible outcomes, and sanctions. This information can be found at www.nsu.edu/student-affairs/student-judicial/.

Sincerely,

A handwritten signature in dark ink, appearing to read 'M. Porter', is written over a faint, circular stamp or watermark.

Marcus Porter
Student Conduct Officer

COMPLAINT EXHIBIT 2

Norfolk State University—An Equal Opportunity Employer

RESOLUTION

June 15, 2017

Joseph Brown
433929

15 Chester Avenue Apt 2
Irvington, NJ 07111

Dear Joseph,

I have concluded your case of a reported violation of the *Code of Student Conduct* specifically, *No.20-Threatening Behavior (Probation Violation)*. I have found you responsible. As such, the following sanctions are imposed:

Expulsion: Effective immediately, you are permanently separated from Norfolk State University.

**You must notify Norfolk State University Campus Police at 757-823-8102 prior to any campus visits.*

You have five days from the date of this letter to appeal this decision. An appeal form has been attached for your convenience. Please return your appeal to deanofstudents@nsu.edu.

Sincerely,



Marcus Porter
Student Conduct Officer

Cc. Dr. Michael Shackleford, Vice President of Student Affairs and Enrollment Management
Tracci Johnson, Dean of Students
Dr. Faith Fitzgerald, Executive Director, Housing & Residence Life
Anthony Tillman, Resident Hall Director, Housing & Residence Life
Mecca Marsh, Director of Housing Operations, Spartan Suites
Chief Troy Covington, University Police
Cassandra Gwathney, Acting Director of Financial Aid
Mike Carpenter, Registrar
Sandra Riggs, Bursar
Cary Lazarus, SpartanCard Manager
Dr. Vanessa Jenkins, Counseling Center



Dean of Students Office
700 Park Avenue, Suite 318, Norfolk, Virginia 23504
Tel: (757) 823-2152 Fax: (757) 823-2297
Web: www.nsu.edu

June 28, 2017

Joseph Brown (0400667)

Subject: Appeal from Disciplinary Sanction

This letter is in response to your appeal from a sanction imposed at a Student Conduct Conference on June 15, 2017. After carefully considering your request, your appeal is denied. This appeal decision is final.

Your sanctions remain as imposed:

-Expulsion: Effective immediately, you are permanently separated from Norfolk State University.

**You must notify Norfolk State University Campus Police at 757-823-8102 prior to any campus visits.*

I wish you the best in your future endeavors.

Sincerely,

Tracci K. Johnson
Dean of Students

Cc: Dr. Michael Shackleford, Vice President of Student Affairs and Enrollment Management
Marcus Porter, Student Conduct Officer
Dr. Faith Fitzgerald, Executive Director, Housing & Residence Life
Anthony Tillman, Resident Hall Director, Housing & Residence Life
Mecca Marsh, Director of Housing Operations, Spartan Suites
University Police, Investigation
Cassandra Gwathney, Acting Director of Financial Aid
Mike Carpenter, Registrar
Sandra Riggs, Bursar
Cary Lazarus, Spartan Card Manager
Dr. Vanessa Jenkins, Counseling

**DEAN OF STUDENTS
APPEAL RESPONSE RATIONALE**

1. Appeal Conference Date: June 15, 2017
2. Meeting Attendee's: Joseph Brown (via email)
3. Appeal Officer: Tracci K. Johnson

SUMMARY OF FACTS

Reason for appeal (what did they check on the form):

- To determine whether the conduct conference/hearing was conducted fairly and in conformity with prescribed procedures.
- To consider new evidence unavailable during the original conduct conference/hearing.
- To consider whether the sanctions imposed were disproportionate to the violation.

Appeal Decision

- Approved
- Approved with revision
- Denied

Rational for appeal revisions:

The student was a threat to the Norfolk State University community. He threatened to break his roommate's jaw. In his previous conduct case he punched someone in the face. Based on the language and content of his appeal letter, I felt that his behavior was volatile and I did not want to compromise the safety of the student body.

COMPLAINT EXHIBIT 5

Student Conduct

[Student Conduct](#) | [About](#) | [Student Conduct Process](#) | [Policies](#) | [Clearance](#) | [Reporting](#) | [Forms](#) | [Contact Us](#)

COMPLAINT EX. 6

► Violations

1. **Abuse of student conduct system** to include but not limited to providing false information during the student conduct process and/or not completing sanctions within allocated time period.
2. **Abuse of safety equipment** to include but not limited to tampering with or engaging fire alarms, extinguishers or smoke detectors.
3. **Acts of dishonesty** to include but not limited to furnishing false information to University officials or forgery of any University document. For academic dishonesty, refer to Academic Dishonesty Procedures.
4. **Alcohol the use, possession or distribution** of alcoholic beverages or paraphernalia.
5. **Computer Misuse**- Refer to Acceptable Use of Technological Resource Policy.
6. **Conduct that threatens or endangers the health or safety of any person including one's self.**

7. **Gambling** for money, in any form on University property.
8. **Dating Violence**
9. **Domestic Violence**
10. **Drugs the use, possession or distribution** of illegal drugs or misuse of prescription drugs and other controlled substances or drug paraphernalia.
11. **Disruptive behavior** that interferes with University sponsored events/activities; teaching, learning, administration, research; and/or University operations.
12. **Failure to comply** with directions of University employees or law enforcement officers.
13. **Harassment** to include but not limited to bullying/cyber-bullying, intimidation and/or hate crimes.
14. **Hazing**- Hazing includes, but is not limited to any situation which: creates a risk of physical injury; causes embarrassment and/or discomfort; involves harassment and/or humiliation; causes psychological or emotional distress; involves degradation and/or ridicule of an individual or group; involves or includes the willful destruction or removal of public or private property; involves the expectation that new/perspective members will participate in an activity, but full members will not.
15. **Obscene behavior** to include but not limited to public sexual acts or indecent exposure.
16. **Retaliation** against any person or group who makes a complaint, cooperates with an investigation, or participates in the resolution process.
17. **Sexual misconduct** - Refer to BOV Policy # 5 (2014) Sexual Misconduct Policy ; Refer to Admin Policy #
18. **Stalking** is when a person, on more than one occasion, engages in any behavior or conduct directed at another person with the intent to place that other person in reasonable fear of harm, death, criminal sexual assault, or bodily injury to that person or to that person's family or household member. **Cyber-stalking** is form of stalking or harassment that involves the intentional act of using the Internet to cause someone emotional distress
19. **Theft** includes the use, removal or possession of University/individual property without entitlement or authorization.
20. **Threatening behavior** whether written or verbal, towards any member of the University community that causes an expectation of injury or implies a threat to cause fear.
21. **Unauthorized access or entry** to any University building.
22. **Unauthorized recording and/or distribution** to include but not limited to pictures, audio or videos of any person without their explicit permission or consent.
23. **Weapons**-Refer to Violence Prevention Policy.
24. **Vandalism** includes but is not limited to destroying or damaging University property or property of another person.
25. **Violence to persons** includes but is not limited to intentionally or recklessly causing harm to any person.
26. **Violating federal, state or local laws** that legitimately affect the University's interest.
27. **Violating any published Board of Visitors or University policies or rules.**

COMPLAINT EX 6
pg 7

► Procedures

Procedures

The below procedures provide a general overview of student conduct proceedings; however, these procedures are flexible based on the severity of the situation.

Any member of the University community may file a report against a student or student organization for violations of the *Code of Student Conduct*. All allegations should be submitted through an online incident report form or student summons (NSU Police Department). The student

conduct officer may act on notice of a potential violation whether a formal report is made.

Students should be aware the criminal (Police) and student conduct (University) processes are separate but may occur concurrently.

Informal Resolution

Step 1. Investigation

Upon receipt of the incident report, a student conduct officer will begin an investigation that will include interviews of the respondent, the complainant and/or others as necessary. Additionally, all documentary and physical evidence will be obtained and reviewed. Upon completion of the investigation, the following may occur:

- The student conduct officer determines there is insufficient information and the case is closed.
- The student conduct officer determines there is sufficient information and proceeds with scheduling a conduct conference (step 2).

Step 2. Notification

The respondent will receive a formal complaint of a violation through written notice. The notice will be delivered by one or more of the following methods: emailed to the student's University-issued account and/or mailed to the permanent address according to the University's record. The letter of notice will include:

- The reported violation(s) citing the *Code of Student Conduct*.
- The date, time, and location of the conference.
- The rights of the respondent.

Step 3. Conference

During the conference, the student conduct officer will present the findings to the respondent. As a result, the following may occur:

- The respondent is found not responsible and the case is closed.
- The respondent accepts responsibility and/or the findings for the violation and the student conduct officer imposes sanctions.
- The respondent denies responsibility and/or rejects the findings for the violation but has the right to appeal the decision and sanctions imposed by the student conduct officer.
- The respondent denies responsibility for the violation and/or rejects the findings and the misconduct could result in expulsion, suspension and/or removal from housing. The student conduct officer will then refer the case to the Student Conduct Board for formal resolution through an administrative hearing.

A respondent placed on interim suspension may request to have their case heard by the conduct officer through a conduct conference or referred to the Student Conduct Board.

The student conduct officer, at his or her discretion, may refer a case to the Student Conduct Board for resolution.

If the respondent fails to attend the conduct conference, the student conduct officer may render a decision based on the evidence available. The respondent will then forfeit their right to appeal the decision and/or sanction(s) imposed by the student conduct officer.

Formal Resolution

The University has established appropriate student conduct panels to provide hearings concerning reported violations of the *Code of Student Conduct* that could result in expulsion, suspension and/or removal from housing.

1. Notification

A notice will be made in writing and delivered by one or more of the following methods: emailed to the student's University-issued email account; mailed to the permanent address according to the University's record. The letter of notice will include:

- The reported violation(s) citing the *Code of Student Conduct*.
- The date, time, and location of the hearing.
- The rights of the respondent.

2. Hearing

The student conduct officer will schedule a hearing with the student conduct panel no more than ten (10) business dates after the conduct conference. This may be extended when reasonably necessary. If the respondent wishes to request a delay, he/she must notify the student conduct staff within two (2) business days of the scheduled hearing.

The student conduct panel for each hearing will be composed of five (5) members from the University to include employees and students. Each student conduct panel must include at least three (3) students. All members of the student conduct panel will be selected from the student conduct board and participate in mandatory training covering all aspects of the conduct process. Members of the University must apply to become a member of the student conduct board. Students serving must be in good academic standing with no serious conduct violations at the University. All appointments are subject to approval by the dean of students or designee and serve one-year renewable terms.

The Chief Justice or designee will serve as the chair for each hearing panel. The chair of the panel will conduct hearings according to the following guidelines:

- Hearings are closed to the public.
- Hearings are tape-recorded; however, deliberations of the hearing panel will remain private.
- Incidents involving more than one respondent, the panel will jointly conduct a hearing. Separate findings will be made for each respondent. At the discretion of the student conduct officer, individual hearings may be permitted.
- The complainant, respondent and advisors will be allowed to attend the entire portion of the hearing except for the deliberation and findings. Only in cases involving violence or sexual misconduct, as it relates to Title IX, will the complainant be advised of the outcome.
All parties will have the privilege of questioning witnesses. Witnesses will only attend the portion of the hearing in which they are presenting information.
- Advisors are not permitted to speak or participate directly in any student conduct hearing unless permitted by the chair of the panel.
- The panel may only rely on oral and written statements of witnesses and written reports/documents.
- After the hearing, the panel will determine, by majority vote, using a preponderance of the evidence (whether it is more likely than not) the respondent violated the *Code of Student Conduct* and recommend sanctions.

COMPLAINT Ex 6
Dr. W

- The chair of the panel will provide a written summary of testimony, findings of facts (evidence), and rationale for the decision. This report will be sent to the student conduct officer within two (2) business days of the hearing. A written decision will be sent to the respondent within two (2) business days after receiving the hearing panel's report.

If the respondent fails to attend the hearing, the Student Conduct Board may render a decision based on the evidence available. The respondent will then forfeit their right to appeal the decision and/or sanction(s) imposed by the Board.

There are certain times of the year and possible extenuating circumstances that may remove the option of the student conduct panel. During this time, a student conduct officer will adjudicate cases. The option of a student conduct panel may be removed on the following occasions:

1. When the student conduct board is participating in training.
2. When the University is not in session.
3. During the final two weeks of the fall or spring semester.
4. During summer sessions.

► Appeals

Appeal forms may be submitted online by visiting <https://www.nsu.edu/Assets/websites/student-affairs/sa-documents/Student-Conduct-Appeal-Form.pdf>. The basis for the appeal must be one (or more) of the reasons shown above. The notice of appeal must contain, at a minimum, a statement of grounds for appeal and a summary statement of the facts supporting such grounds.

Upon receipt of the appeal, the dean of students* will review and provide a written decision within five (5) business days. The respondent may request a meeting with the dean of students to further discuss the appeal; however, the decision is made based on the written information submitted and is final.

*The vice president for student affairs has designated the dean of students as the appellate officer for student conduct matters.

► Academic Matters

A formal grievance may be filed in the Dean of Students Office. Every attempt is made to ensure that the complainant has sought resolution of the grievance at the appropriate levels.

COMPLAINT Ex 6
Pg 5

Grade Appeals

The instructor has the responsibility for evaluating coursework and determining grades; however, the student has the right to appeal a grade believed to be in error. The appeal process may involve the following steps and may be resolved at any level:

- The student confers with the instructor involved.
- The student and instructor (preferably together) confer with the chairperson of the department offering the course.
- The student and instructor (preferably together) confer with the dean of the school in which the department is housed.
- When the above steps do not resolve the issue, the student may initiate a formal written appeal through the Faculty-Student Grievance Committee to the Provost and Dean of Students Office for its review and recommendation.

Appeals should not be taken lightly by either the student or the instructor. The student is responsible for verifying the accuracy of his or her academic records. Grade appeals should be made immediately after the grade in question is received. No appeals will be considered after one year has elapsed or after graduation, whichever is earlier.

Academic Dishonesty

Cases involving academic dishonesty are immediately sent to the Faculty-Student Grievance Committee if the student denies responsibility. If the student accepts responsibility, the instructor may issue an appropriate grade sanction and notify the Dean of Students Office to place the student on probation.

