

Cause No. 2009-550,359

MIKE LEACH

Plaintiff,

v.

**TEXAS TECH UNIVERSITY;
KENT HANCE; JERRY TURNER;
LARRY ANDERS; CRAIG JAMES;
GUY BAILEY; GERALD MYERS;
AND CHARLOTTE BINGHAM**

Defendants.

IN THE DISTRICT COURT

OF LUBBOCK COUNTY, TEXAS

99TH JUDICIAL DISTRICT

PLAINTIFF MIKE LEACH'S FOURTH AMENDED PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW Mike Leach ("Leach"), Plaintiff and files this Fourth Amended Petition complaining of Texas Tech University ("TTU" or "Texas Tech"), Kent Hance, Jerry Turner, Larry Anders, Craig James, Guy Bailey, Gerald Myers and Charlotte Bingham (collectively the "Defendants"), and would show as follows:

I. DISCOVERY CONTROL PLAN

1. Mike Leach intends to conduct discovery under Level 3 of Texas Rule of Civil Procedure 190.

II. PARTIES

2. Plaintiff is Mike Leach, the former head football coach at Texas Tech University.
3. Texas Tech University, a Defendant, has already appeared in this case.
4. Kent Hance is an individual who is Chancellor of Texas Tech University. He can be served by and through his attorney Terry Scarborough, Hance & Scarborough, 111 Congress

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DISTRICT CLERK LUBBOCK CO.
BY _____ DEPUTY
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B. [Signature]
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Avenue, Suite 500, Austin, Texas 78701. Defendant Hance is being sued in his official capacity as Chancellor of Texas Tech and in his capacity as an individual.

5. Jerry Turner is an individual who is Vice Chairman of the Texas Tech University System Board of Regents. He can be served by and through his attorney, Pat G. Lochridge, McGinnis, Lochridge & Kilgore, L.L.P., 600 Congress Avenue, Suite 2100, Austin, Texas 78701. Defendant Turner is being sued in his official capacity as Vice Chairman of the Texas Tech University System Board of Regents and in his capacity as an individual.

6. Larry Anders is an individual who is Chairman of the Texas Tech University System Board of Regents. He can be served by and through his attorney Stephen C. Rasch, Thompson & Knight, LLP, One Arts Plaza, 1722 Routh Street, Suite 1500, Dallas, Texas 75201. Defendant Anders is being sued in his official capacity as Chairman of the Texas Tech University System Board of Regents and in his capacity as an individual.

7. Craig James, an individual, is the father of Adam James and is an ESPN college football analyst. He can be served by and through his attorney Scott R. McLaughlin, Jackson Walker, 1401 McKinney Street, Houston, Texas 77010.

8. Guy Bailey is an individual residing in Texas and is the President of Texas Tech University. He may be served with process at the Office of the President, Texas Tech University, 125 Administrative Building, Lubbock, Texas 79409. Defendant Bailey is being sued in his official capacity as President of Texas Tech University and in his capacity as an individual.

9. Gerald Myers is an individual residing in the State of Texas and is the Athletic Director of Texas Tech University. He may be served with process at the Office of the Athletic Director, Texas Tech University, 6th and Boston, Room: South End, MS 3021, Lubbock, Texas

79409. Defendant Myers is being sued in his official capacity as Athletic Director of Tech University and in his capacity as an individual.

10. Charlotte Bingham is an attorney employed by Texas Tech as the Managing Director of Equal Employment Opportunity and may be served at the Office of the Chancellor, Texas Tech University, 125 Administration Building, Lubbock, Texas 79409. Defendant Bingham is being sued only in her official capacity as Managing Director of Equal Employment Opportunity of Texas Tech University.

11. Defendants TTU, Hance, Turner, Anders, Bailey and Myers may be referred to collectively as the Tech Defendants.

III. VENUE

12. Venue is proper in Lubbock County, Texas. Specifically, venue is allowed in this county because all or a substantial part of the events or omissions occurred in this county. Tex. Civ. Prac. & Rem. Code § 15.002(a)(1). Venue is mandatory in this county because Texas Civil Practice & Remedies Code Section 15.017 provides that venue is mandatory in the county in which the plaintiff resided at the time of the accrual of the cause of action.

IV. FACTS

A. Introduction

13. This case involves a dispute between Texas Tech University and Leach, its former head football coach, over the termination of his employment. For the last ten years Mike Leach has made his livelihood as head football coach at Texas Tech University, a Division 1 school that has appeared in NCAA College Bowl games in each of these same ten years. Leach has a strong winning percentage while the head coach at Texas Tech. He is the winningest head football coach in Texas Tech's history. According to www.collegefootballpoll.com, Leach is responsible

for over half of Texas Tech's 11 bowl wins all time. Last year Leach was the national college coach of the year.

14. Leach is a member of a very small pool of qualified applicants for head coaching positions at major colleges and universities in the United States. The number of head coaches at Division 1 schools number 120 in the NCAA Bowl Eligible Subdivision. Even fewer openings exist for such positions in any given year. These Division 1 schools recruit during the year and practice in the spring and summer for the upcoming year. If a coach is not hired in the early part of the year, his opportunity to find a position is effectively gone. Moreover, a coach's good reputation among recruits – high school seniors and their families – is paramount.

B. During The Contract Negotiations, the TTU Defendants Violate SACS Rules, Deceive Leach and Plan to Chisel Leach Out of Compensation

15. After a successful 2008 football season in which Plaintiff Leach led the Red Raider football team to an 11-2 record and a Cotton Bowl appearance, he began negotiations with Defendant TTU for an extension of his contract. Under Texas Tech policies and procedures and the guidelines of the Southern Association of Colleges and Schools ("SACS"), the only persons authorized to conduct such negotiations were President Guy Bailey and Athletic Director Gerald Myers. Anders Dep. at 30:14-25; 31:1-4. Nevertheless, in direct contravention of these rules, Defendant Hance negotiated the contract directly with Plaintiff Leach and his agents. See Ex. 87.¹ Unbeknownst to Plaintiff Leach, Defendants TTU, Hance, Anders and Turner permitted two former members of the Texas Tech Board of Regents ("BOR") Alan White and James Sowell to direct negotiations and influence the terms of Plaintiff's contract. See Exs. 85-87, 89. Indeed, Defendants Turner and Anders recognized and acknowledged that the Defendants' actions were inconsistent with SACS guidelines. Exs. 166, 171.

¹ The exhibit numbers in Plaintiff Mike Leach's Fourth Amended Petition refer to Plaintiff's Deposition exhibit numbers. The exhibit letters refer to exhibits not previously used in the depositions.

16. The negotiations proved bitter for the Tech Defendants. See Ex. 35. In particular, Defendants Hance, Anders and Turner were angry at Leach's agents for their aggressiveness. Anders Dep. at 39:20-23. Despite the Tech Defendants' dissatisfaction with the terms of the agreement, and in particular the compensation provisions, the University executed a contract of employment with Leach effective January 1, 2009 (the "Agreement"), contracting to retain Leach's services as Head Football Coach of the University's Division 1 football program for a term of five years. See Ex. 8, Employment Contract dated February 19, 2009.

