

<b>LARIMER COUNTY DISTRICT COURT</b> 201 LaPorte Ave., Fort Collins, CO 80521 (970) 494-3500		DATE FILED: June 15, 2017 3:06 PM FILING ID: A72DACF2FFB34 CASE NUMBER: 2017CV30516
<b>CHRISTINA BOUCHER,</b> Plaintiff  v.  <b>BOARD OF GOVERNORS OF THE COLORADO          STATE UNIVERSITY SYSTEM dba COLORADO          STATE UNIVERSITY,</b> <b>ASA BEN HUR,</b> in his individual capacity, <b>JANICE NERGER,</b> in her individual capacity, and <b>DARRELL WHITLEY,</b> in his individual capacity, Defendants	♦ COURT USE ONLY ♦	
Sam Cannon #46132 Gordon Hadfield #42759 <b>CANNON HADFIELD STIEBEN, LLC</b> 3534 John F. Kennedy Pkwy, # B, Fort Collins, CO 80525 Telephone: (970) 689-3037 Fax: (970) 360-1004 e-mail: <a href="mailto:scc@cannonlaw.com">scc@cannonlaw.com</a> <a href="mailto:gmh@cannonlaw.com">gmh@cannonlaw.com</a>	CASE:  DIVISION:	
<b>COMPLAINT AND JURY DEMAND</b>		

Dr. Christina Boucher ("Boucher") worked as a tenure-track assistant professor for Defendant The Board of Governors of the Colorado State University System dba Colorado State University ("CSU"). After reporting that she was sexually harassed by another professor, Defendant Dr. Asa Ben Hur ("Ben Hur"), Boucher was subjected to a campaign of retaliation by Ben Hur, Boucher's Department Chair, Dr. Darrell Whitley ("Whitley"), and Janice Nerger ("Nerger"), Dean of the College of Natural Sciences in violation of Title VII of the Civil Rights

Act of 1964 ("Title VII") and 42 U.S.C. § 1983 ("Section 1983"). For her complaint, Boucher states as follows:

#### **JURISDICTION AND VENUE**

1. Boucher brings this action under Title VII and Section 1983.
2. The Court has jurisdiction over CSU because it is organized under Colorado law.
3. The Court has jurisdiction over Whitley because he is a resident of Colorado.
4. The Court has subject matter jurisdiction over this case under Colo. Const., Art. VI, § 9.
5. Larimer County is an appropriate venue for this case because the defendants reside in Larimer County.

#### **PARTIES**

6. Boucher is an individual residing in Florida. At all times relevant to this case, Boucher was an employee of CSU within the meaning of Title VII.
7. CSU is an entity organized under Colorado law with a principal place of business of Larimer County, Colorado.
8. At all relevant times, CSU was an employer within the meaning of Title VII of the Civil Rights Act of 1964 ("Title VII").
9. Upon information and belief, Whitley is an individual residing in Larimer County, Colorado.
10. At all relevant times, Whitley was employed by CSU as chair of the Department of Computer Science. He was empowered by CSU, and therefore the State of Colorado, to make decisions regarding professors in the Department of Computer Science. Accordingly, Whitley was acting under color of state law under Section 1983 in decisions he made regarding Boucher's employment at CSU.

11. Whitley was one of Boucher's supervisors with the power to take tangible employment actions against her.
12. Upon information and belief, Ben Hur is an individual residing in Larimer County, Colorado.
13. At all relevant times, Ben Hur was employed by CSU as a tenured faculty member. He was empowered by CSU, and therefore the State of Colorado, to make recommendations regarding professors in the Department of Computer Science through the tenure and promotion committee. Accordingly, Ben Hur was acting under color of state law under Section 1983 in actions he took, through the tenure and promotion committee, regarding Boucher's employment at CSU.
14. As a member of the tenure and promotion committee, Ben Hur was one of Boucher's supervisors as CSU had empowered him to recommend tangible employment actions be against her.
15. Upon information and belief, Nerger is an individual residing in Larimer County, Colorado.
16. At all relevant times, Nerger was employed by CSU as Dean of the College of Natural Sciences. She was empowered by CSU, and therefore the State of Colorado, to make decisions regarding professors in the Department of Computer Science. Accordingly, Nerger was acting under color of state law under Section 1983 in decisions she made regarding Boucher's employment at CSU.
17. Nerger was one of Boucher's supervisors with the power to take tangible employment actions against her.

