

CAUSE NO. 153-323924-21

John Doe	§	IN THE DISTRICT COURT OF
	§	
Plaintiff,	§	
	§	
v.	§	
	§	
THE UNIVERSITY OF TEXAS AT	§	
ARLINGTON; STEFAN ANTON	§	_____ JUDICIAL DISTRICT
ROMANOSCHI, <i>individually and</i>	§	
<i>in his official capacity</i> ; DAYNA FORD,	§	
<i>individually and in her official capacity</i> ;	§	
JANELLE HERRON, <i>individually and</i>	§	
<i>in her official capacity</i> ; and	§	TARRANT COUNTY, TEXAS
R. STEPHEN GIBBS, <i>individually and</i>	§	
<i>in his official capacity</i> .	§	
	§	
Defendants.	§	

**PLAINTIFF’S ORIGINAL PETITION
AND APPLICATION FOR TEMPORARY
INJUNCTION AND PERMANENT INJUNCTION**

TO THE HONORABLE JUDGE OF SAID COURT:

Plaintiff John Doe (“Doe” or “Plaintiff”) files this Original Petition, Application for Temporary Injunction, and Permanent Injunction, complaining of Defendants, The University of Texas at Arlington (“UTA”); Stefan Anton Romanoschi, individually and in his official capacity; Dayna Ford, individually and in her official capacity; Janelle Herron, individually and in her official capacity and R. Stephen Gibbs, individually and in his official capacity; and in support thereof, would respectfully show the Court as follows:

PRELIMINARY STATEMENT

1. This is a civil suit, in part, for injunctive relief arising under the Texas Constitution, including Article 1, Section 19 (due course of law) and Article 1, Section 3 and 3a (equal rights under the law). This suit is also brought under the provisions of 42 U.S.C. Sections 1981, 1983, and 1988 as well as under the 5th and 14th Amendments to the United States Constitution.

2. Plaintiff, who is dark-skinned and of West African decent, was a senior engineering student at UTA, when he was wrongfully, and in violation of his due process rights and right to equal protection, found guilty of cheating on an examination pursuant to UTA's Policy 9, Handbook of Operating Procedures. Defendants' allegations of cheating arose from the requirement by UTA and Defendant Romanoschi that Plaintiff install on his home computer and use, Respondus Monitor, a remote proctoring program.¹ As a result of the guilty finding, Plaintiff was administratively withdrawn from his classes and suspended from UTA for one year effective December 2, 2020 through November 20, 2021.

3. As part of its remote learning, which resulted from the Corona Virus Pandemic, UTA requires students to install the Respondus Monitor ("Monitor" or "Program") on their computers.² The Program allows UTA's professors to thereafter receive video and sound recordings from each individual student's home computer, recorded while the students take a required examination for the professor.

¹ There are many remote proctoring programs. UTA choose to use Respondus Monitor.

² According to an advertising flyer used by Respondus, UTA has been using Respondus Monitor since 2013 in connection with its "...extensive catalog of online courses and more than 30 fully online programs."

4. After all members of a class have completed an exam, the professor is given the class results with data showing whether a particular student has received a high “Review Priority” score from the program.

5. The Respondus Monitor website states that the webcam video uses “facial detection technology” which flags certain events. Respondus notes that flags are not cheating, “they are tools to help identify suspicious activities...”

6. A student who receives a high “Review Priority” score is flagged in red on the class roster page and “conveys whether a student’s exam session warrants a closer look by the instructor.”

7. Respondus Monitor uses a student’s webcam to analyze the student using “facial detection technology.” However, facial detection technology is not perfect and can result in misidentification of certain races and classes of people, particularly those with dark skin. There are such concerns now at colleges and universities using Respondus Monitor and other like technologies that some, including USC, have discontinued its use.

8. Plaintiff has been the victim of such misidentification and the use of the Respondus Monitor continues at UTA.

9. It is clear from the actions taken by Defendants, as shown below, that each of them had preconceived opinions that Plaintiff must have cheated on the exam because Respondus Monitor flagged him as a possible cheater and so, the outcome of the “due process” Plaintiff was given was predetermined.

10. More specifically, although the video from the exam did not show that Plaintiff had materials around his computer, Defendants theorized that a Lab manual was there and that Plaintiff’s correct answers proved he had cheated. Defendants ignored the explanations and

evidence offered by Plaintiff to demonstrate that his work background, his training and his study of the Lab manual were the reasons he had done well on the exam

11. Defendants found further “evidence” of Plaintiff’s cheating by blaming him for not completing a camera scan of the area around his computer. It did not matter to Defendants that Plaintiff had not been required to do such a scan. In fact, Defendants Ford and Herron, in finding Plaintiff guilty, omitted the evidence Plaintiff had timely offered to show that Professor Romanoschi had not required the scan of the area around the students’ computers.