17. Despite the express guarantees in the Employment Agreement and contrary to the procedural guarantees set out in the policies established by the Board of Regents for all of the University employees, the University and Defendants Hance, Turner, and Anders had no intention of honoring TTU's promises. Indeed, the conduct of these representatives of the University, acting both for the University and to suit their own improper purposes, was intentionally deceptive. Agreeing to pay Coach Leach much more than they wanted to, and harboring an ill-will created during the contract negotiations, these Defendants resolved – at the time of contracting – to find a way to deprive Coach Leach of the agreed upon compensation, and to find a way to terminate him before the end of the 2009 season to avoid paying contractual bonuses. Exs. 148, 150, 151.

18. Specifically, Turner advised Board members Anders and Sowell that they should terminate Leach on November 30, 2009 to avoid paying his \$800,000 bonus since Leach would not be head football coach on December 31, 2009. Indeed, this bonus was a carry-over "tenure" bonus that Leach had been "earning" since signing his 2006 Contract. See Ex. 149. What could possibly be more chiseling than to deprive a man, after years of work, from his justly promised and earned compensation? Further emails illustrate the University's hostility on the part of the

Tech Defendants in contract negotiations with Leach regarding the bonuses and monetary issues were at the very heart of the hostility. Exs. 85, 86, 87.²

19. Specifically, on the day after the Agreement was signed, Anders and Turner decided that TTU would obtain the benefits of Leach's performance but chisel him out of his compensation under the Contract. Ex. 148. Because they were infuriated by Leach's conduct during the negotiations and felt that TTU had overpaid Leach under the new Contract, Defendants TTU, Anders, Turner and Hance secretly agreed that they would terminate Leach at "the appropriate time." Exs. 150, 151.

C. **TTU Expressly Waives Sovereign Immunity in Leach's Contract and Leach Relies Upon That Promise in Executing the Contract**

20. Section III.C(5) of the Agreement expressly incorporates TTU's policies and ~~procedures as terms of the contract, and provides that Leach is entitled to the benefits of TTU's~~ policies and procedures. Ex. 8, Sections III.C(5) and IV. Among other things, the TTU Operating Procedures ("OP") provide that an employee aggrieved by an employment decision of the University may appeal that decision through a grievance proceeding without fear that the University will retaliate. Moreover, the University expressly acknowledged that the purpose of these policies and procedures was to ensure that University employees received the due process to which they are entitled:

It is the policy of TTU/TTUS **to ensure due process** and to seek fair, just, and prompt resolution of complaints and grievances by non-faculty employees arising from the employ relationship with TTU/TTUS.

OP 70:10.1.c (emphasis added) (Ex. 2). Operating Procedure 70.31:11 specifically provides that

Any employee of the university may present complaints or grievances *without retaliatory action being taken against him/her* in accordance with the policy

² Indeed, three prominent current and former members of the school's board of regents said the Leach firing was largely the result of ill will left over from the heated contract negotiations in early 2009.

governing appeals and grievances (see OP 70.10 for non-faculty and OP 32.05 for faculty employees).

Ex. 1 (emphasis added). Coach Leach was a non-faculty employee and his grievance rights were established by OP 70.10. *See* Deposition of Charlotte Bingham ("Bingham Dep.") at 53:15-21. OP 70:10 reiterates the University's assurance that an employee could have his grievances heard without fear of retaliation. It says, unequivocally, "**An employee may present a complaint or grievance without retaliation.**" OP 70:10:1.d (emphasis added) (Ex. 2). That OP permitted Coach Leach to file a grievance proceeding regarding all issues relating to his termination. Bingham Dep. at 55:13-16. At Coach Leach's election, that proceeding could take the form of a civil lawsuit:

In the event the employee files substantially the same issues as the grievance or complaint before or during this procedure with any external agency or court, the employee may elect to remove such issues of grievance or complaint from further consideration through this process.

Ex. 2 (emphasis added); see also Bailey Dep. at 17:18-22:

Q: And would you agree with me that he [Leach] had the right to pursue a grievance or complaint with an external court without fear of retaliation from the University?

A: Yes.

Further, TTU's Regent's Rules provide:

Grievance procedures. The TTU system administration and component institutions shall establish grievance procedures for the types of grievances of students, faculty, and staff members applicable to the component. Each such procedure will indicate the final level of review within the TTU system administration or component institution that is available to an individual grievant, and a decision at the level so indicated will constitute final institutional action on the grievance.

TTU Regent Rule 3.06.2, Ex. A.

21. These policies were established under a direct grant of authority by the Texas Legislature.

The governance, control, jurisdiction, organization, and management of the Texas Tech University System is hereby vested in the present board of regents of Texas Tech University, which will hereinafter be known and designated as the board of regents of the Texas Tech University System. The board by rule may delegate a power or duty of the board to an officer, employee, or other agent of the board.

Texas Education Code, section 109.001(c).

22. Thus, TTU's grant of this express right of an employee to challenge a University termination decision in state civil court under OP 70.10 has the force and effect of an act of the Texas Legislature. See Ex. B, Brief of Texas Tech University, *et al.*, in *Roberts v. Haragan*, 2003 W.L. 23889164 at 1 n.1, C.A. 5-03CV0140-C (N.D. Tex., July 17, 2003), quoting *Bache Halsey Stuart Shields, Inc., v. University of Houston*, 638 S.W.2d 920, 927 (Tex. App. – Houston [1st Dist.] 1982, writ ref'd n.r.e.) (“[T]he rules enacted by the University have the same force as enactments of the Legislature.”) Because Regent Rule 3.06.2, OP 70.31:11 and OP 70.10 have the effect of an act of the legislature, they unambiguously waive TTU's immunity from suit. Moreover, because OP 70.10 sets the legal parameters within which the University must act, the abrogation of an employee's grievance rights by retaliatory termination is an act without legal authority and is *ultra vires*. In addition, because of the ill-will from the contract negotiations and the subsequent acts of Defendants, it is clear that TTU's conduct was designed to lure Leach into believing that TTU had waived immunity from suit. However, the Tech Defendant had no intent to abide by such promises.

23. Moreover, the Employment Agreement contains certain provisions limiting termination by TTU, including a termination without cause provision, a termination for cause provision, and a notice and cure provision. Under Section V.C of the Agreement, if the University decided to terminate Coach Leach without cause, it was required to pay liquidated damages to Coach Leach of \$400,000 for each year remaining on the contract, and to do so

within 30 days of termination. Termination for cause, under Section V.A, requires a 10 business day notice and opportunity to cure the alleged violation. This provision also requires payment of any earned base salary and any earned supplemental salary up to the date of termination. Ultimately, the University failed to provide such notice but terminated Coach Leach summarily, prior to the Alamo Bowl, in order to evade the \$800,000 bonus obligation that would have accrued on December 31, 2009. *See* Ex. 8, Section III.A.³

D. Adam James is a Discipline Problem

24. During the 2009 football season, Leach had to contend with the disciplinary problems of a sophomore wide receiver named Adam James. Far from a model student athlete, during 2008 Adam James was a discipline problem and often failed to attend class. Exs. 69, 102-106. His performance as an athlete was similarly deficient. For example, in September 2009, wide receiver coach Lincoln Riley met with Adam James in the Texas Tech coaches' offices. Coach Riley told Adam James that his effort at practices was not good and that Riley needed more from James at his position, and that as a result, James was being demoted to third team. Infuriated with this demotion, Adam James stormed out of the athletic offices yelling "F*#@# this!" in front of staff and players. James slammed the outer door to the coaches' office so hard that it split and came off its hinges, causing approximately \$1,100 in damage.

