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**IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA**

BOISE STATE UNIVERSITY,

Plaintiff,

v.

MOUNTAIN WEST CONFERENCE, a  
Colorado Non-Profit Corporation; and DOES  
INDIVIDUAL/ENTITIES 1 through 20,

Defendants.

Case No. CV01-20-01293

**COMPLAINT AND DEMAND FOR JURY  
TRIAL**

**Filing Fee: \$221.00**

**Fee Category: A.A.**

Plaintiff Boise State University ("Boise State"), by and through its counsel of record,  
Andersen Schwartzman Woodard Dempsey, PLLC, pleads and alleges as follows:

## THE PARTIES

1. Boise State is, and at all times relevant hereto was, a public institution of higher education organized and existing under the laws of the State of Idaho, with its principal place of business in Boise, Idaho.

2. The Mountain West Conference (“MWC”) is, and at all times relevant hereto was, a non-profit corporation organized and existing under the laws of the State of Colorado, with its principal place of business in Colorado Springs, Colorado.

3. The fictitiously named Doe Defendants are individuals and entities which, on information and belief, have committed acts or omissions, or have caused events to occur, that have resulted in damages to Boise State. If and when the identities of those individuals and entities are discovered, this Complaint shall be amended accordingly.

## JURISDICTION AND VENUE

4. This Court has original jurisdiction over this matter under Idaho Code § 1-705. Defendants are subject to this Court’s jurisdiction under Idaho Code § 5-514.

5. Pursuant to Idaho Code § 5-404, venue is proper in Ada County where Boise State resides.

6. Damages in the instant action are expected to be above the limit of this Court to reassign to the Magistrate Division.

## GENERAL FACTUAL ALLEGATIONS

### **A. Facts Regarding Boise State and its Football Program**

7. Boise State was originally founded by the Episcopal Church as a junior college in 1932 but became independent two years later. In 1965, four-year college status was approved, and the school officially entered the state system of higher education in 1969 as Boise State College.

In 1974, the school's name was changed to Boise State University.

8. Throughout its history, Boise State's football team has performed well, regularly achieving winning – and even undefeated – seasons and securing numerous conference titles and significant post-season bowl wins in the process, including three Fiesta Bowl victories in 2007, 2010 and 2014 over the University of Oklahoma, Texas Christian University and the University of Arizona, respectively. Due to its strong play, Boise State's football team has been ranked in the top 25 in the Associated Press (“AP”) Poll at some point during the season in every year since 2002, and has finished the season in the top 25 in thirteen of the last eighteen years. In fact, in 2006 and 2009, it ended its season ranked in the top five in the nation, and in 2010, it ranked as high as number two in the nation.

9. The Boise State football team's success and its widely known and highly popular blue turf have consistently made it a team that draws high television viewership numbers, both for its away and home games. Its home games, however, routinely draw the highest television viewership numbers on ESPN platforms, among its conference peers, and are a significant draw to the media outlets looking to televise Boise State's football games.

**B. Facts Regarding the MWC**

10. In 1998, the presidents of eight institutions, including the United States Air Force Academy, Brigham Young University, Colorado State University, University of New Mexico, San Diego State University, University of Nevada Las Vegas, University of Utah and University of Wyoming, decided to form a new NCAA Division I-A intercollegiate athletic conference. This new conference became known as the MWC and officially began operations in or about January 1999.

11. The MWC is governed by a Board of Directors that is made up of one appointed director from each of its member institutions. According to the MWC's Bylaws, each member institution must appoint as its representative to the Board of Directors the institution's Chief Executive Officer (President, Superintendent, Chancellor or similar position).

**C. Facts Regarding Boise State's Original Membership in the MWC**

12. In July 2011, Boise State officially joined the MWC. Shortly thereafter, Boise State looked to become a "football only member" of the Big East Conference and, in the process, entered into a memorandum of understanding ("MOU") with the Big East Conference. Prior to the date that MOU became effective, however, the landscape of the Big East Conference changed dramatically. For example, the Big East Conference lost all of the following: (1) eleven of its fourteen members; (2) its "automatic qualification" standing within the Bowl Championship Series system and its guaranteed right to play in the prestigious Sugar Bowl, Fiesta Bowl or Orange Bowl; and (3) the ownership rights to the name, the Big East, and with it, the brand, corporate status, image rights and good standing associated with that name.

