

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF MISSOURI  
KANSAS CITY DIVISION**

AFSANEH MOMTAHAN,

Plaintiff,

v.

THE CURATORS OF THE UNIVERSITY  
OF MISSOURI, d/b/a THE UNIVERSITY  
OF MISSOURI AT KANSAS CITY d/b/a  
THE UMKC SCHOOL OF DENTISTRY,  
THE UNIVERSITY OF MISSOURI  
AT KANSAS CITY,  
THE UNIVERSITY OF MISSOURI  
AT KANSAS CITY  
SCHOOL OF DENTISTRY  
MARSHA PYLE,  
PAMELA OVERMAN,  
and RICHARD M. BIGHAM,

Defendants.

Case No. \_\_\_\_\_

**COMPLAINT  
AND  
DEMAND FOR TRIAL BY JURY**

Plaintiff, **AFSANEH MOMTAHAN**, ("Plaintiff") for her claims against Defendants, **THE CURATORS OF THE UNIVERSITY OF MISSOURI d/b/a THE UNIVERSITY OF MISSOURI AT KANSAS CITY d/b/a THE UNIVERSITY OF MISSOURI AT KANSAS CITY SCHOOL OF DENTISTRY, THE UNIVERSITY OF MISSOURI AT KANSAS CITY, THE UNIVERSITY OF MISSOURI AT KANSAS CITY SCHOOL OF DENTISTRY, MARSHA PYLE, PAMELA OVERMAN, and RICHARD M. BIGHAM** ("Defendant(s)") states as follows:

**I. TABLE OF CONTENTS.**

I. TABLE OF CONTENTS. .... 2

II. PARTIES..... 2

III. JURISDICTION AND VENUE..... 3

IV. COMMON ALLEGATIONS..... 4

V. COUNTS..... 10

COUNT 1: VIOLATION OF ACADEMIC POLICIES (SOD)..... 10

COUNT 2: BREACH OF THE ACADEMIC AGREEMENT (SOD)..... 12

COUNT 3: BREACH OF THE READMISSION AGREEMENT (SOD)..... 13

COUNT 4: VIOLATION OF FEDERAL DUE PROCESS CLAUSE  
(DEFENDANTS). .... 14

COUNT 5: VIOLATION OF MISSOURI DUE PROCESS CLAUSE  
(DEFENDANTS). .... 15

COUNT 6: VIOLATION OF ADA-DESPERATE TREATMENT  
(DEFENDANTS). .... 17

COUNT 7: VIOLATION OF TITLE VI - DISPARATE TREATMENT  
(DEFENDANTS). .... 19

COUNT 8: BREACH OF DUTIES (SOD). .... 21

COUNT 9: PROMISSORY ESTOPPEL/DETRIMENTAL RELIANCE (SOD  
and DEAN PYLE). .... 22

VI. REQUEST FOR RELIEF..... 22

VII. DEMAND FOR TRIAL BY JURY. .... 23

**II. PARTIES**

1. Afsaneh is an individual who currently resides Kansas City, Missouri, and is domiciled in and is a citizen of the State of Missouri.

2. THE CURATORS OF THE UNIVERSITY OF MISSOURI d/b/a THE UNIVERSITY OF MISSOURI AT KANSAS CITY d/b/a UMKC d/b/a The UMKC SCHOOL OF DENTISTRY, a public corporation of the State of Missouri, (the “Curators”) is a public university, operated under State laws by the State of Missouri and receiving funding from the State of Missouri as well as Federal funds. Its primary address is 650 E. 25th Street, Kansas City, MO

64108.

3. THE UNIVERSITY OF MISSOURI AT KANSAS CITY d/b/a UMKC d/b/a The UMKC SCHOOL OF DENTISTRY, a public corporation of the State of Missouri, (“UMKC”) is a public university, operated under State laws by the State of Missouri and receiving funding from the State of Missouri as well as Federal funds. Its primary address is 650 E. 25th Street, Kansas City, MO 64108.

4. THE UNIVERSITY OF MISSOURI AT KANSAS CITY SCHOOL OF DENTISTRY, a public corporation of the State of Missouri, (the “SOD”) (the Curators, UMKC, and the SOD are hereinafter, collectively, referred to as the “SOD”) is a public university, operated under State laws by the State of Missouri and receiving funding from the State of Missouri as well as Federal funds. Its primary address is 650 E. 25th Street, Kansas City, MO 64108.

5. DR. MARSHA A. PYLE (“Dean Pyle”) is the Dean of the SOD employed at 650 East 25th Street, Kansas City, Missouri 64108 and who resides and is domiciled in the State of Missouri.

