

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

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U.S. DISTRICT COURT
DISTRICT OF MASSACHUSETTS

BRIAN C. MARQUIS *and others*
similarly situated, DOES 1-25,000

Plaintiff,

v.

Civil Action No.: **07-30015-KPM**

UNIVERSITY OF MASSACHUSETTS at
Amherst, Massachusetts,
BOARD OF TRUSTEES, *individually and*
in their official capacities,
JOHN V. LOMBARDI,
Chancellor, *individually and in his official*
Capacity,
CHARLENA SEYMOUR,
Provost and Senior Vice Chancellor for
Academic Affairs, *individually and in her*
official capacity,
JO-ANN VANIN, GALDYS RODRIGUEZ,
Dean and Associate Dean for Student Affairs,
respectfully, *individually and in their official capacities*,
CATHERINE PORTER,
Ombudsperson, *individually and in her*
official capacity,
PHILLIP BRICKER,
Philosophy Department Chair, *individually*
and in his official capacity,
JEREMY D. CUSHING,
Continuing Education Doctoral
Candidate, and Teaching Assistant/
Associate, *individually and in his*
official capacity,

DOES 1-10,

Defendants

COMPLAINT

REQUEST FOR CLASS
ACTION CERIFICATION

INTRODUCTION

The Plaintiff, BRIAN C. MARQUIS, (“Plaintiff”) brings this complaint against the Defendants, The University of Massachusetts at Amherst, (“University”) Massachusetts, Board of Trustees, JOHN V. LOMBARDI, Chancellor, CHARLENA SEYMOUR, Provost, CATHERINE PORTER, Ombudsperson, PHILLIP BRICKER, Philosophy Department Chair, and Jeremy D. Cushing, doctoral candidate and teaching assistant or associate for violations of United States Cont. amend. I, V, XIV, § 1, 42 U.S.C. §§ 1981, 1982, 1983, 1985, 1986, 18 U.S.C. § 241, Mass.Gen.L. c. 93A, promissory estoppel, breach of contract, breach of the special relationship, and Intentional Infliction of emotional distress, a tort liability.

PATIES

1. Plaintiff, a ‘*matriculated*’, non-traditional, commuter student at the University, is a resident of Lanesborough, Berkshire County, Massachusetts.
2. Plaintiff is ‘*matriculated*’ in the University’s College of Social and Behavioral Sciences, maintaining double degrees in Legal Studies and Sociology. He is a transfer student who has accumulated approximately sixty-seven (67) graduation credits out of the required 150 needed to graduate from the University. Additionally, he is a Sociology Undergraduate Teaching Assistant and serves on the Faculty Senate Committee for General Education.
3. The University is a Massachusetts state sponsored, creature of the state, four-year residential undergraduate and graduate educational and research university, in Amherst, Massachusetts. The University is the “flagship campus of the University of Massachusetts system” with a total undergraduate and graduate enrollment in excess of 25,000 students.
4. The University’s Board of Trustees are composed of twenty-two (22) members, all with the exception of five (5) student trustees, are appointed by the governor of the Commonwealth of Massachusetts and serving a defined term.
5. The University’s Chancellor maintains a working office on the Amherst campus. Upon information and belief, the board of trustees appointed the chancellor.

6. The University's Provost and Senior Vice Chancellor for Academic Affairs maintain a working office on the Amherst campus. Upon information and belief, the chancellor and board of trustees appointed the Provost.
7. The University's Dean and Associate Dean for Student Affairs maintain a working office on the Amherst campus. Upon information and belief, the chancellor appointed the dean and the dean appointed the associate dean.
8. The University's Ombudsperson maintains a working office on the Amherst campus. Upon information and belief, the provost and chancellor appointed the Ombudsperson.
9. The University's Philosophy Department Chair maintains a working office on the Amherst campus. Upon information and belief, the provost appointed the chair.
10. The University's Continuing Education doctoral program maintains a working program and office on the Amherst campus. Jeremy D. Cushing is a doctoral candidate in the program and is a teaching assistant or teaching associate who instructed a fall semester Philosophy 161 course.

JURISDICTION AND VENUE

11. Subject matter jurisdiction in this Court is predicated on 28 U.S.C. § 1331, as parties are disputing federal constitutional and statutory issues.
12. Venue is proper in the district court for the District of Massachusetts under 28 U.S.C. § 1391, as a substantial part of the actions, events and omissions giving rise to this claim occurred in Massachusetts. This complaint also alleges violations of Massachusetts law arising under the Mass. Consumer Protection Act, G.L. c. 93A. This Court has jurisdiction over this claim pursuant to its supplemental jurisdiction, 29 U.S.C. § 13679(a). If the claim is certified, pursuant to F.R.C.P. 23, as a class action or collective action, then future named and unnamed plaintiffs currently referred to as "DOES 1-25,000" will be found to reside in most every district of Massachusetts.