13. Due to the fundamental and material changes to the Big East Conference, Boise State provided notice of its intent not to join the Big East Conference and to cancel or revoke any obligations it may have had under the MOU. In response, the Big East Conference demanded that Boise State pay it a substantial exit or cancellation fee.

14. While this was occurring, Boise State and the MWC agreed that Boise State would rejoin the MWC under certain terms and conditions.

**D. Facts Regarding Boise State's Re-Entry Agreement With the MWC**

15. Boise State rejoined the MWC as an all-sports member in 2013 pursuant to the terms the parties expressly agreed to in a December 31, 2012 contract entitled "Boise State

Membership in Mountain West Conference Term Sheet” (the “Re-Entry Agreement”), which was executed on Boise State’s behalf by Dr. Robert Kustra, its President at the time, and on the MWC’s behalf by Craig Thompson, its Commissioner, and Tony Frank, its Board Chair. The Re-Entry Agreement does not contain a termination or expiration date and remains in full force and effect. A true and correct copy of the Re-Entry Agreement is attached hereto as **Exhibit 1**.

16. Under the Re-Entry Agreement, Boise State is entitled to certain rights and bonuses as a result of its football team’s consistent success that, in turn, bring recognition and increased revenue to the MWC. More specifically, as noted above, Boise State has for many years been ranked highly in the AP Polls and has performed well at prominent post-season bowl games, including the Fiesta Bowl. Additionally, statistics such as television viewer numbers, establish that Boise State’s football games, especially its home games on the blue turf, are watched by significantly more people than other football games within the MWC.

17. To address Boise State’s success and, in particular, the substantial popularity of its home games and the corresponding increased revenue those games generated for the MWC, which far exceeded the revenue generated by the other MWC participants’ games, the Re-Entry Agreement reasonably gives Boise State significant control over the television rights to those home games. In particular, Boise State and the MWC agreed to the following in the Re-Entry Agreement with respect to such television rights:

**3. Television Rights.** Boise State shall provide the MWC the exclusive television broadcast rights to its intercollegiate athletic events, including but not limited to home football games, each season. In return, MWC will ensure such Boise State home football games are not part of, nor granted under, any current or future MWC conference-wide television rights contract including the MWC television rights currently under contract with CBS/CSTV or as such may be amended in the future. MWC will ensure that the Boise State home football games are sold as a separate package. Boise State and MWC must mutually agree to whom such Boise State

home football game rights are licensed and to the material terms of such license (provided that Boise State agrees in advance that CBS/CSTV may remain the prime licensee of the conference for television rights and the agreement for the sale of the Boise State home football games may take the form of a sub-license from CBS/CSTV in which case Boise State and the MWC must mutually agree to who sub-licensee is and the material terms of the sub-license). Material terms include, but are not limited to, monetary terms, time/duration of the license, cancellation terms, network upon which the games are broadcast, time and dates of performance (games), and other terms relevant to payment and performance. The revenue from such Boise State home football games license/sub-license shall be retained by the MWC and the MWC will add its retained amount to the MWC media revenue monies to be pooled and disbursed in the same manner as with all other MWC media revenues. All television broadcast rights for the Boise State away games shall be treated in the same manner as and on the same terms as other members of the MWC.

(Ex. 1, ¶ 3, emphasis added.)

18. Under the Re-Entry Agreement, the MWC also agreed to give Boise State and its other members additional bonus payments if their football teams participated in regular season football games that were broadcast nationally. (Ex. 1, ¶ 4.) In particular, paragraph 4(a) of the Re-Entry Agreement provided as follows:

National Exposure Bonus System. In return for the grant of television rights in paragraph 3 above, the MWC will adopt policies or bylaws that provide additional payments to conference members when they participate in regular season football games broadcast nationally as provided for in this paragraph. A national broadcast will be where a football game is aired on one of the following networks (or their successor as long as the network is in over 90,000,000 homes in the United States) ESPN, ESPN2, ABC network "Over the Air," NBC network "Over the Air," CBS network "Over the Air," or Fox network "Over the Air." If a conference member plays in a regular season game on a national broadcast as defined herein, then any MWC team participating in such game will receive a bonus of \$300,000 from the MWC. Further, if such national broadcast is on a Saturday, the MWC will provide an additional bonus payment of \$200,000. Multiple appearances on a national broadcasts are cumulative (for example and for the avoidance of doubt, a MWC team that plays on a game

broadcast on ESPN on a Thursday night, and later in the season plays on ABC network “over the air” on a Saturday would earn a bonus of \$800,000). National exposure bonus payments are calculated and paid as a higher priority and prior to the per-member division of conference revenues.