25. On or about September 10, 2009, Adam James' father Craig James⁴, called Texas Tech assistant coach Tommy McVey to tell him, in effect, that "you coaches are crazy and you're screwing my kid." On or about the same day, Craig James left a voice message for Coach

³ Shortly after the University fired Coach Leach, the team he had prepared to play in the Alamo Bowl up until only two days before it was actually played, did, in fact, win the Alamo Bowl, a win that would have entitled Coach Leach to another \$50,000 in compensation. Agreement Section 4.f.

⁴ Craig James is a former SMU running back who played in the National Football League and who currently works as a college football analyst for ESPN. James had previously contacted Leach and other members of the coaching staff to complain and question the amount of playing time afforded to his son.

Riley stating, in effect, "You don't know what you're doing. Adams James is the best player at the wide receiver position." He concluded his message to Coach Riley by stating, "If you've got the balls to call me back, and I don't think you do, call me back."⁵ See C. James Dep. at 114:13-22. Coach Riley forwarded the message to Plaintiff Leach. Plaintiff Leach met with Adam James and requested that Adam tell his father to stop calling Texas Tech coaches. Thereafter, upon information and belief, Craig James began to call Texas Tech officials to complain about his son's playing time at TTU.

26. On December 14, 2009, during practice for the Alamo Bowl, Coach Leach noted poor effort by Adam James. Leach advised James during the 1st period of practice if he didn't like James' effort he was going to be sent to 'Muscle Beach' (an area designated for use by injured players and for lifting weights which is generally overseen by Texas Tech Strength Coach Bennie Wylie). During the 2nd period of practice, Leach advised several players, including Adam James, that their effort was unacceptable and that he had seen enough. Leach sent James and other players to Muscle Beach. At Muscle Beach, Coach Wylie directed James, and the two other players to run laps and stairs. Afterward, the players other than James acknowledged to Coach Wylie that they had put forth unacceptable effort in practice and had learned from the discipline of the coaching staff. See Ex. 103. However, Adam James told Coach Wylie that Wylie didn't know what he was doing and James' effort was just fine. *Id.*

27. On or about December 17, 2009, Adam James arrived at football practice in street clothes wearing sunglasses, claiming he had received a concussion. The team physician Dr. Phy acknowledged that James had a mild concussion and limited him from any physical activity until he was symptom free. The football team policy provides that all players, including injured

⁵ It is noteworthy that in August 2009, Craig James told Mike Leach that he was in business with Chancellor Kent Hance, in an attempt to influence Coach Leach in his decision regarding Adam James.

players, shall attend practice in practice attire and participate in the manner permissible given the nature of their injury. If a player cannot practice at all, he must still attend practice in appropriate practice attire and “walk the field.” Street clothes and sunglasses are not considered appropriate attire. According to the statement of team trainer Steve Pincock, James was “walking the field” in a nonchalant, non-caring way. See Ex. 30.

28. When advised by Pincock that James had a concussion, Leach told Mr. Pincock to take James to a dark location (since concussions cause sensitivity to light), to remove James from the immediate practice field since he was not in proper attire and the rest of the team was practicing hard for the Alamo Bowl, and to have James stand during the duration of the practice. Plaintiff Leach did not identify where James was to be taken; he did not direct that James be locked anywhere; and he did not require James to engage in any physical activity during practice.

In his affidavit, Mr. Pincock has testified that Leach did not want James loafing while others practiced. (Any reasonable person can understand the need to keep a team focused on the most important game of the season and to limit the team’s view of/exposure to players who are not practicing and being put through the same difficult physical and mental stresses of an elite college football program preparing for its biggest game of the season.)

29. Athletic trainer Steve Pincock placed Adam James in the medicine/athletic training garage and told him to stand. Mr. Pincock placed assistant trainer Jordan Williams outside the garage so that someone could check on James’ condition every fifteen to twenty minutes. When James was checked by team trainers during the practice, which lasted approximately 1-1/2 - 2 hours, James was sitting, walking around, getting ice, drinking water and/or sleeping in the garage. Ex. 30. Adam James was never locked in the garage. Further

there is no “electrical closet” in the garage.⁶ In his deposition, Adam James found the incident “funny” and did not believe that Coach Leach should be terminated. A. James Dep. at 54:8-10; 93:15-21. In fact, he notified his father, Craig James, of the incident because he thought he would “like” it. *Id.* at 54:8-17.

30. On or about December 19, 2009, the Red Raiders football team conducted practice on the game field. Prior to practice trainer Pincock asked Coach Leach what should be done with the injured players. Leach responded, to the effect, “same thing as yesterday.” Because he was still allegedly suffering from this mild concussion, James did not practice. At Pincock’s direction, James spent the practice in a media room used for opposing teams’ post-game press conferences at the Red Raiders’ stadium. Specifically, Pincock told Adam James not to enter the electrical closet attached to the media room. Based on Mr. Pincock’s statement, James was specifically told not to go into the electrical closet. Ex. 30. In his deposition, Adam James admitted that he ignored Mr. Pincock’s express instructions. See A. James Dep. at 141:10-25; 142:1-14. Consequently, Adam James voluntarily placed himself into the electrical closet and apparently took pictures with his phone camera.⁷

31. Pincock instructed that Jordan Williams be placed outside the media room to check on James’ condition. At no time was James locked inside the room or the electrical closet. Indeed, according to Mr. Pincock’s statement, Adam James wandered around the room, sat down, and laid down in the media room. Ex. 30. James was not required to engage in any physical activity, and was checked periodically by team trainers. In fact, James’s teammates were permitted to enter the room and talk to James.

⁶ Indeed, offensive linemen stay in the training garage during special teams practice.

⁷ It is a violation of team policy to have a phone at practice.

E. Craig James Interferes With Leach's Contract and Defendants' "Opportunity" to Fleece Leach Arrives

32. On the evening of December 19, 2009, Craig James called Defendant Anders, Chairman of the Texas Tech University Board of Regents, and complained that Adam had been locked in an electrical closet and later demanded that Coach Leach be fired. Anders Dep. at 41-44; 87:7-24. Defendant Anders discussed the matter with Defendant Hance. Defendant Hance called Plaintiff Leach that same evening. During the phone call from Chancellor Kent Hance on December 19th, Leach was advised that Defendant Anders had received a complaint from Craig James. According to Hance, the elder James complained that his son was being forced to play before his concussion had healed. Leach denied this allegation. Further, Leach informed Hance that Craig James had previously called Tech coaches to interfere on Adam's behalf. Hance admitted to previously receiving such calls. Plaintiff told Defendant Hance that Adam James had been a discipline problem and intended to cut James from the TTU football team. Hance instructed Plaintiff not to do so. In response, Hance advised Leach that Hance would tell Craig James three things: (1) that Adam could choose to listen to the coaches; (2) that Adam could leave the team, stay at Texas Tech, and the school would honor the scholarship through graduation (typically, a school is only required to honor a scholarship through the semester); or (3) transfer to another school which Texas Tech would facilitate by signing necessary waivers. At no time did Hance request that Mike Leach change the treatment of Adam James.