6. DR. PAMELA OVERMAN (“Associate Dean”) was the Associate Dean for Patient Care at the SOD employed at 650 East 25th Street, Kansas City, Missouri 64108.

7. MR. RICHARD H. BIGHAM (“Mr. Bigham”) is the Assistant Dean for Student Programs at the SOD, employed at 650 East 25th Street, Kansas City, Missouri 64108 and who resides and is domiciled in the State of Missouri.

8. Each natural person is sued in their official and individual capacities.

### **III. JURISDICTION AND VENUE.**

9. This action is brought under 42 U.S.C. Sec. 1983, Title II of the Americans with Disabilities Act and Section 504 of the Rehabilitation Act of 1973, Title VI of the Civil Rights Act

of 1964, as amended through the Civil Rights Restoration Act of 1987, and the Federal Due Process Clause of the Fourteenth Amendment.

10. Jurisdiction is based upon 28 U.S.C. Sec. 1331 (Federal Question).

11. Afsaneh further invokes the supplemental jurisdiction of this Court under 28 U.S.C. Sec. 1367(a) to adjudicate claims arising under state law.

12. Venue in this District is proper under 28 U.S.C. Sec. 1391(b).

#### **IV. COMMON ALLEGATIONS.**

13. On May 25, 2017, second-year student Afsaneh, a person with "brown" skin (a descriptive term used in the past by the SOD), was served with written notice of being automatically dismissed (the "Dismissal Notice") from the University of Missouri at Kansas City School of Dentistry (the "SOD") due to alleged academic performance stemming from "poor grades". *See* Ex. 1 at 74.

14. Pursuant to the Student Handbook (Ex. 2 at 22), a student is automatically dismissed from the SOD in the event said student receives a GPA lower than 2.5 in two (2) consecutive semesters at the SOD. *See* Ex. 2 at 20; *See* also Ex. 1 at 74.

15. Afsaneh's automatic dismissal from the SOD (Afsaneh's "Dismissal") resulted from Afsaneh receiving a 2.225 in her first semester at the SOD ("GPA 1") followed by a 2.326 in her second semester at the SOD ("GPA 2") (hereinafter, Afsaneh's "GPAs").

16. Pursuant to the Dismissal Notice, "[t]he school's academic standards...allow students who have been *dismissed for poor grades* to appeal to the Academic Standards Committee [(the "Committee")] for re-admittance." *See* Ex. 1 at 74.

17. Pursuant to the Dismissal Notice, to initiate an appeal, Afsaneh was directed by the

SOD to notify Dr. Pamela Overman by “no later than 4:00 p.m. on Thursday, June 1, 2017 [(hereinafter, “Appeal Initiation Deadline”).” *See* Ex. 1 at 74.

18. Pursuant to the Dismissal Notice, Afsaneh was informed by the SOD that the SOD unilaterally set her Appeal for a hearing before the Committee (the “Dismissal Hearing”) for Thursday, June 1, 2017 (the “Hearing Date”). *See* Ex. 1 at 74.

19. On May 25, 2017, Afsaneh informed Dr. Overman in writing that Afsaneh was going forward with her appeal (the “Appeal”) and requesting readmission to the SOD (Afsaneh’s “Readmission Request”).

20. On June 8, 2017, Afsaneh Appeal was heard by the Committee. *See* Ex. 1 at 75.

21. On June 9, 2017, the Committee issued a letter informing Afsaneh that the Committee had decided not to recommend readmission of Afsaneh to Dean Pyle (the “Committee Recommendation”). *See* Ex. 1 at 75.

22. On June 21, 2017, Afsaneh met with Dean Pyle as the final stage in her Appeal following Committee’s Recommendation. *See* Ex. 1 at 76.

23. During her conference with Dean Pyle (the “Pyle Meeting”), Dean Pyle highlighted the reason why the Committee issued the Committee Recommendation recommending to Dean Pyle that Afsaneh’s Appeal be denied.

24. Specifically, Dean Pyle represented to Afsaneh that the SOD did not feel that Afsaneh could succeed going forward due to concerns over Afsaneh’s proficiency in English (the “Alleged Language Issue”).

25. Despite the SOD’s concerns over the Alleged Language Issue, the SOD was aware of Afsaneh’s proficiency as an English speaker prior to Afsaneh’s admission to the SOD.

26. Furthermore, Afsaneh was, is, and remains a fluent English speaker.

27. As Defendants were aware of (even prior to Afsaneh's admission to the SOD), Afsaneh had already overcome extreme obstacles leading up to her admission to the SOD, which included, without limitation, a clear demonstration of her mastery of not only one (1), but three (3) languages (Farsi, Urdu, and English).