#### **ADMINISTRATIVE EXHAUSTION**

18. On September 3, 2015, Boucher filed Charge of Discrimination number 541-2015-02356 with the Equal Opportunity Employment Commission ("EEOC") alleging sex discrimination,

sexual harassment, and retaliation. Under the work share agreement between the Colorado Civil Rights Division (“CCRD”) and the EEOC, the charge was also filed with the CCRD.

19. On April 19, 2017, Boucher received a Right to Sue letter from the Department of Justice giving her 90 days to file a lawsuit.
20. Boucher has exhausted her administrative remedies under 42 U.S.C. § 2000e-5.

### **ALLEGATIONS**

- 1. CSU’S DEPARTMENT OF COMPUTER SCIENCE AND RELEVANT UNIVERSITY POLICIES**
21. Boucher was employed by CSU as a tenure-track assistant professor at CSU in the department of computer science.
22. As the chair of the department of computer science, Whitley was one of Boucher’s supervisors who had the power to take tangible employment actions against Boucher.
23. In order for a tenure-track assistant professor to receive tenure, she must be recommended for tenure by the department’s tenure and promotion committee. The tenure and promotion committee is made up of the tenured faculty in the department. The department chair is not eligible to be a member of the tenure and promotion committee.
24. CSU has delegated the following duties to the tenure and promotion committee: (1) Advise the Department Chair in the annual evaluation of the Faculty.; (2) Recommend the award or denial of tenure; (3) Recommend the award or denial of promotion to Associate Professor; (4) Approve the selection of new members of the Faculty with tenure; faculty appointed with tenure will be required to undergo the usual tenure review process with a modified time frame;(5) Recommend the renewal or non-renewal of appointment for untenured members of the Faculty.

25. As a tenured faculty member in the department of computer science, Ben Hur sat on the tenure and promotion committee. Accordingly, Ben Hur was one of Boucher's supervisors as CSU had delegated to him, through the tenure and promotion committee, the power to recommend tangible employment actions against Boucher.
26. Even if the tenure and promotion committee recommends an assistant professor receive tenure, the department chair has the power to overrule that recommendation and recommend to the dean of the college that the professor not receive tenure.
27. Even if the tenure and promotion committee and the department chair recommend an assistant professor receive tenure, the dean of the college can still recommend to the provost's office that the professor not receive tenure.
28. Accordingly, to receive tenure and a promotion, Boucher had to receive the support of the tenure and promotion committee, on which Ben Hur sat; Whitley, who was department chair; and Nerger, the Dean of the College of Natural Sciences at CSU.
29. Under the CSU faculty manual, free speech rights apply in the classroom and in all other education programs and activities of public institutions, and First Amendment rights apply to the speech of students and teachers.
30. Further, the CSU faculty manual states, the freedoms granted by the First Amendment to the Constitution of the United States are applicable to the faculty member, both as an academician and as a Citizen.

**2. BOUCHER'S HIRING AND INTRODUCTION TO THE DEPARTMENT OF COMPUTER SCIENCE**

31. Boucher was hired as a tenure-track assistant professor in the Department of Computer Science to start work in the Fall of 2012.

32. During the Summer of 2012, before Boucher began work at CSU, she attended a conference that was attended by other professors in the department, including Ben Hur.

33. During the conference, Boucher attended dinner with some soon-to-be colleagues, including Ben Hur. Throughout the dinner, Ben Hur stared at her breasts. Ben Hur's behavior was so obvious that another attendee of the dinner said that she noticed Ben Hur giving Boucher his "googly eyes."

