

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO**

**DR. GAVIN CLARKSON, an individual,**

**Plaintiff,**

**Civ. No. 18-870 SMV/GBW**

**v.**

**BOARD OF REGENTS OF NEW MEXICO  
STATE UNIVERSITY, DAN HOWARD in his  
individual capacity and official capacity as  
Provost, JAMES HOFFMAN in his individual  
capacity and official capacity as Dean and  
individual capacities, RALPH LUCERO in his  
individual capacity and official capacity as  
Hearing Officer, and NANCY ORETSKIN in  
her individual capacity and official capacity as  
Professor.**

**Defendants.**

**LIMITED OPPOSITION TO DEFENDANT’S MOTION TO DISMISS FOR FAILURE  
TO STATE A CLAIM; COUNTERMOTION TO AMEND COMPLAINT**

COMES NOW, Plaintiff Dr. Gavin Clarkson (“Dr. Clarkson”) and files his Limited Opposition to Defendant’s Motion to Dismiss for Failure to State a Claim.

**I. DISCUSSION**

Defendant seeks dismissal of four out of five of Dr. Clarkson’s causes of action. Dr. Clarkson brings this limited opposition to request that certain of these causes of action be dismissed without prejudice, so Dr. Clarkson can either pursue his administrative remedies or otherwise amend these claim pursuant to the concurrently filed Countermotion to Amend Complaint.

**a. *Wrongful Termination***

Dr. Clarkson does not oppose dismissal of this cause of action.

b. *Denial of Due Process*

Defendant's only argument against Dr. Clarkson's denial of due process cause of action is that the due process clause of the Fourteenth Amendment does not provide Dr. Clarkson a private right of action under which to enforce his rights. But Dr. Clarkson need not expressly invoke 42 U.S.C. § 1983 to seek damages for violations of his constitutional rights. *See Johnson v. City of Shelby, Miss.*, 135 S. Ct. 346, 347 (2014) ("no heightened pleading rule requires plaintiffs seeking damages for violations of constitutional rights to invoke § 1983 expressly in order to state a claim.").

However, Dr. Clarkson requests leave to amend to add the individuals ("Individual Defendants") responsible for the violations of Dr. Clarkson's constitutional rights. *See* Countermotion, *infra* Section II. Accordingly, Dr. Clarkson does not oppose dismissal of this cause of action so long as dismissal is without prejudice, so that Dr. Clarkson may bring this cause of action in the proposed First Amended Complaint.

c. *Violation of 42 U.S.C. § 1983 – Racial Discrimination and Age Discrimination*

Similar to the discussion above, Dr. Clarkson does not oppose dismissal of these causes of action so long as dismissal is without prejudice. Dr. Clarkson seeks to pursue these claims through all available administrative channels before bringing them in this Court. Accordingly, dismissal should be without prejudice so that Dr. Clarkson may later pursue these claims and seek redress for the discrimination he suffered.

II. COUNTERMOTION

Federal Rule of Civil Procedure 15(a) provides that where an answer to a complaint has been filed "a party may amend its pleading only with the opposing party's written consent or the court's leave" and "the court should freely give leave when justice so requires." Fed. R. Civ. P.

15(a). “[T]he grant of leave to amend the pleadings pursuant to Rule 15(a) is within the discretion of the trial court.” *Zenith Radio Corp. v. Hazeltine Research, Inc.*, 401 U.S. 321, 330, (1971). Absent any “undue delay, bad faith or dilatory motive, . . . undue prejudice to the opposing party . . . [or] futility of amendment,” leave should be “freely given.” *Foman v. Davis*, 371 U.S. 178, 182 (1962). The purpose of the Rule is to provide litigants “the maximum opportunity for each claim to be decided on its merits rather than on procedural niceties.” *Hardin v. Manitowoc-Forsythe Corp.*, 691 F.2d 449, 456 (10th Cir. 1982).

The Court should grant Dr. Clarkson leave to amend his Complaint. This case is at the onset, and there is no undue delay, bad faith, or dilatory motive in seeking amendment. Dr. Clarkson should be given the opportunity to have his claims decided on the merits.