28. Afsaneh was born in Iran and, at the age of 10 begin the process of immigrating to the United States with her family to avoid religious persecution.

29. On her way to the United States, Afsaneh and her family were granted political asylum in Pakistan while they awaited permission to enter the United States; however, rather than an expected 18-month delay in Pakistan, Afsaneh's immigration to the United States was delayed for six (6) long years.

30. In the interim, Afsaneh became fluent in Urdu.

31. Afsaneh arrived in the United States at age 17 in 2006 not speaking a word of English.

32. Despite the same, Afsaneh immediately enrolled in a local community college followed by her being admitted into UMKC's Undergraduate Program.

33. By the Spring of 2016, Afsaneh not only was fluent in English, but also graduated UMKC with BOTH a Bachelor's degree in Chemistry and a Bachelor's degree in Psychology.

34. Afsaneh applied to the SOD and was admitted into the incoming class for the Fall of 2016.

35. Prior to her admission into the SOD, Afsaneh filled out several admission applications and related documentation in which she disclosed the details of her immigration to

the United States; including, without limitation, the fact that the highest grade Afsaneh had completed prior to arriving in the United States at age 17 was fifth (5<sup>th</sup>) grade in Iran at age (10), that Afsaneh, prior to attending college, never even attended middle school or high school, that Afsaneh began learning the English language at 17, and that the history of Afsaneh's higher education demonstrated not only an extreme resiliency on the part of Afsaneh to overcome obstacles, but also a significant upward trend in her academic performance following any academic stumble Afsaneh may have experienced along the way. *See, e.g.*, Ex. 1 at 62-69. All of the forgoing is hereby referred to as Afsaneh's "Educational Challenges".

36. With full knowledge of the forgoing, the SOD decided that Afsaneh was worthy to bring into the SOD for an interview as another step in the admissions process.

37. Accordingly, in November of 2015, the SOD brought Afsaneh into the SOD for an admissions interview during which Afsaneh met and spoke with several SOD faculty.

38. After complete and full disclosure by Afsaneh of the forgoing and after meeting Afsaneh face-to-face, the SOD officially admitted Afsaneh to the SOD on December 1, 2015; less than one (1) month later.

39. Despite the forgoing, on June 23, 2017, Dean Pyle issued a final decision denying Afsaneh's Appeal effective as of the same date (the "Final Decision") based on Alleged Language Issue. *See* Ex. 1 at 76.

40. Indeed, SOD Faculty disclosed Afsaneh's private Qualified Disability to other SOD students.

41. Normally, at the end of a meeting with Dean Pyle regarding an appeal, Dean Pyle will use the following week to meet with SOD Faculty and to consider what her final decision would be; however, with regard to Afsaneh, it is believed that Dean Pyle did not render a decision

following a meeting with Afsaneh's faculty, but rather unilaterally rendered a decision based solely on the Committee's Recommendation.

42. Afsaneh was one of three dental students in the Spring 2017 Term whose GPA for a second consecutive term, fell below a 2.5 and she, together with the two other students, appeared before the Committee on June 8, 2017.

43. The two other students who appeared on June 8, 2017 were Cynthia Villalvazo ("Cynthia") and Kyle Stallbaumer ("Kyle") both of whom had a second consecutive term GPA lower than 2.5.

44. Kyle is a Caucasian male.

45. Cynthia is a Hispanic female.

46. At the conclusion of the first Committee Meeting (held for Kyle), an SOD Representative came out of the room in which each Committee Meeting was (and would be) held and congratulated Kyle with the announcement that the Committee was recommending to Dean Pyle that he be re-admitted and allowed to remain in the DDS Program; which recommendation Dean Pyle ultimately upheld.

47. At the conclusion of the third Committee Meeting (held for Cynthia), the same SOD Representative came out and announced to Cynthia (just as they had for Afsaneh) that the Committee was recommending to Dean Pyle that she NOT be re-admitted and that she remain dismissed from the DDS Program; which recommendation Dean Pyle ultimately upheld.

48. Despite the fact that all three (3) students lacked the requisite 2.5 GPA, Kyle received a preference by the SOD whereas the Hispanic female (Cynthia) and Persian female (Afsaneh) did not.



49. Following the Dean's Decision, on June 23, 2017, Afsaneh entered into an agreement with the SOD wherein the SOD agreed that they would readmit Afsaneh following Afsaneh could demonstrate an ability to complete courses in a science master's degree program as the same would demonstrate that Afsaneh's proficiency in English was at a level that the SOD found acceptable for readmittance (the "Readmission Agreement").