If it is found that sufficient documentation is present to warrant a hearing, the Dean of Students Office will request to convene a hearing with the Faculty-Student Grievance Committee. The Faculty-Student Grievance Committee is comprised of faculty representatives from the schools and colleges.

The panel for each academic dishonesty hearing will be composed of three (3) members to include two (2) faculty and one (1) student. The chair of the panel (non-voting) will conduct the hearing according to the guidelines established for student conduct hearings. The decision of the Faculty-Student Grievance committee is final and cannot be appealed.

► During the Conduct Process

Responsibilities

All students are responsible for being knowledgeable about the information contained in the Code of Student Conduct policy. An electronic version of this policy can be found online at <https://www.nsu.edu/president/policies/index>. Hard copies are available upon request the office for student conduct located in Suite 316, Student Services Center.

University email serves as the official communication with students. It is the responsibility of all students to maintain and monitor their University email regularly to stay abreast of student conduct proceedings.

Rights of the Accused (Respondent)

COMPLAINT EX 6
P. 1

- The right to confidentiality of educational records pursuant to Family Educational Rights and Privacy Act (FERPA) of 1974.
- The right to be informed of the charges against him/her in writing.

- The right to have a support person or advisor present during student conduct proceedings. This person may not actively participate in the hearing but may give advice to the complainant.
- The right to request, in advance, a copy of the incident report.
- The right to call a reasonable number of witnesses. Names of the witnesses must be provided to the Dean of Students Office at least one day prior to the hearing.
- The right not to appear or to remain silent at the hearing. In the event the respondent does not appear at the hearing, after proper notification, the evidence in support of the violation will be presented, considered and adjudicated.
- The right to a fair and impartial hearing.

Rights of Victims (Complainant)

- The right to have a support person or advisor present during student conduct proceedings. This person may not actively participate in the hearing but may give advice to the complainant.
- The right to be informed of the outcome in cases involving violence and sexual misconduct as it relates to Title IX.
- The right to a fair and impartial hearing.

Rights of Complainant and Respondent (Title IX/Sexual Misconduct)

- Respondents of sexual misconduct have the right to a student conduct hearing and the right to identify and produce witnesses who may have information relevant to the complaint.
- The parties involved may bring an advocate, advisor or support person to any meeting with the student conduct officer/panel.
- Parties involved may present their case before the hearing panel by submitting documents and other relevant evidence.
- It should be noted that while each party will have the opportunity to present his/her case, the student conduct officer has the responsibility to identify and obtain any additional evidence and/or witnesses relevant to the grievance.
- Attorneys will not be permitted to personally participate in University student conduct proceedings.
- Student conduct hearings do not replace or substitute criminal prosecutions and students who choose student conduct hearings are also encouraged to seek justice through the criminal justice system and/or civil courts as appropriate.

Refer to [BOV Policy # 05 \(2015\) Title IX: Sexual Violence, Discrimination, Harassment, and Retaliation](#)

► Sanctions

Warning: An official written notice that the student has violated the Code of Student Conduct.

Disciplinary Probation: Disciplinary probation is for a specific length of time. Mandatory conditions may be imposed and may include, but not limited to the following: loss of good standing and/or denial of the privilege to hold a position of leadership or responsibility in any University student organization or activity. If the student is found in violation of the Code of Student Conduct while on disciplinary probation, the University may impose additional sanctions.

Educational Project: The requirement to attend, present or participate in a program related to the violation. It may also require writing reflective papers.

Community Service: The requirement to complete supervised service.

Counseling Referral: The requirement to visit the Counseling Center and complete a screening within five (5) business days of the respondent's conference/hearing. Upon completion of the screening, if any additional services are recommended they must be completed within the timeframe provided by the Counseling Center.

Fine: A sum imposed as a result of an offense; the sum must be reasonable and may be imposed depending on the severity of the violation.
Loss of Privilege: The denial of specified privileges for a designated period of time.

Restitution: The repayment for damage to University property or facilities; payment for damage to the property or person of a member of the University community; guests of the University, and/or other appropriate third parties; repayment of misappropriated or misused University funds. Restitution must be paid by cashier's check or money order. A disciplinary hold will be placed on the respondent's record until payment is made; however, if payment is not made by the end of the semester, the respondent's account will be charged.

University Housing Reassignment: The reassignment to another residential hall as determined by the Office of Housing & Residence Life.

University Housing Visitation Restriction: The loss of privilege to host any guests in the lobby of the student's residence hall and/or individual room.

University Housing Removal: The student's privilege to live or visit any residential hall is permanently revoked.

Suspension: Separation from the University for a specified amount of time. The student will be required to vacate the campus with 24 hours of notification of this action. During the suspension period, the student is not permitted on University property, events or activities.

Expulsion: The permanent separation of a student from the University.

Other Sanctions: Additional sanctions may be designed as deemed appropriate to the offense.

Interim Actions: The Dean of Students or designee may impose restrictions and/or separate a student from the University community pending the outcome of a hearing to protect the interests of the health, safety and welfare of the University community, or to ensure the student's safety and well-being. These actions can include but are not limited to no-contact orders, amending a student's schedule, hall relocation and/or interim suspension. Interim suspension is the temporary separation of a student from the University. If an interim suspension is imposed, the respondent may request a meeting with the dean of students or designee to discuss the interim suspension. The Dean of Students may uphold or lift the interim suspension after meeting with the respondent; however, this decision is final. If the interim suspension is upheld, the respondent will be required to vacate the campus immediately. At the discretion of the dean of students or designee, alternative coursework options may be provided.

COMPLAINT EX 6
DL 9



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*COMPLAINT EX 6
DL 0*

COMMONWEALTH OF VIRGINIA



NORFOLK CIRCUIT COURT
Civil Division
150 ST. PAUL'S BLVD 7TH FLOOR
NORFOLK VA 23510
(757) 769-8539

Summons

To: MARCUS PORTER
3341 ARGONNE AVE
NORFOLK VA 23509

Case No. 710CL19006091-00

The party upon whom this summons and the attached complaint are served is hereby notified that unless within 21 days after such service, response is made by filing in the clerk's office of this court a pleading in writing, in proper legal form, the allegations and charges may be taken as admitted and the court may enter an order, judgment, or decree against such party either by default or after hearing evidence.

Appearance in person is not required by this summons.

Done in the name of the Commonwealth of Virginia on, Monday, June 17, 2019

Clerk of Court: GEORGE E. SCHAEFER III

by


(CLERK DEPUTY CLERK)

Instructions:

Hearing Official:

Attorney's name: DEANS, ALASTAIR
757-412-9026

COVER SHEET FOR FILING CIVIL ACTIONS
COMMONWEALTH OF VIRGINIA

Case No. _____
(CLERK'S OFFICE USE ONLY)

Norfolk City

Circuit Court

Joseph Covell Brown
PLAINTIFF(S)

v./In re: Marcus Porter, Norfolk State University,
DEPENDANT(S)

Tracci K. Johnson and the Commonwealth of Virginia

I, the undersigned plaintiff defendant attorney for plaintiff defendant hereby notify the Clerk of Court that I am filing the following civil action. (Please indicate by checking box that most closely identifies the claim being asserted or relief sought.)

GENERAL CIVIL

Subsequent Actions

- Claim Impleading Third Party Defendant
 - Monetary Damages
 - No Monetary Damages
- Counterclaim
 - Monetary Damages
 - No Monetary Damages
- Cross Claim
- Interpleader
- Reinstatement (other than divorce or driving privileges)
- Removal of Case to Federal Court

Business & Contract

- Attachment
- Confessed Judgment
- Contract Action
- Contract Specific Performance
- Detinue
- Garnishment

Property

- Annexation
- Condemnation
- Ejectment
- Encumber/Sell Real Estate
- Enforce Vendor's Lien
- Escheatment
- Establish Boundaries
- Landlord/Tenant
 - Unlawful Detainer
- Mechanics Lien
- Partition
- Quiet Title
- Termination of Mineral Rights

Tort

- Asbestos Litigation
- Compromise Settlement
- Intentional Tort
- Medical Malpractice
- Motor Vehicle Tort
- Product Liability
- Wrongful Death
- Other General Tort Liability

ADMINISTRATIVE LAW

- Appeal/Judicial Review of Decision of (select one)
 - ABC Board
 - Board of Zoning
 - Compensation Board
 - DMV License Suspension
 - Employee Grievance Decision
 - Employment Commission
 - Local Government
 - Marine Resources Commission
 - School Board
 - Voter Registration
 - Other Administrative Appeal

DOMESTIC/FAMILY

- Adoption
 - Adoption - Foreign
- Adult Protection
- Annulment
 - Annulment - Counterclaim/Responsive Pleading
- Child Abuse and Neglect - Unfounded Complaint
- Civil Contempt
- Divorce (select one)
 - Complaint - Contested*
 - Complaint - Uncontested*
 - Counterclaim/Responsive Pleading
 - Reinstatement - Custody/Visitation/Support/Equitable Distribution
- Separate Maintenance
 - Separate Maintenance Counterclaim

WRITS

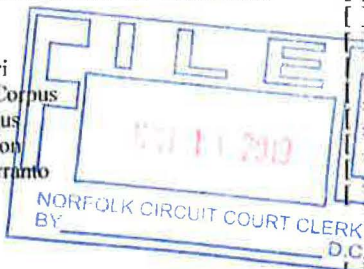
- Certiorari
- Habeas Corpus
- Mandamus
- Prohibition
- Quo Warranto

PROBATE/WILLS AND TRUSTS

- Accounting
- Aid and Guidance
- Appointment (select one)
 - Guardian/Conservator
 - Standby Guardian/Conservator
 - Custodian/Successor Custodian (UTMA)
- Trust (select one)
 - Impress/Declare/Create
 - Reformation
- Will (select one)
 - Construe
 - Contested

MISCELLANEOUS

- Amend Death Certificate
- Appointment (select one)
 - Church Trustee
 - Conservator of Peace
 - Marriage Celebrant
- Approval of Transfer of Structured Settlement
- Bond Forfeiture Appeal
- Declaratory Judgment
- Declare Death
- Driving Privileges (select one)
 - Reinstatement pursuant to § 46.2-427
 - Restoration - Habitual Offender or 3rd Offense
- Expungement
- Firearms Rights - Restoration
- Forfeiture of Property or Money
- Freedom of Information
- Injunction
- Interdiction
- Interrogatory
- Judgment Lien-Bill to Enforce
- Law Enforcement/Public Official Petition
- Name Change
- Referendum Elections
- Sever Order
- Taxes (select one)
 - Correct Erroneous State/Local
 - Delinquent
 - Vehicle Confiscation
- Voting Rights - Restoration
- Other (please specify)



Damages in the amount of \$ 10,000,000.00 are claimed.

June 14, 2019

DATE

Alastair C. Deans

PRINT NAME

P.O. Box 13915, Chesapeake VA 23325

ADDRESS/TELEPHONE NUMBER OF SIGNATOR

(757) 412-9026

alastaircdeans@gmail.com

EMAIL ADDRESS OF SIGNATOR (OPTIONAL)

PLAINTIFF

DEFENDANT

ATTORNEY FOR

PLAINTIFF

DEFENDANT

Alastair C. Deans

****Contested**** divorce means any of the following matters are in dispute: grounds of divorce, spousal support and maintenance, child custody and/or visitation, child support, property distribution or debt allocation. An "Uncontested" divorce is filed on no fault grounds and none of the above issues are in dispute.

VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF NORFOLK

JOSEPH COVELL BROWN,)
)
Plaintiff,)

v.)

No. CL9-4091

MARCUS PORTER)
In his individual capacity,)
3341 Argonne Ave.)
Norfolk, Va 23509)
(City of Norfolk))

and)

NORFOLK STATE UNIVERSITY,)
SERVE: Pamela F Boston)
University Counsel)
700 Park Ave. Suite 101)
Norfolk, Va 23509)
(City of Norfolk))

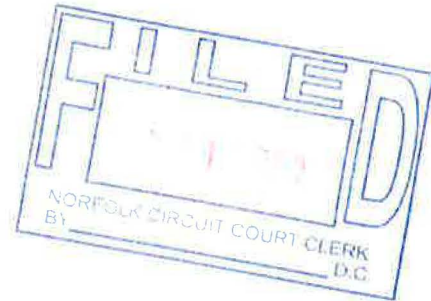
and)

THE BOARD OF VISITORS OF)
NORFOLK STATE UNIVERSITY,)
SERVE: Pamela F Boston)
University Counsel)
700 Park Ave. Suite 101)
Norfolk, Va 23509)
(City of Norfolk))

and)

THE COMMONWEALTH OF VIRGINIA,)
SERVE: Mark Herring)
Attorney General for the)
Commonwealth of Virginia)
900 E. Main St.)
Richmond, Va 23219)
(City of Richmond))

and)



TRACCI K. JOHNSON
In her individual capacity,
9518 3rd Bay St. Unit 125
Norfolk, Va 23518
(City of Norfolk)

Defendants.

COMPLAINT

Plaintiff, Joseph Covell Brown, in support of his Complaint against Marcus Porter, Norfolk State University, the Board of Visitors of Norfolk State University, the Commonwealth of Virginia, and Tracci K. Johnson states the following:

NATURE OF THE ACTION

1. Plaintiff seeks damages for the violation of his due process rights by government officials acting under color of law in clear violation of established standards.
2. Plaintiff seeks damages for the gender discrimination against him by government officials acting under color of law in clear violation of established standards.
3. Plaintiff seeks damages for the violation of his freedom of speech rights by government officials acting under color of law in clear violation of established standards
4. Plaintiff seeks damages for the violation of his due process rights and gender discrimination by government entities.
5. Plaintiff seeks damages for breach of contract.

THE PARTIES

6. Plaintiff Joseph Covell Brown (hereinafter "Brown"), is a citizen and resident of New Jersey.
7. Brown attended NSU as a student from August 2014 through June 2017.
8. Brown is a member of the Muslim faith.

9. Marcus Porter (hereinafter "Porter") was an official at Norfolk State University at all times relevant to this complaint.

10. Upon information and belief, Defendant Porter was the Assistant Director of Student Conduct at Norfolk State University at all times relevant to this complaint.