### **3. BEN HUR'S INAPPROPRIATE BEHAVIOR TOWARDS BOUCHER**

34. After Boucher began working for CSU, Ben Hur continued to stare at Boucher's breasts or backside.

35. Ben Hur's act of staring at Boucher's breasts and backside was due to Boucher's sex.

36. Ben Hur's behavior made Boucher uncomfortable, and she considered it sexual harassment.

Throughout Boucher's employment at CSU, she had a good faith belief that she was the victim of sexual harassment at the hands of Ben Hur.

37. The CSU faculty manual states "No member of the academic community (faculty, staff, and students) may sexually harass another. The University deplores sexual harassment and will act energetically to prevent it."

### **4. BOUCHER'S JOB PERFORMANCE BEFORE REPORTING SEXUAL HARASSMENT**

38. On March 12, 2013, Whitley gave Boucher an annual evaluation in which she met expectations in all reviewed categories.

39. On February 24, 2014, Boucher received a report from the Department of Computer Science promotions and tenure committee based on Boucher's 2013 performance. In that letter, the committee stated that it felt Boucher was "doing very well in all respects" and was "looking forward to [her] achievements in the years to come."

40. On March 11, 2014, Whitley gave Boucher an annual evaluation in which she met expectations in all reviewed categories.

41. On June 18, 2014, Boucher received a 2.5% raise.

42. Before Boucher complained about sexual harassment, Boucher was the highest paid assistant professor given the length of her employment in the department of computer science.

#### **5. BOUCHER'S REPORT OF SEXUAL HARASSMENT TO CSU**

43. In or around the end of October 2014, Boucher met with Whitley. During that meeting, Boucher told Whitley that she was upset because Ben Hur continually looked at her chest in a sexual manner. Whitley responded that he would report the allegation to the Dean and that Boucher should report the incident to CSU's Office of Equal Opportunity ("OEO") if she felt Ben Hur acted inappropriately.

44. Boucher's statements to Whitley in late October 2014 constituted a good faith report of sexual harassment.

45. Boucher's statements to Whitley in late October 2014 constituted protected speech under the First Amendment.

46. On October 28, 2014, Boucher met with Nerger. Nerger was Whitley's supervisor. During the meeting, Boucher reported to Nerger that "Ben Hur looked at her inappropriately when they talked." Boucher reported that Ben Hur's actions made her uncomfortable.

47. Nerger advised Boucher that if she was concerned, she should contact OEO.

48. Boucher's statements to Nerger on October 28 2014 constituted a good faith report of sexual harassment.

49. Boucher's statements to Nerger on October 28 2014 constituted protected speech under the First Amendment.

50. CSU's faculty manual states that any faculty member or administrative professional who encounters acts of discrimination because of race, age, color, religion, national origin or ancestry, sex, gender, disability, veteran status, genetic information, sexual orientation, or gender identity or expression, either on or off campus, is urged to report such incident to the University by completing a simple form available for that purpose from the Office of Equal Opportunity (OEO).

## **6. CSU, BEN HUR, AND WHITLEY'S RETALIATION AGAINST BOUCHER**

### **6.1. BEN HUR'S BEHAVIOR CHANGES**

51. Ben Hur was a member of the Department of Computer Science tenure and promotion committee. As such, Ben Hur had decision making power over Boucher's ability to achieve a promotion from assistant professor to associate professor and to achieve tenure. Accordingly, Ben Hur was one of Boucher's supervisors.
52. Shortly after Boucher's conversations with Whitley and Nerger. Whitley disclosed Boucher's complaint about Ben Hur to Ben Hur.
53. Ben Hur immediately stopped inviting Boucher to meetings even when those meetings related to her research or her graduate student advisees.
54. In late May or early June 2015, Ben Hur approached Boucher in her office and asked her to step down from a PhD student's committee because Boucher made Ben Hur "feel uncomfortable." Boucher asked Ben Hur to email her the request.
55. On June 1, 2015, Ben Hur emailed Boucher stating "Thanks for agreeing to step down from [student's] thesis committee. I will come to collect your signature on the S9A."
56. Boucher never agreed to step down from the student's thesis committee.