50. Based on the forgoing Readmission Agreement, Afsaneh applied for admission, and was accepted, into UMKC Master's Degree Program for Cell and Molecular Biology (the "Master's Program").

51. In September of 2017, in furtherance of the Readmission Agreement, Afsaneh notified Dean Pyle that Afsaneh had been admitted and was enrolled in the Master's Program.

52. By the end of the Spring of 2018, Afsaneh had two (2) semesters of the Master's Program in which Afsaneh obtained a 3.567 GPA (in the first semester) and a 3.650 GPA (in her second semester) resulting in a combined GPA of 3.6.

53. After completing higher level courses in her Master's Program, Afsaneh reached out to Dean Pyle on February 11, 2018, during Afsaneh's second semester in her Master's Program, for readmission into the SOD for the upcoming 2018 Fall Term pursuant to the Readmission Agreement.

54. However, despite the Readmission Agreement, the SOD refused to readmit Afsaneh for the 2018 Fall Term.

55. The only reason Afsaneh enrolled in the Master's Program was due to the SOD's promise to readmit Afsaneh once Afsaneh demonstrated an ability to complete related courses; however, once the SOD breached the Readmission Agreement, Afsaneh had no reason to continue in the Master's Program and, therefore, completed her second semester and, thereafter,

discontinued her Master's Program.

56. Pursuant to the SOD's Academic Policies, "all non-regular faculty, including but not limited to instructors, lecturers, adjunct and visiting faculty, must provide evidence of English proficiency prior to teaching an undergraduate course," which specifically provides as follows:

A non-regular faculty member must either have successfully completed two courses requiring verbal and written proficiency in English from an accredited college or university or have successfully completed English language screening and training utilizing similar standards and requirements as those of Missouri law for graduate teaching assistants and graduate instructors. a comparable law of another state, for graduate teaching assistants and graduate instructors."

See Ex. 2 at 61 (hereinafter, the "English Proficiency Standard").

57. Afsaneh served as a graduate teaching assistant during her Master Program with UMKC. In order to qualify for said position, Afsaneh was required, and in fact did, satisfy the English Proficiency Standard. Specifically, Afsaneh successfully completed Composition Course 1 and Composition Course 2 during undergrad, English as a Second Language Course during undergrad, and other courses.

## **V. COUNTS.**

### **COUNT 1: VIOLATION OF ACADEMIC POLICIES (SOD).**

58. All preceding allegations are hereby incorporated by reference.

59. Students are protected from deviation from information advertised in the following documents: registration materials, manuals, course catalogues, bulletins, circulars, regulations, class syllabi, student codes, and handbooks.

60. Such rights include, without limitation, (1) the right to a continuous contract during a period of enrollment, without a change in degree requirements, (2) the right to retain property and copyright for results of research, artistic creation and innovation unless contracts exist, (3) the

right to participate in programs and services in accordance with advertised program objectives, (4) the right to be evaluated in accordance with advertised curriculum evaluation criteria, and (5) the right to be evaluated with criteria in line with advertised course objectives.

61. These documents may be binding implied-in-fact contracts.

62. Furthermore, verbal contracts are binding in Higher Education settings.

63. Institutional documents are still contractual regardless if they have a disclaimer.

64. According to the Academic and Non-Academic Policies

65. University of Missouri-Kansas City School of Dentistry (hereinafter, the “Academic Policies”), the SOD has an explicit policy providing as follows (the “Non-Discrimination Policy”).

UMKC does not discriminate on the basis of race, color, ethnic or national origin, sex, sexual orientation, gender identity, religion, age, ancestry, disability, military status, veteran status, in admissions, educational programs or activities and employment. The University complies with all federal and state laws and University of Missouri System policy regarding nondiscrimination and affirmative action, including Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, Title VII of the Civil Rights Act of 1964 and the state of Missouri Human Rights Act Chapter 213 RSMO.

*See Ex. 2 at 5.*

66. The SOD violated due process and Afsaneh's rights under the Academic Policies by violating the SOD's Non-Discrimination Policy leading to Afsaneh's Dismissal from the SOD and the denial of Afsaneh's Re-Admission Request.

67. According to the Academic Policies, the SOD has an explicit policy setting forth the SOD's “Core Values, Vision, Mission, and Goals” which set forth the SOD's policies regarding “Integrity”, “Justice”, the SOD's “Mission Statement”, and “Goals” (the “Core Value Policies”).