11. Norfolk State University (hereinafter "NSU"), is a public institution pursuant to Va. Code Sec. §23.1-1900 *et seq.*

12. Defendant NSU receives federal funding.

13. Upon information and belief, Defendant NSU's Federal School Code (also known as its Title IV Institution Code) is 003765.

14. The Board of Visitors of Norfolk State University composes a corporation organized and existing under the laws of the Commonwealth of Virginia, Va. Code §23.1-1900 *et seq.*, under the name and style of "The Visitors of Norfolk State University," formed for the purpose of establishing and maintaining the provisions and duties of NSU's teachers, staff and agents; and at all times relevant to this complaint, maintaining, operating and directing the affairs of NSU (as used herein, the Board of Visitors of Norfolk State University and Norfolk State University are referred to collectively as "NSU").

15. Plaintiff Brown filed a timely notice of claim against the Commonwealth of Virginia (hereinafter "The Commonwealth") as required by Va. Code § 8.01-195.6.

16. Tracci K. Johnson (hereinafter "Johnson") was an official at NSU at all times relevant to this complaint.

17. Upon information and belief, Defendant Johnson was the Dean of Students at all times relevant to this complaint.

18. This Court has jurisdiction over these claims because all transactions and occurrences relevant to this complaint occurred in Norfolk, Virginia.

BACKGROUND

19. In order to pay his tuition at NSU, Plaintiff Brown took, and remains responsible for the repayment of, student loans with interest.

20. In 2015, Plaintiff Brown was placed on disciplinary probation for the 2016 to 2017 academic year.

21. The aforesaid disciplinary probation ended in May of 2017.

22. In June of 2017, Plaintiff Brown was completing the final paperwork for a lucrative study abroad program, to which he had been accepted and intended to undertake during his senior year at NSU.

23. On or about June 14, 2017, Plaintiff Brown was suffering from sciatica in his left hip and could barely walk.

24. NSU routinely publishes its disciplinary procedures online. Those procedures in place during June of 2017 were printed on July 20, 2017 by Plaintiff's counsel and are attached hereto as "Complaint Exhibit 6".

FACTS

25. On or about June 11, 2017, Plaintiff Brown and his roommate Davonte' Smith (hereinafter "Smith") were texting each other.

26. During the aforesaid texting, Brown and Smith were engaged in a conversation about food and dirty dishes in their room.

27. During the aforesaid texting conversation, Brown and Smith were either physically present within the same room or in adjoining rooms.

28. Evidence available to NSU officials indicated that Smith considered the texting conversation to be playful in nature.
29. During this texting conversation, Plaintiff Brown allegedly texted the phrase "Text me again and im breaking your jaw."
30. Upon receipt of the aforementioned text, Smith texted Brown again.
31. Brown did not break Smith's jaw.
32. Three days later, on June 14, 2017, Defendant Porter transmitted a notice to Brown of an alleged violation of the NSU's Code of Student Conduct (a copy of said notice is attached hereto as "Complaint Exhibit 1").
33. Defendant Porter transmitted the aforesaid Notice to Plaintiff Brown via email, at about 4:58 p.m. on June 14, 2017.
34. The aforesaid Notice required Brown to vacate his residence hall no later than 7:00 p.m. on June 14, 2017.
35. Pursuant to the aforesaid notice, Brown was given approximately one hundred and twenty-two minutes to receive the email, read it, pack all of his possessions, find alternative housing, arrange transportation and vacate his dormitory room.
36. At the time the aforesaid notice was transmitted, Brown was working in an administrative office at NSU.
37. When Brown finished work on June 14, 2017, he received the aforesaid notice and barely managed to rush to his dormitory room and successfully vacate it within the cursory deadline.

38. Though Brown vacated his dormitory room prior to the deadline, he had to abandon many of his possessions, and was unable to arrange transportation or alternate housing for the evening.

39. With nowhere else to go, Plaintiff Brown spent a restless night in the waiting room of the NSU Campus Police Station, tormented by pain from his sciatica after having to abandon his medications along with other possessions in his dormitory room.

40. On the morning of June 15, 2017, at approximately 8:57 a.m., Defendant Porter transmitted a Second Notice Letter “to schedule a meeting to discuss the investigation of a report...that [Brown] violated section(s) of the Code of Student Conduct.” (a copy of said notice letter is attached hereto as “Complaint Exhibit 2”)

41. The aforesaid Second Notice Letter indicated that the conduct conference would be at the NSU Campus Police Station at 10:00 a.m. on June 15, 2017.

42. At the time the notice email was sent, Plaintiff Brown was still at the NSU Campus Police Station.

43. There is no indication that Brown saw or read the email with the attached Notice Letter during the sixty-three minute interval between transmission and the conduct conference.

44. Upon information and belief, Defendant Porter met Plaintiff Brown at the NSU Campus Police Station around 10:00 a.m. on June 15, 2017.

45. Upon information and belief, Defendant Porter and NSU Campus Police Officers questioned Plaintiff Brown at the NSU Campus Police Station around 10:00 a.m. on June 15, 2017.

46. Upon information and belief, during the aforesaid questioning, Defendant Porter asked Plaintiff Brown if he is Muslim, to which inquiry Brown affirmed that he is.
47. There is no indication that any witnesses were present for the conduct conference.
48. There is no indication that any counsel, support person or advisor was present to speak for or give advice to Brown at the conduct conference.
49. There is no indication that Brown presented any defense at the conduct conference.
50. There is no indication that specific allegations against Brown and the potential consequences were explained to Brown before or during the conduct conference.
51. Plaintiff Brown was not afforded a reasonable opportunity to assess the accusations, formulate a defense, contact counsel, contact witnesses or otherwise prepare for a hearing.
52. On June 15, 2017, the same day as the aforesaid conduct conference, Defendant Porter sent a Resolution Letter to Plaintiff Brown via email, informing Brown that he was being held responsible for “violation of the Code of Student Conduct specifically, No. 20-Threatening Behavior (Probation Violation).” (a copy of this Resolution Letter is attached hereto as “Complaint Exhibit 3”)
53. The aforesaid Resolution Letter informed Brown that he was being expelled.
54. Until receipt of the Resolution Letter, Brown had received no written notice that he was being charged with probation violation.
55. Until receipt of the Resolution Letter, Brown had received no written notice that expulsion was a likely sanction.

56. Pursuant to NSU's posted disciplinary procedures, violations punishable by "expulsion, suspension and/or removal from housing" must be referred by the student conduct officer "to the Student Conduct Board for formal resolution through an administrative hearing."
57. Pursuant to NSU's posted disciplinary procedures, the formal resolution process contains more procedural safeguards to an accused student than does the informal resolution process.
58. Brown did not receive the additional procedural safeguards that should have been afforded to him as a student accused of conduct punishable by "expulsion, suspension and/or removal from housing."
59. It is unlikely that an objectively reasonable fact finder, aware of the context of the texting conversation, would have interpreted the text message in question as a true threat.
60. Expulsion, and all of its attendant consequences, is a disproportionate punishment to the conduct alleged.
61. Throughout the course of the disciplinary proceedings against Brown, Defendant Porter acted as investigator, fact finder and decision maker.
62. Among other reasons, Brown was denied a fair and impartial hearing because Defendant Porter assumed the emphatically separate roles of investigator, fact finder and decision maker during the proceedings.
63. Less than twenty-four hours elapsed between the transmission of notice to Brown and the decision to expel Brown.
64. Plaintiff Brown filed an Appeal Form on June 22, 2017.

65. The grounds for Plaintiff Brown's appeal included: a determination of "whether the conduct conference/hearing was conducted fairly and in conformity with prescribed procedures"; consideration of "new evidence unavailable during the original conduct conference/hearing"; and, consideration of "whether the sanctions imposed were disproportionate to the violation."

66. Plaintiff Brown's appeal letter indicated that a witness had been present during the texting conversation.

67. NSU sent an Appeal Response on June 28, 2017 (attached hereto as "Complaint Exhibit 4") indicating that Plaintiff Brown's appeal was denied.

68. The Appeal Response, dated June 28, 2017, indicated that denial of Brown's appeal was final.

69. NSU's Appeal Response Rationale (attached hereto as "Complaint Exhibit 5") indicates:

- a. that the Appeal Conference was held on June 15, 2017;
- b. that Defendant Johnson was the Appeal Officer at the Appeal Conference; and
- c. that Plaintiff Brown attended the Appeal Conference via email.

70. NSU's Appeal Response Rationale did not address the issue of "whether the conduct conference/hearing was conducted fairly and in conformity with prescribed procedures."

71. NSU's Appeal Response Rationale did not address "new evidence unavailable during the original conduct conference/hearing."

72. NSU's Appeal Response Rationale arguably concluded that expulsion was not disproportionate to the conduct at issue, but only after including references to prior

conduct that was not at issue in the Notice sent by Defendant Porter on June 15, 2017, as well as references to the language and content of Plaintiff Brown's appeal letter.

73. Pursuant to an attorney request for documents, NSU produced a Complainant's statement, signed and dated June 14, 2018¹, more than a year after the incident and almost a year to the day after the conduct conference at which the statement should have been presented.

74. The aforesaid Complainant's statement does not identify Joseph Brown.

75. Pursuant to an attorney request for documents, NSU produced a document titled Investigative Rationale, purportedly from Defendant Marcus Porter's office, which is unsigned and undated.

76. That the aforesaid Investigative Rationale asserts:

- a. that Defendant Porter interviewed Plaintiff Brown at the NSU Campus Police Station on June 15, 2017;
- b. that Plaintiff Brown was told that the text message violated the Student Code of Conduct; and
- c. that Plaintiff Brown was told that the text message violated Brown's disciplinary probation.

77. Brown was humiliated by the expulsion and suffered severe emotional stress as a result.

¹ The statement is handwritten, and dated at the top in handwriting by the Complainant as June 14, 2018. At the bottom, next to the Complainant's signature the Complainant dated his signature as June 14, 2018. Underneath the Complainant's signature, a Conduct Officer believed to be Defendant Marcus Porter signed his name and dated his signature as June 14, 2018.

78. NSU's expulsion of Brown has permanently tarnished his academic record, potentially closing the door on numerous career and educational opportunities, and reducing his future earnings potential.

79. NSU's expulsion of Brown has foreclosed the possibility of an enlightening and career enhancing study abroad program, to which Brown had already applied and been accepted prior to the conduct conference of June 15, 2017.

80. The Defendants' violations of and sheer indifference to Brown's Constitutional rights has shattered Brown's confidence in American ideals.

81. On or about February 19, 2018, Plaintiff Brown travelled from New Jersey to NSU to obtain his transcript.

82. This trip followed multiple failed attempts to obtain his transcript through requests.

83. In February of 2018, Plaintiff Brown was attempting to complete his degree in New Jersey, and thereby mitigate the damage caused to his reputation and future earnings by the Defendants.

84. During the aforesaid trip to NSU, Plaintiff Brown went first to the building occupied by NSU Campus Police to announce his presence and purpose of visit.

85. Brown then went to the registrar's office to obtain his transcript.

86. While in the administrative offices to request his transcript, multiple NSU Campus Police Officers appeared and publicly arrested Brown in full view of several of his friends and former colleagues.

87. NSU Campus Police put Brown in handcuffs and led him out of the registrar's office in full view of several of his friends and former colleagues.

88. Brown was humiliated, denigrated and defamed by this incident and suffered severe emotional stress as a result.
89. NSU Campus Police then transported Plaintiff Brown to the Campus Police Station where they informed him that he was being charged with trespassing and would be turned over to the Norfolk Police Department.
90. Upon information and belief, NSU's expulsion of Brown prompted the actions of NSU Campus Police on February 19, 2018.
91. Upon information and belief, an unidentified NSU official requested that NSU Campus Police arrest Brown on February 19, 2018.
92. NSU Campus Police released Plaintiff Brown after being made aware by both Brown and Brown's attorney that Brown had reported in at the NSU Campus Police building and received permission to visit the registrar's office to obtain his transcript.
93. Shaken and embarrassed, Brown left the NSU campus on February 19, 2018 still without his transcript.
94. The incident rendered worthless an expensive and time consuming trip from New Jersey to Virginia for the purpose of obtaining his transcript.
95. Defendants' expulsion of Brown has caused and continues to cause Brown significant reputational injury, significant professional injury, losses in earnings, substantial losses to future earnings and benefits, significant pain and suffering, medical expenses, embarrassment, anguish and severe emotional distress.
96. Upon information and belief, monies remaining in Brown's student account were not returned before NSU shut down his student account.

COUNT I: DENIAL OF DUE PROCESS IN VIOLATION OF
THE UNITED STATES CONSTITUTION AND THE CONSTITUTION OF THE
COMMONWEALTH OF VIRGINIA.

97. The allegations contained in paragraphs 1 through 96 and all subsequent allegations are adopted and incorporated by reference as if set forth fully in this paragraph.

98. The right to due process is enshrined in the Fourteenth Amendment to the United States Constitution.

99. The right to due process is enshrined in Article 1 Section 11 of the Constitution of the Commonwealth of Virginia.

100. Officials at government funded universities, like Defendants Porter and Johnson, owe a duty to provide students with sufficient due process in disciplinary proceedings.

101. Officials at government funded universities, like Defendants Porter and Johnson, owe a duty to students to follow the university's disciplinary procedures.

102. State sponsored universities, like NSU, owe a duty to students to establish rules and regulations governing disciplinary proceedings in such a way that Constitutional Rights are preserved.

103. NSU's rules and regulations governing disciplinary proceedings are found within its Student Policy Handbook.

104. The Commonwealth owes a duty to students to oversee state sponsored universities, like NSU, and ensure that disciplinary procedures provide sufficient due process.

105. The manner in which Defendant Porter investigated and expelled Brown denied Brown his clearly established due process rights.
106. Furthermore the manner in which Defendant Porter investigated and expelled Brown failed to adhere to NSU's published procedures for disciplinary proceedings.
107. The flippant manner in which Defendant Johnson processed Brown's appeal denied him his clearly established due process rights.
108. Furthermore, Defendant Johnson failed to follow NSU's published procedures governing appeal resolution.
109. Defendants Porter and Johnson are both government officials.
110. At all times relevant to this complaint, Defendants Porter and Johnson were acting under the color of law.
111. Pursuant to 42 U.S.C. § 1983, Defendants Porter and Johnson are liable to Brown.
112. NSU's procedures, even if followed, would have fallen short of the clearly established standards for minimum due process in student discipline hearings.
113. The Commonwealth is likewise responsible for NSU's disciplinary procedures falling below the minimum due process required by the United States Constitution.
114. For these reasons, NSU and the Commonwealth are liable to Brown.
115. Brown has suffered damages as a direct and proximate result of these denials of his Constitutional right to due process.