33. On December 20, 2009, Adam James again reported to practice. Trainer Pincock placed James in the training room and instructed James to ride a stationary bicycle because his symptoms had subsided sufficiently. Leach was not advised of Pincock's treatment until after practice. At no time did Leach or any other member of the coaching staff or team place Adam

James at any risk of additional injury or take any action that was inconsistent with James' health and welfare.

34. On December 20, 2009, Hance, Anders, and Vice Chairman of the Texas Tech University Board of Regents Jerry Turner discussed the Adam James matter. Because they were pre-disposed to fire Leach for cause to avoid payment, Hance, Anders and Turner claim that Leach had verified the material allegations of Craig James. Nothing could be further from the truth. They also discussed instigating an investigation of Adam James' allegations against Coach Leach and the possibility of terminating Leach. Hance instigated an investigation by Texas Tech University attorney, Defendant Charlotte Bingham. On the evening of December 20, 2009 Ms. Bingham interviewed Adam James who told her: (1) he was in the electrical closet for five (5) minutes; (2) he was in the shed for 1.5 hours; and (3) he suffered no lasting effect from any alleged confinement. In contrast, Craig James said that Adam had been confined for a much longer period and had been instructed to stay in the electrical closet.

35. On December 21, 2009, Defendant Turner contacted Ms. Bingham directly before she had interviewed a single witness other than the James family. Despite being strictly prohibited from interfering with the investigation and discipline of Plaintiff Leach under SACS guidelines and TTU policies and procedures, Mr. Turner instructed Ms. Bingham, Mr. Bailey and Mr. Myers that the investigation should be used to terminate Mike Leach as head football coach at Texas Tech. See Ex. 7.

36. However, in an effort to keep Leach working, Tech officials advised Leach that the investigation was simply to ensure that the University had some evidence in its files that it investigated the James family's complaints. Specifically, President Guy Bailey advised Leach on December 21, 2009 that while the investigation was no big deal, he (Bailey) was concerned

that Kent Hance was going to “railroad Leach” because Hance and Craig James were in business together. Consequently, Bailey had his assistant, Ms. Grace Hernandez, attend the investigation interviews conducted by Ms. Bingham, who worked for Hance’s office. After interviewing Leach as part of the investigation, Ms. Bingham advised Leach that this was just a routine investigation to protect the University in case the James family sued Texas Tech.

37. On or about December 22, 2009, Defendants met in person and via conference call to discuss the findings of Ms. Bingham’s investigation. Ms. Bingham told the other Defendants that: (1) Coach Leach did not lock Adam James in any space; (2) that Pincock, Williams and Leach had not ordered Adam James to stay in the electrical closet; (3) that Coach Leach had not been profane in front of Adam James; (4) that Coach Leach had placed Adam James into the dark because he was sensitive to light; (5) that Coach Leach was concerned about player morale if Adam James remained on the field; and (6) that Adam James was a discipline problem. Nevertheless, as part of their scheme to use the Adam James incident to avoid payment of funds to Plaintiff, Hance, Turner and Anders continued to claim that Leach had verified the James’ allegations. Defendant Hance called Leach to advise him that some members of the Board of Regents wanted to fire Leach over the complaints made by Craig James.⁸ Hance also advised Leach that they were going to take some kind of disciplinary action against Leach, though Hance could not articulate what Leach had done wrong. Hance indicated that he wanted to fine Leach up to \$100,000 and demanded a letter of apology from Leach. When Leach reiterated that he had not done anything wrong and did not believe an apology was appropriate. Hance also advised Leach that he would call Leach after the board meeting. Hance never called Leach. According to Ms. Bingham, Defendants Turner and Anders had resolved to fire Leach

⁸ According to statements from Hance, Craig James called Hance, Board Chairman Larry Anders, Board Vice Chairman Jerry Turner and Athletic Director Gerald Myers.

for cause during their meeting on December 22nd. The Tech Defendants admit that they never gave Leach the 10 business day notice of an opportunity to cure as allowed by his contract because they wanted to terminate Leach and avoid payment.

38. On December 23, 2009, Craig James wrote to Chairman Hance demanding that Mike Leach be terminated. Ex. 15. On December 24, 2009, Defendant Hance authorized Defendants Bailey and Myers to fire Leach and communicated same to Turner and Anders. Ex. 66. On December 25, 2009, Dr. Phy, the physician who handled Adam James' concussion, was advised of his confinement. Dr. Phy stated that nothing from the confinement placed Adam at additional risk for injury. See Ex. 30. After speaking to Dr. Phy on December 23, 2009, Ms. Bingham's investigation, and that of TTU, was complete.

39. On December 26, 2009 Leach attended a meeting with Athletic Director Myers and President Bailey. At that meeting, Bailey and Myers presented Leach with a letter signed by Dr. Bailey acknowledging and representing that the allegations by the James family had not been substantiated despite Ms. Bingham's investigation. See Ex. 68. Nevertheless, Defendants Myers and Bailey advised Leach that he needed to sign the letter which acknowledges wrongdoing on the part of Leach in the "mistreatment" of a student-athlete. Leach refused to sign the letter, again reiterating his innocence of any mistreatment. In addition, the letter delineates several items that Leach is supposed to undertake. When Leach noted that he had already agreed to each of the items in his contract, Defendants Myers and Bailey concurred. More specifically, Leach's contract states clearly that it contains all the terms and conditions to which the parties had agreed and that no other understandings or representations exist regarding Leach's employment as head football coach of Texas Tech University for five years. Leach advised Bailey and Myers that nothing in his contract required him to sign this letter. They did not disagree. In fact, Bailey and

Myers admitted to Leach that Hance and the Board of Regents were intent on interfering with this matter and their (Bailey and Myers') job responsibilities.

40. Texas Tech did not set forth any deadline in the letter or advise Leach of any deadline for Leach to execute the letter. Myers and/or Bailey advised Leach that if Hance would not meddle with them, they would not be in this situation. Thereafter, both Bailey and attorney Bingham confirmed to Leach's representative that the letter did not need to be signed by Leach. Instead, according to them, it was needed to "paper" the file. Indeed, attorney Bingham stated that she had advised Bailey, Myers and Hance that Leach did not need to sign the letter, the letter could be placed in the file without Leach's signature, that the James family should be called and advised not to call again. On December 26, 2009, Defendant Craig James again wrote to Defendant Hance in an effort to interfere with Leach's contract. James demanded that Leach be fired. See Ex. 15.

41. The next day, December 27, 2009, Ms. Bingham left a voicemail for Leach's representative, to the effect that "outside pressures" were affecting this situation. Ms. Bingham testified that the "outside pressures" were the James family. Bingham Dep. at 19-25; 209:1-6. Ms. Bingham's voicemail stated that if there "were no major objections," Plaintiff Leach should sign the letter presented to him and issue an apology letter. Ex. 17.