(Ex. 1, ¶ 4(a).)

19. The bonus payments generated under paragraph 4(a) of the Re-Entry Agreement, which for Boise State fluctuated between \$1.6 million and \$2.2 million annually, were unwieldy for the MWC and Boise State as it made budgeting difficult. To address this problem, Boise State and the MWC entered into an “Amendment to Boise State Membership in Mountain West Conference Term Sheet” (the “Re-Entry Agreement Amendment”), which was executed on November 30, 2016 by Dr. Kustra on Boise State’s behalf, and by Mr. Thompson and Joseph Castro, the MWC’s new Chairman of the Board, on the MWC’s behalf. A true and correct copy of the parties’ Re-Entry Agreement Amendment is attached hereto as **Exhibit 2**.

20. Of importance, the Re-Entry Agreement Amendment altered the bonus structure provided for in paragraph 4(a) by deleting the paragraph contained in the Re-Entry Agreement and replacing it with the following:

Distribution of Net Television Revenue. In return for the grant of television rights in paragraph 3 above, the MWC will adopt the following formula for the distribution of net television revenue:

(i) One million eight hundred thousand dollars shall be paid to Boise State.

(ii) The remainder of the net television revenue shall be paid in equal shares to the MWC members participating in football – including Boise State, but excluding University of Hawaii.

For example, if the net television revenue in a year is \$13.4 million, Boise State would receive \$1,800,000 plus \$1,054,545, and the ten other MWC members participating in football television revenue (excluding University of Hawaii) would receive \$1,054,545.

(Ex. 2.)

21. Under the Re-Entry Agreement Amendment, Boise State is entitled to a \$1.8 million annual bonus in addition to an equal share of the net television revenue in recognition of the fact that its football games, and especially its home games, generate significantly more revenue for the MWC than the other members' games. Boise State's football games are a substantial factor in increased revenue for the entire conference. The \$1.8 million figure was derived by averaging the amounts Boise State received under the previous bonus structure.

22. The Re-Entry Agreement Amendment does not contain a termination or expiration date and remains in full force and effect.

**E. Facts Regarding the MWC's Television Rights Agreement With CBS/ESPN**

23. Beginning in 2013, the television rights to the MWC's football games (and some other sports) were licensed to CBS and ESPN, with ESPN securing the exclusive rights to all of the coveted Boise State home football games (the "ESPN License"). ESPN agreed to pay the MWC \$7 million annually for its license, which began on July 1, 2013 and ran for a seven year term. As required by the Re-Entry Agreement, the MWC provided Boise State with the ESPN License's material terms, including the monetary terms, the license's duration and cancellation terms, the networks upon which Boise State's games would be broadcast, the time and dates of the games and other terms relevant to payment and performance, such as the payment of bonuses and the limitations applicable to the dates, times and channels on which Boise State's home football games could be played or televised. As also required by the Re-Entry Agreement, the MWC sought Boise State's agreement to those terms prior to entering into the ESPN License. Boise State expressly agreed to the terms of the ESPN License and sent a formal letter to Mr. Thompson confirming this agreement. A true and correct copy of a March 5, 2013 letter from Dr. Kustra to



Mr. Thompson confirming Boise State's agreement to the ESPN License is attached hereto as **Exhibit 3**.

24. Under the combined CBS/ESPN television rights agreement, Boise State received \$2.9 million annually, which was made up of the \$1.8 million bonus and its equal share of the remaining net television revenue as agreed to in the Re-Entry Agreement as amended by the Re-Entry Agreement Amendment.

**F. Facts Regarding the MWC's Television Rights Agreement With CBS/Fox**

25. In anticipation of the upcoming expiration of the CBS/ESPN television rights agreement, in spring of 2019, the MWC through a consultant, Dean Jordan, began negotiating new television rights for the conference. These negotiations included staying with CBS for many of the MWC's games and events, including Boise State's away football games, but replacing ESPN with Fox, who would have the exclusive broadcast rights to Boise State's home football games.