**COUNT II: DENIAL OF FREEDOM OF SPEECH IN VIOLATION OF
THE UNITED STATES CONSTITUTION AND THE CONSTITUTION OF THE
COMMONWEALTH OF VIRGINIA.**

116. The allegations contained in paragraphs 1 through 114 and all subsequent allegations are adopted and incorporated by reference as if set forth fully in this paragraph.

117. The right to free speech is enshrined in the First Amendment to the United States Constitution.

118. The right to free speech is enshrined in Article 1 Section 12 of the Constitution of the Commonwealth of Virginia.

119. As described above, Defendants Porter and Johnson are government officials.

120. Upon information and belief, Defendant Porter's decision to expel Brown was based in part on Brown's Constitutionally protected speech.

121. That Defendant Johnson's decision to deny Brown's appeal was based in part on Brown's Constitutionally protected speech.

122. Pursuant to 42 U.S.C. § 1983, Defendants Porter and Johnson are liable to Brown for these abridgments of his Constitutional right to free speech.

123. Brown has suffered damages as a direct and proximate result of these denials of his Constitutional right to free speech.

COUNT III: GENDER DISCRIMINATION IN VIOLATION OF TITLE IX.

124. The allegations contained in paragraphs 1 through 123 and all subsequent allegations are adopted and incorporated by reference as if set forth fully in this paragraph.

125. Pursuant to Title IX of the Education Act of 1972, schools receiving federal financial assistance like NSU are prohibited from: excluding from participation in, denying benefits of, or otherwise subjecting students like Brown to “discrimination under any education program or activity” on the basis of sex. 20 U.S.C. § 1681 *et seq.*
126. The Commonwealth has a duty to ensure that state supported schools, like NSU, comply with their duties under Title IX of the Education Act of 1972.
127. As described herein, Brown, a male, was investigated and expelled from NSU following a student complaint that Brown violated the student conduct policy with threatening behavior.
128. Over a year prior to Brown’s expulsion, Brown complained to NSU officials that a female student had violated the student conduct policy with threatening behavior.
129. Upon information and belief, no investigation or disciplinary action was ever taken against the aforementioned female student.
130. Upon information and belief, NSU rarely if ever investigates or disciplines females for the conduct Brown was accused of committing.
131. This disparate treatment of genders constitutes gender discrimination in violation of Title IX of the Education Act of 1972.
132. Brown has suffered damages and continues to suffer damage as a direct and proximate result of this disparate treatment.
133. Defendant NSU is liable to Brown under Title IX of the Education Act of 1972 for these damages.
134. The Commonwealth is likewise liable to Brown under Title IX of the Education Act of 1972 for these damages.

**COUNT IV: DISCRIMINATION BASED JOINTLY ON RELIGION AND
GENDER IN VIOLATION OF TITLE IX.**

135. The allegations contained in paragraphs 1 through 134 and all subsequent allegations are adopted and incorporated by reference as if set forth fully in this paragraph.

136. Title IX forbids religiously based discrimination by institutions such as NSU when it is partially based on gender, ethnicity or national origin.

137. Upon information and belief, Defendants Porter and Johnson based the decision to expel Brown in part or in whole upon his religious status as a Muslim.

138. Upon information and belief, Defendants would have been less likely to expel Brown had Brown been of a different religious conviction.

139. Upon information and belief, Defendants' interest in Brown's status as a Muslim during investigation and expulsion proceedings stems from a negative stereotype of Muslim males as being prone to violence.

140. Therefore, upon information and belief, Defendants would have been less likely to expel Brown had Brown been a Muslim female.

141. The aforesaid conduct constitutes gender discrimination by officials at NSU in violation of Title IX of the Education Act of 1972, for which NSU and the Commonwealth are liable

142. Brown has suffered damages and continues to suffer damage as a direct and proximate result of this violation of Title IX of the Education Act of 1972.

COUNT V: BREACH OF CONTRACT

143. The allegations contained in paragraphs 1 through 142 and all subsequent allegations are adopted and incorporated by reference as if set forth fully in this paragraph.

144. A contract, either express or implied, existed between Plaintiff Brown and NSU during the period of Brown's enrollment at NSU.

145. Brown fulfilled his contractual obligations to NSU by paying his tuition, maintaining his grades, and abiding by NSU's policies to the best of his ability and understanding.

146. Upon information and belief, Defendant NSU drafted its disciplinary procedures.

147. The aforesaid disciplinary procedures constitute contractual terms between NSU and students like Brown.

148. Certain procedures, safeguards, and rights contained within NSU's disciplinary procedures constitute contractual rights of NSU's students.

149. NSU breached one or more of Brown's contractual rights during its investigation and expulsion of him in June of 2017.

150. Therefore, NSU is in breach of its contract with Brown.

151. Brown has sustained damages as a result of NSU's aforesaid breach of contract.

152. In addition to the previously stated damages, Brown seeks restitution on the basis of breach of contract.

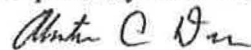
PRAYER FOR RELIEF

WHEREFORE, Plaintiff, by counsel, respectfully requests that this Court enter judgment in his favor and against Defendants, jointly and severally, in an amount of up to TEN MILLION DOLLARS (\$10,000,000.00) as compensatory damages and punitive damages, together with attorney's fees including any expert fees pursuant to 42 U.S.C. Sec. 1988, costs of litigation, and interest from the date of expulsion, and any further relief that this Court may deem appropriate.

A JURY TRIAL IS DEMANDED

Dated: 14 June 2019

Respectfully Submitted



Alastair C. Deans (Va. Bar No. 83167)
P.O. Box 13915
Chesapeake, VA 23325
Telephone: (757) 412-9026
Email: alastairdeans@gmail.com

Attorney for Plaintiff

June 14, 2017

Joseph Brown (433929)

15 Chester Ave Apt 2
Irvington NJ 07111

Dear Joseph,

On June 14, 2017, it was reported that you violated the *Code of Student Conduct*, specifically, *No. 20. Threatening behavior whether written or verbal, towards any member of the University community that causes an expectation of injury or implies a threat to cause fear.*

You have the right to have your case heard by a conduct officer through a conduct conference or the Student Conduct Board through a formal hearing. Please contact Marcus Porter at 823-2336 to further discuss. It is the responsibility of the respondent to notify witnesses of the date, time, and location of any conduct proceedings.

In the interests of the health, safety, and welfare of the University community, you have been placed on interim hall removal (effective immediately) pending the outcome of your conduct matter. If you are in the residence halls without permission or a police escort, you will be subject to arrest for trespassing. **You must move out of housing by 7:00pm today, June 14, 2017.**

We recognize that the receipt of this letter may cause some students to experience anxiety. Please examine our website which will provide additional information about the student conduct process to include student rights, possible outcomes, and sanctions. This information can be found at www.nsu.edu/student-affairs/student-judicial/.

Sincerely,

Marcus Porter, Student Conduct Officer

Cc: Dr. Michael Shackelford, Vice President of Enrollment Management and Student Affairs
Tracci Johnson, Dean of Students
Dr. Faith Fitzgerald, Executive Director, Housing & Residence Life
Anthony Tillman, Resident Hall Director, Spartan Suites
Mecca Marsh, Director of Housing Operations, Spartan Suites
University Police, Investigations

COMPLAINT EXHIBIT 1



NORFOLK STATE UNIVERSITY

Dean of Students Office

700 Park Avenue, Suite 307, Norfolk, Virginia 23504

Tel: (757) 823-2152 Fax: (757) 823-2297

Web: www.nsu.edu

June 15, 2017

Joseph Brown,

I am writing to schedule a meeting to discuss the investigation of a report submitted to the Dean of Students Office.

On June 14, 2017, it was reported that you violated the following section(s) of the Code of Student Conduct:

- No. 20- *Threatening Behavior*

I have scheduled a student conduct conference for June 15, 2017, at 10:00 am at the NSU Campus Police Station. If the scheduled time is in direct conflict with a class, please call me at 757-823-2152 to reschedule. At this meeting, you may ask any questions regarding the student conduct process. If you fail to attend, a decision may be reached in your absence. If you are found responsible for the misconduct, a sanction will be issued at that time.

We recognize that the receipt of this letter may cause some students to experience anxiety. Please examine our website which will provide additional information about the student conduct process to include student rights, possible outcomes, and sanctions. This information can be found at www.nsu.edu/student-affairs/student-judicial/.

Sincerely,

A handwritten signature in black ink, appearing to read 'Marcus Porter', is written over a faint, circular stamp or watermark.

Marcus Porter
Student Conduct Officer

COMPLAINT EXHIBIT 2

Norfolk State University—An Equal Opportunity Employer

RESOLUTION

June 15, 2017

Joseph Brown
433929

15 Chester Avenue Apt 2
Irvington, NJ 07111

Dear Joseph,

I have concluded your case of a reported violation of the *Code of Student Conduct* specifically, *No.20-Threatening Behavior (Probation Violation)*. I have found you responsible. As such, the following sanctions are imposed:

Expulsion: *Effective immediately, you are permanently separated from Norfolk State University.*

**You must notify Norfolk State University Campus Police at 757-823-8102 prior to any campus visits.*

You have five days from the date of this letter to appeal this decision. An appeal form has been attached for your convenience. Please return your appeal to deanofstudents@nsu.edu.

Sincerely,


Marcus Porter
Student Conduct Officer

Cc. Dr. Michael Shackelford, Vice President of Student Affairs and Enrollment Management
Tracci Johnson, Dean of Students
Dr. Faith Fitzgerald, Executive Director, Housing & Residence Life
Anthony Tillman, Resident Hall Director, Housing & Residence Life
Mecca Marsh, Director of Housing Operations, Spartan Suites
Chief Troy Covington, University Police
Cassandra Gwathney, Acting Director of Financial Aid
Mike Carpenter, Registrar
Sandra Riggs, Bursar
Cary Lazarus, SpartanCard Manager
Dr. Vanessa Jenkins, Counseling Center



Dean of Students Office
700 Park Avenue, Suite 318, Norfolk, Virginia 23504
Tel: (757) 823-2152 Fax: (757) 823-2297
Web: www.nsu.edu

June 28, 2017

Joseph Brown (0400667)

Subject: Appeal from Disciplinary Sanction

This letter is in response to your appeal from a sanction imposed at a Student Conduct Conference on June 15, 2017. After carefully considering your request, your appeal is denied. This appeal decision is final.

Your sanctions remain as imposed:

-Expulsion: Effective immediately, you are permanently separated from Norfolk State University.

**You must notify Norfolk State University Campus Police at 757-823-8102 prior to any campus visits.*

I wish you the best in your future endeavors.

Sincerely,

Tracci K. Johnson
Dean of Students

Cc: Dr. Michael Shackelford, Vice President of Student Affairs and Enrollment Management
Marcus Porter, Student Conduct Officer
Dr. Faith Fitzgerald, Executive Director, Housing & Residence Life
Anthony Tillman, Resident Hall Director, Housing & Residence Life
Mecca Marsh, Director of Housing Operations, Spartan Suites
University Police, Investigation
Cassandra Gwathney, Acting Director of Financial Aid
Mike Carpenter, Registrar
Sandra Riggs, Bursar
Cary Lazarus, Spartan Card Manager
Dr. Vanessa Jenkins, Counseling

**DEAN OF STUDENTS
APPEAL RESPONSE RATIONALE**

1. Appeal Conference Date: June 15, 2017
2. Meeting Attendee's: Joseph Brown (via email)
3. Appeal Officer: Tracci K. Johnson

SUMMARY OF FACTS

Reason for appeal (what did they check on the form):

- To determine whether the conduct conference/hearing was conducted fairly and in conformity with prescribed procedures.
- To consider new evidence unavailable during the original conduct conference/hearing.
- To consider whether the sanctions imposed were disproportionate to the violation.

Appeal Decision

- Approved
- Approved with revision
- Denied

Rational for appeal revisions:

The student was a threat to the Norfolk State University community. He threatened to break his roommate's jaw. In his previous conduct case he punched someone in the face. Based on the language and content of his appeal letter, I felt that his behavior was volatile and I did not want to compromise the safety of the student body.

Student Conduct

[Student Conduct](#) | [About](#) | [Student Conduct Process](#) | [Policies](#) | [Discipline](#) | [Reporting](#) | [Fines](#) | [Contact Us](#)

► Violations

1. **Abuse of student conduct system** to include but not limited to providing false information during the student conduct process and/or not completing sanctions within allocated time period.
2. **Abuse of safety equipment** to include but not limited to tampering with or engaging fire alarms, extinguishers or smoke detectors.
3. **Acts of dishonesty** to include but not limited to furnishing false information to University officials or forgery of any University document. For academic dishonesty, refer to Academic Dishonesty Procedures.
4. **Alcohol the use, possession or distribution** of alcoholic beverages or paraphernalia.
5. **Computer Misuse**- Refer to Acceptable Use of Technological Resource Policy.
6. **Conduct that threatens or endangers the health or safety of any person including one's self.**

COMPLAINT EX. 6

- 7. **Gambling** for money, in any form on University property.
- 8. **Dating Violence**
- 9. **Domestic Violence**
- 10. **Drugs the use, possession or distribution** of illegal drugs or misuse of prescription drugs and other controlled substances or drug paraphernalia.
- 11. **Disruptive behavior** that interferes with University sponsored events/activities; teaching, learning, administration, research; and/or University operations.
- 12. **Failure to comply** with directions of University employees or law enforcement officers.
- 13. **Harassment** to include but not limited to bullying/cyber-bullying, intimidation and/or hate crimes.
- 14. **Hazing**- Hazing includes, but is not limited to any situation which: creates a risk of physical injury; causes embarrassment and/or discomfort; involves harassment and/or humiliation; causes psychological or emotional distress; involves degradation and/or ridicule of an individual or group; involves or includes the willful destruction or removal of public or private property; involves the expectation that new/perspective members will participate in an activity, but full members will not.
- 15. **Obscene behavior** to include but not limited to public sexual acts or indecent exposure.
- 16. **Retaliation** against any person or group who makes a complaint, cooperates with an investigation, or participates in the resolution process.
- 17. **Sexual misconduct** - Refer to BOV Policy # 5 (2014) Sexual Misconduct Policy ; Refer to Admin Policy #
- 18. **Stalking** is when a person, on more than one occasion, engages in any behavior or conduct directed at another person with the intent to place that other person in reasonable fear of harm, death, criminal sexual assault, or bodily injury to that person or to that person's family or household member. **Cyber-stalking** is form of stalking or harassment that involves the intentional act of using the Internet to cause someone emotional distress
- 19. **Theft** includes the use, removal or possession of University/individual property without entitlement or authorization.
- 20. **Threatening behavior** whether written or verbal, towards any member of the University community that causes an expectation of injury or implies a threat to cause fear.
- 21. **Unauthorized access or entry** to any University building.
- 22. **Unauthorized recording and/or distribution** to include but not limited to pictures, audio or videos of any person without their explicit permission or consent.
- 23. **Weapons**-Refer to Violence Prevention Policy.
- 24. **Vandalism** includes but is not limited to destroying or damaging University property or property of another person.
- 25. **Violence to persons** includes but is not limited to intentionally or recklessly causing harm to any person.
- 26. **Violating federal, state or local laws** that legitimately affect the University's interest.
- 27. **Violating any published Board of Visitors or University policies or rules.**

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► Procedures

Procedures

The below procedures provide a general overview of student conduct proceedings; however, these procedures are flexible based on the severity of the situation.