12. Thereafter, Ford, Herron and Gibbs refused to give credence to the evidence Plaintiff offered about his prior experience in the areas tested in the exam. Further, and more importantly, Ford and/or Herron did not provide Plaintiff his individual review by Respondus Monitor. As a result, he did not know which of his movements caused him to be flagged and was therefore unable to refute the program’s specific allegations of suspected cheating.

13. Believing the computer program over Plaintiff, and ignoring his oral and documentary evidence to support his innocence, Defendants’ acts were arbitrary and capricious and denied Plaintiff the process he was due for a disciplinary suspension. Further, the Defendants actions demonstrate their intent to discriminate against Plaintiff and deprive him of his right to equal protection.

I. PARTIES

1.1 Plaintiff John Doe is an individual residing in Tarrant County, Texas. For privacy reasons involved in this matter, Doe hereby exercises his right to proceed with this matter anonymously. The need to protect the identity of Doe does not hinder the defense of this matter because the facts are well known to Defendants. When balancing the need to protect Doe’s privacy against any inconvenience to Defendant, the protection of Doe’s privacy is paramount and prevails.

1.2 Defendant UTA is an arm or instrumentality of the State of Texas and is a public university organized under the laws of the State of Texas; UTA may be served by serving Teik C. Lim, in his capacity as Interim President of the University of Texas at Arlington, Office of the President, 701 S. Nedderman Drive, Arlington, Texas, 76019.

1.3 Defendant Stefan Anton Romanoschi (“Romanoschi”) is a professor of Civil Engineering at UTA and may be served by serving him with process at his office, 634 Nedderman Hall, 416 Yates Street, Arlington, Texas 76019-0019, or wherever he may be found.

1.4 Defendant Dayna Ford (“Ford”) is Director of Community Standards at UTA and may be served by serving her with process at her office, Office of Community Standards, University Center, Lower Level, Suite B150, Arlington, Texas 76019, or wherever she may be found.

1.5 Defendant Janelle Herron (“Herron”) is an administrative assistant in the Office of the Provost at UTA and may be served with process at the Office of Academic Personnel, Davis Hall 333, 701 E. Nedderman Dr., Arlington, Texas, or wherever she may be found.

1.6 Defendant R. Stephen Gibbs (“Gibbs”) is a Senior Lecturer in the Electrical Engineering office and may be served with process at the Department of Electrical Engineering, University of Texas at Arlington, 76019, or wherever he may be found.

II. DISCOVERY

2.1 Discovery in this case is to be conducted under Discovery Control Plan – Level 3 pursuant to Rule 190.4, TEX.R.CIV. P. Plaintiff hereby moves for entry of a Level 3 Scheduling Order.

**III.
JURISDICTION, VENUE, AND RELIEF SOUGHT**

3.1 Plaintiff seeks monetary relief over \$200,000 but not more than \$1,000,000 and non-monetary relief. This Court has jurisdiction over this action because the amount in controversy exceeds this Court's minimum jurisdictional limits, and because this suit concerns acts or omissions of Defendants which occurred in the State of Texas.

3.2 Venue is proper in Tarrant County, Texas pursuant to TEX. CIV. PRAC. & REM. CODE § 15.002(a) because Tarrant County is where all or a substantial part of the events or omissions giving rise to Plaintiff's claims occurred.

3.3 This suit is brought, in part, under the Texas Constitution, including Article 1, Section 19 (due course of law) and Article 1, Section 3 and 3a (equal rights under the law).

3.4 This suit is also brought under the provisions of 42 U.S.C. Sections 1981, 1983, and 1988 as well as under the 5th and 14th Amendments to the United States Constitution.

**IV.
FACTUAL BACKGROUND**

Respondus Lockdown Browser and Respondus Monitor.

4.1 In the spring semester of 2020, as a result of the Covid-19 pandemic, Defendant UTA converted a majority of its on-campus classes to virtual learning and many of its exams were administered via Respondus Lockdown Browser ("Lockdown Browser") and Respondus Monitor ("Monitor").

4.2 According to its website, Respondus.com, Respondus Lockdown Browser "locks down student computers to prevent cheating." It prevents a student from accessing other applications on his or her computer "including messaging, screen-sharing, virtual machines, and

remote desktops.” Overall, it locks down any function that a student might use to get outside information from his or her computer during an exam.³

4.3 As also noted on the Respondus website:

“...Respondus Monitor is a powerful engine that performs a second-by-second analysis of the exam session. The first layer is comprised of computer vision technology that uses facial detection, motion, and lighting to analyze the student and examination environment. The next layer uses data from the computing device (keyboard activity, mouse movements, hardware changes, etc.) to identify patterns and anomalies associated with cheating. Finally, the student's interaction with the exam instrument itself is woven into the analysis, including question-by-question comparisons with other students who took the same exam. In all, Respondus Monitor analyzes dozens of factors, such as whether multiple faces appear within the video frame, or if the person who started the exam switches to a different person along the way. The data then flows into the “Review Priority” system to help instructors quickly evaluate the proctoring results.” (Emphasis added.)

