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John Clune, Colorado Bar No. 27684, application for admission *Pro Hac Vice* forthcoming
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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF PIMA

NICHOLAS PAYNE HOGSED, individually,
Plaintiff,

vs.

ARIZONA BOARD OF REGENTS, operating as
UNIVERSITY OF ARIZONA, a governmental body
of the State of Arizona.
Defendant.

Case No.:

COMPLAINT
Tort – Non-Motor Vehicle

For his complaint, NICHOLAS PAYNE HOGSED (hereinafter "Plaintiff") alleges as follows:

1. Plaintiff is, and was at all times material herein, a resident of the County of Coweta, State of Georgia.

2. Defendant Arizona Board of Regents, operating as University of Arizona (Hereinafter "UofA") is, and was at all times herein, a governmental body of the State of Arizona organized and existing under the laws of the State of Arizona with its principal place of business located in Pima County, Arizona.

3. Richard James DeMont ("DeMont") was, at all applicable times herein, an employee or agent of the Arizona Board of Regents, and was acting as an agent, servant, or

1 employee within the scope of his employment on behalf of Defendant Arizona Board of Regents,
2 and therefore, Defendant Arizona Board of Regents should be held liable to Plaintiff for the actions
3 of DeMont on the theory of respondeant superior, agency, equitable estoppels, or other applicable
4 law. Defendant Arizona Board of Regents is vicariously liable to Plaintiff for all injuries and other
5 damages caused by DeMont.

6 4. All acts and events alleged hereafter occurred within the County of Pima, State of
7 Arizona.

8 5. The minimum jurisdictional amount established for filing this action has been
9 satisfied.

10 6. This Court has jurisdiction and venue is proper.

11 7. Plaintiff complied with all preliminary notice provisions to bring a claim against
12 Defendant, in that a written itemized claim was filed by personally serving a Notice of Claim upon
13 Defendant Arizona Board of Regents. Further, such claim did state what the claim was for, the
14 date of the occurrence, and the amount to settle the claim. This lawsuit is timely filed.

15 8. On August 21, 2016, Plaintiff was a second-year student athlete at the UofA
16 attending classes as a scholarship athlete on the men's swimming team.

17 9. Plaintiff had been recruited by UofA for the purposes of swimming after a very
18 successful high school swim and academic career at East Coweta High School in Georgia.

19 10. On August 21, 2016, Plaintiff was violently attacked by a fellow men's swimming
20 team member who appeared heavily intoxicated on alcohol, drugs, or both.

21 11. Plaintiff was taken to the hospital and treated for multiple injuries resulting from
22 the attack.

23 12. Plaintiff reported the assault to the UofA as well as to the men's swimming coaches,
24 including DeMont.
25

1 13. Instead of taking any action to address the hostility, Coach DeMont retaliated
2 against him by repeatedly blaming, demeaning, and belittling Plaintiff for reporting the matter to
3 the UofA Dean of Students office.

4 14. DeMont informed Plaintiff that he was hurting the team and that he was to blame
5 for getting beat up. DeMont further indicated that Plaintiff was playing the victim and needed to
6 "be a man." DeMont further told Plaintiff that his door was always open if Plaintiff wanted to talk
7 about something real instead of "this pissant bullshit."

8 15. Over the course of the semester, DeMont continued to ridicule Plaintiff and
9 encouraged him to quit the swim team.

10 16. In the following weeks, Plaintiff was ostracized by DeMont. Plaintiff was informed
11 that DeMont instructed his teammates to have nothing to do with him. DeMont told teammates to
12 ignore Plaintiff, going as far as telling teammates not to converse with him and not to swim in
13 lanes next to him at practice. Plaintiff was alienated and isolated.

14 17. Plaintiff began seeking a transfer to another school.

15 18. In order to do so, Plaintiff asked DeMont for a release which would permit Plaintiff
16 to swim at another university.

17 19. DeMont stated to Plaintiff that he would only provide a release if Plaintiff dropped
18 his complaint to the Dean of Students against the teammate who assaulted him asking Plaintiff,
19 "Are you done retaliating? I'm not sure I want to give you the release unless I know you are done
20 retaliating" in an apparent reference to the complaint lodged.