26. Under the proposed CBS/Fox agreement and the increased television rights revenue resulting therefrom, and assuming the bonus structure remained the same, Boise State would receive in excess of \$5 million annually under the contract. Overall, the value of the proposed CBS/Fox agreement to the MWC and all of its members was more than double that of the prior CBS/ESPN agreement.

27. According to the plain and unambiguous terms of the Re-Entry Agreement, the MWC is prohibited from entering into a new television license agreement that encompasses the broadcast rights to Boise State's home football games without Boise State's consent to the particular broadcasting entity and to the material terms of any such license.

28. In early December 2019, Mr. Thompson was in Boise, Idaho for the MWC's championship football game. While in Boise, a meeting was held among Mr. Thompson, Boise

State's President, Dr. Marlene Tromp, and Boise State's Athletic Director, Curt Apsey. In that meeting, Mr. Thompson acknowledged that Boise State and, in particular, its football team, was the driving force behind the new, and much more favorable and profitable, deal with Fox. Mr. Thompson also admitted that the increase in revenue to the MWC, and therefore, to its members, that would result from the new agreement with CBS/Fox was dependent in large part on Fox's expressed interest in Boise State's games and, as such, he understood why Boise State expected to, and should, receive more money than the other member institutions, even double the amount.

29. Consistent with the Re-Entry Agreement as amended by the Re-Entry Agreement Amendment, the spirit of that agreement, Boise State's importance to Fox and the increase in revenue its football games generated for the MWC, Dr. Tromp notified Mr. Thompson during their December 2019 meeting that not only did Boise State expect to retain the \$1.8 million guaranteed bonus set forth in the Re-Entry Agreement Amendment, but to also gain an additional, proportionate share of the increased revenue from the new television deal with Fox. Mr. Thompson, Dr. Tromp, and Mr. Apsey discussed the strategy for addressing this issue at the upcoming Board of Directors meeting and the best method by which to go about attempting to obtain what Boise State wanted and deserved. According to Mr. Thompson, he felt that the best strategy was to have Mr. Jordan, who had negotiated the CBS/Fox agreement, to raise the topic with the other directors by emphasizing that the increase in revenue generated from the new agreement was due in large part to Boise State. Mr. Thompson told Dr. Tromp and Mr. Apsey that because Mr. Jordan negotiated the deal and, as such, was privy to the communications with Fox, the message would be better received and more powerful if it was delivered by Mr. Jordan as opposed to Mr. Thompson himself.

30. Based on Mr. Thompson's representations, Boise State, including Dr. Tromp and Mr. Apsey, reasonably believed that at the upcoming Board of Directors meeting to be held on December 15 and 16, 2019, the MWC would support the following: (1) the continued payment of the \$1.8 million bonus to Boise State as it expressly agreed and was obligated to do under the Re-Entry Agreement as amended by the Re-Entry Agreement Amendment; and (2) increasing that bonus amount in proportion to the amount the revenue generated from the CBS/Fox agreement increased in comparison to the prior CBS/ESPN agreement.

31. Contrary to Mr. Thompson's recognition of Boise State's pivotal role in the MWC securing the more lucrative CBS/Fox agreement and his statement that Mr. Jordan would emphasize this role at the Board of Directors meeting in order to address Boise State's reasonable demand for receipt of a proportionate share of that increased revenue, neither Mr. Jordan nor Mr. Thompson did any such thing. Instead, at the Board of Directors meeting, Mr. Jordan and Mr. Thompson presented eight alternatives, none of which addressed an increase in the bonus to be paid to Boise State. Instead, all eight alternatives addressed different methods for phasing out and ultimately ending the already agreed to \$1.8 million bonus to Boise State and entering into uniform agreements with all member institutions under which every member institution, regardless of their contribution to the television revenue, received equal distributions. Thus, contrary to Mr. Thompson's assurances and representations that Boise State should receive its original bonus plus a proportionate share of the increased revenue generated by the new CBS/Fox agreement and that such a bonus structure would be discussed with the MWC's Board of Directors, the MWC offered only alternatives to decrease and end any bonus to Boise State.