4.4 However, a recent article in The *Ontarion*,⁴ described problems that arise with facial recognition programs. “[a]rtificial intelligence (AI) programs that power facial recognition technology...scour databases for millions of images to learn what faces look like in order to identify them. But due to the over-representation of some groups, the program becomes culturally and ethnically biased.” (Emphasis added.)

4.5 Additionally, the *Ontarion* article quoted Jodi Feeney, Chief Operations Officer for Respondus, who stated that the flagging system in Respondus Monitor “...doesn’t indicate a

³ Not all professors required the use of Respondus for exams. Some professors gave their students a deadline to complete an exam and upload it to UTA’s Canvas program.

⁴ Kopsaftis, Eleni, “Over 4700 signatures against the LockDown Browser at U of G,” University of Guelph, [Ontario, Canada], student newspaper, December 14, 2020.

student has cheated. It simply provides information to the instructor to help them determine if an exam violation has occurred.” More importantly however, in the same article Feeney stated that, in connection with claims that facial recognition software is ethnically-biased, Respondus is declining to comment now because it cannot give the issue “the weight it needs”. (Emphasis added.)

4.6 On or about December 9, 2020, approximately a week before Ms. Feeney made the comment above, Respondus, Inc. received a letter from a group known as the Electronic Privacy Information Center (“EPIC”), which identified itself as a “public interest research center located in Washington, D.C. focused on emerging privacy and civil liberties issues.”

4.7 The letter provided notice to Respondus, Inc. that EPIC had “filed a Complaint and Request for Investigation, Injunction and Other Relief with the Office of the Attorney General for the District of Columbia regarding Respondus’ online proctoring tools.” EPIC further stated that, as was contained in its Complaint, “...Respondus’ excessive and unjustified collection of students’ personal information (including biometric data) and reliance on opaque, unproven AI analysis to flag purported instances of cheating constitute unfair or deceptive practices under the D.C. Consumer Protection Procedures Act (‘DCCPPA’) and the Federal Trade Commission Act (‘FTC’)”. (Emphasis added.)

4.8 More recently, on January 26, 2021, Charles F. Zukoski, Provost and Senior Vice President for Academic Affairs at the University of Southern California (“USC”), in correspondence to the USC faculty, informed them that “[b]ased upon a review of the Fall semester, we have decided to **discontinue the use of Respondus Monitor**, an online exam proctoring program that uses artificial intelligence. During the course of the Fall semester, we heard a number of concerns about fairness and privacy regarding the use of Respondus Monitor. We have reached out to Respondus regarding our concerns, and they are working on modifying

and enhancing their software to address these issues. If that occurs, we may reconsider use of the tool at a later date, but at this time it is no longer available for use.” (Emphasis in the original text.)⁵

The Exam.

4.9 Plaintiff was a senior engineering student at the time of his suspension by Defendants. Defendant Romanoschi accused Plaintiff of academic dishonesty, which had allegedly occurred on approximately May 1, 2020, in connection with Defendant Romanoschi’s Advanced Civil Engineering Materials course.⁶ As a result and in violation of his due process and equal protection rights, Plaintiff was suspended from UTA for cheating on an exam that was conducted via the Respondus Lockdown Browser and Respondus Monitor program.

4.10 Due to Covid-19 protocols implemented by UTA for the Spring semester of 2020, after returning from spring break, students in Romanoschi’s class were unable to attend the laboratory portion of the class in person and perform the materials tests originally assigned. After spring break, Romanoschi’s students, including Plaintiff, were only able to observe the material tests being performed via YouTube videos.

4.11 While still early in the experience of virtual learning and using the Respondus programs, Defendant Romanoschi chose to have his students take the lab exam for the class using the Respondus programs.

⁵ The correspondence was copied to the Office of the President, Academic Deans, President’s Senior Leadership Team, Provost’s Leadership Team, Academic Senate, Staff Assembly, graduate student government (GSG) President and undergraduate student government (USG) President.

⁶ Plaintiff’s alleged violation occurred in Romanoschi’s class the end of the Spring Semester 2020; however, as a result of Defendants’ slow moving application of its policies on student appeals of an adverse disciplinary suspension, approximately seven months passed and Plaintiffs’ suspension did not become effective until December 2, 2020, some seven (7) months later.

4.12 Professors who conduct exams by this method are responsible for instructing their students on specific use of the programs, including whether a student is required to do a pre-exam environmental camera scan of the student's test area.

4.13 In an email to the class dated April 29, 2020, Romanoschi's instructions, for the exam, did not include instructions to the class to conduct the environmental camera scan. The students rely on the professor's instructions to know the test requirements as they relate to the use of the Lockdown Browser and Monitor.