21 20. On December 15, 2016, due to the hostile environment and severe mental anguish
22 created by DeMont, Plaintiff gave up his education at UofA and left for good.

23 21. In the months following the assault and due to DeMont's abusive conduct, Plaintiff
24 suffered weight loss, anxiety, sleep disruption, flashbacks in dreams, stomach sickness, loss of
25 appetite, stress, fear, and headaches.

1 COUNT ONE: NEGLIGENCE

2 22. Plaintiff re-alleges and incorporates paragraphs 1-21 above as if fully set forth
3 herein.

4 23. Defendant owed a duty of care to its students to respond to reports of student on
5 student violence that affects the education of a student.

6 24. Defendant knew or should have known that by ignoring a report of physical
7 violence by a member of the men's swimming team, and retaliating against Plaintiff by harassing
8 and bullying him to leave school and instructing teammates to not further associate with him,
9 Plaintiff's educational opportunities including swimming would be significantly affected.

10 25. Defendant breached its duty of care by failing to address the violence against
11 Plaintiff and responded instead with harassment and retaliation for reporting the violent behavior
12 of a fellow student.

13 COUNT TWO: NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS

14 26. Plaintiff re-alleges and incorporates paragraphs 1-25 above as if fully set forth
15 herein.

16 27. UofA was negligent in its failure to adequately respond to Plaintiff's report of
17 violence at the hands of another member of the swimming team and due to its retaliatory conduct.

18 28. Defendant's negligence created an unreasonable risk of bodily harm to Plaintiff by
19 engaging in conduct that clearly constituted emotional harassment and bullying.

20 29. Defendant's negligence was a cause of emotional distress to Plaintiff.

21 30. Plaintiff's emotional distress resulted in physical injury or illness to Plaintiff.

22 31. As a result, Plaintiff has suffered damages.

23 COUNT THREE: INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

24 32. Plaintiff re-alleges and incorporates paragraphs 1-31 above as if fully set forth
25 herein.

1 33. DeMont's conduct in retaliating against and bullying Plaintiff to leave the school
2 and was extreme and outrageous.

3 34. DeMont's conduct was either intentional or reckless.

4 35. DeMont's conduct caused Plaintiff to suffer severe emotional distress.

5 **DAMAGES**

6 36. As a direct and proximate result of the negligent and/or reckless acts and omissions
7 of Defendant as alleged herein, Plaintiff sustained injuries which caused him pain, suffering,
8 distress, mental and emotional anguish and anxiety, and a general decrease in his quality and
9 enjoyment of life.

10 37. As a further direct and proximate result of the negligent, reckless, and careless
11 conduct of Defendant, Plaintiff has incurred expenses for medical care, and may incur expenses
12 for future medical care, all in an amount to be proven at trial.

13 38. As a further direct and proximate result of the negligent, reckless, and careless
14 conduct of Defendant, Plaintiff has or may have suffered a decrease in future earnings, educational
15 opportunities, and loss of scholarship benefits all in an amount to be proven at trial.

16 **WHEREFORE**, Plaintiff prays for judgment against the Defendant as follows:

- 17 (a) For Plaintiff's general and special damages;
- 18 (b) For Plaintiff's expenses incurred for past medical care and treatment of
19 Plaintiff's injuries for future medical treatment expenses;
- 20 (c) For Plaintiff's lost educational opportunities;
- 21 (d) For Plaintiff's past and future lost wages and loss of earning capacity;
- 22 (e) For Plaintiff's costs incurred herein;

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24 ///

1 (f) For interest at the highest legal rate on all damages and costs from the time
2 incurred on the date of such judgment, whichever is sooner, until paid; and

3 (g) For such other and further relief as the Court deems just and proper.

4 DATED this 18th day of August, 2017.

5
6 MICHAEL D RICH PLLC
7 And
8 HUTCHINSON BLACK and COOK, LLC

9 By: 

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