32. During the December 15 and 16, 2019 Board of Directors meeting, the directors voted on two important issues: (1) whether to accept or reject the CBS/Fox agreement; and (2)

whether to continue paying Boise State the \$1.8 million agreed to in the Re-Entry Agreement Amendment for six more years (coincidentally, the term of the CBS/Fox agreement), after which that payment would cease.

33. Prior to voting on whether to accept or reject the CBS/Fox agreement, the MWC provided Boise State with only minimal information as to the basic proposed terms of the agreement. It did not, however, disclose many of the proposed agreement's material terms, including material monetary terms, such as how the revenue from the agreement would be distributed, how bonuses would be paid or the agreement's cancellation terms. Essentially, the MWC refused to provide Boise State with vital information on the proposed agreement's material terms, and thereby deprived Boise State of a meaningful opportunity to evaluate whether the agreement was acceptable or not. And, as expressly stated in the Re-Entry Agreement, before a contract embracing the television rights to Boise State's home football games could be entered into by the MWC, rights the CBS/Fox agreement unequivocally covered, both the MWC and Boise State were required to agree to the company to whom those rights were sold and to the material terms of the contract. (Ex. 1, ¶ 3.)

34. Because it lacked the required information on the CBS/Fox agreement's material terms and because the MWC, based on the alternatives it presented during the Board of Directors meeting, was not only trying to renege on its contractual obligation to pay Boise State the \$1.8 million bonus, but also to deprive it of any proportionate share of the increased revenue generated by the CBS/Fox agreement even though Boise State was admittedly the driving force behind that agreement, Boise State (1) did not vote to approve or accept the CBS/Fox agreement; and (2) opposed the termination of the Re-Entry Agreement Amendment's \$1.8 million bonus.

35. Based on these votes, and pursuant to the express terms of the Re-Entry Agreement as amended by the Re-Entry Agreement Amendment, the MWC could not adopt either course of action. Despite this fact, it accepted both, a course of action that was contrary to and in breach of the MWC's contract with Boise State and in violation of the covenant of good faith and fair dealing implied therein.

36. Upon information and belief, each individual director who participated in the votes at the December 15 and 16, 2019 Board of Directors meeting knew that by his or her "yes" vote on either issue (1) or (2), he was acting to cause the MWC to breach its contractual obligations to Boise State to the ultimate detriment of both Boise State and the MWC.

37. Upon information and belief, the MWC, its Commissioner, and individual directors other than Dr. Tromp, agreed and conspired to negotiate terms of the CBS/Fox agreement, failed to obtain Boise State's consent and, to its detriment, voted (1) in favor of the agreement, and (2) in favor of terminating the Re-Entry Agreement Amendment's \$1.8 million bonus, thereby violating the MWC's contractual obligations to Boise State. In fact, two directors voted against any additional distribution to Boise State in the second vote, even for the six years of the CBS/Fox agreement.

**G. Facts Regarding the MWC's Press Conference Regarding the CBS/Fox Agreement**

38. On January 9, 2020, the MWC held a press conference at which the CBS/Fox agreement was discussed. During this press conference, Fox's President, Mark Silverman, acknowledged the significant role Boise State and its football program played in securing the Fox agreement.

39. In addition, Mr. Thompson made various representations during the press conference. In particular, he admitted that the media rights to Boise State's home football games,

and any licenses granted for those rights, had to be negotiated separately based on the express language of the MWC's Re-Entry Agreement with Boise State. Mr. Thompson also indicated that the MWC was terminating the \$1.8 million bonus it had agreed to pay Boise State in the Re-Entry Agreement Amendment and that, moving forward, Boise State would receive distributions equal to those received by the other member institutions. Finally, despite actual knowledge of the falsity of such a statement, Mr. Thompson intimated that Boise State had agreed to the acceptance of the CBS/Fox agreement, the termination of its \$1.8 million bonus and receiving distributions equal to the other member institutions in the future without any bonus for the additional revenue it admittedly generated for the MWC.

### **CLAIMS FOR RELIEF**

#### **COUNT I BREACH OF CONTRACT**

40. Boise State re-alleges the allegations in each paragraph above and incorporates them herein by reference as though set forth in full.