*See Ex. 2 at 9-10.*

68. The SOD violated due process and Afsaneh's rights under the Academic Policies by violating the SOD's Core Value Policies leading to Afsaneh's Dismissal from the SOD and the denial of Afsaneh's Re-Admission Request.

69. The SOD DDS Program is an accredited program with the Commission on Dental Accreditation ("CODA") and, as such, is required to adhere to the accreditation standards developed by CODA, which include, without limitation, standards of diversity, cultural competence, institutional climate, curriculum diversity, educational environment, and structural diversity found in, without limitation, Standard 1-Institutional Effectiveness (1-3 and 1-4), Standard 2-Program (2-17), Standard 3-Faculty (3-1, 3-2, and 3-4, ), Standard 4-Admissions (4-1, 4-4, 4-5 and 4-7), and Standard 5-Patient Care Services (5-4) and Staff (hereinafter, collectively, the "CODA Policies") (hereinafter, when the term "Academic Policies" is used, said term shall automatically include the "CODA Policies" as well"). *See generally* Ex. 3.

70. The SOD violated due process and Afsaneh's rights under the Academic Policies by violating the SOD's CODA Policies leading to Afsaneh's Dismissal from the SOD and the denial of Afsaneh's Re-Admission Request.

71. Afsaneh has incurred damages due to foregoing violations (hereinafter referred to as the "Academic Policy Violations") including, without limitation, tuition and fees, lost wages, value of professional services, reputational damage, emotional damage, and other non-pecuniary damages.

**COUNT 2: BREACH OF THE ACADEMIC AGREEMENT (SOD).**

72. All preceding allegations are hereby incorporated by reference.

73. As a matter of law, students and institutions of higher education formed a contractual relationship.

74. Institutions of higher education are responsible to ensure that contracts, including those implied and verbal, are fair, in good faith, and not unconscionable.

75. Afsaneh had (and has) a valid express and/or implied contract with the SOD, which was subject to the Academic Policies, written directives of the SOD and its Faculty, and other related documents, (*see, e.g.*, without limitation, Exs. 1, 2 and 3) whereby Afsaneh agreed to complete the SOD's pre-doctoral program requirements and pay tuition and the SOD would provide Afsaneh with an education and a degree/certificate upon completion of program requirements (the "Academic Agreement").

76. The Academic Policy Violations leading to Afsaneh's Dismissal from the SOD and the denial of Afsaneh's Re-Admission Request each constitute a breach (collectively, the "Breaches" and each a "Breach") by the SOD of the Academic Agreement.

77. Afsaneh has incurred damages due to foregoing Breaches including, without limitation, tuition and fees, lost wages, value of professional services, reputational damage, emotional damage, and other non-pecuniary damages.

**COUNT 3: BREACH OF THE READMISSION AGREEMENT (SOD).**

78. All preceding allegations are hereby incorporated by reference.

79. As a matter of law, students and institutions of higher education formed a contractual relationship.

80. Institutions of higher education are responsible to ensure that contracts, including those implied and verbal, are fair, in good faith, and not unconscionable.

81. As a matter of law, the Readmission Agreement constitutes a valid and binding contract.

82. The Academic Policy Violations leading to Afsaneh's Dismissal from the SOD and the denial of Afsaneh's Re-Admission Request each constitute a breach (collectively, the "Breaches" and each a "Breach") by the SOD of the Readmission Agreement.

83. Afsaneh has incurred damages due to foregoing Breaches including, without limitation, tuition and fees, lost wages, value of professional services, reputational damage, emotional damage, and other non-pecuniary damages.

**COUNT 4: VIOLATION OF FEDERAL DUE PROCESS CLAUSE  
(DEFENDANTS).**

84. All preceding allegations are hereby incorporated by reference.

85. Dismissal of a student by a public education institution is a deprivation within the Fourteenth Amendment of the United States Constitution.

86. The SOD is constrained to recognize a student's legitimate entitlement to a public education as a property interest which is protected by due process rights under the Fourteenth Amendment to the United States Constitution (the "Federal Due Process Clause").

87. Furthermore, Afsaneh has protected liberty and/or property interests in her investment in the program at the SOD, her professional reputation, her earning ability and potential, and the value of her education and her privacy, as well as a liberty interest in freedom from arbitrary and wanton intrusions into her personal and professional life.

88. An exclusion from a public university, in whole or in part, for failure to comply with disciplinary and/or academic standards is within the protection of the Federal Due Process Clause.