FACTUAL STATEMENTS AND BACKGROUND

13. During the fall 2006 semester, Plaintiff enrolled in the University's Philosophy 161, Problems in Social Thought, course instructed by Defendant Cushing ("Cushing"). Plaintiff's role had been and continues to be that of a full-time *matriculated* University student.
14. In this Philosophy class, there were approximately fifty-(50) students. During the first day of class, Cushing distributed a two (2) page, double sided course syllabus to each individual student; he also posted the syllabus on his course website.
15. The syllabus contained varying headings of course requirements, including but not limited to, his method of semester "Grading." The grading was to be determined as follows: "Each exam will be worth 25% of the final grade for a total of 75%; The response papers will be worth a total of 20% (or 5% each). Each paper will receive a number grade (from 0-5) in .5 point increment; The remaining 5% is for participation in class. I want all students to ask questions and participate in the class discussion." The final calculated numeric grade should be determined out of a possible 100% (75% plus 20% plus 5% equals 100%) *See Exhibit "A"* attached hereto and made a part hereof for all general purposes.
16. When the semester concluded, Plaintiff finished with response papers of 5, 4, 4, 4.5 (out of possible 5s) equaling 17.5% out of a possible 20%; exam papers of 23, 22.50, 19.50 (out of possible 25%) equaling 65% out of a possible 75%; and 5 percent for class participation. a) The difference of 17.5% from 20:% equals 3.5%, b) the difference of 65% from 75% equals 10%; thus 10.00% plus 3.5% equals 13.5% minus 100% equals 87.5%; and c) 5% for class participation equates into a 92.5% (87.5% plus 5%) out of a possible 100% numeric grade, translating, by universally accepted standards, into an "A-" letter grade.
17. On or about 09 January 2007, Plaintiff reviewed his grading schedule on the University's SPIRE site (this site is accessible by entering an individual student's username and password. SPIRE displays different tabs and links

which assist students in monitoring how finances are applied, course offerings and semester registration and schedules of the Registrar's official semester grades).

18. While reviewing his fall 2006 semester grades, Plaintiff noticed a grade of C in the Philosophy 161, Problems in Social Thought, cell.
19. On or about 10 January 2007, Plaintiff e-mailed Cushing with this apparent discrepancy and ask him to reevaluate, or in the alternative, explain the method used to arrive at a C grade against the terms expressed in his syllabus contract. This grade (of C) was inconsistent with both Plaintiff's semester performance and the how final grades were to be determined as expressly stated in the course syllabus.
20. Cushing responded on 10 January 2007, after contacted by Defendant Porter ("Porter"), and stated, "This brought your final grade to an 84 for the class...but I thought your grade (of C) [*sic*] was a good reflection of your work." Moreover, on 10 January 2007 he claimed, "To make the grades more representative of student performances, I set a curve (or, more accurately, I drew up a new grade scale)." *See Exhibit "B"* attached hereto and made a part hereof for all general purposes. On 14 January 2007 he declares, "There were two other students that had grades in this range, one with an 83.5 and one with an 84.5, both of these students also received a grade of C." "In your case, the grade assigned by scale seemed to fit."
21. Plaintiff wrote to Porter and further objected to Cushing's grading deviations. Instead of Porter reconsidering this matter, she declared, "I would urge you to accept this grade and continue on with your course work as these are no grounds for an academic grievance." "For example 84 points could range anywhere from a 'C' to possibility an 'A-,' at the extreme end." *See Exhibit "C"* attached hereto and made a part hercof for all general purposes.
22. The University's Undergraduate Registrar's Office on Grading and System and GPA calculations are scheduled accordingly: A- grade equals 3.700 points, B equals 3.00 points and C equals 2.00 points. A- is what Plaintiff earned during the semester, which equates into 3.700 added to his semester