4.14 The Respondus Monitor environmental scan is optional when a professor sets up the exam parameters. If the professor checks a specific box while setting up the exam, then the Monitor program will require an environmental camera scan before the test can begin. If the professor does not check the box, then no environmental scan is required of the students.⁷

4.15 Without the requirement by the professor of an environmental camera scan, the student holds up his driver's license while sitting in front of the camera. After this shorter scan is completed, the program gives the test-taker a green check on the screen and he then is allowed to proceed with the test.

Romanoschi's Charge that Plaintiff Committed Scholastic Dishonesty.

4.16 The alleged cheating incident occurred in May 2020, the end of the 2020 Spring Semester. On May 18, 2020, Romanoschi informed Plaintiff, via email, that he was accusing him of cheating on the lab examination.

4.17 Plaintiff did not receive an "initial notice" about the matter from the Office of Student Conduct until August 10, 2020, by which time Plaintiff had taken four addition courses during the summer semesters, for a total of twelve hours, and registered for his fall classes.

⁷ Canvas Quizzes and Lockdown Browser training tutorial (video), UTA website, Office of Community Standards.

4.18 Romanoschi refused to communicate with Plaintiff about the reasons for his belief. However, by refusing to meet with Plaintiff, Romanoschi did not learn that Plaintiff's employment background was in the very area covered by the exam. Plaintiff would have explained that he had not cheated, but knew the material covered because of his extensive work background in a family business and through his study of the material covered. UTA's policies required such a meeting, however Romanoschi reported Plaintiff to the Office of Student Conduct without having met with him.

Meeting with Defendant Ford.

4.19 Thereafter Plaintiff met with Defendant Dayna Ford, Director of Community Standards, on August 19, 2020, for an "Administrative Meeting" pursuant to the aforementioned Code of Student Discipline. Due to Pandemic restrictions, the meeting was conducted via Microsoft Teams.

4.20 Prior to his meeting with Ford, Plaintiff submitted a letter to her on August 17, 2020. In his letter, Plaintiff told Ford of his on-going experience in the construction industry and specifically in construction material testing. Plaintiff told Ford that he had "been certified and qualified to perform the measure of Theoretical Maximum Specific Gravity of HMA for years by the highest accreditation body governing this esoteric test called The American Association of State Highway and Transportation Officials (AASHTO). AASHTO is a standards setting body which publishes specifications, test protocols and guidelines that are used in highway design and construction throughout the United States. My certificate is attached for your review."

4.21 Plaintiff has worked with his uncle's business for a number of years. Plaintiff's uncle, who is a registered Texas Professional Engineer, owns a company that specializes in design, construction project management, and construction material testing. The company employs approximately twenty people, including seven registered Texas Professional Engineers and a

combination of fourteen others that serve as certified quality assurance and quality control inspectors and technicians. Most of the material Plaintiff analyzes in his work are concrete, asphalt and soils, which related directly to the materials covered in Romanoschi's course.

4.22 At times, Plaintiff works as an inspector on a company projects under the supervision of a licensed engineer. His duties as an inspector on a project are to assess the construction material for quality, appropriateness and acceptability. In connection with a project, Plaintiff must determine the scope and procedures of testing of the materials used. He must supervise the testing, and the analysis of the test results for construction material acceptance purposes or for use in engineering recommendations. By way of example, Plaintiff was the inspector for his company on the contract relating to the Sam Rayburn Tollway, which was a \$200 million project. The work involved paving asphalt for the highway. It was Plaintiff's responsibility as inspector to ensure the work was done to ASTM, AASHTO, NTTA and TXDOT standards.

4.23 Plaintiff also explained to Ford that the portion of the exam that he is accused of copying from the course lab manual asks for description of steps for the three different experiments that are, in fact, steps covered in a book published by the American Society for Testing and Materials ("ASTM"). ASTM standards are technical standards used worldwide to improve the quality of products. Plaintiff uses these exact ASTM standards on a regular basis.

4.24 Although Defendants Ford, Herron and Robbs all ignored Plaintiff's explanation that he knew much of the material because of his work background, there were additional portions of each exam question that Plaintiff completed satisfactorily that were not contained in the Lab Manual from which Plaintiff was accused of copying.⁸

⁸ After the May 1st exam, Plaintiff took another exam in Romanoschi's class and earned a grade of 100.

4.25 At the conclusion of the meeting, Ford informed Plaintiff that she did not believe any of his explanations and her finding and recommendation was that he would be suspended from UTA for one year. This result, she said, was based on her viewing of the Respondus video, the appearance in the video that he was looking down at the Lab manual used in class⁹; his failure to complete an environmental camera scan of his room¹⁰ and his previously documented cheating incident.¹¹ Plaintiff informed Ford that he wanted to appeal her decision. He was given nothing in writing from Ford memorializing the meeting or her finding and recommendation.

4.26 Thereafter Plaintiff was formally charged with violations of the “Handbook of Operating Procedures, Policy 9, Subchapter 9-200; HOP f.4 Form 2 Cheating; Scholastic Dishonesty, including, but not limited to cheating, plagiarism, and collusion on an examination or an assignment being offered for credit.”¹² On September 15, 2020, Plaintiff received a hearing notice for September 30, 2020.¹³

⁹ The Lab manual is not shown in the video.