57. Upon learning that Boucher had been removed from her committee, the student stated, "It was always great working with you . . . Actually, I have no clear idea on what happened either. Asa mentioned that the committee needs to be changed – I understand that you did not prompt this."
58. Student advising is a significant element of Boucher's job, so removing her from a student's committee had a significant impact on Boucher's ability to meet the expectations of her position.
59. Ben Hur's changed behavior was a result of Boucher's report of sexual harassment.
60. A reasonable employee would have considered Ben Hur's behavior to be materially adverse.

## **6.2. THE NEGATIVE EVALUATION**

61. On March 2, 2015, Nerger emailed Boucher. In the email, Nerger stated, "Because you have come to see me about the climate in the department and I know things with [Ben Hur] have been disruptive, these two things may well come up in your discussion with [Whitley]. I think having another pair of ears in the room could be useful."
62. Nerger's March 2, 2015 email indicates that Boucher was in danger of having her complaint of sexual harassment affect her annual evaluations.
63. On March 12, 2015, Whitley gave Boucher her annual evaluation. In it, he rated her below expectations in two out of three categories reviewed and meets/below expectations overall.
64. Annual evaluations for tenure-track faculty at CSU are extremely important. A single negative evaluation can seriously affect an assistant professor's chance of being promoted or granted tenure.
65. The March 12, 2015 evaluation was a negative evaluation and it had a significant negative impact on Boucher's likelihood of achieving tenure and being promoted at CSU.

66. On March 23, 2015, Boucher met with Nerger and a number of other officials to report Whitley's retaliatory evaluation. During the meeting Boucher stated that she believed she was the victim of discrimination and that she was being retaliated against. After Boucher said that, Nerger responded that such legally charged terms made her angry.
67. After Whitley refused to sufficiently amend his evaluation of Boucher, she filed a formal grievance regarding the evaluation. In the grievance, she alleged that Whitley's negative evaluation was given in retaliation for Boucher's report of sexual harassment against Ben Hur. The grievance was investigated by CSU's OEO.
68. Whitley gave Boucher the negative evaluation because she reported Ben Hur's sexual harassment of her to Whitley and Nerger.
69. A reasonable employee would have considered the negative evaluation to be materially adverse.

### **6.3. BOUCHER'S TENURE AND PROMOTION CASE ATTACKED**

70. On April 3, 2015, the tenure and promotion committee met. During the meeting, Boucher's tenure case was discussed. The committee was about to reach the conclusion that it would strongly recommend and evaluation that Boucher was on track for tenure when Ben Hur argued against Boucher. Specifically, Ben Hur claimed Boucher had treated him hatefully. As a result of Ben Hur's statements, the tenure and promotion committee disbanded without producing an evaluation letter.
71. Ben Hur's statements were in retaliation for Boucher's report of sexual harassment against him.
72. Ben Hur's statements led members of the committee to believe Boucher had done something truly terrible.

73. Ben Hur's statements significantly reduced the likelihood that Boucher would be promoted and granted tenure at CSU.
74. On April 10, 2015, the promotions and tenure committee met again to discuss Boucher's case. Whitley attended the beginning of that meeting to introduce his negative evaluation of Boucher, and to encourage the committee to consider the evaluation.
75. During that tenure and promotion committee meeting, despite Whitley's negative evaluation, the committee voted that Boucher was "doing really well" and stated that she was "making satisfactory progress toward tenure and promotion."
76. After receiving the April 10, 2015, promotion and tenure committee report about Boucher, Nerger asked the committee to reconsider its positive report based on Whitley's negative evaluation of Boucher. The tenure and promotion committee responded to Nerger that it was not their job to adjudicate evaluations when the subject of the evaluation had filed a grievance.
77. On April 15, 2015, Whitley wrote to Boucher stating that he considered the promotions and tenure committee report "intentionally incomplete" because they did not consider his negative evaluation of Boucher. In light of this statement, Whitley's evaluation appears to have been designed to negatively affect Boucher's tenure case.
78. Whitley's April 15, 2015, letter went on to state that Whitley's "primary concern" was with Boucher's "personal interactions with others on campus." He further stated that "in general, these incidents occur when another individual has done something that causes you to take offense and you then lash out at them with threats and accusations."
79. One of the "personal interactions" Whitley was referring to in his April 15, 2015, letter was Boucher's complaint of sexual harassment against Ben Hur.