Any member of the University community may file a report against a student or student organization for violations of the *Code of Student Conduct*. All allegations should be submitted through an online incident report form or student summons (NSU Police Department). The student

conduct officer may act on notice of a potential violation whether a formal report is made.

Students should be aware the criminal (Police) and student conduct (University) processes are separate but may occur concurrently.

Informal Resolution

Step 1. Investigation

Upon receipt of the incident report, a student conduct officer will begin an investigation that will include interviews of the respondent, the complainant and/or others as necessary. Additionally, all documentary and physical evidence will be obtained and reviewed. Upon completion of the investigation, the following may occur:

- The student conduct officer determines there is insufficient information and the case is closed.
- The student conduct officer determines there is sufficient information and proceeds with scheduling a conduct conference (step 2).

Step 2. Notification

The respondent will receive a formal complaint of a violation through written notice. The notice will be delivered by one or more of the following methods: emailed to the student's University-issued account and/or mailed to the permanent address according to the University's record. The letter of notice will include:

- The reported violation(s) citing the *Code of Student Conduct*.
- The date, time, and location of the conference.
- The rights of the respondent.

Step 3. Conference

During the conference, the student conduct officer will present the findings to the respondent. As a result, the following may occur:

- The respondent is found not responsible and the case is closed.
- The respondent accepts responsibility and/or the findings for the violation and the student conduct officer imposes sanctions.
- The respondent denies responsibility and/or rejects the findings for the violation but has the right to appeal the decision and sanctions imposed by the student conduct officer.
- The respondent denies responsibility for the violation and/or rejects the findings and the misconduct could result in expulsion, suspension and/or removal from housing. The student conduct officer will then refer the case to the Student Conduct Board for formal resolution through an administrative hearing.

A respondent placed on interim suspension may request to have their case heard by the conduct officer through a conduct conference or referred to the Student Conduct Board.

The student conduct officer, at his or her discretion, may refer a case to the Student Conduct Board for resolution.

If the respondent fails to attend the conduct conference, the student conduct officer may render a decision based on the evidence available. The respondent will then forfeit their right to appeal the decision and/or sanction(s) imposed by the student conduct officer.

Formal Resolution

The University has established appropriate student conduct panels to provide hearings concerning reported violations of the *Code of Student Conduct* that could result in expulsion, suspension and/or removal from housing.

1. Notification

A notice will be made in writing and delivered by one or more of the following methods: emailed to the student's University-issued email account; mailed to the permanent address according to the University's record. The letter of notice will include:

- The reported violation(s) citing the *Code of Student Conduct*.
- The date, time, and location of the hearing.
- The rights of the respondent.

2. Hearing

The student conduct officer will schedule a hearing with the student conduct panel no more than ten (10) business dates after the conduct conference. This may be extended when reasonably necessary. If the respondent wishes to request a delay, he/she must notify the student conduct staff within two (2) business days of the scheduled hearing.

The student conduct panel for each hearing will be composed of five (5) members from the University to include employees and students. Each student conduct panel must include at least three (3) students. All members of the student conduct panel will be selected from the student conduct board and participate in mandatory training covering all aspects of the conduct process. Members of the University must apply to become a member of the student conduct board. Students serving must be in good academic standing with no serious conduct violations at the University. All appointments are subject to approval by the dean of students or designee and serve one-year renewable terms.

The Chief Justice or designee will serve as the chair for each hearing panel. The chair of the panel will conduct hearings according to the following guidelines:

- Hearings are closed to the public.
- Hearings are tape-recorded; however, deliberations of the hearing panel will remain private.
- Incidents involving more than one respondent, the panel will jointly conduct a hearing. Separate findings will be made for each respondent. At the discretion of the student conduct officer, individual hearings may be permitted.
- The complainant, respondent and advisors will be allowed to attend the entire portion of the hearing except for the deliberation and findings. Only in cases involving violence or sexual misconduct, as it relates to Title IX, will the complainant be advised of the outcome.
All parties will have the privilege of questioning witnesses. Witnesses will only attend the portion of the hearing in which they are presenting information.
- Advisors are not permitted to speak or participate directly in any student conduct hearing unless permitted by the chair of the panel.
- The panel may only rely on oral and written statements of witnesses and written reports/documents.
- After the hearing, the panel will determine, by majority vote, using a preponderance of the evidence (whether it is more likely than not) the respondent violated the *Code of Student Conduct* and recommend sanctions.

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- The chair of the panel will provide a written summary of testimony, findings of facts (evidence), and rationale for the decision. This report will be sent to the student conduct officer within two (2) business days of the hearing. A written decision will be sent to the respondent within two (2) business days after receiving the hearing panel's report.

If the respondent fails to attend the hearing, the Student Conduct Board may render a decision based on the evidence available. The respondent will then forfeit their right to appeal the decision and/or sanction(s) imposed by the Board.

There are certain times of the year and possible extenuating circumstances that may remove the option of the student conduct panel. During this time, a student conduct officer will adjudicate cases. The option of a student conduct panel may be removed on the following occasions:

1. When the student conduct board is participating in training.
2. When the University is not in session.
3. During the final two weeks of the fall or spring semester.
4. During summer sessions.

► Appeals

Appeal forms may be submitted online by visiting <https://www.nsu.edu/Assets/websites/student-affairs/sa-documents/Student-Conduct-Appeal-Form.pdf>. The basis for the appeal must be one (or more) of the reasons shown above. The notice of appeal must contain, at a minimum, a statement of grounds for appeal and a summary statement of the facts supporting such grounds.

Upon receipt of the appeal, the dean of students* will review and provide a written decision within five (5) business days. The respondent may request a meeting with the dean of students to further discuss the appeal; however, the decision is made based on the written information submitted and is final.

*The vice president for student affairs has designated the dean of students as the appellate officer for student conduct matters.

► Academic Matters

A formal grievance may be filed in the Dean of Students Office. Every attempt is made to ensure that the complainant has sought resolution of the grievance at the appropriate levels.

Grade Appeals

The instructor has the responsibility for evaluating coursework and determining grades; however, the student has the right to appeal a grade believed to be in error. The appeal process may involve the following steps and may be resolved at any level:

- The student confers with the instructor involved.
- The student and instructor (preferably together) confer with the chairperson of the department offering the course.
- The student and instructor (preferably together) confer with the dean of the school in which the department is housed.
- When the above steps do not resolve the issue, the student may initiate a formal written appeal through the Faculty-Student Grievance Committee to the Provost and Dean of Students Office for its review and recommendation.

Appeals should not be taken lightly by either the student or the instructor. The student is responsible for verifying the accuracy of his or her academic records. Grade appeals should be made immediately after the grade in question is received. No appeals will be considered after one year has elapsed or after graduation, whichever is earlier.

Academic Dishonesty

Cases involving academic dishonesty are immediately sent to the Faculty-Student Grievance Committee if the student denies responsibility. If the student accepts responsibility, the instructor may issue an appropriate grade sanction and notify the Dean of Students Office to place the student on probation.

If it is found that sufficient documentation is present to warrant a hearing, the Dean of Students Office will request to convene a hearing with the Faculty-Student Grievance Committee. The Faculty-Student Grievance Committee is comprised of faculty representatives from the schools and colleges.

The panel for each academic dishonesty hearing will be composed of three (3) members to include two (2) faculty and one (1) student. The chair of the panel (non-voting) will conduct the hearing according to the guidelines established for student conduct hearings. The decision of the Faculty-Student Grievance committee is final and cannot be appealed.

► During the Conduct Process

Responsibilities

All students are responsible for being knowledgeable about the information contained in the Code of Student Conduct policy. An electronic version of this policy can be found online at <https://www.nsu.edu/president/policies/index>. Hard copies are available upon request the office for student conduct located in Suite 316, Student Services Center.

University email serves as the official communication with students. It is the responsibility of all students to maintain and monitor their University email regularly to stay abreast of student conduct proceedings.

Rights of the Accused (Respondent)

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- The right to confidentiality of educational records pursuant to Family Educational Rights and Privacy Act (FERPA) of 1974.
- The right to be informed of the charges against him/her in writing.
- The right to have a support person or advisor present during student conduct proceedings. This person may not actively participate in the hearing but may give advice to the complainant.
- The right to request, in advance, a copy of the incident report.
- The right to call a reasonable number of witnesses. Names of the witnesses must be provided to the Dean of Students Office at least one day prior to the hearing.
- The right not to appear or to remain silent at the hearing. In the event the respondent does not appear at the hearing, after proper notification, the evidence in support of the violation will be presented, considered and adjudicated.
- The right to a fair and impartial hearing.

Rights of Victims (Complainant)

- The right to have a support person or advisor present during student conduct proceedings. This person may not actively participate in the hearing but may give advice to the complainant.
- The right to be informed of the outcome in cases involving violence and sexual misconduct as it relates to Title IX.
- The right to a fair and impartial hearing.

Rights of Complainant and Respondent (Title IX/Sexual Misconduct)

- Respondents of sexual misconduct have the right to a student conduct hearing and the right to identify and produce witnesses who may have information relevant to the complaint.
- The parties involved may bring an advocate, advisor or support person to any meeting with the student conduct officer/panel.
- Parties involved may present their case before the hearing panel by submitting documents and other relevant evidence.
- It should be noted that while each party will have the opportunity to present his/her case, the student conduct officer has the responsibility to identify and obtain any additional evidence and/or witnesses relevant to the grievance.
- Attorneys will not be permitted to personally participate in University student conduct proceedings.
- Student conduct hearings do not replace or substitute criminal prosecutions and students who choose student conduct hearings are also encouraged to seek justice through the criminal justice system and/or civil courts as appropriate.

Refer to [BOV Policy # 05 \(2015\) Title IX: Sexual Violence, Discrimination, Harassment, and Retaliation](#)

► Sanctions

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Warning: An official written notice that the student has violated the Code of Student Conduct.

Disciplinary Probation: Disciplinary probation is for a specific length of time. Mandatory conditions may be imposed and may include, but not limited to the following: loss of good standing and/or denial of the privilege to hold a position of leadership or responsibility in any University student organization or activity. If the student is found in violation of the Code of Student Conduct while on disciplinary probation, the University may impose additional sanctions.

Educational Project: The requirement to attend, present or participate in a program related to the violation. It may also require writing reflective papers.

Community Service: The requirement to complete supervised service.

Counseling Referral: The requirement to visit the Counseling Center and complete a screening within five (5) business days of the respondent's conference/hearing. Upon completion of the screening, if any additional services are recommended they must be completed within the timeframe provided by the Counseling Center.

Fine: A sum imposed as a result of an offense; the sum must be reasonable and may be imposed depending on the severity of the violation.

Loss of Privilege: The denial of specified privileges for a designated period of time.

Restitution: The repayment for damage to University property or facilities; payment for damage to the property or person of a member of the University community, guests of the University, and/or other appropriate third parties; repayment of misappropriated or misused University funds. Restitution must be paid by cashier's check or money order. A disciplinary hold will be placed on the respondent's record until payment is made; however, if payment is not made by the end of the semester, the respondent's account will be charged.

University Housing Reassignment: The reassignment to another residential hall as determined by the Office of Housing & Residence Life.

University Housing Visitation Restriction: The loss of privilege to host any guests in the lobby of the student's residence hall and/or individual room.

University Housing Removal: The student's privilege to live or visit any residential hall is permanently revoked.

Suspension: Separation from the University for a specified amount of time. The student will be required to vacate the campus with 24 hours of notification of this action. During the suspension period, the student is not permitted on University property, events or activities.

Expulsion: The permanent separation of a student from the University.

Other Sanctions: Additional sanctions may be designed as deemed appropriate to the offense.

Interim Actions: The Dean of Students or designee may impose restrictions and/or separate a student from the University community pending the outcome of a hearing to protect the interests of the health, safety and welfare of the University community, or to ensure the student's safety and well-being. These actions can include but are not limited to no-contact orders, amending a student's schedule, hall relocation and/or interim suspension. Interim suspension is the temporary separation of a student from the University. If an interim suspension is imposed, the respondent may request a meeting with the dean of students or designee to discuss the interim suspension. The Dean of Students may uphold or lift the interim suspension after meeting with the respondent; however, this decision is final. If the interim suspension is upheld, the respondent will be required to vacate the campus immediately. At the discretion of the dean of students or designee, alternative coursework options may be provided.

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**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
(NORFOLK DIVISION)**

**JOSEPH COVELL BROWN,
Plaintiff,**

v.