- GPA; instead, what Cushing did was award Plaintiff a letter grade of C which earned him a disproportion 2.00 points on his semester GPA, still far below that of the 84 (3.00 GPA points) numeric grade calculated by Cushing. *See Exhibit "D"* attached hereto and made a part hereof for all general purposes.
23. By Cushing's arbitrary and capricious letter award of C, it has left Plaintiff's undergraduate transcript as a dismal record of non-achievement. Graduate institutions as having much credibility do not recognize Cs. They lend to the stigma that the applying student are somewhat lazy and inattentive to individual studies. Moreover, the chances of any student with C letter grades seeking admission to graduate school is remote and probably not going to occur. Since Plaintiff did not earn a C final letter grade, he should not have to bear the burden of carrying this beast around with him forever. The fact the Undergraduate or Graduate Registrar's Offices does not foster a numeric to letter grade scheme does not negate the importance of having such a stipulated schedule. Implementing this kind of a system would go a long way in promoting a community understanding of the University's grading policy and in maintaining *matriculated* students' constitutional property rights.
24. Plaintiff does not know the true names or identities of those Plaintiffs named herein as similarly situated "DOES 1-25,000" and therefore refer to those Plaintiffs by such fictitious names. Plaintiff or an assigned attorney to this case, in the future, will amend the complaint with leave of this Court to include another similarly situated classes or sub-classes, where the named Defendants under U.S. Const. amends, federal and state statutes, have infringed property or civil rights.

COUNTS

(Count I-Violation of First Amendment)

(as to all Defendants)

25. Plaintiff repeats the allegations set forth and incorporates by reference herein the above paragraphs 1 through 24 inclusive.
26. By abruptly shutting down the university's grievance procedure, Defendants declared that Plaintiff should "accept this grade and continue on with your

course work as there are no grounds for an academic grievance,” violating his First Amendment rights to be heard further on this matter.

(Count II-Violation of Fifth Amendment)

(as to all defendants)

27. Plaintiff repeats the allegations set forth and incorporates by reference herein the above paragraphs 1 through 26 inclusive.
28. Defendants deprived Plaintiff of his (their) procedure and substantial due process rights by not allowing an appeal to be heard. Defendants further infringed on Plaintiff's rights by the taking of liberty and property without the benefit of any procedure or substantial due process.

(Count III-Violation of Fourteenth Amendment, § 1)

(as to all Defendants)

29. Plaintiff repeats the allegations set forth and incorporates by reference herein the above paragraphs 1 through 28 inclusive.
30. The Defendants took from Plaintiff, as a *matriculated* University student, certain property rights without the benefit of procedural or substantial due process. Plaintiff, a University student, enjoys inherited property rights once he (they) becomes "*matriculated.*"

(Count IV-Violation of 42 U.S.C. § 1981)

(as to all Defendants)

31. Plaintiff repeats the allegations set forth and incorporates by reference herein the above paragraphs 1 through 30 inclusive.
32. Plaintiff, within the jurisdiction of the United States and the Commonwealth of Massachusetts, asserts the Defendants failed to fully or partially perform, and arbitrarily and capriciously modified an enforceable course syllabus, in contradiction to its stated, agreed upon "Grading" terms.

(Count V-Violation of 42 U.S.C. § 1982)

(as to all Defendants)

33. Plaintiff repeats the allegations set forth and incorporates by reference herein the above paragraphs 1 through 32 inclusive.

34. Defendants deprived Plaintiff of his property rights and any future rights of conveyance.

(Count VI-Violation of 42 U.S. C. § 1983)

(as to all Defendants)

35. Plaintiff repeats the allegations set forth and incorporates by reference herein the above paragraphs 1 through 34 inclusive.

36. Defendants, in their official capacities as state actors, whose conduct was sufficiently willful, reckless, and acting and engaging in official state actions with callous indifference, wanton malevolence, malice, with intentional gross negligence, within the scope of their official duties under the color of state law, caused irreparable constitutional harm to Plaintiff.

(Count VII-Violation of 42 U.S.C. § 1985)

(as to all Defendants)

37. Plaintiff repeats the allegations set forth and incorporates by reference herein the above paragraphs 1 through 36 inclusive.

38. Defendants, willfully and wantonly, directly or indirectly, in whole or in part, did with unqualified deliverance, conspire to deprive Plaintiff of his inherent constitutional rights and privileges, thus causing him irreparable harm.

(Count VIII-Violation of 42 U.S.C. § 1986)

(as to all Defendants)

39. Plaintiff repeats the allegations set forth and incorporates by reference herein the above paragraphs 1 through 38 inclusive.

40. Defendants had the inherent or actual authority or power to right or prevent certain constitutional wrongs against Plaintiff but neglected or refused to do so.