80. Whitley closed the April 15, 2015 letter by stating, "I am going to recommend reappoint (sic) at this time for Academic Year 2016-2017. However, these issues need to be resolved to ensure your success here at Colorado State University."
81. One member of the tenure and promotion committee has stated that Ben Hur and Whitley's retaliation against Ben Hur was "ruined [Boucher's] once thriving career at [CSU]."
82. Ben Hur and Whitley's negative statements regarding Boucher to the tenure and promotion committee were a result of Boucher's report of sexual harassment.
83. A reasonable employee would have considered the attack of Boucher's tenure case materially adverse.

#### **6.4. WHITLEY TRIES TO TAKE LAB SPACE FROM BOUCHER'S HUSBAND**

84. Boucher's husband, Dr. Jamie Ruiz ("Ruiz"), was also a professor in the Department of Computer Science at CSU.
85. Soon after Whitley and Ben Hur attacked Boucher's tenure case and Boucher filed a grievance, Whitley tried to take lab space away from Ruiz.
86. The pretext for Whitley's actions is that there was a sofa, a microwave, and dirty dishes in the lab space. However, the condition of the lab space in question had not changed for some time prior to Boucher filing her grievance, and it had never been a problem with CSU's administration before.
87. Whitley attempted to take lab space from Ruiz as a result of Boucher's opposition to sexual harassment and retaliation.
88. A reasonable employee would have considered Whitley attempting to take lab space away from Ruiz to be materially adverse.

#### **6.5. WHITLEY REFUSES TO APPROVE A ROUTINE AMENDMENT TO A GRANT APPLICATION**

89. During the summer of 2015, Boucher and her collaborators were awarded a research grant.

However, in order for the research grant to be finalized, three departments at CSU had to sign off on an administrative change to the grant.

90. Two departments signed off on the change, but Whitley refused.

91. Whitley's refusal to sign off on the administrative changes on the research grant significantly delayed Boucher's research project.

92. Whitley's refusal to sign off on the administrative changes on the research grant was a result of Boucher's opposition to sexual harassment and retaliation.

93. A reasonable employee would have considered the refusal to approve the administrative changes to the grant to be materially adverse.

#### **6.6. NERGER FORCES BOUCHER AND RUIZ TO RESIGN**

94. In or around May 2016, Nerger prevented Boucher and Ruiz from using research funds to pay their graduate students through the summer of 2016.

95. Boucher emailed Nerger on May 9, 2016, asking for funds to be released so she could pay her graduate students through the summer of 2016.

96. In response, Nerger said, "Once I have confirmation from you of your resignations, I will then instruct Cheryl to approve your spending requests."

97. In short, Nerger refused to pay Boucher and Ruiz's employees unless they resigned their employment at CSU.

98. Nerger refused to release the research funds as a result of Boucher's report of sexual harassment and retaliation.

99. A reasonable employee would have found Nерger's act of withholding research funds materially adverse.

#### **6.7. BOUCHER'S RECEIVES A BELOW AVERAGE RAISE**

100. At CSU, each department is allocated a raise budget of a percentage of total salaries.

101. From that allocation, the department chair then determines how to distribute raises among professors by merit.

102. In April 2015, Whitley received notice that the department of computer science's allocation for raises in the academic year 2015/2016 would be two percent of total salaries.

103. The 2015/2016 raises were the first after Boucher complained about sexual harassment and retaliation.

104. In distributing the 2015/2016 raises, Whitley limited Boucher to a 1.79 percent raise. This raise was below the average raise given to professors in the department of computer science.

105. In contrast, Whitley gave Ben Hur an above average 2.36 percent raise for 2015/2016.

106. Whitley himself received a two percent raise for 2015/2016.

107. Boucher's below average raise was not justified by her academic output in 2014/2015.

108. Boucher's below average raise was a result of Boucher's complaint about sexual harassment and opposition to unlawful discrimination and retaliation.