F. As Part of the Plan to Chisel Leach, Turner and Anders Overrule the Decision by Bailey and Myers to Not Terminate Leach

42. Later that same day, Gerald Myers and Guy Bailey, the two persons with authority to determine the disciplinary measures for Coach Leach, proposed that the Adam James matter be closed by Leach paying a fine and receiving a reprimand letter. They circulated the proposal to Anders, Turner, and Hance. See Ex. 26. President Bailey testified that he believed that a letter of instruction and apology would be sufficient response to the James' allegations and

would resolve the matter. Bailey Dep. at 71:7-15. Anders testified that he understood that the position of Myers and Bailey, who had exclusive authority to discipline, suspend and/or terminate Leach, was that a letter of reprimand and fine were sufficient punishment of Plaintiff as a result of the "Adam James" incident. Anders Dep. at 58:1-7. In response to receiving a draft of the letter of reprimand on December 27, 2009, Anders and Turner instructed Hance that Myers and Bailey not issue a letter of reprimand because they (Anders and Turner) wanted to keep the Adam James incident open and use it to "our advantage" to terminate Mike Leach for cause so payment could be avoided. Ex. 42; Anders Dep. at 65:4-8; 67:21-25; 68:1-3.

43. After receiving the instructions of Anders and Turner, Hance, Bailey and Myers spoke and they changed course. Instead of issuing a letter of reprimand to Coach Leach and closing the Adam James matter, Hance declared that Leach had until noon on December 28, 2009 to return a signed copy of the letter presented to him on December 26, 2009 and a letter of apology or he would be suspended. See Ex. 71. No Defendant advised Leach or his attorney that if he failed to sign the letter and issue an apology by noon on December 28, 2009, he would be suspended or terminated.

G. Leach's Suspension and Termination by TTU

44. On December 28, 2009, Leach left for San Antonio to continue preparing the football team for its appearance in the Alamo Bowl on January 2, 2010. When Leach arrived in San Antonio, he was called by University Athletic Director Myers and advised that he was suspended as head football coach at Texas Tech University, despite there being no contractual basis for suspending Leach or any evidence of wrongdoing to support such a disciplinary measure. Leach asked why he was being suspended, but was given no valid reason. Myers told Leach that (1) Hance, Turner and Anders had made up their mind; (2) there was an allegation

against Leach, and (3) Leach's refusal to sign the letter presented on December 26, 2009 amounted to insubordination.

45. Leach reminded Myers that he was not obligated to sign such a letter and asked how exercising his right not to sign a letter constituted insubordination. Moreover, Leach did not agree with the contents of the letter because they suggest that Leach was guilty of mistreating a student-athlete. Leach also did not agree to the suggestion that he must apologize to Adam James or the James family. Myers advised Leach that the decision had been made by Hance and the Board of Regents to suspend him, there was nothing he could do, and that Leach was not coaching the football team at the Alamo Bowl. Leach was instructed not to speak to the team members.

46. On December 28, 2009, Leach received a letter suspending him as head football coach of Texas Tech University. See Ex. 41. The letter states that Texas Tech had received a complaint from a player and that an investigation was on-going, which according to Chairman Anders was false. Anders Dep. at 12-25; 125:1. Nevertheless, later that night, Turner emailed Chancellor Hance and Anders stating that if Leach proceeded with the injunction, he will be terminated. See Exs. 43, 45. In response Anders agreed. Ex. 46. On December 29, 2009, Pat Campbell, General Counsel of Texas Tech, spoke to Leach's representative and advised that if Leach filed an application for temporary restraining order (TRO), Leach would be fired. On December 29, 2009, TTU Board of Regent member, who Neal recognized that TTU Defendants were attempting to avoid payment of the \$800,000 bonus owed to Mike Leach on December 31, 2009, stated it should be paid and that TTU "not be cheap about it." See Ex. 154.

47. Because of Texas Tech's wrongful actions in violation of Plaintiff's contract and without due process, Leach's attorney sought a temporary restraining order in this Court to

complain of Defendant's actions as allowed by Texas Tech OP 70.10 to complain of Defendant's failure to accord Leach due process, and to complain of Texas Tech's breaching his contract. See Ex. 48.

48. OP 70.10 states specifically that a non-faculty employee of Texas Tech has the absolute right to file suit as an appeal of a suspension without fear of retaliation. Bingham Dep. at 57:6-13; Hance Dep. at 247:15-20. In their depositions, Ms. Bingham and Mr. Bailey testified that Plaintiff Leach had the absolute right to file suit in this Court without fear of retaliation. Bailey Dep. at 17:11-22; Bingham Dep. at 55:13-16.

49. On December 30, 2009, at a pre-hearing meeting in the Court's chambers, representatives of Texas Tech advised Leach's attorney that if Leach proceeded with the hearing on the TRO, Texas Tech would terminate Leach as an employee and head football coach of Texas Tech University. Leach's attorney advised Texas Tech's representatives that he intended to proceed with the hearing. At this point, the representatives handed Leach's counsel a letter of termination advising Leach that he was terminated from his employment for cause effective December 30, 2009. Ex. 52.

H. Post-Termination Activities

50. On or about December 30, 2009, Texas Tech released a "Statement from Texas Tech on Termination of Football Coach Mike Leach." See Ex. 53. In that statement, Texas Tech asserted the termination was due to Leach's suit against Texas Tech. *Id.* That statement suggests Texas Tech terminated Leach because he sought to apprise himself of legal protections.

51. As part of their conspiracy to hide their true intention to terminate Plaintiff for cause in an effort to avoid payment, on December 30 and 31, 2009 Defendants Bingham, Anders, Turner, Hance, Bailey and Myers began the process of falsifying the investigation report

on the James incident. Specifically, Chairman Hance directed Bingham to change her investigation report because it was too “mild” and “too milk toast.” Ex. 31.

52. Subsequently University officials, including Chancellor Kent Hance, made statements to the effect that “if you sue your boss, you are going to get fired.” Indeed, on January 4, 2010, Defendant Turner confirmed in four (4) emails to Defendant Anders that Mike Leach was terminated for filing suit against TTU. See Exs. 50, 156, 157, 158. These statements and others like them reflect the motive for the University’s firing of Mike Leach, i.e., that he filed a lawsuit complaining that the University was not affording him his constitutionally protected right to due course of law in Texas. These statements also clearly demonstrate the University’s intentional retaliation against Leach for reporting Defendants’ wrongful conduct in violation of Leach’s constitutional rights. On information and belief, all of the Texas Tech Defendants’ actions were committed intentionally and with impunity based on the belief that they would not face liability for its conduct due to the sovereign immunity shield and, that they would be able to hide behind this shield to deprive Plaintiff of his constitutional rights. In addition, the TTU Defendants fired Leach allegedly for cause to avoid paying Leach the funds owed him under the Contract. Hance Dep. at 105:12-20 (Hance admits that TTU fired Leach for cause and “would not pay [Leach] one penny.”).

53. Hance has subsequently claimed that Leach’s contractual bonuses due under the contract were “never a consideration” when Leach was fired. See Ex. C. That statement is directly contradicted by the email of Board of Regent member Neal and Chairman Anders’ deposition testimony. See Ex. 154 and Anders Dep. at 145:2-8.

54. Texas Tech made these statements confirming the University’s retaliatory intent in firing Leach, despite school officials telling the Los Angeles Times on January 4, 2010 that

“the investigation into Adam James’ allegations is on-going.” See Ex. D. On January 7, 2010, Defendant Turner acknowledged to other TTU BOR members that the actions of meddling by board members violated SACS guidelines. Ex. 80. Indeed, Texas Tech’s representative, Mr. Hance, engaged in an apparent lengthy interview with the Lubbock Avalanche Journal discussing the termination that appeared in that newspaper on January 10, 2009 in which he admitted that Leach was terminated for having filed suit to enforce his rights. These statements demonstrate that Leach was not at fault in this situation and establish that Texas Tech’s actions were wrongful and violated Texas law.