¹⁰ Romanoschi did not require an environmental scan.

¹¹ In approximately 2018, through the use of a computer program, with which Plaintiff is unfamiliar, a large number of students, including Plaintiff, were accused of sharing homework answers on a coding project. The program apparently found these students’ answers to be similar. Plaintiff informed the professor, that he did not know the other students involved and had not cheated. The class professor was not Romanoschi. It was only months later that Plaintiff learned that he had been charged with cheating, a “hearing” had been held, and he was found guilty of cheating. As a result of the decision, Plaintiff was required to write a “reflective essay” about the cheating incident. Plaintiff had not received notice of the hearing as required by UTA’s policies and only learned of the disciplinary action taken against him when he found a hold was put on his registration for classes the next semester. Plaintiff submitted the required “reflective essay” in which he discussed the fact that he had not been given notice of the hearing and had not cheated on the homework. The hold was lifted, Plaintiff registered for his classes and thought nothing further of the incident. The UTA employee in charge of this matter admitted to Plaintiff that while he attempted to give Plaintiff notice of the hearing, Plaintiff had not been given notice of the hearing as required by UTA’s policies.

¹² September 15, 2020 letter from Dayna Ford to Plaintiff informing him of the formal disciplinary hearing to occur on September 30, 2020.

¹³ On September 28, 2020, Plaintiff was notified that the hearing would have to be rescheduled due to the unavailability of the original hearing officer. Plaintiff was then notified on October 15, 2020 that the hearing was rescheduled with the Hearing Officer, Defendant Janelle Herron for October 27, 2020. This

Disciplinary Hearing with Janelle Herron.¹⁴

4.27 Plaintiff timely submitted evidence to be considered at the hearing, including Romanoschi's April 29, 2020, email to the class that gave no instruction for an environmental camera scan. For reasons unknown to Plaintiff, Romanoschi's letter was not listed by Herron in her Decision Letter as "Documents Presented Prior to the Hearing" and therefore not made part of the Hearing record.¹⁵ Plaintiff testified at the hearing that no environmental camera scan had been required by Romanoschi and that he had submitted Romanoschi's letter as evidence of this fact, prior to the hearing.

4.28 Plaintiff again submitted three Certificates of Training from AASHTO, one of which showed Plaintiff had received training in Quality Control and Quality Analysis for Concrete Pavements dated June 15, 2018, which was also a portion of the class curriculum.

4.29 Plaintiff also submitted certification for AASHTO Designation: T209 (2 PDHs). This certification shows Plaintiff's technical competence in answering Theoretical Maximum Specific Gravity of HMA, which was one of the questions contained in Romanoschi's exam. This course explained and demonstrated how to perform the standard method test of theoretical maximum specific gravity and density of hot mix asphalt (HMA) and included all of the steps to prepare for, conduct, and report findings of this test. These universal steps are contained in the *Annual Book of ASTM Standards* and were the same steps that Defendants used as their accusations that Plaintiff cheated.

was almost a month after the original hearing date and almost four months after the alleged incident occurred.

¹⁴ Again, due to Covid protocols, Plaintiff's hearing was not conducted in person but via video conferencing.

¹⁵ Plaintiff forwarded Romanoschi's letter to Ford on October 22, 2020, five days before the reschedule hearing date of October 27, 2020.

4.30 Additionally, Plaintiff submitted a certificate of training in HMA Field Paving Inspection certified by the National Highway Institute and endorsed by the U.S. Department of Transportation and Federal Highway Administration.

Respondus Monitor Hearing Evidence

4.31 Part of the hearing evidence submitted by UTA through Ford, was a link to the “[v]ideo of the environment scan and exam (access provided separately via Microsoft SharePoint).” This was the actual recording of the video and audio made by Respondus Monitor. Although Herron, and the other Defendants, relied on the video in determining Plaintiff was guilty of cheating, the exam video was not viewed during the hearing with all parties present.¹⁶ Plaintiff viewed the video separately but does not know if Ford viewed the video with Herron prior to the hearing. Because UTA was conducting a disciplinary hearing and UTA’s recommendation, through Ford, prior to the hearing was to suspend Plaintiff for a year, the hearing officer’s failure to review the video in Plaintiff’s presence violated Plaintiff’s right to due process, under the Texas Supreme Court precedent of *Than*.

Plaintiff Not Provided His Respondus “Review Priority”

4.32 Moreover, during the hearing, Ford commented to the Hearing Officer several times that Plaintiff had been “flagged” by Respondus. Importantly though, Plaintiff was not provided his personal results of the Respondus Monitor’s “flags” Plaintiff was given by the program. Again, while Plaintiff was not provided his Respondus Monitor Review Priority, it is clear that Ford had reviewed Plaintiff’s personal results as noted by her comments at the hearing about the “flags” Plaintiff had received.