Defendant will not be prejudiced by an amendment as Defendant was already on notice of the claims in the proposed First Amended Complaint. Defendant’s Motion to Dismiss does not seek dismissal as to Dr. Clarkson’s breach of contract claim. The breach of contract cause of action remains in the proposed First Amended Complaint. Moreover, the only other cause of action in the proposed First Amended Complaint asserts a violation of 42 U.S.C. § 1983 based on the denial of Dr. Clarkson’s due process rights. Dr. Clarkson presented the substance of this cause of action in the original Complaint. The proposed First Amended Complaint clears up the form in which this cause of action is presented by asserting the due process violation as a violation of 42 U.S.C. § 1983, as well as names the Individual Defendants.

Finally, adding the individuals responsible for the violation of Dr. Clarkson’s due process rights is necessary for Dr. Clarkson to have this claim adjudicated on the merits. Dr. Clarkson must name an individual to have his 42 U.S.C. § 1983 claim adjudicated on the merits, and it is for this reason that Dr. Clarkson seeks to add the Individual Defendants to the proposed First

Amended Complaint. Justice requires Dr. Clarkson be permitted to amend the Complaint to add the Individual Defendants, rather than preclude him from seeking relief based on the procedural issue of having not named these individuals previously. The Individual Defendants will not be prejudiced by permitting Dr. Clarkson to amend the Complaint as the Individual Defendants will have the same full and fair opportunity to defend against Dr. Clarkson's claims as if they were previously named in the Complaint.

III. CONCLUSION

For the foregoing reasons, the Court should grant Dr. Clarkson's Countermotion to Amend Complaint, and permit Dr. Clarkson to file the proposed First Amended Complaint, attached hereto. Should the Court dismiss any of Dr. Clarkson's causes of action, Dr. Clarkson requests they be dismissed without prejudice.

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her individual capacity and official capacity as  
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**Defendants.**

**FIRST AMENDED COMPLAINT**

COMES NOW, DR. GAVIN CLARKSON seeking injunctive relief and damages against Defendants New Mexico State University (“NMSU”); Dan Howard in his individual capacity and official capacity as Provost; James Hoffman in his individual capacity and official capacity as Dean of NMSU; Ralph Lucero in his individual capacity and official capacity as Hearing Officer; and Nancy Oretskin in her individual capacity and official capacity as Professor at NMSU.

**JURISDICTION AND VENUE**

1. This is a civil action brought pursuant to 42 USC 1983 seeking declaratory and injunctive relief and money damages against Defendants for deprivations of due process under color of

state law, in violation of the Due Process Clauses of the Fifth and Fourteenth Amendments to the United States Constitution.

2. This court has jurisdiction pursuant to 28 USC 1331, 1343(a)(3), 1343(a)(4), and 1367(a). Venue lies in the District of New Mexico pursuant to 28 USC 1391(b).

### **FACTS COMMON TO ALL CLAIMS FOR RELIEF**

3. Dr. Gavin Clarkson, age 49, is an enrolled member of the Choctaw Nation, a federally recognized Indian tribe, and was an Associate Professor in the College of Business at New Mexico State University until April 27, 2018.

4. Dr. Clarkson has a BA and MBA from Rice University, is a *cum laude* graduate of the Harvard Law School where he was President of the Native American Law Students Association and Managing Editor of the Harvard Journal of Law and Technology. The first tribal member to earn a doctorate from the Harvard Business School (in Technology and Operations Management).

5. Dr. Clarkson has published extensively on both intellectual property strategy, tribal finance and economic development, and is a leading scholar on tribal finance and economic development. Upon information and belief, it is alleged that he has sole-authored more law review articles than the entire rest of the NMSU business law faculty combined.

6. Dr. Clarkson was specifically recruited by Dr. Garrey Carruthers to the College of Business at NMSU to “do Indian stuff,” including being the faculty sponsor of the Native American Business Students Association and increasing the amount of tribal finance and economic development research at NMSU.

7. In part, because of his academic credentials and nationally-recognized research expertise, Dr. Clarkson was appointed as the Deputy Assistant Secretary for Policy and Economic Development (“DASPED”) in the Department of the Interior in June of 2017.

8. Dr. Clarkson had also been offered the position of Deputy Director of Indian Energy Policy and Programs in the Department of Energy, but after careful consideration, chose the position at the Department of the Interior instead.

9. Pursuant to NMSU’s Administrative Rules and Procedures (“ARP”) §8-53, Dr. Clarkson requested and was granted a professional leave of absence until January, 2020 in a written letter from Provost Howard dated June 28, 2017.

10. Additionally, the written document from Provost Howard specifically granted Dr. Clarkson a pause in his tenure clock until the Fall of 2020.

11. Dr. Clarkson requested the option of extending the leave for an additional 12 months until January 2021. Provost Howard denied that request in the written grant of leave.