55. In firing Leach, the University wrongfully invoked the “with cause” provision of his contract. As a result, the University has refused to pay him the compensation, including bonuses to which Leach was or would have been entitled and certain guaranteed income it owes under the Agreement. In addition, because of Defendants’ public, defamatory, and false accusations, Leach has been unable to obtain another head coaching position. Defendants have publically accused Leach of mistreating a student-athlete who allegedly suffered a mild concussion and of being insubordinate and uncooperative in the investigation. Defendants even allege that Leach himself is responsible for his contract being terminated. Leach denies those allegations. However, the mere allegation that a head football coach would mistreat a student athlete threatens that coach’s reputation and prospects for future employment and exposes him to ridicule and contempt. In fact, Leach’s agent recently contacted University of Tennessee, University of South Florida, and University of East Carolina. All three Division 1 football teams stated that they were not interested in hiring Leach for “obvious reason” and fear over “potential criticism.”

56. Plaintiff has complied with all prerequisites to bringing this lawsuit and all conditions precedent to suit have been met or waived.

V. WAIVER OF SOVEREIGN IMMUNITY

57. Paragraphs 13 – 56 are incorporated by reference.

58. Texas Tech is not entitled to immunity from suit or liability because Texas Tech has waived such immunity both by express waiver in its statutorily authorized Operating Procedures, and by its inequitable conduct.

59. First, Texas Tech expressly waived any immunity from suit by: (1) Tx. Gov't Code Section 109.001 *et seq*; (2) its promulgation of Regent Rules § 3.06.2 (Ex. A); (3) promulgation and enforcement of Texas Tech Operating Policy & Procedures OP 70.31:11 and 70.10 which specifically provides that Plaintiff may bring suit for any matter arising from or relating to his suspension and termination in this Court; (4) TTU's acknowledgment and affirmation that this lawsuit was brought in accordance with TTU OP 70.10 (Ex. 40); and (5) execution of the Employment Agreement dated February 19, 2009 which specifically gives Leach all benefits and entitlements under TTU's policies and procedures. See Ex. 8, Section III.C.5. Indeed, in a prior litigation, TTU represented and confirmed that "rules enacted by the University have the same force as enactments of the Legislature." Ex. B. At a minimum, TTU is stopped from asserting that their operating policies and procedures OP 70.31 and 70.10 have the force and effect of a legislative act.

60. The conduct of the University and its agents and representatives inducing Leach to enter into the 2009 Employment Agreement waived immunity by conduct. Leach's employment under the 2009 Employment Agreement is, by the Agreements own terms, governed by the University's Operating Procedures. Those procedures set out specific procedural

protections for an employee facing disciplinary action or termination. They also provide for appeal of such action by the University, including filing suit. The existence of those protections were a term of Leach's employment and were a part of the University's assurances the University to Leach which induced him to agree to the 2009 Employment Agreement.

61. TTU's egregious conduct directly abrogated the University's Operating Procedures which entitled Leach to appeal decisions by the University, including bringing this lawsuit. Because those procedural guarantees were a part of the inducement for Leach to enter into the Employment Agreement, Texas Tech's conduct is a waiver of sovereign immunity by conduct. See *Texas Southern University v. State Bank and Trust Co.*, 212 S.W.3d 893 (Tex. App.—Houston [1st Dist.] 2007, pet. denied). On information and belief, all of Texas Tech's actions were committed intentionally and with impunity based on the belief that Texas Tech would not face liability for its conduct due to the sovereign immunity shield and Texas Tech intended to hide behind this shield to deprive Plaintiff of his constitutional rights.

62. Texas Tech's egregious conduct included fraudulently representing that it would honor the parties' agreement to pay his 2009 year-end bonus despite already having decided in February 2009 to avoid payment by terminating him with cause. Only days before it was to pay Leach a bonus of \$800,000 under the Contract, falsely accusing Leach of violations of the contract's "Performance" provisions, despite an investigation that demonstrated the opposite. This misconduct also includes Texas Tech and its agents' willful and malicious slander and defamation of Leach, including making public statements accusing Leach of mistreating an injured player in order to claim that Leach was terminated "for cause," and evade paying the owed compensation. In manufacturing a false basis to terminate Leach allegedly for cause, Texas Tech failed to abide by the notice and cure provisions available to Leach under the

contract and the OPs. When Leach attempted to enforce the contract in a court of law, Texas Tech alleged termination for cause based upon Leach's resort to the courts for protection. These extraordinary factual circumstances put Leach to the proverbial Hobbesian's Choice – accept the University's defamatory public accusations and allegations of improper conduct and get fired for cause based on those allegations, or defend himself and seek to enforce his contractual rights and get fired for cause. This conduct, along with other acts by Texas Tech constitute a waiver of any claim of, or right to, sovereign immunity to which the University might be entitled.

VI. CAUSES OF ACTION

A. Texas Whistleblower Act

63. Plaintiff incorporates paragraphs 13 – 62.

64. Under the Texas Whistleblower Act (TWA), a state or local governmental entity may not suspend or terminate the employment of a public employee who in good faith reports a violation of law by the employing governmental entity to an appropriate law enforcement authority. Tex. Govt. Code Ann. §554.002 (Vernon's 2006). The elements of a TWA claim are: (1) a public employee; (2) acting in good faith made a report; (3) the report involved conduct violating law by the agency or a public employee; (4) the report was made to an appropriate law enforcement authority; (5) the public employee suffered retaliation for making the report. *Lane v. Texas Department of Health*, 2003 WL 21750608 at *3 (Tex. App.—Austin 2003, pet denied.).

65. In the present case, at all times relevant to this lawsuit, Plaintiff was a public employee hired by Texas Tech University as its head football coach. Plaintiff had a written contract of employment. See Ex. 8. Texas Tech sought to suspend Plaintiff under his contract without due process/course of law secured under the Texas Constitution. In addition, Texas

Tech, Hance, Turner and Anders also sought to terminate Plaintiff without allowing the appeal provided by OP 70.10, an appeal that contemplates suits like this one. To remedy these violations, Plaintiff filed a lawsuit seeking a temporary restraining order complaining that Texas Tech failed to afford him the procedural safeguards and appeals provided under the Texas Tech OPs, under which he was entitled to challenge the absence of any legal basis for his suspension. In addition, his suit sought to redress the failure to provide due process required under the Texas Constitution. Plaintiffs' suit, therefore, constituted a good faith report of a violation of law to an appropriate law enforcement authority and is subject to the protections of the Whistleblower Act.

66. Upon learning of Plaintiff's lawsuit, Texas Tech terminated Plaintiff. It is clear from statements made at the time Texas Tech fired Plaintiff and in the timing of the termination that the termination was in direct retaliation for Plaintiff filing this lawsuit that complained of Defendants' failure to afford him due process under the Texas Constitution and his written employment contract in which he has a vested property right as a public employee. Plaintiff filed this lawsuit in good faith with the District Court of Lubbock County, Texas, an appropriate authority in the State of Texas for the enforcement of constitutional rights and guarantees. As a result of Defendants' actions, Plaintiff has suffered and is entitled to recover actual damages, court costs, reasonable attorneys' fees, and compensation for wages lost during the period of termination.