109. A reasonable employee would have found the below average raise to be materially adverse.

#### **7. CSU'S RATIFICATION OF WHITLEY AND BEN HUR'S ACTIONS**

110. As a result of Boucher's grievance, OEO investigated Boucher's claims of sexual harassment and retaliation.

111. CSU's ultimate policymakers have empowered OEO to investigate claims like Boucher's

112. CSU's OEO investigation report attacked Boucher's credibility and concluded that Boucher's allegations against Whitley and Ben Hur were without merit.

113. Accordingly, CSU ratified Whitley and Ben Hur's actions through its OEO report.

#### **8. THE END OF BOUCHER'S EMPLOYMENT AT CSU**

114. After consulting with other professors at CSU, Boucher determined that she would not receive tenure at CSU as Ben Hur, through the tenure and promotion committee; Whitley, as department chair; and Nerger, as Dean of the College of Natural Sciences, would have to recommend for her to receive tenure or a promotion.

115. Accordingly, Boucher was forced to move her family across the country to take a new job as an assistant professor in Florida. At Boucher's new job, she is further away from tenure than she should would have been had she been able to stay at CSU.

116. Boucher has suffered damages as a result to CSU, Whitley, and Ben Hur's actions as she was forced to move jobs and she suffered emotional distress from the campaign of retaliation she endured.

#### **9. CSU'S HISTORY OF SEXUAL DISCRIMINATION, HARASSMENT, AND RETALIATION**

117. In March 2017, CSU published a report drafted in part by its own employees regarding the Status of Women Faculty at Colorado State University.

118. One of the fourteen findings of the report was that "Participants consistently reported gender-based inequities at both inter-personal and institutional levels."

119. The report also found that the evaluation process for female faculty was "erratic, unfair, and inconsistently applied."

120. Another finding was that participants who turned to institutional systems with grievances or complaints often reported dissatisfaction with procedures and systemic barriers to resolutions.
121. Regarding retaliation, the report stated: "There was also a very clearly articulated concern about retribution if one complains. This was such a strong concern that we have chosen not to cite quotes from participants that directly relate to this issue in an effort to protect confidentiality."
122. One of the recommendations of the report was that "Evaluation protocols need to better account for potential gender bias."
123. In response to the report's findings, CSU President Tony Frank described CSU's environment of bias and retaliation against its female faculty "troubling" and "unacceptable."

#### **FIRST CLAIM FOR RELIEF – RETALIATION IN VIOLATION OF TITLE VII**

124. Boucher incorporates all above allegations into this claim for relief.
125. Boucher opposed unlawful sexual harassment by Ben Hur by reporting it to Whitley and Nerger. She further opposed the unlawful retaliation she suffered by filing a grievance that was investigated by CSU's OEO.
126. CSU took action against Boucher that a reasonable employee would have found materially adverse in that it gave her a negative evaluation, it attacked her tenure case, it tried to take lab space away from her husband, it delayed her research grant, it refused to release funds to allow her to pay her students unless she and her husband resigned their employment at CSU, and it gave her a below average raise in 2015/2016.
127. CSU would not have taken the above materially adverse actions but for Boucher's opposition to unlawful sexual harassment and retaliation.



128. Because of CSU's retaliation against Boucher, she has suffered damages including economic and non-economic losses.

**SECOND CLAIM FOR RELIEF – FIRST AMENDMENT RETALIATION IN  
VIOLATION OF SECTION 1983 AGAINST WHITLEY**

129. All above allegations are incorporated into this claim for relief.
130. Boucher's report of sexual harassment to Nerger and Whitley and her subsequent opposition to the retaliation she suffered was protected speech under the First Amendment to the United States Constitution.
131. Whitley's negative evaluation of Boucher, attack on Boucher's tenure case, attempt to take lab space from Boucher's husband, refusal to sign off on the amended research grant, and act of giving her a below average raise in 2015/2016 constituted adverse employment actions against Boucher because the actions might have dissuaded a reasonable employee from engaging in protected speech like Boucher's.
132. In taking the above actions, Whitley was acting under color of state law.
133. Boucher's protected speech was a motivating factor in the above adverse employment actions.
134. Boucher has suffered damages as a result of Whitley's behavior in the form of economic and non-economic losses.