12. Dr. Clarkson requested that, upon his return to the faculty, he be given control of the Indian Resource Development Program. Provost Howard denied that request in the written grant of leave.

13. ARP §8.53-G states “All conditions of professional leave without pay, including the status of the individual upon return to the university and (if appropriate) the effect of this period on tenure and promotion eligibility, must be in writing prior to the leave period.” Nowhere in the written grant of leave from Provost Howard are any conditions specified under which Dr. Clarkson’s leave could be unilaterally cancelled by NMSU or Provost Howard.

14. At the time of his appointment as DASPED, Dr. Clarkson was preparing to teach an online course at NMSU, and he didn’t want to abandon his students, so he requested that his

leave begin after the end of the summer semester. He then requested and was granted ethics clearance by the Department of Interior to teach the course while he served as the DASPED.

15. NMSU has previously attempted to discriminate against and terminate Dr. Clarkson on at least one other occasion. Approximately two weeks after Dr. Clarkson attended the presidential inauguration in January 2017, a defamatory dossier was submitted to his supervisors alleging that he had engaged in plagiarism. Since Dr. Clarkson is the nation's leading scholar in tribal finance, however, they were unable to document any cases of actual plagiarism and instead compiled a dossier alleging "self-plagiarism."

16. The fake dossier contained passages that Dr. Clarkson periodically re-uses, with proper attribution, from earlier articles. The dossier omitted these attributions in an attempt to persuade the P&T committee not to renew Dr. Clarkson's contract.

17. Based on information obtained in a separate administrative hearing, one of the professors behind this effort, Professor Nancy Oretskin, admitted under oath that she had been involved in targeting Dr. Clarkson for years. Oretskin had also publicly denigrated Dr. Clarkson's scholarship regarding Indian tribes and had declared that it was a waste of time to teach anything regarding Indians to business law students in New Mexico.

18. Additionally, in or around August, 2014, during an NMSU governmental relations meeting, Defendant Dean Hoffman commented that he would prefer someone other than Dr. Clarkson to run a specific Native American program because he wanted someone who "looked more like a New Mexican Indian."

19. As noted above, Dr. Clarkson is a member of the Choctaw nation.

20. During the time that Dr. Clarkson was serving in Washington D.C., Congressman Steve Pearce decided to run for Governor of New Mexico instead of seeking another term in Congress.



Dr. Clarkson began seriously considering leaving Interior and running for the open seat, given that one of his mentors, Garrey Carruthers, had taken a similar path.

21. In November, 2013, a false news story appeared in the Washington Post alleging that Dr. Clarkson had resigned because of a report about problems with the Indian Loan Guarantee Program during the Obama Administration.

22. On November 15, 2017, Provost Howard acknowledged receipt of the false news story, but he took no steps to contact Dr. Clarkson or cancel his leave.

23. Provost Howard would later testify, under oath, that as of November 15, 2017 he fully expected that Dr. Clarkson would be rejoining the faculty in January 2018. Based on information and belief, his statement was demonstrably false. Furthermore, the Provost took no steps whatsoever indicating any expectation that Dr. Clarkson would be returning to the faculty anytime other than January 2020.

24. On December 14, 2017, Dr. Clarkson received email correspondence confirming that he was still on professional leave of absence.

25. On December 29, 2017, Dr. Clarkson submitted a letter of resignation to Secretary Zinke.

26. Upon information and belief it is alleged that NMSU wrongly claims that the act of resigning from the Department of the Interior resulted in revocation of Dr. Clarkson's leave.

27. Despite claims that Dr. Clarkson's leave of absence was terminated by his resignation, upon information and belief it is alleged that NMSU took no action to return him to the faculty and did so only after his announcement that he was running for Congress.

28. On January 1, 2018, Dr. Clarkson moved back to Las Cruces and started preparing for his upcoming campaign for New Mexico's 2<sup>nd</sup> Congressional District.

29. On January 4<sup>th</sup>, Finance Department head Harikumar Sankaran emailed Dr. Clarkson that he is assuming that Dr. Clarkson will return for the Fall 2018 semester. No mention is made of teaching in Spring 2018 or cancellation of Dr. Clarkson's leave.

30. As a courtesy, Dr. Clarkson replied back to Sankaran indicating that he is running for Congress.

31. On January 5, 2018, Sankaran reminded the Provost in an email that Dr. Clarkson was on leave even through the Fall of 2018. The Provost's written response does not contradict the statement that Dr. Clarkson remains on leave.