89. Afsaneh's right to due process were denied by Defendants failing to apply fair and impartial procedural policies.

90. Afsaneh's right to due process were denied by Defendants' commission of the Academic Policy Violations.

91. Afsaneh's right to due process were denied by Defendants' commission of the Breaches.

92. Each of the forgoing due process violations, as well as the Dismissal, (collectively, the "Federal Due Process Violations" and each a "Federal Due Process Violation") constitute a deprivation of Afsaneh's due process rights under the Federal Due Process Clause.

93. The SOD is a state actor.

94. All individual Defendants acted under color of state law.

95. All individual Defendants knew or should have known that their actions complained of herein violated clearly established Federal rights.

96. All individual Defendants worked individually and/or in conspiracy to violate Afsaneh's rights complained of herein.

97. Afsaneh has incurred damages due to the Federal Due Process Violations including, without limitation, tuition and fees, lost wages, value of professional services, reputational damage, emotional damage, and other non-pecuniary damages.

**COUNT 5: VIOLATION OF MISSOURI DUE PROCESS CLAUSE (DEFENDANTS).**

98. All preceding allegations are hereby incorporated by reference.

99. Dismissal of a student by a public education institution is a deprivation within Section 10 of the Constitution of the State of Missouri (the "Missouri Due Process Clause").

100. The SOD is constrained to recognize a student's legitimate entitlement to a public education as a property interest which is protected by the due process clause set forth in Missouri

Due Process Clause.

101. Afsaneh has protected liberty and/or property interests in her investment in the program at the SOD, her professional reputation, her earning ability and potential, and the value of her education and her privacy, as well as a liberty interest in freedom from arbitrary and wanton intrusions into her personal and professional life.

102. Afsaneh's right to due process arising under the Missouri Due Process Clause was denied by Defendants failing to apply fair and impartial procedural policies, thereby depriving Afsaneh of rights.

103. An exclusion from a public university, in whole or in part, for failure to comply with disciplinary and/or academic standards is within the protection of the Missouri Due Process Clause.

104. Afsaneh's right to due process under the Missouri Due Process Clause were denied by Defendants failing to apply fair and impartial procedural policies.

105. Afsaneh's right to due process under the Missouri Due Process Clause were denied by Defendants' commission of the Academic Policy Violations.

106. Afsaneh's right to due process under the Missouri Due Process Clause were denied by Defendants' commission of the Breaches.

107. Each of the forgoing due process violations, as well as the Dismissal, (collectively, the "State Due Process Violations" and each a "State Due Process Violation") constitute a deprivation of Afsaneh's due process Missouri Due Process Clause.

108. The SOD is a state actor.

109. All individual Defendants acted under color of state law.



110. All individual Defendants knew or should have known that their actions complained of herein violated clearly established State rights.

111. All individual Defendants worked individually and/or in conspiracy to violate Afsaneh's rights complained of herein.

112. Afsaneh has incurred damages due to foregoing State Due Process Violations including, without limitation, tuition and fees, lost wages, value of professional services, reputational damage, emotional damage, and other non-pecuniary damages.

**COUNT 6: VIOLATION OF ADA-DESPERATE TREATMENT (DEFENDANTS).**

113. All preceding allegations are hereby incorporated by reference.

114. The primary federal laws that protect people with disabilities from discrimination in higher educational settings like colleges and universities are (1) the Americans with Disabilities Act of 1990, amended in 2008, (2) Section 504 of the Rehabilitation Act of 1973, and (3) ADA Amendments Act of 2008 (collectively, the “ADA”). *See* 42 U.S.C.A. §§ 12101-12300; *See* also 29 U.S.C.A. §§ 701-796.

115. The ADA guarantees equal opportunity for individuals with disabilities in public and private sector services and employment. *See* 42 U.S.C. §§ 12111-12, 12131-32.

116. Generally, the ADA makes it illegal to discriminate against someone because she or she has a disability. *See* 42 U.S.C. § 12101.

117. Specifically, Title II of the ADA prohibits all state and local governmental entities, including public colleges and universities, from discriminating against people with disabilities. *See* 42 U.S.C. §§ 12131-32.

118. Section 504 prohibits “any program receiving federal financial assistance” from

discriminating against an individual because of her or her disability. *See* 29 U.S.C. § 794.

119. Section 504 covers any college or university that receives direct or indirect federal financial assistance, including those that accept students who receive federal financial aid. *See* 29 U.S.C. § 794.

120. Afsaneh is a qualified individual with a disability resulting from her Educational Challenges (“Qualified Disability”). *See* 29 U.S.C. § 794.