**THIRD CLAIM FOR RELIEF – FIRST AMENDMENT RETALIATION IN  
VIOLATION OF SECTION 1983 AGAINST BEN HUR**

135. All above allegations are incorporated into this claim for relief.
136. Boucher's report of sexual harassment to Nerger and Whitley and her subsequent opposition to the retaliation she suffered was protected speech under the First Amendment to the United States Constitution.

137. Ben Hur's behavioral changes towards Boucher, including his removal of her from a student's PhD committee and his attack on Boucher's tenure case constituted adverse employment actions against Boucher because the actions might have dissuaded a reasonable employee from engaging in protected speech like Boucher's.
138. In taking the above actions, Ben Hur was acting under color of state law.
139. Boucher's protected speech was a motivating factor in the above adverse employment actions.
140. Boucher has suffered damages as a result of Ben Hur's behavior in the form of economic and non-economic losses.

**FOURTH CLAIM FOR RELIEF – FIRST AMENDMENT RETALIATION IN  
VIOLATION OF SECTION 1983 AGAINST NERGER**

141. All above allegations are incorporated into this claim for relief.
142. Boucher's report of sexual harassment to NERGER and Whitley and her subsequent opposition to the retaliation she suffered was protected speech under the First Amendment to the United States Constitution as stated by CSU's faculty manual.
143. Boucher's opposition to sexual harassment at CSU involved a matter of public concern.
144. NERGER's statement that reports of retaliation and discrimination make her angry, her attempt to have the tenure and promotion committee reconsider its positive evaluation of Boucher, and her demand that Boucher and Ruiz resign before funds would be released before CSU paid their graduate students constituted adverse employment actions against Boucher because the actions might have dissuaded a reasonable employee from engaging in protected speech like Boucher's.
145. In taking the above actions, NERGER was acting under color of state law.

146. Boucher's protected speech was a motivating factor in the above adverse employment actions.

147. Boucher has suffered damages as a result of Nerger's behavior in the form of economic and non-economic losses.

**FIFTH CLAIM FOR RELIEF – FIRST AMENDMENT RETALIATION IN VIOLATION OF SECTION 1983 AGAINST CSU**

148. All above allegations are incorporated into this claim for relief.

149. Whitley, Ben Hur, and Nerger acted under color of state law in taking the actions described in Boucher's second, third, and fourth claims for relief.

150. As described above, in taking the actions described in Boucher's second, third, and fourth claims for relief, Whitley, Ben Hur, and Nerger deprived Boucher of her First Amendment rights.

151. CSU's OEO was authorized by CSU's policymakers to investigate claims like those made by Boucher and make decisions regarding such allegations.

152. CSU's OEO investigated Boucher's allegations against Whitley, Ben Hur, and Nerger and concluded that they had not discriminated, harassed, or retaliated against Boucher.

153. Accordingly, CSU, through its OEO, ratified Whitley, Ben Hur, and Nerger's behavior and are liable for it.

**SIXTH CLAIM FOR RELIEF – FOURTEENTH AMENDMENT RETALIATION IN VIOLATION OF SECTION 1983 AGAINST WHITLEY**

154. All above allegations are incorporated into this claim for relief.

155. Boucher's report of sexual harassment to Nerger and Whitley and her subsequent opposition to the retaliation she suffered and participation in the EEOC process was an impermissible reason to treat her differently under the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

156. Whitley's negative evaluation of Boucher, attack on Boucher's tenure case, attempt to take lab space from Boucher's husband, refusal to sign off on the amended research grant, and act of giving her a below average raise in 2015/2016 constituted adverse employment actions against Boucher because the actions might have dissuaded a reasonable employee from engaging in protected activity like Boucher's.

157. In taking the above actions, Whitley was acting under color of state law.

158. Boucher's opposition to discrimination, harassment, and retaliation described above were a substantial or motivating factor in Whitley's adverse employment actions described above.

159. Whitley would not have taken the above actions but for Boucher's opposition to discrimination, harassment, and retaliation detailed above.