32. Also, on January 5<sup>th</sup>, 2018, Dr. Clarkson filed paperwork to enter the race as a Republican for New Mexico's 2<sup>nd</sup> Congressional District.

33. On January 8<sup>th</sup>, 2018, Dr. Clarkson formally announced his candidacy at a meeting of Doña Ana County Republicans.

34. On January 9<sup>th</sup>, 2018, the Las Cruces Sun-News ran a story about Dr. Clarkson's running for Congress, highlighting, among other items, his membership in an Indian tribe and his having been "named the nation's 'leading scholar in tribal finance' by The Financial Times [and having] been cited by Bloomberg, the Wall Street Journal and USA TODAY on matters of tribal finance and federal Indian law." Other national publications similarly highlight Dr. Clarkson's tribal heritage.

35. On January 9<sup>th</sup>, Provost Howard and General Counsel Lizbeth Ellis initiated a conversation on how to respond.

36. On January 10<sup>th</sup>, Sankaran asks Dr. Clarkson to schedule a meeting with himself, the Associate Dean and the Dean of the College of Business to discuss the status of his leave. He

mentions that several options regarding the leave will be on the table. He also sent a Doodle Poll meeting request.

37. Additionally, on January 10<sup>th</sup>, the assistant to the Provost wrote a message asking the Dean to “hold off on talking [about] options for the Clarkson leave of absence until [he had] talked with the Provost.” This change in direction was allegedly based on “new information.”

38. Faculty were to report to campus by January 11, 2018 in conjunction with the beginning of the next semester. The first paycheck for faculty would have been issued January 12, 2018 covering the time period between January 1, 2018 and January 15, 2018.

39. Upon information and belief it is alleged that at 6:08pm on January 11<sup>th</sup>, Sankaran emailed that “I was advised the NMSU Attorney General Liz Ellis that the Provost is going to send a letter with options to Gavin. Until then we will not be meeting.”

40. On Friday morning, January 12<sup>th</sup>, Dr. Clarkson voluntarily attended the Finance Department faculty meeting. He reminded everyone that he is on leave while he is running for office. At that meeting nobody disputed that he was on leave, and it is confirmed that he is not on the schedule to teach in the Spring of 2018.

41. Later on January 12<sup>th</sup>, at the end of the day before the Martin Luther King holiday weekend, Provost Howard sent Dr. Clarkson a letter revoking his leave and demanding that he either resign immediately or return to campus the next business day.

42. Dr. Clarkson attempted to call Provost Howard back within a few minutes of receiving the letter, but according to his assistant, he had already left for the day. Dr. Clarkson gave the assistant his personal cell phone number and asked that the Provost call him to discuss. No such call took place until the following week.

43. Dr. Clarkson did not receive a paycheck from NMSU on January 12, 2018.

44. If, as NMSU claims, they were anticipating Dr. Clarkson's return to campus for the Spring of 2018, then Dr. Clarkson should have received a paycheck on January 12, 2018, which did not occur.

45. On January 16<sup>th</sup>, Dr. Clarkson voluntarily attended the College of Business convocation and "checked in" with Finance Department Head Sankaran.

46. Also on January 16<sup>th</sup>, Sankaran mentioned in an email to the Provost that the General Counsel had made some disparaging remarks regarding Dr. Clarkson's presence on campus, presumably because Dr. Clarkson had previously flown back to Houston to take care of his teenage son and elderly mother.

47. No mention was made of monitoring other faculty member's presence on campus. NMSU has claimed attorney-client privilege in order to keep such relevant information information from Dr. Clarkson.

48. Upon information and belief it is alleged that in that same email, there was a discussion about hindering Dr. Clarkson's run for Congress

49. In Response, the Provost indicated that Dr. Clarkson is to be on campus at all times (a requirement that is not imposed on any other faculty member anywhere at NMSU). He also declared that Dr. Clarkson will have to go up for tenure two years earlier than promised in the grant of professional leave.

50. On Wednesday, January 17<sup>th</sup>, the Provost called Dr. Clarkson on his personal cell phone. In that conversation, the Provost claimed that the leave was automatically cancelled the moment that Dr. Clarkson resigned his position within the Presidential administration. The Provost further claimed that he was aware in November 2017 that Dr. Clarkson would be leaving the Interior and was expecting him back on campus for Spring 2018.