41. The Re-Entry Agreement as amended by the Re-Entry Agreement Amendment is a valid and enforceable contract that does not contain a set term limit.

42. As noted above, the Re-Entry Agreement expressly requires that the television rights to Boise State's home football games are to be sold as a separate package and, more importantly, that "Boise State and [the] MWC must mutually agree to whom such Boise State home football game rights are licensed and to the material terms of such license..." (Ex. 1, ¶ 3.) The MWC materially breached the Re-Entry Agreement when it entered into the CBS/Fox agreement, which encompassed the television rights to Boise State's home football games, without Boise State's fully informed consent to its material terms.

43. The Re-Entry Agreement as amended by the Re-Entry Agreement Amendment also expressly requires the MWC to distribute the net television revenue in a specific manner. Specifically, Boise State is to receive \$1.8 million plus a share of the remainder of the net television revenue equal to the shares received by the other member institutions, except the University of Hawaii. Although the MWC is still paying the \$1.8 million bonus explicitly required by this contract, it inexplicably and improperly elected to cease such payments in six years. By electing to do so, again without Boise State's consent, and despite the fact the Re-Entry Agreement as amended by the Re-Entry Agreement Amendment does not have a termination date, the MWC anticipatorily repudiated one of the material obligations it owes to Boise State under that contract.

44. As a direct and proximate result of the MWC's material breaches of the Re-Entry Agreement as amended by the Re-Entry Agreement Amendment, Boise State has suffered damages in excess of the jurisdictional minimum of this Court.

45. Boise State will establish the precise amount of damages according to proof at trial.

**COUNT II**  
**BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING**

46. Boise State re-alleges the allegations in each paragraph above and incorporates them herein by reference as though set forth in full.

47. By engaging in the conduct described above, the MWC violated, nullified and significantly impaired Boise State's benefits and rights under the Re-Entry Agreement as amended by the Re-Entry Agreement Amendment, thereby breaching the implied covenant of good faith and fair dealing.

48. As a direct and proximate result of the breaches of the implied covenant of good faith and fair dealing, Boise State has suffered damages in excess of the jurisdictional minimum of this Court.

49. Boise State will establish the precise amount of damages according to proof at trial.

**COUNT III**  
**DECLARATORY JUDGMENT**

50. Boise State re-alleges the allegations in each paragraph above and incorporates them herein by reference as though set forth in full.

51. Boise State's right to consent to the material terms of the CBS/Fox agreement and to the continued receipt of the \$1.8 million bonus depend upon the construction of the terms of the Re-Entry Agreement as amended by the Re-Entry Agreement Amendment.

52. An actual and judiciable controversy exists between the parties as to their rights and obligations under the terms of the Re-Entry Agreement as amended by the Re-Entry Agreement Amendment.

53. Boise State is entitled to a declaration of the rights and obligations of the under the Re-Entry Agreement as amended by the Re-Entry Agreement Amendment pursuant to Idaho Code § 10-1202.

**COSTS AND ATTORNEY'S FEES**

54. Boise State has been required to obtain the assistance of counsel to assist in the prosecution of this matter. Boise State is entitled to recover its reasonable costs and attorney's fees incurred in the prosecution of this matter pursuant to applicable law, including Idaho Rule of Civil Procedure 54, Idaho Code §§ 12-120 and 12-121, and/or other applicable law.

**DEMAND FOR JURY TRIAL**

55. Boise State hereby demands a jury trial on all issues so triable pursuant to Idaho Rule of Civil Procedure 38(b).



**PRAYER FOR RELIEF**

WHEREFORE, Boise State respectfully requests that this Court enter judgment in its favor and against the MWC as follows:

1. Awarding all economic and non-economic damages sustained by Boise State as a result of the defendants' conduct in an amount to be determined at trial;
2. Declaring the rights and obligations of the parties under the subject contracts;
3. Awarding all costs and attorney's fees incurred in prosecution of this action pursuant to Idaho law; and
4. Granting Boise State such other and further relief as the Court deems just and proper.

DATED this 17th day of January, 2020.

ANDERSEN SCHWARTZMAN  
WOODARD DEMPSEY, PLLC

*/s/ Steven B. Andersen*  
Steven B. Andersen  
*Attorneys for Plaintiff Boise State University*