Case No. 2:19-cv-000376

**MARCUS PORTER,
NORFOLK STATE UNIVERSITY,
THE BOARD OF VISITORS OF
NORFOLK STATES UNIVERSITY,
THE COMMONWEALTH OF VIRGINIA,
and
TRACCI K. JOHNSON,
Defendants.**

FIRST AMENDED COMPLAINT

Plaintiff, Joseph Covell Brown, in support of his Complaint against Marcus Porter, Norfolk State University, the Board of Visitors of Norfolk State University, the Commonwealth of Virginia, and Tracci K. Johnson states the following:

NATURE OF THE ACTION

1. Plaintiff seeks damages for the violation of his freedom of speech rights by government officials acting under color of law in clear violation of established standards.
2. Plaintiff seeks damages for the gender discrimination against him by university officials in clear violation of established standards.
3. Plaintiff seeks damages for breach of contract.

THE PARTIES

4. Plaintiff Joseph Covell Brown (hereinafter "Brown"), is a citizen and resident of New Jersey.
5. Brown attended NSU as a student from August 2014 through June 2017.

6. Brown is a member of the Muslim faith.
7. Marcus Porter (hereinafter “Porter”) was an official at Norfolk State University at all times relevant to this complaint.
8. Upon information and belief, Defendant Porter was the Assistant Director of Student Conduct at Norfolk State University at all times relevant to this complaint.
9. Norfolk State University (hereinafter “NSU”), is a public institution pursuant to Va. Code Sec. § 23.1-1900 *et seq.*
10. Defendant NSU receives federal funding.
11. Upon information and belief, Defendant NSU’s Federal School Code (also known as its Title IV Institution Code) is 003765.
12. The Board of Visitors of Norfolk State University composes a corporation organized and existing under the laws of the Commonwealth of Virginia, Va. Code § 23.1-1900 *et seq.*, under the name and style of “The Visitors of Norfolk State University,” formed for the purpose of establishing and maintaining the provisions and duties of NSU’s teachers, staff and agents; and at all times relevant to this complaint, maintaining, operating and directing the affairs of NSU (as used herein, the Board of Visitors of Norfolk State University and Norfolk State University are referred to collectively as “NSU”).
13. Tracci K. Johnson (hereinafter “Johnson”) was an official at NSU at all times relevant to this complaint.
14. Upon information and belief, Defendant Johnson was the Dean of Students at all times relevant to this complaint.

15. This Court has jurisdiction over these claims because Defendants previously invoked Federal Subject Matter Jurisdiction and supplemental jurisdiction to remove this cause of action from a Virginia Circuit Court for the City of Norfolk to this court.

BACKGROUND

16. In order to pay his tuition at NSU, Plaintiff Brown took, and remains responsible for the repayment of, student loans with interest.

17. In 2015, Plaintiff Brown was placed on disciplinary probation for the 2016 to 2017 academic year.

18. The aforesaid disciplinary probation ended in May of 2017.

19. In June of 2017, Plaintiff Brown was completing the final paperwork for a career enhancing study abroad program, to which he had been accepted and intended to undertake during his senior year at NSU.

20. On or about June 14, 2017, Plaintiff Brown was suffering from sciatica in his left hip and could barely walk.

21. NSU routinely publishes its disciplinary procedures online. Those procedures in place during June of 2017 were printed on July 20, 2017 by Plaintiff's counsel and are attached hereto as "Amended Complaint Exhibit 6".

22. NSU routinely publishes its student handbook online.

23. Upon information and belief student policies, documents, agreements, accountings and other relevant evidence is accessible through NSU's student portal.

24. Plaintiff Brown's access to the student portal was terminated upon expulsion.

25. Plaintiff Brown's access to emails via his student email account was terminated upon expulsion.

26. NSU's handbook for the 2016-2017 academic year is no longer available online.

27. Plaintiff Brown downloaded a copy of NSU's handbook for the 2016-2017 academic year on July 20, 2017 and attaches it hereto as "Amended Complaint Exhibit 7."

28. NSU's handbook for the 2017-2018 academic year is no longer available online.

29. NSU's handbook for the 2018-2019 academic years is no longer available online.

30. NSU's handbook for the 2019-2020 academic year is available online and is attached hereto as "Amended Complaint Exhibit 8" for purposes of comparison to the 2016-2017 Student Handbook with respect to those portions relevant to this action.

31. Following expulsion, Plaintiff Brown received from Defendants a Statement of Account dated September 8, 2017, evidencing his up to date payments of tuition at all times relevant to this complaint.

GENERAL FACTS

32. On or about June 11, 2017, Plaintiff Brown and his roommate Davonte' Smith (hereinafter "Smith") were texting each other.

33. During the aforesaid texting, Brown and Smith were engaged in a conversation about food and dirty dishes in their room.

34. During the aforesaid texting conversation, Brown and Smith were either physically present within the same room or in adjoining rooms.

35. Evidence available to NSU officials indicated that Smith considered the texting conversation to be playful in nature.

36. During this texting conversation, Plaintiff Brown allegedly texted the phrase "Text me again and im breaking your jaw."

37. Upon receipt of the aforementioned text, Smith texted Brown again.
38. Brown did not break Smith's jaw.
39. Three days later, on June 14, 2017, Defendant Porter transmitted a notice to Brown of an alleged violation of the NSU's Code of Student Conduct (a copy of said notice is attached hereto as "Amended Complaint Exhibit 1").
40. Defendant Porter transmitted the aforesaid Notice to Plaintiff Brown via email, at about 4:58 p.m. on June 14, 2017.
41. The aforesaid Notice required Brown to vacate his residence hall no later than 7:00 p.m. on June 14, 2017.
42. Pursuant to the aforesaid notice, Brown was given approximately one hundred and twenty-two minutes to receive the email, read it, pack all of his possessions, find alternative housing, arrange transportation and vacate his dormitory room.
43. At the time the aforesaid notice was transmitted, Brown was working in an administrative office at NSU, as a work-study student employed by NSU.
44. When Brown finished work on June 14, 2017, he received the aforesaid notice and barely managed to rush to his dormitory room and successfully vacate it within the cursory deadline.
45. Though Brown vacated his dormitory room prior to the deadline, he had to abandon many of his possessions, and was unable to arrange transportation or alternate housing for the evening.
46. With nowhere else to go, Plaintiff Brown spent a restless night in the waiting room of the NSU Campus Police Station, tormented by pain from his sciatica after having to abandon his medications along with other possessions in his dormitory room.

47. On the morning of June 15, 2017, at approximately 8:57 a.m., Defendant Porter transmitted a Second Notice Letter “to schedule a meeting to discuss the investigation of a report...that [Brown] violated section(s) of the Code of Student Conduct.” (a copy of said notice letter is attached hereto as “Amended Complaint Exhibit 2”)

48. The aforesaid Second Notice Letter indicated that the “conduct conference” would be at the NSU Campus Police Station at 10:00 a.m. on June 15, 2017.

49. At the time the notice email was sent, Plaintiff Brown was still at the NSU Campus Police Station.

50. There is no indication that Brown saw or read the email with the attached Notice Letter during the sixty-three minute interval between transmission and the “conduct conference”.

51. Upon information and belief, Defendant Porter met Plaintiff Brown at the NSU Campus Police Station around 10:00 a.m. on June 15, 2017.

52. Upon information and belief, Defendant Porter and NSU Campus Police Officers questioned Plaintiff Brown at the NSU Campus Police Station around 10:00 a.m. on June 15, 2017.

53. Upon information and belief, during the aforesaid questioning, Defendant Porter asked Plaintiff Brown if he is Muslim, to which inquiry Brown affirmed that he is.

54. There is no indication that any witnesses were present for the “conduct conference”.

55. There is no indication that any counsel, support person or advisor was present to speak for or give advice to Brown at the “conduct conference”.

56. There is no indication that Brown presented any defense at the “conduct conference”.

57. There is no indication that specific allegations against Brown and the potential consequences were explained to Brown before or during the “conduct conference”.

58. Plaintiff Brown was not afforded a reasonable opportunity to assess the accusations, formulate a defense, contact counsel, contact witnesses or otherwise prepare for a hearing.

59. On June 15, 2017, the same day as the aforesaid “conduct conference”, Defendant Porter sent a Resolution Letter to Plaintiff Brown via email, informing Brown that he was being held responsible for “violation of the Code of Student Conduct specifically, No. 20-Threatening Behavior (Probation Violation).” (a copy of this Resolution Letter is attached hereto as “Amended Complaint Exhibit 3”)

60. The aforesaid Resolution Letter informed Brown that he was being expelled.

61. Until receipt of the Resolution Letter, Brown had received no written notice that he was being charged with probation violation.

62. Until receipt of the Resolution Letter, Brown had received no written notice that expulsion was a likely sanction.

63. Pursuant to NSU’s disciplinary procedures, violations punishable by “expulsion, suspension and/or removal from housing” must be referred by the student conduct officer “to the Student Conduct Board for formal resolution through an administrative hearing.”

64. Pursuant to NSU’s posted disciplinary procedures, the formal resolution process contains more procedural safeguards to an accused student than does the informal resolution process.

65. Brown did not receive the additional procedural safeguards that should have been afforded to him as a student accused of conduct punishable by “expulsion, suspension and/or removal from housing.”

66. It is unlikely that an objectively reasonable fact finder, aware of the context of the texting conversation, would have interpreted the text message in question as a true threat.

67. Expulsion, and all of its attendant consequences, is a disproportionate punishment to the conduct alleged.

68. Throughout the course of the disciplinary proceedings against Brown, Defendant Porter acted as investigator, fact finder and decision maker.

69. Among other reasons, Brown was denied a fair and impartial hearing because Defendant Porter assumed the emphatically separate roles of investigator, fact finder and decision maker during the proceedings.

70. Less than twenty-four hours elapsed between the transmission of notice to Brown and the decision to expel Brown.

71. Plaintiff Brown filed an Appeal Form on June 22, 2017.

72. The grounds for Plaintiff Brown’s appeal included: a determination of “whether the conduct conference/hearing was conducted fairly and in conformity with prescribed procedures”; consideration of “new evidence unavailable during the original conduct conference/hearing”; and, consideration of “whether the sanctions imposed were disproportionate to the violation.”

73. Plaintiff Brown’s appeal letter indicated that a witness had been present during the texting conversation.

74. NSU sent an Appeal Response on June 28, 2017 (attached hereto as “Complaint Exhibit 4”) indicating that Plaintiff Brown’s appeal was denied.

75. The Appeal Response, dated June 28, 2017, indicated that denial of Brown’s appeal was final.

76. NSU’s Appeal Response Rationale (attached hereto as “Complaint Exhibit 5”) indicates:

- a. that the Appeal Conference was held on June 15, 2017;
- b. that Defendant Johnson was the Appeal Officer at the Appeal Conference; and
- c. that Plaintiff Brown attended the Appeal Conference via email.

77. NSU’s Appeal Response Rationale did not address the issue of “whether the conduct conference/hearing was conducted fairly and in conformity with prescribed procedures.”

78. NSU’s Appeal Response Rationale did not address “new evidence unavailable during the original conduct conference/hearing.”

79. NSU’s Appeal Response Rationale arguably concluded that expulsion was not disproportionate to the conduct at issue, but only after including references to prior conduct that was not at issue in the Notice sent by Defendant Porter on June 15, 2017, as well as references to the language and content of Plaintiff Brown’s appeal letter.

80. Pursuant to an attorney request for documents, NSU produced a Complainant’s statement, signed and dated June 14, 2018¹, more than a year after the incident and

¹ The statement is handwritten, and dated at the top in handwriting by the Complainant as June 14, 2018. At the bottom, next to the Complainant’s signature the Complainant dated his signature as June 14, 2018. Underneath the Complainant’s signature, a Conduct Officer believed to be Defendant Marcus Porter signed his name and dated his signature as June 14, 2018.

almost a year to the day after the conduct conference at which the statement should have been presented.

81. The aforesaid Complainant's statement does not identify Joseph Brown.

82. Pursuant to an attorney request for documents, NSU produced a document titled Investigative Rationale, purportedly from Defendant Marcus Porter's office, which is unsigned and undated.

83. That the aforesaid Investigative Rationale asserts:

- a. that Defendant Porter interviewed Plaintiff Brown at the NSU Campus Police Station on June 15, 2017;
- b. that Plaintiff Brown was told that the text message violated the Student Code of Conduct; and
- c. that Plaintiff Brown was told that the text message violated Brown's disciplinary probation.

84. Brown was humiliated by the expulsion and suffered severe emotional stress as a result.

85. Brown has incurred medical bills as result of the severe emotional stress resulting from the expulsion.

86. NSU's expulsion of Brown has permanently tarnished his academic record, potentially closing the door on numerous career and educational opportunities, and reducing his future earnings potential.

87. NSU's expulsion of Brown has foreclosed the possibility of an enlightening and career enhancing study abroad program, to which Brown had already applied and been accepted prior to the "conduct conference" of June 15, 2017.

88. The Defendants' violations of and sheer indifference to Brown's Constitutional rights has shattered Brown's confidence in American ideals.

89. On or about February 19, 2018, Plaintiff Brown travelled from New Jersey to NSU to obtain his transcript.

90. This trip followed multiple failed attempts to obtain his transcript through requests.

91. In February of 2018, Plaintiff Brown was attempting to complete his degree in New Jersey, and thereby mitigate the damage caused to his reputation and future earnings by the Defendants.

92. During the aforesaid trip to NSU, Plaintiff Brown went first to the building occupied by NSU Campus Police to announce his presence and purpose of visit.

93. Brown then went to the registrar's office to obtain his transcript.

94. While in the administrative offices to request his transcript, multiple NSU Campus Police Officers appeared and publicly arrested Brown in full view of several of his friends and former colleagues.

95. NSU Campus Police put Brown in handcuffs and led him out of the registrar's office in full view of several of his friends and former colleagues.

96. Brown was humiliated, denigrated and defamed by this incident and suffered severe emotional stress as a result.

97. NSU Campus Police then transported Plaintiff Brown to the Campus Police Station where they informed him that he was being charged with trespassing and would be turned over to the Norfolk Police Department.

98. Upon information and belief, NSU's expulsion of Brown prompted the actions of NSU Campus Police on February 19, 2018.

99. Upon information and belief, an unidentified NSU official requested that NSU Campus Police arrest Brown on February 19, 2018.