51. During the conversation the Provost stated that the leave was only for the position of Deputy Assistant Secretary at Interior. He claimed that if Dr. Clarkson had changed jobs in the Trump Administration, either to the position at the Department of Energy or presumably a promotion within Interior, the leave would still have automatically cancelled although no such restrictions were ever made in writing prior to Dr. Clarkson's leave.

52. Upon information and belief it is alleged that the Provost pretextually told Dr. Clarkson that the leave was being cancelled because his presence was desperately needed on campus. Dr. Clarkson told the provost that he was willing to teach classes while on leave if there was a curricular need. The Provost then told Dr. Clarkson to work out an arrangement with Dean Hoffman.

53. Dr. Clarkson then had a subsequent call with Dean Hoffman during which Dr. Clarkson repeated his offer to teach courses while on leave if there is a curricular need.

54. On Friday, January 19<sup>th</sup>, Sankaran emailed Dr. Clarkson indicating that he is being scheduled for three intensive "mini-mester" courses, one of which Dr. Clarkson had never taught and one of which he had never taught in the "mini-mester" format.

55. In the same email, and confirmed in others, he asked Dr. Clarkson to meet with himself and Dean Hoffman to discuss the proposed teaching assignments. No mention is made of attorneys being present in the meeting request.

56. On January 23<sup>rd</sup>, Dr. Clarkson was ambushed in the meeting by both Provost Howard and General Counsel Ellis. Since he was not afforded the opportunity to have his own attorney present, he declined to continue the meeting. Dr. Clarkson did point out that, and it was acknowledged by the Dean, that Dr. Clarkson had not been returned to the NMSU payroll as of January 23<sup>rd</sup>, midway through the second pay period of the Spring 2018 semester.

57. In the event that it was expected that Dr. Clarkson was to return to the faculty in the Spring of 2018, he would have already been added to the payroll and would have received at least one paycheck.

58. On January 24, 2018, also at close of business, HR, Employee, and Labor Relations Director Ralph Lucero emailed Dr. Clarkson a letter from the Provost proposing his termination.

59. On January 25, 2018, however, Dr. Clarkson received an email indicating that he had been returned to work as of January 16, 2018 and would receive a paycheck on January 31, 2018. Dr. Clarkson replied that he had not returned to work and was still on leave until January 2020.

60. On January 31, 2018, Dr. Clarkson filed a timely appeal of the proposed termination.

61. Despite Dr. Clarkson's request for relevant documents, Defendants refused to turn over many of the requested documents and they improperly claimed attorney client privilege for others. They also refused to allow an investigator to interview witnesses in order to prepare witness statements.

62. NMSU also continued to engage in hostile actions against Dr. Clarkson. In particular, when Dr. Clarkson made a reasonable request in February for the NMSU College Republicans to be able make a room reservation, he was met with aggressive hostility and had to escalate the request to the highest levels in the University and point out that one of the attendees at the meeting would be Congressman Steve Pearce, a distinguished alumnus. Eventually the university relented and allowed the College Republicans to have their organizational meeting.

63. In late February 2018, NMSU asked for, and Dr. Clarkson agreed to, a postponement of the administrative "Pre-Action Determination Hearing," the first step in the appeals process.

64. After additional NMSU delays and a continued refusal to provide all relevant information and access to witnesses, the Pre-Action Determination Hearing took place on Friday, April 13, 2018.

65. NMSU selected a hearing officer, Ralph Lucero, who was not only hired by Provost Howard but directly reports to Provost Howard. Provost Howard was acting as the lead prosecutor in the hearing, and despite Dr. Clarkson's objections to the obvious conflict of interest, the hearing officer did not recuse himself.

66. At the hearing, both the Provost and the Dean admitted, under oath, that neither of them took any actions whatsoever regarding Dr. Clarkson's leave until after he announced his run for Congress.

67. The Provost also admitted, under oath, that nothing in the grant of professional leave gave the Provost the authority to unilaterally cancel the leave.

68. As expected, given the fundamental lack of due process and inherent conflicts of interest, the hearing officer ruled in favor of his direct superior and against Dr. Clarkson.

69. The hearing officer did not apply the appropriate standard for burden of proof Clarkson says, nor did he apply it against the correct party, which should have been NMSU. The opinion itself ignored the plain text of the leave granting document and instead engaged in contract by inference and anecdote as opposed to the rule of law.