A. Breach of Contract – Wrongful Termination

67. Plaintiff incorporates paragraphs 13 – 66.

68. Defendant Texas Tech has breached its contract with Mike Leach by, among other things, suspending him without any process or contractual basis, failing to give Plaintiff notice as required under his contract and a reasonable opportunity to cure, and allegedly

terminating him for cause when no good cause exists. It is clear that TTU knew and understood that the alleged breach it claimed was capable of cure under the contract. Defendant Texas Tech terminated Leach without providing him with the contractually required notice of conduct Defendant claimed violated the contract terms and at least 10 business days to cure any alleged breach. See Ex. 52.

69. In addition, because the procedural safeguards, including an appeal, are a term and condition of Leach's employment, termination without permitting such appeal – including this suit – is a breach of contract. See TTU OP 70.10 *et seq.*

70. Plaintiff has suffered damages in excess of the minimum jurisdictional limits of this Court for which he now sues.

C. Violation of Takings Clause of the Texas Constitution; Due Course of Law

71. Plaintiff incorporates paragraphs 13 – 70.

72. Defendants violated Plaintiff's due process rights under the Texas Constitution. Defendants deprived Plaintiff of his property rights under the contract without providing him the due course of law to which Plaintiff is entitled under the Texas Constitution. On the date that Texas Tech terminated him, Plaintiff Leach was an employee of Texas Tech, a public institution of higher education in the State of Texas. Plaintiff Leach had a written contract that provided for continued employment for a specific term. In addition, the University's ability to terminate that contract was expressly limited by terms requiring substantial monetary payment in the event it were terminated without cause and also provided for specific procedures and an opportunity to cure, in the event the University contemplated termination with cause. Specifically, the contract's "for cause" provision required at least 10 days notice of the alleged violation and a reasonable opportunity to cure before being terminated. The limitations on termination for cause

were additionally regulated by specific procedures under the employment policies and regulations of Texas Tech University.

73. The specific term of years in Plaintiff Leach's contract and the limitations on the University's ability to terminate that contract created a vested property interest and a protected entitlement to payment protected by Article I, Section 19 of the Texas Constitution. Defendants violated Plaintiff Leach's rights under the Texas Constitution by failing to afford the mandatory due process, and by unilaterally and wrongfully terminating Plaintiff Leach's employment contract, thereby depriving him of a vested property right.

74. Under the Texas Constitution, no person's property shall be "taken, damaged, or destroyed for or applied to public use without adequate compensation being made...." TEX. CONST. ART. I, §17. Thus, the takings clause prohibits the State from taking a person's property under its sovereign powers without adequate compensation. In this case, Texas Tech has taken or invaded Plaintiff Leach's property and/or unreasonably interfered with Leach's right to the use and enjoyment of the contract terms and benefits without compensation. On information and belief, all of Texas Tech's actions were committed intentionally and with impunity based on the belief that the University would not face liability for its conduct due to the sovereign immunity shield and the University intended to hide behind this shield to deprive Plaintiff of his constitutional rights and property. As such, Plaintiff Leach is entitled to compensation for the loss he has suffered as a result of Texas Tech's actions.

75. Plaintiff Leach seeks redress from this Court for Defendants' actions in depriving him of his rights without due course of law. In light of this Constitutional due course of law violation, Plaintiff Leach seeks a declaratory judgment under Texas Civil Practice and Remedies Code section 37.001 *et seq.* that he did not violate a material provision of the contract, that

Defendants did not have cause to terminate Leach as head football coach and that Defendants violated Leach's rights under the contract and Texas Constitution in terminating the contract.

D. Fraud in the Inducement

76. Plaintiff incorporates paragraphs 13 – 75.

77. Additionally, Plaintiff would not have entered into the contract but for the representations by Defendants Texas Tech, Hance, Turner, Bailey, Myers and Anders, that he would not be deprived of process prior to any termination of his contract in the face of allegations of misconduct, and that these Defendants intended to honor the contract terms. In the present case, Texas Tech's representatives' private communications with one another during contract negotiations with Leach and Defendants' actions surrounding his wrongful termination support the conclusion that Defendants negotiated Leach's contract in bad faith and without any intent to perform it. By way of example, internal emails among Defendant Hance and a booster and among members of the TTU Board of Regents at the time negotiations between Leach and Defendant Hance were on-going "evidence" an intent not to perform this contract at the time of its execution. Despite these private emails and discussions, these Defendants represented and assured Leach that Texas Tech would honor all contract terms. These Defendants knew or should have known these representations were false or made recklessly. These representations and/or omissions were material and were made or omitted with the intent that Plaintiff rely upon them. These Defendants had an obligation to fully disclose to Plaintiff their intent not to honor the contract and to assert immunity in the face of their breach, but these Defendants failed to do so. Plaintiff relied upon such representations and/or omissions to his detriment and has suffered damages in excess of the minimum jurisdictional limits of this Court for which he now sues.

78. These fraudulent misrepresentations were made by Hance, Turner, Bailey, Myers and Anders in both their official and private capacities. Because they were illegal and intentionally deceptive, they were made outside the scope of their duties as Texas Tech agents and representatives, and were made in bad faith.

E. Negligent Misrepresentation

79. Plaintiff incorporates paragraphs 13 – 78.

80. Defendants Hance, Anders, Turner, Myers and Bailey represented to Plaintiff that (1) he would not be terminated for cause without good cause shown; (2) that Texas Tech would honor all contract terms including his right to cure an alleged contract violation. These Defendants' statements were made negligently without due care. Plaintiff reasonably relied on this misrepresentation and as a result has suffered actual damages for which it now sues. These negligent statements were made by Hance, Turner, Bailey, Myers and Anders in both their official and private capacities. Because they were made with reckless disregard for the truth, they were made outside the scope of their duties as Texas Tech agents and representatives, and were made in bad faith.

F. Defamation

81. Plaintiff incorporates paragraphs 13 – 80.

82. Defendants Hance, Turner, Anders, Bailey, Myers and James have made both slanderous and libelous statements including but not limited to:

- a) that Mike Leach was terminated for cause;
- b) that Leach was insubordinate and refused to cooperate and was responsible for his contract being terminated for cause;

- c) that Plaintiff Leach's termination was precipitated by his treatment of a player diagnosed with a concussion and that he placed that player at risk of additional injury.
- d) that Plaintiff Leach's termination was solely Leach's fault.

These false statements were made intentionally and designed to injure Mike Leach's reputation as a coach, injure him in his occupation, and expose him to financial harm. Plaintiff has suffered damages in excess of the jurisdictional limits of this Court for which he now sues. These slanderous and defamatory statements were made by Hance, Turner, Bailey, Myers and Anders in both their official and private capacities. Because they were illegal and intentionally malicious, they were made outside the scope of their duties as Texas Tech agents and representatives, and were made in bad faith.

G. Tortious Interference

83. Plaintiff incorporates paragraphs 13 – 82.

84. Hance, Turner, Anders, Myers, Bailey and James, in their individual capacities, tortiously interfered with Plaintiff's contract with Texas Tech. They acted willfully and intentionally to serve their own personal interests at the expense of Leach. Hance, Turner, Bailey, Myers and Anders interfered with Leach's contract by suspending and terminating Leach without any contractual basis, evidence of wrongdoing, or due process. Upon information and belief, the actions of Hance, Turner, Bailey, Myers and Anders were self-serving and stemmed from ill will resulting from earlier contract negotiations. James interfered with Leach's contract by threatening Texas Tech University and its officials with litigation if Texas Tech did not terminate Leach. As a result of their unjustified interference with Leach's contract, Plaintiff has

suffered damages in excess of the minimum jurisdictional limits of this Court for which he now sues.