160. Boucher has suffered damages as a result of Whitley's adverse employment actions.

**SEVENTH CLAIM FOR RELIEF – FOURTEENTH AMENDMENT RETALIATION IN VIOLATION OF SECTION 1983 AGAINST BEN HUR**

161. All above allegations are incorporated into this claim for relief.

162. Boucher's report of sexual harassment to Nerger and Whitley and her subsequent opposition to the retaliation she suffered and participation in the EEOC process was an impermissible reason to treat her differently under the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

163. Ben Hur's behavioral changes towards Boucher, including his removal of her from a student's PhD committee and his attack on Boucher's tenure case constituted adverse employment actions against Boucher because the actions might have dissuaded a reasonable employee from engaging in protected speech like Boucher's.

164. In taking the above actions, Ben Hur was acting under color of state law.

165. Boucher's opposition to discrimination, harassment, and retaliation described above were a substantial or motivating factor in Ben Hur's adverse employment actions described above.

166. Ben Hur would not have taken the above actions but for Boucher's opposition to discrimination, harassment, and retaliation detailed above.

167. Boucher has suffered damages as a result of Ben Hur's adverse employment actions.

**EIGHTH CLAIM FOR RELIEF – FOURTEENTH AMENDMENT RETALIATION IN VIOLATION OF SECTION 1983 AGAINST NERGER**

168. All above allegations are incorporated into this claim for relief.

169. Boucher's report of sexual harassment to Nerger and Whitley and her subsequent opposition to the retaliation she suffered and participation in the EEOC process was an impermissible reason to treat her differently under the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

170. Nerger's statement that reports of retaliation and discrimination make her angry, her attempt to have the tenure and promotion committee reconsider its positive evaluation of Boucher, and her demand that Boucher and Ruiz resign before funds would be released before CSU paid their graduate students constituted adverse employment actions against Boucher because the actions might have dissuaded a reasonable employee from engaging in protected speech like Boucher's.

171. In taking the above actions, Nerger was acting under color of state law.

172. Boucher's opposition to discrimination, harassment, and retaliation described above were a substantial or motivating factor in Nerger's adverse employment actions described above.

173. Nerger would not have taken the above actions but for Boucher's opposition to discrimination, harassment, and retaliation detailed above.

174. Boucher has suffered damages as a result of Nerger's adverse employment actions.

**NINTH CLAIM FOR RELIEF – FOURTEENTH AMENDMENT RETALIATION IN  
VIOLATION OF SECTION 1983 AGAINST CSU**

175. All above allegations are incorporated into this claim for relief.
176. Whitley, Ben Hur, and Nerger acted under color of state law in taking the actions described in Boucher's sixth, seventh, and eighth claims for relief.
177. As described above, in taking the actions described in Boucher's sixth, seventh, and eighth claims for relief, Whitley, Ben Hur, and Nerger deprived Boucher of her rights under the equal protection clause of the Fourteenth Amendment to the United States Constitution.
178. CSU's OEO was authorized by CSU's policymakers to investigate claims like those made by Boucher and make decisions regarding such allegations.
179. CSU's OEO investigated Boucher's allegations against Whitley, Ben Hur, and Nerger and concluded that they had not discriminated, harassed, or retaliated against Boucher.
180. Accordingly, CSU, through its OEO, ratified Whitley, Ben Hur, and Nerger's behavior and are liable for it.

**PRAYER FOR RELIEF**

181. Boucher respectfully asks the Court to enter judgment in her favor and against Defendants in an amount to be determined at trial, and award her all relief allowed by law, including but not limited to:
- a. Economic Losses including back pay for the lower raise Boucher received in academic year 2015/2016.
  - b. Compensatory damages,
  - c. Attorneys' fees
  - d. The costs of bringing this action
  - e. Pre-judgment and post-judgment interest, and

f. Any other relief justice requires and law or equity allow.

**JURY DEMAND**

Boucher demands a jury trial on all issues.

Dated June 15, 2017

CANNON HADFIELD STIEBEN, LLC

A handwritten signature in dark ink, appearing to read 'Sam Cannon', is written over a horizontal line.

Sam Cannon