70. Despite ruling against Dr. Clarkson and in favor of his direct superior, Provost Howard, the hearing officer nevertheless found NMSU's conduct troubling, saying NMSU's "communication with Dr. Clarkson has been antagonistic, especially at the Department and College levels, with limited attempts to seek mutual understanding and establish a positive protocol of communication and interaction."

71. Despite being within the 5-day appeal window, the Provost sent a notice of termination on April 24. There was a disingenuous offer for Dr. Clarkson to be reinstated provided that he remain in his office on campus at all times, even though he had no students and no classes. This offer was clearly intended to make it impossible for Dr. Clarkson to continue to campaign, and the “office arrest” provision has never been imposed on any faculty member at NMSU. The letter acknowledged that an appeal of the Pre-Action Determination Hearing was possible.

72. On April 25, Dr. Clarkson filed a timely appeal of the Pre-Action Determination Hearing to the faculty senate, pursuant to ARP §10-50-N.

73. On April 30, despite the pending appeal, Dr. Clarkson’s employment was terminated effective April 27, 2018. Upon information and belief it is alleged that by choosing this date, NMSU attempted to put additional pressure on Dr. Clarkson because his son’s health insurance would also be cancelled on that date.

**FIRST CAUSE OF ACTION  
(Breach of Contract)**

74. Plaintiff incorporates the allegations of the preceding paragraphs as if set forth in full.

75. The document granting Dr. Clarkson’s professional leave of absence is a contract, which granted rights to Dr. Clarkson.

76. Any ambiguities in the contract must be construed against against NMSU as the drafter of the contract.

77. NMSU breached the plain language of the contract when Provost Howard unilaterally, and without any authority under law or regulation, revoked Dr. Clarkson’s leave of absence.

78. A second breach occurred when the Provost ordered Dr. Clarkson to go up for tenure in the Fall of 2018 rather than the Fall of 2020.

79. Dr. Clarkson was damaged as a result of these breaches.



**SECOND CAUSE OF ACTION**  
**(Right to Due Process of Law – 42 U.S.C. § 1983)**

80. Plaintiff incorporates the allegations of the preceding paragraphs as if set forth in full.

81. The due process clauses of the Fifth and Fourteenth Amendments to the U.S. Constitution preclude Defendants, their employees and agents, as state actors, from depriving Plaintiff of life, liberty, or property without due process of law.

82. Defendants Dan Howard, James Hoffman, Ralph Lucero, and Nancy Oretskin are state actors as they are employed by NMSU and act under the color of the authority they possessed by virtue of state law and made possible only because these Defendants are clothed with the authority of state law.

83. Dr. Clarkson had a constitutionally protected property interest in continued employment at NMSU, specifically granted via the professional leave of absence granted on June 28, 2017 via letter from Provost Howard, among others.

84. Defendants Dan Howard, James Hoffman, Ralph Lucero, and Nancy Oretskin deprived Dr. Clarkson of his constitutionally protected property interest in continued employment for an illegitimate and/or discriminatory purpose.

85. Defendants Dan Howard, James Hoffman, Ralph Lucero, and Nancy Oretskin deprived Dr. Clarkson of his constitutionally protected property interest in continued employment without notice or a hearing meaningful in either fact or theory.

86. NMSU administrative regulations likewise expressly confirm that due process will be afforded a party prior to termination.

87. The hearing process at NMSU was fundamentally flawed from the beginning, and Dr. Clarkson's interest in his leave was arbitrarily undermined.

88. Dr. Clarkson was denied access to relevant documents, was not allowed to interview witnesses prior to the hearing.

89. At the time this Complaint is filed, Plaintiff has still not been afforded all relevant documents which had been requested prior to the pre-determination hearing.

90. Plaintiff was denied the opportunity to present his case in full and was not afforded an impartial tribunal as the hearing officer was selected by, and directly answers to, the party seeking to terminate Plaintiff, Provost Dan Howard.

91. Dr. Clarkson was damages as a result of these violations.

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**Relief Sought**

92. Dr. Clarkson asks this court to issue an order enjoining NMSU from processing his termination until all administrative appeal rights have been exhausted. Dr. Clarkson further asks this court to compel NMSU to undo all actions taken since April 26, 2018 regarding Dr. Clarkson's employment and leave status, particularly the cancellation of his son's health insurance;
93. Dr. Clarkson seeks damages for the pain and suffering caused by NMSU's hostile and discriminatory actions;
94. Monetary damages in an amount to be proven at trial;
95. Attorneys' fees and costs; and,
96. Any other appropriate relief which the evidence in the case may support and the Court finds appropriate.

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