100. NSU Campus Police released Plaintiff Brown after being made aware by both Brown and Brown's attorney that Brown had reported in at the NSU Campus Police building and received permission to visit the registrar's office to obtain his transcript.

101. Shaken and embarrassed, Brown left the NSU campus on February 19, 2018 still without his transcript.

102. The incident rendered worthless an expensive and time consuming trip from New Jersey to Virginia for the purpose of obtaining his transcript.

103. Defendants' expulsion of Brown has caused and continues to cause Brown significant reputational injury, significant professional injury, losses in earnings, substantial losses to future earnings and benefits, significant pain and suffering, medical expenses, embarrassment, anguish and severe emotional distress.

104. Upon information and belief, monies remaining in Brown's student account were not returned before NSU shut down his student account.

105. Plaintiff Brown filed a timely notice of claim against the Commonwealth of Virginia (hereinafter "The Commonwealth") as required by Va. Code § 8.01-195.6.

**COUNT II: DENIAL OF FREEDOM OF SPEECH IN VIOLATION OF
THE UNITED STATES CONSTITUTION AND THE CONSTITUTION OF THE
COMMONWEALTH OF VIRGINIA.**

106. The allegations contained in paragraphs 1 through 106 and all subsequent allegations are adopted and incorporated by reference as if set forth fully in this paragraph.

107. The right to free speech is enshrined in the First Amendment to the United States Constitution.

108. The right to free speech is enshrined in Article 1 Section 12 of the Constitution of the Commonwealth of Virginia.

109. As described above, Defendants Porter and Johnson are government officials.

110. Plaintiff Brown alleges that his freedom of speech was violated in three ways:

1) by expelling him for a text message he did not reasonable expect to be taken seriously given the context in which it was sent;

2) by denying his appeal because he included frustrated and insulting comments in his appeal letter; and

3) by flippantly expelling him and/or then denying his appeal in part because he published one or more articles relating to conditions at NSU relevant to the University community and/or otherwise spoke freely and publicly about unsatisfactory conditions relevant to the NSU community.

The Text Conversation

111. Upon information and belief, on June 11, 2017, Plaintiff Brown and his roommate Smith were texting each other.

112. Upon information and belief, during this texting conversation they were arguing about dishes and food.

113. Plaintiff Brown and Smith were in the same or adjoining rooms at the time.

114. Smith later informed Residence Hall Director Anthony Tillman that he and Plaintiff Brown were having a playful conversation.

115. Plaintiff Brown's Appeal Letter indicates that a witness, Caleb Wright, was with him and Smith during the texting conversation at issue.

116. Plaintiff Brown's Appeal Letter indicates that witness Caleb Wright sensed no hostility from either Plaintiff Brown or Smith during the texting conversation at issue.

117. Plaintiff Brown received a screenshot of eight of the texts allegedly sent between himself and Smith as part of a pre-litigation attorney request for information.

118. The screenshot of the texting conversation tends to indicate that Plaintiff Brown and Smith were exchanging insults between approximately 12:02 p.m. and 12:10 p.m.

119. The screenshot of the texting conversation shows that at approximately 12:11 p.m. Plaintiff Brown sent the text at issue, stating "Text me again and im breaking your jaw."

120. Plaintiff Brown did not actually intend to break Smith's jaw.

121. Plaintiff Brown did not intend for Smith to take this text as a serious threat to break Smith's jaw.

122. Plaintiff Brown did not reasonably expect that Smith would take this text as a serious expression of intent to break Smith's jaw.

123. At the time of the texting conversation Plaintiff Brown was suffering sciatica and could barely walk.

124. At the time of the texting conversation Plaintiff Brown had a reasonable belief that Smith knew that Plaintiff Brown had sciatica and could barely walk.

125. At the time of the texting conversation, Plaintiff Brown and Smith were equally aware that they were in the same or adjoining rooms and acting without animosity towards each other despite whatever words they typed into their phones.

126. The screenshot of the texting conversation shows that at approximately 12:13 p.m., less than three minutes after receiving Plaintiff Brown's text at issue, Smith texted again, stating "No chick b. Your shit getting ate if its on my pan again. All facts."

127. Evidence available to Defendants Porter and Johnson indicates that Plaintiff Brown understood that the phrase "Your shit getting ate" is a threat of imminent stabbing or attack.

128. There is no evidence available to Plaintiff at this time to indicate whether Smith also understood that the phrase "Your shit getting ate" is a threat of imminent stabbing or attack.

129. Plaintiff Brown was annoyed but not put in fear of an imminent stabbing or attack by Smith's statement "Your shit getting ate" because Plaintiff Brown was not taking the conversation seriously.

130. Plaintiff Brown was annoyed but not put in fear of an imminent stabbing or attack Smith's statement, "Your shit getting ate" because Plaintiff Brown had no reason to believe Smith was taking any of the conversation seriously.

131. Smith's continued texting after receiving the phrase "Text me again and im breaking your jaw" is evidence that he was in fact not taking it or any of the conversation seriously.

132. Evidence that Smith did not actually take the texting conversation seriously at the time it occurred is evidence of the context in which the texting conversation took place.

133. Plaintiff Brown and Smith continued their cohabitation of the dorm room peacefully and without incident.

134. Though the timeline is unclear, it appears that Smith waited between one and three days before reporting to Resident Hall Director Anthony Tillman that “there has been no real problem in the room” but that “[Brown] is using [Smith’s] items more often especially during the summer” and that they “had a ‘playful’ argument about [Brown] using [Smith’s] items” and that “[a]s a response to Smith saying, ‘if you keep using my stuff, then I’m expecting that food to be mine too,’ Brown stated ‘you’re all talk, I’ll break your jaw.’”

135. Smith’s delay of between one to three days before reporting Brown’s text is evidence that he did not take it seriously at the time it was sent.

136. Smith’s delay of between one to three days before reporting Brown is evidence that he was merely using it as part of general complaint of annoyance about his roommate.

137. For the foregoing reasons and upon information and belief, Plaintiff Brown did not intend for or expect that a reasonable recipient of the texted phrase who was familiar with the context of the texting conversation, as Smith was, would interpret the texted phrase as a serious expression of intent to cause harm.

138. For the foregoing reasons the texted phrase, “Text me again and im breaking your jaw” uttered in this context was not a true threat.

139. For the foregoing reasons the texted phrase, “Text me again and im breaking your jaw” is hyperbole.

140. For the foregoing reasons the texted phrase at issue was Constitutionally protected speech.

141. For the foregoing reasons and upon information and belief, Defendant Porter’s decision to expel Brown was based in part on Brown’s Constitutionally protected speech.

142. Information provided by Defendants to Plaintiff as part of a pre litigation attorney request for information indicates a discrepancy in events, in that:

- a. Upon information and belief, the eight texts provided do not encompass the entire texting conversation on the day in question;
- b. The portion of the texting conversation provided is undated;
- c. The portion of the texting conversation provided indicates that Plaintiff Brown sent the text “Text me again and im breaking your jaw” before Smith texted the phrase “Your shit getting ate”;
- d. A witness statement by Smith dated June 14, 2018 indicates that he texted the phrase “Your shit getting ate” before Plaintiff Brown texted the phrase “Text me again and im breaking your jaw” (the date of this witness statement upon which Defendant Porter based his investigation may be erroneous, however it should be noted that the report is dated June 14, 2018, Smith signed it and dated his signature June 14, 2018, and Defendant Porter signed it and dated his signature June 14, 2018, creating an intriguing curiosity as to how everybody involved in this primary evidence upon which Plaintiff Brown’s expulsion was based, failed to know what year it was);

- e. A witness statement by an unidentified witness dated June 15, 2017 indicates that Plaintiff Brown told the unidentified witness that Smith first texted him that “next time you use my stuff I’ll eat your food” to which Plaintiff Brown responded “if you want to fight then we can fight in closed doors”;
- f. The above witness statement by an unidentified witness dated June 15, 2017 indicates that Plaintiff Brown told the unidentified witness that where he’s from if someone says “eating your food” it means the speaker is seeking confrontation;
- g. An incident report from Residence Hall Director Anthony Tillman dated June 12, 2017 indicates that Smith reported to him that he told Plaintiff Brown “I’m expecting that food to be mine too” before Plaintiff Brown stated “you’re all talk, I’ll break your jaw”;
- h. The incident report from Anthony Tillman reports that the incident took place at 1:50 p.m. on August 11, 2016, but also reports it occurred “yesterday” (ie June 11, 2017 assuming the date of the report is correct).
- i. Notices sent from Defendant Porter to Plaintiff Brown indicate the Smith reported the alleged conduct on June 14, 2017.

143. Upon information and belief, discovery will provide a clearer picture of the context in which the texting conversation took place.

The Appeal Letter

144. As described above, Plaintiff Brown filed an Appeal Form on June 22, 2017.

145. The appeal form, appeal letter, appeal resolution and appeal resolution letter were previously filed in this case as Exhibit 4 to Document 12, it is attached hereto as “Amended Complaint Exhibit 9.”

146. Plaintiff Brown's Appeal Form asked Defendant Johnson to "determine whether the "conduct conference"/hearing was conducted fairly and in conformity with prescribed procedures."

147. Plaintiff Brown's Appeal Form asked Defendant Johnson to "consider new evidence unavailable during the original conduct conference/hearing."

148. Plaintiff Brown's Appeal Form asked Defendant Johnson to "consider whether the sanctions imposed were disproportionate to the violation."

149. The appeal form directed Brown to include an appeal letter.

150. Plaintiff Brown's appeal letter contains issues relevant to appeal, including but not limited to the following:

- a. Procedures were not followed in his expulsion;
- b. Due process was denied in his expulsion;
- c. He committed no crime;
- d. He committed no misconduct;
- e. Even if he did commit the alleged misconduct expulsion was a disproportionate sanction;
- f. Campus police were under the impression on the evening of June 14, 2017 that his hearing had already taken place;
- g. Caleb Wright was a witness to the conduct at issue and had pertinent information that could have saved Brown from expulsion, yet Defendant Porter either did not consider that evidence or simply denied Brown the opportunity to present it; and
- h. Brown's probation ended in May of 2017, yet he was expelled for violating it in mid June of 2017.

151. Plaintiff Brown's appeal letter also contained frustrated and disrespectful language directed at Defendants Porter and Johnson.

152. Plaintiff Brown's appeal letter demonstrates that his frustrated and disrespectful language resulted from his perception that Defendants Porter and Johnson were intentionally committing misconduct as officials at a public university.

153. Defendant Johnson notified Plaintiff Brown by letter on June 28, 2017 that his appeal was denied.

154. Defendant Johnson's Appeal Response Rational dated June 15, 2017, stated that "[b]ased on the language and content of [Plaintiff Brown's] appeal letter, I felt that his behavior was volatile and I did not want to compromise the safety of the student body."

155. Plaintiff Brown has a Constitutional right to freedom of speech which includes the right to use disrespectful language.

156. Plaintiff Brown has an enhanced Constitutional right to freedom of speech when addressing issues of misconduct by government officials.

157. Nothing in Plaintiff Brown's appeal letter stated, implied, insinuated, or related to violence or any other threat to safety.

158. The term "volatility" in its ordinary sense and use with regard to a person generally means a person's likelihood to display rapid emotional changes.

159. Denying an expulsion appeal based on a subjective determination of a student's emotional changes is inappropriate.

160. The appeal letter does not demonstrate volatility because Plaintiff Brown's obvious frustration remains consistent throughout it.

161. The appeal letter accuses Defendants Porter and Johnson of either stupidity or justifying stupidity, reckless abandon, abuse of power, and refusing him fair treatment.

162. For the foregoing reason, the appeal letter contains language that Defendant Johnson would find personally insulting.

163. The appeal letter also promises litigation brought by Brown and that Brown will notify the local news station.

164. The appeal letter contains legitimate logical concerns with the process in which Brown was expelled.

165. Defendant Johnson's appeal rational does not address the legitimate logical concerns noted within the appeal letter.

166. Defendant Johnson's appeal rationale is evidence that she based the denial of appeal on Brown's speech in his appeal letter.

167. The appeal letter contains Constitutionally protected free speech.

168. There is no speech in the letter that falls outside of the Constitutional protections.

169. For the above reasons, Defendant Johnson's decision to deny Brown's appeal was based either totally or in part on Brown's Constitutionally protected speech.

Retaliation for Prior Constitutional Speech

170. Upon information and belief, Plaintiff Brown wrote one or more articles available to the university community that brought to light one or more problems he saw with NSU and/or its officials.

171. Upon information and belief, Plaintiff Brown spoke to other members of the university community about one or more problems he saw with NSU and/or its officials.

172. Upon information and belief, Plaintiff Brown's speech alleged in the above two paragraphs was Constitutionally protected.

173. Upon information and belief, Defendants expulsion of Plaintiff and/or denial of his appeal was based in part on retaliation for the speech alleged in the above three paragraphs.

174. Upon information and belief, evidence of the above four allegations exists within the possession and control of Defendants and available to Plaintiff through discovery.

Conclusion to Count II

175. Pursuant to 42 U.S.C. § 1983, Defendants Porter and Johnson are liable to Brown for these abridgments of his Constitutional right to free speech.

176. Brown has suffered damages as a direct and proximate result of these denials of his Constitutional right to free speech.

COUNT III: GENDER DISCRIMINATION IN VIOLATION OF TITLE IX.

177. The allegations contained in paragraphs 1 through 176 and all subsequent allegations are adopted and incorporated by reference as if set forth fully in this paragraph.

178. Pursuant to Title IX of the Education Act of 1972, schools receiving federal financial assistance like NSU are prohibited from: excluding from participation in, denying benefits of, or otherwise subjecting students like Brown to "discrimination under any education program or activity" on the basis of sex. 20 U.S.C. § 1681 *et seq.*

179. The Commonwealth has a duty to ensure that state supported schools, like NSU, comply with their duties under Title IX of the Education Act of 1972.