H. Conspiracy to Defraud, Tortiously Interfere, Defame, Violate the Texas Whistleblower Act and Plaintiff's Constitutional Rights

85. Plaintiff incorporates paragraphs 13 – 84.

86. Hance, Turner, Anders, Bailey, Myers and James, in their individual capacities, conspired to: (1) tortiously interfere with Plaintiff's contract; (2) defame Plaintiff; (3) violate the Texas Whistleblower Act; and (4) violate Plaintiff's Constitutional rights. Hance, Turner, Bailey, Myers and Anders' communications with one another during contract negotiations with Leach and their actions surrounding his wrongful termination support the conclusion that Hance, Turner, Bailey, Myers and Anders conspired to induce Leach to enter into a contract that they knew they did not intend to perform and was not enforceable and conspired to misrepresent the terms of the contract to Leach. Hance, Turner, Anders, Bailey, Myers and James then conspired to tortiously interfere with the contract by suspending and wrongfully terminating Leach without cause and in breach of his contract. Hance, Turner, Bailey, Myers and Anders conspired to violate Leach's constitutional due process rights by terminating Leach without notice or hearing. Hance, Turner, Anders, Bailey, Myers and James conspired to defame Leach by making public statements including but not limited to that Leach was terminated for cause, for insubordination, that his termination was precipitated by his treatment of a player diagnosed with a concussion, and that he placed the player at risk of additional injury. Hance, Turner, Bailey, Myers and Anders conspired to retaliate against Leach's report of TTU's violation of constitutional rights by terminating Leach in violation of the Texas Whistleblower Act. As a proximate result of Defendants' conspiracy and fraudulent inducement, tortious interference, defamation, and

violations of the TWA and Plaintiff's constitutional rights, Plaintiff Leach has suffered damages in excess of the minimum jurisdictional limits of this Court for which he now sues.

VII. DECLARATORY JUDGMENT:
DUE COURSE OF LAW AND TAKINGS CLAUSE VIOLATIONS

87. Plaintiff incorporates paragraphs 13 – 86.

88. In light of this Constitutional due course of law violation, Plaintiff Leach seeks a declaratory judgment under Texas Civil Practice and Remedies Code section 37.001 *et seq.* for the following:

- a) That that he did not violate a material provision of the contract, that Defendants did not have cause to terminate Leach as head football coach and that Defendants violated Leach's rights under the contract and Texas Constitution in terminating the contract;
- b) That Texas Tech University violated the due course of law clause of the Texas Constitution when it summarily terminated Leach's contract;
- c) That Texas Tech violated the Takings Clause when it terminated Leach's contract and terminated his vested property rights in his Employment Agreement;
- d) That Defendant Bingham as the appropriate officer of Texas Tech, be required to provide the procedures set out in the Texas Tech Operating Procedures regarding employee discipline and termination, including the right of appeal under OP 70.10;
- e) That Leach has a constitutional entitlement to the unpaid compensation due him on the remaining term of the 2009 Employment Agreement;

- f) That Texas Tech be required to pay Leach the unpaid compensation on the 2009 Employment Agreement to which he is constitutionally entitled.

VIII. DECLARATORY JUDGMENT: ESTOPPEL

89. Plaintiff incorporates paragraphs 13 – 88.

90. The University relied on the “for cause” provision of the 2009 Employment Agreement as grounds for terminating Leach. Under this provision, the University refused to pay Leach his completion bonus of \$800,000 which was due only days after his termination. It has also refused to pay the compensation that would have been due him under the contract had the University terminated the Employment Agreement “without cause.”

91. As a result of Texas Tech’s actions, Leach has suffered a significant detriment, including monetary loss, expenses of suit, and damage to his reputation. Texas Tech has benefitted by withholding millions of dollars. Texas Tech is, therefore, equitably estopped to now claim that it terminated Leach under the “without cause” provision, and take any monetary benefit that might accrue to it under that provision and the Court should so declare.

IX. DECLARATORY JUDGMENT: ULTRA VIRES ACTS

92. Plaintiff incorporates paragraphs 13 – 91.

93. The Operating Procedures of Texas Tech University set the parameters within which the Texas Tech Board of Regents and the other officials of Texas Tech may operate. These OPs have the force and effect of legislative acts. Because Texas Tech terminated Leach’s contract without providing the procedural safeguards provided by the OPs, the Tech Defendants’ acts in terminating Leach are without legal authority and are *ultra vires*. Because of this, Leach seeks a declaration that the University’s termination of his contract is null and of no effect.

X. DECLARATORY JUDGMENT: DEFAMATION

94. Plaintiff incorporates paragraphs 13 – 93.

95. The defamatory statements by Texas Tech, Anders, Turner, Hance, and James were without justification and false. Leach is entitled to a declaration requiring Texas Tech to retract its termination for cause of Leach. Leach is also entitled to a declaration that all allegations by Texas Tech, Hance, Turner, Anders, and James that Leach mistreated Adam James were false and without justification, and to a declaration requiring Texas Tech, Hance, Turner, Anders, and James to publicly retract all such allegations.

XI. ATTORNEY'S FEES

96. Pursuant to Texas Civil Practice & Remedies Code Section 37.001 *et seq.* and 38.001 *et seq.*, and the Texas Whistleblower's Act, Plaintiff seeks recovery of his reasonable attorney's fees.

XII. PUNITIVE DAMAGES

97. Due to the intentional, abusive and reckless conduct of Defendants as set forth above, Plaintiff seeks recovery of punitive damages as allowed by law.

XIII. PERMANENT INJUNCTION

98. Due to the intentional, abusive, and reckless conduct of Defendants, Plaintiff seeks a permanent injunction enjoining Defendants from making statements that Plaintiff was terminated for cause, that Leach was insubordinate and was responsible for his contract being terminated for cause, that Leach's termination was precipitated by his treatment of a player diagnosed with a concussion and he placed that player at risk of additional injury, and that Plaintiff Leach's termination was solely Leach's fault.

XIV. DEMAND FOR JURY

99. Mike Leach demands a jury trial and has paid the appropriate fee.


XV. PRAYER

100. For these reasons, Mike Leach asks that Defendants be cited to appear and answer and, on final trial, that Mike Leach have judgment against Defendants for:

- a. Actual damages.
- b. Consequential, special and incidental damages.
- c. Punitive damages.
- d. Reasonable attorney fees.
- e. Declaratory Judgments as requested above.
- f. A permanent injunction as requested above.
- g. Prejudgment and post-judgment interest as allowed by law.
- h. Costs of suit.
- i. All other relief, in law and in equity, to which Mike Leach may be entitled.

Respectfully submitted,

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CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing document has been served upon the following on the 16th day of April, 2010, as follows:

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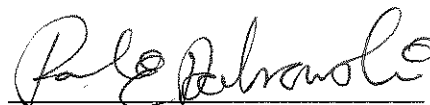
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