¹⁶ Plaintiff’s case here is virtually identical to the student in *University of Tex. Med. Sch. At Hous. v. Than*, 901 S.W.2d 926, 932 (Tex. 1995), where the court held that Than should have been permitted to visit the classroom where the alleged cheating incident occurred along with the University representative and the hearing officer. Permitting this visit would have permitted Than to respond to the evidence and offer his own explanation.

4.33 According to the Respondus website “Respondus Monitor: (Understanding Proctoring Results”), once a class has completed the exam, the professor can select “Class Results” from the “LockDown Browser Dashboard.” “Review Priority is a comprehensive measure that conveys whether a student’s exam session warrants a closer look by the instructor. Results appear in Low, Medium, and High categories with a green-to-red bar graph conveying the risk level.” (Emphasis added.) Because Plaintiff was not provided with his specific “Review Priority” and it was referred to by Ford in the hearing, Plaintiff again was deprived of due process in connection with the Hearing.

Respondus Monitor Camera Scan Not Required by Romanoschi

4.34 Further confirming that no environment scan was required was Romanoschi’s Academic Integrity Referral form to the Office of Student Conduct. In it, he alleged that Plaintiff copied answers from the Lab Manual used by the students during the class. He made no mention of Plaintiff’s failure to conduct an environmental camera scan. However, in spite of all information to the contrary, both Defendant Herron,¹⁷ the Hearing Officer, and Defendant Gibbs,¹⁸ the Appeal Officer, thereafter, arbitrarily and in bad faith, used their findings that Plaintiff failed to do the environmental camera scan as a portion of their basis to support Plaintiffs’ immediate suspension from UTA.¹⁹ Ford had previously come to the same result in her “Administrative Meeting” with Plaintiff.

¹⁷ “The environmental scan for [John Doe’s]” exam in CE4301 lasted less than 60 seconds.” Janelle Herron, Hearing Officer Decision Letter, 11/05/2020, p. 2.

¹⁸ “Details of the room scan prior to the test were not specified, so [John Doe] was able to sit in front of the webcam without moving for the scan period. The purpose of the test is to show that there is nothing in the environment that would facilitate cheating on the test. This objective was not accomplished.” R. Stephen Gibbs, Appeal Official, Appeal Decision of [John Doe]. December 2, 2020, p. 2.

¹⁹ At the time of filing of this petition, no requirement that professors use an environmental scan was found on UTA’s website.

4.35 During the hearing, Plaintiff attempted to submit rebuttal evidence, which included information pertaining to his certifications and portions of the *Annual Book of ASTM Standards*. Plaintiff wanted to show Ford and Herron that universally, there is only one set of steps to perform the type of testing ask by Romanoschi's of his students on the exam. Being able to accurately describe the testing steps does not automatically mean that Plaintiff cheated on the exam. Because it is a universal test, there are only so many words that a knowledgeable person can use to describe the steps. Ford and Herron arbitrarily refused to allow Plaintiff to submit this evidence.

4.36 With Dayna Ford representing UTA at the hearing, even though she had already found that Plaintiff was guilty, Herron found that “the environmental scan...lasted less than 60 seconds. It did not adequately show that his surroundings were clear and free from obstruction.” She also found that Plaintiff “...can be seen looking/reading something that is below him, in the area of the keyboard.” And the answers that Plaintiff “provided for his exam match almost identically to the answers from the CE 4301 Lab Manual for Spring 2020.” Ford stated that her reason for the assessment was that she felt “that the disciplinary action is appropriate not only based on the information pertaining to this case but, it also speaks to his history of violations for the student. [John Doe] has a prior cheating violation on his record where he received a one-year probation, reflective essay and grade penalty.” This referenced violation is the same violation for which Plaintiff did not receive notice of the hearing required by UTA's policies and procedures but remains on Plaintiff's record.

4.37 Thereafter, Defendant Herron did not provide Plaintiff with her findings and conclusions in the time-frame required by the Rules for Student Disciplinary Hearings. Once Plaintiff was apprised that the suspension had been upheld, he timely filed an appeal and asked that a professor from the engineering department be appointed the appeal officer.

Appeal to R. Stephen Gibbs.

4.38 Plaintiff submitted his appeal to Defendant Gibbs, who was appointed the appeal officer as a member of the engineering department. In fact, Gibbs' background is in electrical engineering and he teaches only electrical engineering classes. Not being a civil engineer, Gibbs has no background in materials testing.

4.39 Gibbs also serves as a Hearing Officer for the Office of Student Conduct. As noted on his on-line faculty profile Gibbs serves "...for cases involving students accused of unacceptable/forbidden conduct." He determines "responsibility/non-responsibility" and recommends "punishment/corrective action."