121. The Academic Policy Violations, the Academic Agreement Breaches, the Readmission Agreement, the Federal Due Process Violations, and the State Due Process Violations, as well as the resulting Dismissal and the SOD’s denial of Afsaneh’s Readmission Request, were in whole or in part each example of and the result of Defendants’ disparate and discriminatory treatment of Afsaneh on the basis of her Qualified Disability (as further defined herein) (the “ADA Disparate Treatment Violations”).

122. Afsaneh suffers from the Qualified Disability.

123. Students without Afsaneh’s disability were not treated in such a manner.

124. The circumstances of Afsaneh’s Dismissal have cast her as a social outcast to her fellow student colleagues as well as further promoted additional negative branding to Afsaneh’s reputation in the eyes of other SOD Faculty.

125. The forgoing ADA Disparate Treatment Violations are examples of types of discriminatory and disparate treatment that Afsaneh received by the Defendants in violation of Afsaneh’s rights under the ADA; treatment which contributed in whole or in part and/or otherwise served as the basis of Afsaneh’s Dismissal as well as the SOD’s denial of Afsaneh’s Readmission Request.

126. Afsaneh has incurred damages due to foregoing violations including, without

limitation, tuition and fees, lost wages, value of professional services, reputational damage, emotional damage, and other non-pecuniary damages.

127. The SOD is a state actor.

128. The individual Defendants acted under color of state law.

129. The individual Defendants each knew or should have known that their actions complained of herein violated clearly established Federal rights.

130. The Defendants worked individually and/or in conspiracy with the SOD to violate Afsaneh's rights complained of herein.

**COUNT 7: VIOLATION OF TITLE VI - DISPARATE TREATMENT (DEFENDANTS).**

131. All preceding allegations are hereby incorporated by reference.

132. Title VI of the Civil Rights Act of 1964, as amended through the Civil Rights Restoration Act of 1987, ("Title VI") was adopted to outlaw racial discrimination in schools, public places, and employment.

133. According to Title VI, "No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination in any program receiving Federal financial assistance" (42 U.S.C. § 2000d).

134. The scope of Title VI is coextensive with judicial interpretation of the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution.

135. Title VI applies only to discrimination in colleges and universities receiving federal funds.

136. Title VI is may be enforced through suits by private individuals.

137. Disparate treatment involves the unequal treatment of individuals because of a discriminatory motive.

138. In discrimination cases, the legal analysis is adapted from case law interpreting Title VI of the Civil Rights Act of 1964.

139. Afsaneh's Title VI claims herein are supported largely by the same Disparate Treatment Violations identified *supra*, except that the claims of discrimination underlying the preceding Count 6 disability based whereas the claims of discrimination underlying this Count are based on race and ethnicity.

140. As such, the Disparate Treatment Violations are hereby incorporated and made a party hereof.

141. The harassment and discrimination that Afsaneh has been made to endure, as evidenced by the Disparate Treatment Violations, was so severe, pervasive, and objectively offensive that it effectively barred Afsaneh's access to her dental education and the benefits thereof.

142. These very same disparate treatment Violations resulted in and/or manifested from the Academic Policy Violations, the Academic Agreement Breaches, the Readmission Agreement Violations, the Federal Due Process Violations, the State Due Process Violations, and the ADA Disparate Treatment Violations, as well as the Dismissal, and the subsequent denial by the SOD of Afsaneh's Readmission Request.

143. In addition to the Title VI Disparate Treatment Violations, the SOD has a history of disparate treatment to “brown” people.

144. From 2016 through 2018, “brown” students are estimated to have made up approximately 2-3% of the overall SOD Class, yet the dismissal rate remained (and remains) grossly disproportionate (i.e., 1 out of every 3 “brown” students are dismissed on average).

145. In 2017, Afsaneh, another “brown” student, has suffered the same or similar disparate treatment.

146. The forgoing Disparate Treatment Violations are examples of types of discriminatory and disparate treatment of Afsaneh received by the Defendants in violation of Afsaneh's rights under the Title VI; treatment which contributed in whole or in part to Afsaneh's Dismissal as well as the SOD's denial of Afsaneh's Readmission Request.

147. Afsaneh has incurred damages due to foregoing violations (the “Title VI Disparate Treatment Violations”) including, without limitation, tuition and fees, lost wages, value of professional services, reputational damage, emotional damage, and other non-pecuniary damages.

148. The SOD is a state actor.

149. The individual Defendants acted under color of state law.

150. The Defendants knew or should have known that their actions complained of herein violated clearly established Federal rights.