180. As described herein, Plaintiff Brown, a male, was investigated and expelled from NSU for sending a text message.

181. As described herein, Defendants:

- a. Failed to provide notice to Brown of the specific conduct for which he was being investigated;
- b. Failed to provide Brown with adequate preparation time prior to his “conduct conference”;
- c. Failed to provide Brown any prior notice that he was charged with probation violation despite expelling him for probation violation;
- d. Failed to notify Brown that expulsion was the likely sanction for his alleged misconduct;
- e. Failed to provide Brown with procedural safeguards at the June 15, 2017 “conduct conference” as required by NSU’s Code of Student Conduct when a student is accused of conduct punishable by expulsion, suspension or removal from housing;
- f. Denied Brown a fair and impartial hearing by having Defendant Porter act simultaneously as the investigator, fact finder and decision maker during the proceedings;
- g. Held an appeal conference without Brown’s presence, thereby denying Brown an opportunity to present facts, defenses or new evidence;
- h. Failed to address in the Appel Decision Letter whether Brown’s “conduct conference” was conducted “fairly and in conformity with prescribed procedures,” or whether “new evidence unavailable during the original conduct

conference/hearing” was considered, or whether “the sanctions imposed were disproportionate to the violation”;

- i. Considered at the appeal conference Brown’s prior conduct that was not at issue in the Notice sent by Defendant Porter on June 15, 2017 as well as references to the language and content of Brown’s appeal letter;
- j. Committed other shortcomings with regard to Brown’s disciplinary proceedings; and
- k. Issued a sanction disproportionate to the alleged misconduct.

182. Upon information and belief, NSU rarely if ever investigates females for sending text messages.

183. Upon information and belief, NSU rarely if ever disciplines females for sending text messages.

184. Upon information and belief, NSU rarely if ever investigates females.

185. Upon information and belief, NSU rarely if ever disciplines females.

186. Upon information and belief, information related to gender statistics in NSU disciplinary proceedings are in Defendants’ possession and control.

187. Upon information and belief, Plaintiff can acquire information related to gender statistics in NSU disciplinary proceedings from the Defendants through discovery.

188. Upon information and belief, Defendants’ denied Plaintiff Brown minimal due process protections based in part on his gender.

189. Upon information and belief, Defendants’ denied Plaintiff Brown the procedural safeguards required by the Student Disciplinary Process based in part on his gender.

190. Upon information and belief, Defendants' based their expulsion of Brown in part on his gender.

191. Upon information and belief, Defendants' based their denial of Plaintiff Brown's appeal on his gender.

192. Upon information and belief, Defendants' would have provided Plaintiff Brown minimal due process protections if he was female.

193. Upon information and belief, Defendants' would have provided Plaintiff Brown the procedural safeguards required by the Student Disciplinary Process if he was female

194. Upon information and belief, Defendants' would not have expelled Plaintiff Brown over a text message if he was female.

195. Upon information and belief, Defendants' would have provided Plaintiff Brown fair consideration of his appeal if he was female.

196. Upon information and belief, information relating to paragraphs 188-195 above are in Defendants possession and control and can be acquired by Plaintiff Brown through discovery.

197. This disparate treatment of genders constitutes gender discrimination in violation of Title IX of the Education Act of 1972.

198. Brown has suffered damages and continues to suffer damage as a direct and proximate result of this disparate treatment.

199. Defendant NSU is liable to Brown under Title IX of the Education Act of 1972 for these damages.

200. The Commonwealth is likewise liable to Brown under Title IX of the Education Act of 1972 for these damages.

COUNT V: BREACH OF CONTRACT

201. The allegations contained in paragraphs 1 through 200 and all subsequent allegations are adopted and incorporated by reference as if set forth fully in this paragraph.
202. In the Commonwealth of Virginia, the elements of a contract are an offer and an acceptance of that offer supported by valid consideration.
203. In order for Defendants to expel Plaintiff Brown from NSU, Plaintiff Brown must have been a student at NSU.
204. In order for Plaintiff Brown to be a student at NSU he must have accepted an offer of admission from NSU.
205. In order for Plaintiff Brown to accept an offer of admission from NSU, he must have received an offer of admission from NSU.
206. In order for Plaintiff Brown to remain as a student at NSU from 2014 to 2017 he must have been paying tuition.
207. The payment of tuition is valid consideration.
208. Prior to June of 2017, NSU sent Plaintiff Brown an offer admission.
209. Prior to June of 2017, Plaintiff Brown accepted NSU's offer of admission.
210. Prior to June of 2017, Plaintiff Brown provided valid consideration in, among things, the form of tuition payment.
211. Plaintiff Brown provided valid consideration to NSU in the form of tuition and fees from 2014 to 2017.

212. For the reasons stated above, there was an offer by Defendants to the Plaintiff, an acceptance of that offer by the Plaintiff, and valid consideration by the Plaintiff to the Defendants to support that acceptance of offer.

213. For the above stated reason, there was a contract, either express or implied, between Defendants and Plaintiff prior to and up to Defendants' expulsion of Plaintiff.

214. Additionally, Plaintiff Brown resided in Defendants' student housing in June of 2017, therefore there was a housing contract, either express or implied, between Plaintiff and Defendants.

215. Additionally, Plaintiff Brown participated in NSU's work study program in June 2017, therefore there was an employment contract, either express or implied, between Plaintiff and Defendants.

216. Additionally, in order to meet his tuition responsibilities, Plaintiff Brown accepted financial aid in the form of Federal loans, therefore there may have been additional contractual obligations upon the parties stemming from the use of federal funding.

217. Additionally, in order to meet his tuition responsibilities, Plaintiff Brown received financial aid in the form of grants and assistance from NSU, therefore there may have been additional contractual obligations upon the parties stemming from the use of NSU financial aid.

218. Nearly all of the documents further evidencing the contractual obligations of the parties were rendered inaccessible to Plaintiff Brown upon his expulsion.

219. Upon information and belief, documents further evidencing the contractual obligations of the parties remains in the custody and control of Defendants.

220. Upon information and belief, Plaintiff Brown can obtain further evidence of the contractual obligations of the parties through discovery.

221. NSU's 2016-2017 student handbook states, "All students, by accepting admission to Norfolk State University, agree to abide by all regulations and policies published in the Student Handbook, the University Catalog, University bulletins and other University publications, as well as federal, state and local laws." See Amended Complaint Exhibit 7, p 19.

222. Based on the foregoing language, "all regulations and policies published in the Student Handbook, the University Catalog, University bulletins and other University publications, as well as federal, state and local laws" constituted binding terms of the contract between Plaintiff Brown and NSU upon Plaintiff Brown's acceptance of NSU's offer of admission.

223. NSU's 2016-2017 student handbook also contains language indicating that it is binding on NSU and its officers, agents, employees, and other members of the "University Community". See Generally Amended Complaint Exhibit 7.

224. NSU's 2016-2017 student handbook also contains language indicating that it is binding on NSU and its officers, agents, employees, and other members of the "University Community" including but not limited to rights specifically reserved to NSU, and rights which it guarantees to the university community. See Generally Amended Complaint Exhibit 7.

225. NSU's 2016-2017 student handbook states, "As a member of the Norfolk State University community, students are entitled to all of the rights and privileges guaranteed

to every citizen of the United States and the Commonwealth of Virginia.” See Complaint Exhibit 7, p 17.

226. The aforementioned terms created a duty upon the Defendants to respect Plaintiff Brown’s right to freedom of religion, right to freedom of speech, and right to due process.

227. NSU’s 2016-2017 student handbook states, “Norfolk State University is committed to providing an environment that emphasizes the dignity and worth of every member of its community.....[s]pecifically, discrimination based on race, sex, color, national origin, religion, age, veteran status, sexual orientation, gender identity or expression, pregnancy, genetic information, persons with disabilities, or any other status protected by law is prohibited.” See Complaint Exhibit 7, p 18.

228. The aforementioned terms created a contractual duty upon the Defendants to not discriminate against Plaintiff Brown based on his religion.

229. The aforementioned terms created a contractual duty upon the Defendants to not discriminate against Plaintiff Brown based on his gender.

230. The aforementioned terms created a contractual duty upon the Defendants to not discriminate against Plaintiff Brown based on other enumerated categories including but not limited to race, veteran status, and retaliation against protected freedom of speech.

231. The aforementioned terms created a contractual duty upon the Defendants to provide Plaintiff Brown due process.

232. As described herein, Defendants discriminated against Plaintiff Brown in violation of their contractual obligations to him.

233. As described herein, Defendants violated other contractual duties they owed to Plaintiff Brown.

234. Upon information and belief, discovery in this case may reveal other ways in which Defendants violated other contractual duties owed to Plaintiff Brown, including but not limited to retaliation against protected freedom of speech.

235. Upon information and belief, discovery in this case may reveal other ways in which Defendants violated other contractual duties owed to Plaintiff Brown, including but not limited to retaliation against protected freedom of speech in relation to one or more student articles Plaintiff Brown wrote, and/or one or more complaints Plaintiff Brown may have brought to university officials in the interest of the “University Community.”

236. Upon information and belief, Defendant NSU drafted all documents, agreements and terms.

237. Contractual ambiguities are construed against the party that drafted the documents, agreements or terms containing the ambiguities.

238. NSU’s 2016-2017 student handbook states, “The University reserves the right to send official communications to students by email to their university-supplied email addresses.” See Complaint Exhibit 7, p 22.

239. The aforementioned term put Plaintiff Brown on notice that he could expect official communications from university officials that notify him of his rights and responsibilities and any contractual issues to arrive via e-mail in his student email account.

240. On June 14, 2017, Defendant Porter sent two official communications to Plaintiff Brown, both of which indicated that his rights as a student facing investigation and

disciplinary proceedings were posted online at www.nsu.edu/student-affairs/student-judicial. See Amended Complaint Exhibits 1-2.

241. Therefore, the aforementioned official communications notified Brown that the Student Conduct Process, as posted online at www.nsu.edu/student-affairs/student-judicial, served as the source of any specific contractual rights and obligations Plaintiff Brown had during disciplinary proceedings. See Amended Complaint Exhibits 1-2, 6.

242. The Student Conduct Process in effect in June 2017 was downloaded by Plaintiff on July 20, 2017 and constitutes one of the binding bulletins published by NSU. See Amended Complaint Exhibit 6.

243. The disciplinary procedures contained in the Student Conduct Process contain terms indicating what students and/or officials may do, what they will do, and what they must do. See Amended Complaint Exhibit 6.

244. The disciplinary procedures contained in the Student Conduct Process contain terms indicating what students and/or officials may do, what they will do, and what they must do, including but not limited to the following three examples:

- a. “The student conduct officer will schedule a hearing with the student conduct panel no more than ten (10) business dates after the conduct conference.”;
- b. “If the respondent wishes to request a delay, he/she must notify the student conduct staff within two (2) business days of the scheduled hearing.”; and
- c. “During the conference the student conduct officer will present the findings to the respondent...(if) [t]he respondent denies responsibility for the violation and/or rejects the findings and the misconduct could result in expulsion, suspension and/or removal from housing...[t]he student conduct officer will then refer the

case to the Student Conduct Board for formal resolution through an administrative hearing.” See Amended Complaint Exhibit 6 (emphasis added).

245. Amended Complaint Exhibit 6 evidences other contractual obligations of NSU and its officials during student disciplinary proceedings.

246. Amended Complaint Exhibit 6 evidences other student rights in student disciplinary proceedings

247. The Student Conduct Process constitutes contractual terms between NSU and students like Brown.

248. The procedures, safeguards, and rights contained within the Student Conduct Process constitutes contractual rights and obligations of NSU’s students.

249. Defendants Porter and Johnson are employees, officers and agents of NSU.

250. For the above reasons, Defendants breached one or more of Brown’s contractual rights during its investigation and expulsion of him in June of 2017.

251. For the above reasons, Defendants breached one or more of Brown’s contractual rights during its denial of his appeal in June of 2017.

252. Therefore, Defendants are in breach of their contract with Brown.

253. Plaintiff Brown has sustained damages as a result of Defendants aforesaid breach of contract.

254. If, in the alternative, “all regulations and policies published in the Student Handbook, the University Catalog, University bulletins and other University publications, as well as federal, state and local laws” were not terms of contract between Defendant NSU and Plaintiff Brown, then Defendants had no contractual right to expel Plaintiff Brown for any conduct except failure to pay tuition.

255. If, as stated above in the alternative, “all regulations and policies published in the Student Handbook, the University Catalog, University bulletins and other University publications, as well as federal, state and local laws” were not contractual terms between Defendant NSU and Plaintiff Brown, then Defendant NSU was obligated to continue providing Plaintiff Brown a higher education until his graduation, regardless of any allegations against him, so long as he maintained his tuition payments.

256. If, as stated in the above two paragraphs, in the alternative, “all regulations and policies published in the Student Handbook, the University Catalog, University bulletins and other University publications, as well as federal, state and local laws” were not contractual terms between Defendant NSU and Plaintiff Brown, then Defendants breached their contract with Plaintiff Brown by ceasing to provide a higher education to Plaintiff Brown prior to his graduation, because Brown was maintaining tuition payments.

257. By expelling Plaintiff Brown, Defendants terminated the higher education contract between Plaintiff Brown and NSU.

258. By expelling Plaintiff Brown, Defendants terminated the housing contract between Plaintiff Brown and NSU.

259. By expelling Plaintiff Brown, Defendants terminated the employment contract between Plaintiff Brown and NSU.

260. If Defendants violated NSU’s own procedures in the course of expulsion, then Defendants are in breach of all of these contracts with Plaintiff Brown.

261. If there were no binding terms of contract, then Defendants had no contractual right to prematurely terminate their contracts by expelling Plaintiff Brown, and are therefore in breach of these contracts with Plaintiff Brown.

262. In addition to the previously stated damages, Brown seeks restitution for breach of contract.

REQUEST FOR RELIEF

Plaintiff, by counsel, respectfully requests that this Court enter judgment in his favor and against Defendants, jointly and severally, in an amount not to exceed ten million dollars (\$10,000,000.00) that the Court deems just and proper as compensatory damages and punitive damages, together with attorney's fees including any expert fees pursuant to 42 U.S.C. § 1988, costs of litigation, and interest from the date of expulsion, and any further relief that this Court may deem appropriate.

JURY TRIAL DEMAND

Plaintiff demands a jury trial on all issues so triable.

Dated: February 20, 2020

Respectfully Submitted

/s/ Alastair Deans

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Attorney for Plaintiff

CERTIFICATE OF SERVICE

I certify that on February 20, 2020, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send a notification of such filing (NEF) to the counsel of record for the Defendants at:

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