4.40 Plaintiff's appeal to Gibbs included the exhibits he had previously provided plus others.

4.41 As noted earlier, Gibbs assumed that even without the professor's requirement of an environmental camera scan, Plaintiff should have done a scan. "Details of the room scan prior to the test were not specified, so [John Doe] was able to sit in front of the webcam without moving for the scan period. The purpose of the test is to show that there is nothing in the environment that would facilitate cheating on the test. This objective was not accomplished." R. Stephen Gibbs, Appeal Official, Appeal Decision of [John Doe]. December 2, 2020, p. 2. Plaintiff was never provided any information from any source that told him "[t]he purpose of the test is to show that there is nothing in the environment that would facilitate cheating on the test." And using this baseless assertion, Gibbs decreed that "[t]his objective" was not met.

4.42 Gibbs also maligns Plaintiff for stating in his appeal that he "did not have any unauthorized material next to my keyboard and the video shows and proves that." In response Gibbs states in his findings that "[t]he video does not show that he had nothing next to his

keyboard.” However, more importantly, neither he or Herron, or Ford could say unequivocally that Plaintiff had materials near his computer from which obtained answers to the exam.

4.43 Additionally, in his findings, Gibbs felt motivated to go beyond the findings of Herron. “Not mentioned were the two other locations that [John Doe] looked at. To his right, and beyond the computer, there appears to be a clock. Each time he looked in that direction he made some comment related to time remaining for the test. But more significantly, he regularly looked to his left, to an area immediately adjacent to his work area. By failing to perform a room scan it is impossible to be determine what was there, but whatever it was, it continually drew is (sic) attention.”

4.44 On December 2, 2020, Plaintiff received the response that upheld the decision to suspend Plaintiff, effective immediately. This meant that he was administratively withdrawn from UTA with three of his six senior elective classes completed with passing grades, and only his final exams to be completed in the three remaining classes.

V. CAUSES OF ACTION

Alternative Pleadings. To the extent necessary, each of the claims set forth below is pleaded in the alternative.²⁰

COUNT 1 Violations of the United States Constitution, Fifth and Fourteenth Amendments and the Texas Constitution, Article 1, Section 19: Procedural and Substantive Due Process

5.1 To the extent necessary, the information contained in paragraphs 4.1 through 4.44 above of this Petition are hereby fully incorporated by this specific reference, as though fully set forth herein.

²⁰ Plaintiff has exhausted and/or attempted to exhaust any and all necessary administrative remedies.

5.2 As set forth above, Defendants' actions deprived Plaintiff of his rights, privileges and/or immunities secured under the United States Constitution, for which Plaintiff now sues pursuant to 42 U.S.C. Section 1983.

5.3 Specifically, Defendants deprived Plaintiff of his right to procedural and substantive due process, as secured by the Fifth and Fourteenth Amendments to the United States Constitution. Additionally, or alternatively, Defendants deprived Plaintiff of his right to procedural and substantive due process, as secured by Article I Section 19 of the Texas Constitution.

5.4 Additionally or alternatively, Defendants violated Plaintiff's right to procedural due process by depriving Plaintiff of and/or diminishing his protected property and/or liberty interest in the policies, procedures, guidelines, rules and regulations of UTA, including UTA's requisite due process for a disciplinary dismissal, the due course of law provision of the Texas Constitution, and the due process provisions of the United States Constitution, as well as an objective expectancy based upon such that Defendants would follow and/or comply with the policies, procedures, and practices required therein.

5.5 Defendants failed and/or refused to provide Plaintiff with the minimal or requisite procedural due process required under the circumstances, effectively denying Plaintiff the due process right to which he was entitled, thus violating his right to procedural due process guaranteed by the United States and Texas Constitutions, as well as the policies, procedures, guidelines, rules and/or regulations of UTA, including the college's due process policies for disciplinary dismissal.

5.6 Moreover, Plaintiff also possesses a claim against Defendants for violations of substantive due process for Defendants' arbitrary, capricious, unreasonable, and/or irrational actions taken against him. Additionally, or alternatively, Plaintiff has been deprived of his protected and fundamental right without due process of law in an arbitrary, capricious, unreasonable and/or irrational manner.

5.7 As a result of the foregoing, Plaintiff has been injured and/or damaged. Plaintiff's injuries are in part irreparable, and he has no adequate remedy at law. Alternatively, Plaintiff seeks to recover any and all remedies afforded and/or available under law and/or in equity, including but not limited to his damages resulting from said conduct by Defendants in an amount to be proven and/or determined at time of trial, injunctive relief, equitable relief, and his attorneys' fees.

COUNT 2

Violations of the United States Constitution, Fourteenth Amendment, and the Texas Constitution, Article I §§ 3 and 3a: Equal Protection.

5.8 To the extent necessary, the information contained in paragraphs 4.1 through 4.44 above of this Petition are hereby incorporated by this specific reference, as though fully set forth herein.