(Count IX-Violation of Mass.Gen. L. ch. 93A)

(as to all Defendants)

41. Plaintiff repeats the allegations set forth and incorporates by reference herein the above paragraphs 1 through 40.

42. Defendants engaged in an unfair and deception act by proffering a course syllabus and then abandoning the consented grading scheme in an arbitrary

and capricious manner. Defendants conduct has an extortionate quality that gives it the rancid flavor of unfairness. (defendants have not been served with thirty (30) days notice of Plaintiff's unfair and deceptive act claim).

(Count X-Violation of 18 U.S.C. § 241)

(as to all Defendants)

43. Plaintiff repeats the allegations set forth and incorporates by reference herein the above paragraphs 1 through 42 inclusive.
44. Defendants intentionally conspired to interfere with Plaintiff's civil rights.

(Count XI-Promissory Estoppel)

(as to all Defendants)

45. Plaintiff repeats the allegations set forth and incorporates by reference herein the above paragraphs 1 through 44 inclusive.
46. Defendants promised Plaintiff's grade would accurately reflect his effort and his numeric and letter grade would calculate according to the course syllabus.
47. In reliance on Defendants promise, Plaintiff enrolled and remained in the Philosophy 161 course with the promise that he would be graded according to the course syllabus.
48. As a result, of the Defendants' promise to grade accordingly, and their breach to Plaintiff's reasonable and detrimental reliance on their promise to do so, the Defendants are liable for direct, indirect and consequential damages suffered.

(Count XII-Breach of the Special Relationship)

(as to all Defendants)

49. Plaintiff repeats the allegations set forth and incorporates by reference herein the above paragraphs 1 through 48 inclusive.
50. Defendants breach the special relationship owed to a *matriculated* student, thus, causing Plaintiff irreparable harm.

(Count XIII-Breach of Contract)

(as to all Defendants)

51. Plaintiff repeats the allegations set forth and incorporates by reference herein the above paragraphs 1 through 50 inclusive.

52. Defendants breached the contract (course syllabus) when they failed to comply with or calculate final letter grades on behalf of Plaintiff. Defendants are therefore liable to Plaintiff for all the damages that follow as a natural consequence of their actions and are the proximate result of their conduct.
53. Defendants were negligent in the administration of assigning final letter grades.
54. Plaintiff claims the Defendants breached the contract when the grading policy was effectively conveyed to him through the course syllabus, University catalogue, policies and regulations regarding academic requirements and then bypassed the formal and informal procedural structure by actionable conduct.
55. Defendants violated the implied or expressed terms of the contract.
56. Defendants' conduct was extremely incompetent.

(Count XIV-Intentional Infliction of Emotional Distress)

(as to all Defendants)

57. Plaintiff repeats the allegations set forth and incorporates by reference herein the above paragraphs 1 through 56 inclusive.
58. By Defendants intentionally and maliciously depriving Plaintiff of his constitutional rights, they have intentionally inflicted emotional distress on him.

(Count XV-Tortious Interference with Economic Advantage)

(as to all Defendants)

59. Plaintiff repeats the allegations set forth and incorporates by reference herein the above paragraphs 1 through 58 inclusive.
60. By Defendants, in an arbitrary and capricious manner and with malicious intent, have deprived and interfered with Plaintiff's economic advantage. The Defendants letter award of C versus A- offers a dismal academic record.

REQUEST FOR CLASS ACTION CERTIFICATION

Plaintiff, on his behalf, and all others similarly situated (DOES 1-25,000) respectfully request that this cause of action be considered and certified as a class action pursuant to F.R.C.P. 23. In the alternative, if class action is denied, Plaintiff moves, on his behalf and all others similarly situated (DOES 1-25,000) request certification as a Collective Action under Section 216(b) of the Fair Labor Standards Act (1938), as amended.

PLAINTIFF'S ENTITLEMENT TO RELIEF

WHEREFORE, Plaintiff prays this Honorable Court will...

1. Enjoin Defendants from any further statutory or constitutional violations;
2. Order injunctive relief and declaratory judgment;
3. Certify this cause of action into a F.R.C.P. 23 class action;
4. Order the immediate creation and implementation of a equitable, uniform numeric to lettering grading scheme;
5. Order Defendants to adjust letter grade from C to A-;
6. Monetary, retroactive, and prospective relief;
7. Disallow Defendants invocation of their Eleventh Amendment qualified immunity shield under the *Ex Parte Young Doctrine*;
8. Award court cost and attorney fees;
9. Order other relief that may be deemed just and proper.

PLAINTIFF(S) REQUEST A TRIAL ON ALL ISSUES SO TRIABLE

Dated: 31 January 2007

By: 

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