151. The Defendants worked individually and/or in conspiracy to violate Afsaneh's rights complained of herein.

**COUNT 8: BREACH OF DUTIES (SOD).**

152. Afsaneh incorporates the above and below paragraphs as fully set forth herein.

153. The SOD owed Afsaneh a duty under the Academic Policies, the Academic Agreement, the Readmission Agreement, the ADA, Title VI, and via their student/teacher relationship, including, without limitation, to carry out the proceedings and procedures surrounding her Dismissal and Readmission Request.

154. Based on the Academic Policy Violations, the Academic Agreement Breaches, the

Readmission Breaches, the Federal Due Process Violations, the State Due Process Violations, the ADA Disparate Treatment Violations, Title VI Disparate Treatment Violations, as well as the Dismissal and the SOD's denial of Afsaneh's Readmission Request, the SOD, by and through the individual Defendants, intentionally, knowingly, and willfully violated duties owing to Afsaneh.

155. Afsaneh has incurred damages due to foregoing breach of duty violations (the "Duty Violations") by the SOD including, without limitation, tuition and fees, lost wages, value of professional services, reputational damage, emotional damage, and other non-pecuniary damages.

**COUNT 9: PROMISSORY ESTOPPEL/DETRIMENTAL RELIANCE (SOD and DEAN PYLE).**

156. Afsaneh incorporates the above and below paragraphs as fully set forth herein.

157. Alternatively, the SOD (via Dean Pyle) repressed to Afsaneh that if Afsaneh completed some classes in the Master's Program that Afsaneh would be readmitted to the SOD in the Fall of 2018.

158. Afsaneh determinably relied on the forgoing representations and, without limitation, enrolled in and attended two (2) semesters of the Master's Program.

159. The SOD knew and/or should have reasonably known that Afsaneh would so rely.

160. The SOD should be equitably estopped from denying the exitance of the Readmission Agreement.

161. Afsaneh has incurred damages due to foregoing detrimental reliance on the SOD and Dean Pyle including, without limitation, tuition and fees, lost wages, value of professional services, reputational damage, emotional damage, and other non-pecuniary damages.

**VI. REQUEST FOR RELIEF.**

**WHEREFORE**, Afsaneh requests that the Court:

162. Enter Judgment in Afsaneh's favor as to all claims set forth in each Count herein;

163. Issue and Order vacating and/or overturning the Dismissal;

164. Issue and Order compelling the SOD to immediately allow Afsaneh to return to the SOD as student;

165. Issue an Order preventing the Defendants from retaliating, harassing and/or discriminating against Afsaneh;

166. Issue an award for any and all present and future damages incurred owing to Defendants' actions in an amount to be determined; provided, however, that if Afsaneh is not readmitted to the SOD, in an amount not less than \$17,494,500.85 (a figure which based on the average annual salary of dentist in Kansas City, Missouri of \$150,580.00 (the "Average Salary") with an annual increase of 3% over 50 years; but this figure does not include yearly bonuses and/or profits) plus \$2,834,483.23 (a figure which based on the average annual income of owner-solo-practitioner dentist in Kansas City, Missouri of \$180,260.00 less the Average Salary with an annual increase of 3% over 45 years) for an aggregate amount of not less than \$20,328,984.08; any and all available special damages, punitive damages, treble damages and other relief under State and/or Federal law; as well as payment of the amount that the SOD was unjustly enriched, including tuition and fees, payment for services performed, any other enrichment accrued to the SOD as a result of Afsaneh's attendance; and reasonable attorney fees, costs and expenses; and,

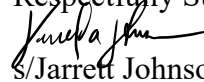
167. For all other just and proper relief.

**VII. DEMAND FOR TRIAL BY JURY.**

Afsaneh hereby requests a trial by Jury on all matters so triable.

Date: December 21, 2018.

Respectfully Submitted,



s/Jarrett Johnson **MO. BAR # 42481**

Jarrett Johnson Attorney at Law  
215 West 18th Street--Suite 220  
Kansas City, Missouri 64108  
Telephone: 816-875-5754 (office: 24/7)  
Mobile: 816-686-8723 (mobile: M-F, 8-6)  
Facsimile: 816-527-9005 (fax)  
E-mail: [jj@kcmo.law](mailto:jj@kcmo.law)

**DAVIS & SARBINOFF, LLC**, an Indiana  
limited liability company,

s/ P. Adam Davis

P. Adam Davis, Esquire, P.C.  
DAVIS & SARBINOFF, LLC  
1 South Rangeline Road, Suite 400  
Carmel, Indiana 46032  
Telephone: (317)569-1200  
Facsimile: (317)569-1293  
E-mail: [adavis@d-slaw.com](mailto:adavis@d-slaw.com)