5.9 As set forth above, Defendants' actions deprived Plaintiff of his rights, privileges and/or immunities secured under the United States Constitution, for which Plaintiff now sues pursuant to 42 U.S.C. Section 1983. Defendants deprived Plaintiff of his right to equal protection, as secured by the Fourteenth Amendment to the United States Constitution. Additionally, or alternatively, Defendants deprived Plaintiff of his right to equal protection, as secured by Article I, Section 3 and 3a of the Texas Constitution. Defendants violated Plaintiff's right to equal protection by failing and/or refusing to provide Plaintiff equal treatment based upon Plaintiff's race, color, and/or ethnic origin and/or by showing preferential, different, and/or special treatment to Caucasian students and/or students of non-African heritage. Such acts deprived and/or diminished Plaintiff's right to equal protection by discriminating against him based upon his race, color and/or ethnic origin.

5.10 Additionally and/or alternatively, Defendants' conduct constituted and/or arose to a pattern of repeated discrimination and/or Defendants' conduct has an opportunity to be repeated

against person similarly situated to Plaintiff. Defendants' conduct constitutes violations of Plaintiff's right to equal protection.

5.11 As a result of the foregoing, Plaintiff has been injured and/or damaged. Plaintiff's injuries are irreparable, and he has no adequate remedy at law. Alternatively, Plaintiff seeks to recover any and all remedies afforded and/or available under law and/or in equity, including but not limited to his damages resulting from said conduct by Defendants in an amount to be proven and/or determined at time of trial, injunctive relief, equitable relief, and his attorneys' fees.

VI. DECLARATORY RELIEF

6.1 Additionally, and/or in the alternative, Plaintiff would show that a justiciable controversy has arisen regarding the rights and obligations afforded Plaintiff and Defendants in part pursuant to the University of Texas at Arlington Handbook of Operating Procedures, Policy 9, Subchapter 9-200; HOP f.4 Form 2 Cheating; Scholastic Dishonesty, including, but not limited to cheating, plagiarism, and collusion on an examination or an assignment being offered for credit. Plaintiff therefore seeks relief from this Court pursuant to Chapter 37, TEX. CIV. PRAC. & REM. CODE, declaring that such System Rules and/or Handbook of Operating Procedures, and the Texas Constitution, bar UTA and its administrators from the arbitrary penalties given to Plaintiff including the one year suspension, grade penalty and reflective essay.

VII. INJUNCTIVE RELIEF

7.1 In addition to Plaintiff's damages sought herein, Plaintiff seeks temporary and permanent injunctive relief, specifically including an order from this Court enjoining Defendants to lift the suspension imposed on Plaintiff, to permit him to obtain credit for all courses taken in Fall 2020, lifting the grade penalty imposed on him, and reinstating him as a student in good standing in the Engineering Department of UTA. Given the constitutional violations by

Defendants, such injunctive relief is available. Plaintiff has suffered and will suffer irreparable harm if Defendants are not enjoined as requested, and further, Plaintiff is without any other adequate remedy at law.

7.2 The intangible rights involved herein are unique and irreplaceable, so that it will be impossible to accurately measure, in monetary terms, the damages caused by the Defendants' actions. It is probable that Plaintiff will succeed in his claims, including his request for a permanent injunction. Additionally, the actions of Defendants will be shown to have clearly violated the constitutionally protected rights of Plaintiff, who continues to suffer irreparable and imminent harm and injury in the interim if an injunction is not granted.

7.3 In order to preserve the status quo and/or status quo ante and the rights of Plaintiff during the pendency of this action, Defendants should be cited to appear and show cause why they should not be temporarily enjoined, during the pendency of this action, as set forth above.

7.4 To the extent necessary and in support of the injunctive relief sought herein, Paragraphs 4.1 through 4.44 of this Plaintiffs' Petition are hereby referenced and fully incorporated herein by this specific reference, as though fully set forth herein.

VII. ATTORNEYS' FEES AND COSTS

8.1 Plaintiff has retained the law firm of Hill Gilstrap, P.C. to represent him in connection with this matter, and has agreed to pay the firm reasonable and necessary attorneys' fees. In addition to and without waiving and/or limiting any other relief requested in this Petition, Plaintiff seeks, to the extent permitted by applicable law, including but not limited to 42 U.S.C. Section 1988, his reasonable attorneys' fees and costs to be incurred herein, in such amount as is equitable and just.

IX.
JURY DEMAND

9.1 Pursuant to Rule 216, Tex.R.Civ.P. Plaintiff requests trial by jury.

WHEREFORE, PREMISES CONSIDERED, Plaintiff prays that Defendants be cited to appear and answer, and that, upon final hearing, Plaintiff recover judgment against Defendants for the relief set forth below:

- a. Temporary injunction;
- b. Permanent injunction;
- c. Actual damages;
- d. Attorneys' fees;
- e. Pre-judgment and post-judgment interest, at the maximum rate allowed by law;
- f. Costs of suit; and
- g. Such other and further relief, whether general or special, at law or in equity, to which Plaintiff may show himself justly entitled.

/s/ Frank Hill

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