

**UNITED STATES COURT OF APPEALS  
FOR THE THIRD CIRCUIT**

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**No.26-1795**

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**DR. DANIEL C. SHELTON,**

**Plaintiff / Appellant,**

**v.**

**DONALD PATTON, individually and in his official capacity; NAVEED  
BAQIR, individually and in his official capacity; YUN FEI LOU, individually  
and in his official capacity; ALETHEA SMITH-TUCKER, individually and  
in her official capacity; and BOARD OF EDUCATION OF THE  
CHRISTINA SCHOOL DISTRICT,**

**Defendants / Appellees.**

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**BRIEF OF APPELLANT**

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**On Appeal from the  
United States District Court for the  
District of Delaware  
(Civil Action No. 24-1338-CFC)**

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### **STATEMENT OF JURISDICTION**

The District Court had federal question jurisdiction under 28 U.S.C. §§ 1331 and 1343(a)(3) and (4), 28 U.S.C. §§ 2201 and 2202, and supplemental jurisdiction over the related state law claims under 28 U.S.C. § 1367(a). This Court has appellate jurisdiction from a final decision under 28 U.S.C. § 1291.

### **STATEMENT OF THE ISSUES**

1. Did the District Court err in holding that the Complaint did not factually plead a violation of a stigma-plus liberty interest in reputation under the due process clause of the Fourteenth Amendment? (Op. at 8; D.I. 28 at 32-45; D.I. 20 at 9-11; D.I. 14 at 10-11; D.I. 16 at 14, 16-18; D.I. 18 at 2, 13, 18-19; JA10, 16-17).

2. Did the District Court err in holding that the Complaint did not factually plead a violation of a property interest under the due process clause of the Fourteenth Amendment? (Op. at 8-10; D.I. 28 at 45-51; D.I. 20 at 7-9; D.I. 14 at 8-9; D.I. 16 at 14-16; D.I. 18 at 13-18; D.I. 26 at 8-10; JA10-12, 16-17).

3. Did the District Court err in holding that the Complaint did not plead a breach of either employment contract? (Op. at 5-8; D.I. 28 at 76-78; D.I. 20 at 3-7; D.I. 14 at 4-6; D.I. 16 at 7-10; D.I. 18 at 6, 9-12; D.I. 26 at 10-11; JA7-10, 16-17).

**RELATED CASES AND PROCEEDINGS**

None.

**STATEMENT OF THE CASE**

This is a Fourteenth Amendment procedural due process and state law breach of contract employment action on behalf of Plaintiff Dr. Daniel Shelton, the experienced Superintendent of the Christina School District, who had recently been honored as Delaware’s Superintendent of the Year. Defendants are four members of the District’s School Board and the Board itself. Without giving Plaintiff any notice or opportunity to defend himself, Defendants: (1) fired and replaced him before his 5 year “just cause” contract expired; (2) attacked and destroyed his reputation in a public media campaign; and (3) canceled his 1 year contract extension after it had already been accepted. These actions have left Plaintiff “unemployable.” The Board’s longtime legal counsel contemporaneously advised Defendants that their “wholesale disregard of the law” as to Plaintiff violated his “due process” rights, would subject them to punitive damages and he soon resigned rather than be a part of their “witch hunt.”

The 22-page, 162-paragraph, 5,555-word Complaint was filed on December 9, 2024. (D.I. 1; JA19). Each of the five Defendants filed individual Motions to Dismiss and Opening Briefs, authored by their own separate counsel, and

collectively attached 46 pages of documents and affidavits disputing the Complaint's factual record. (D.I. 13-22, 25-26; JA16-17). Under D.Del. Local Rule 7.1.3(a)(4) and the lower court's Standing Order of November 10, 2022, Plaintiff was allotted five separate Answering Briefs, of 5,000 words each, totaling 25,000 words to respond. In accord with Fed.R.Civ.P. 1 and "to more efficiently address the legal issues raised across the five Opening Briefs and reduce the total number of words the Court will have to review" (D.I. 24 at 2; JA17), the parties petitioned to permit Plaintiff to file a shorter, single, consolidated Answering Brief with a maximum word count of 18,469, rather than the default 25,000 words. (Id. at 1-2; JA17). The Court approved. (D.I. 27; JA17). Plaintiff filed his Answering Brief totaling 18,176 words, along with a Rule 56(d) declaration. (D.I. 28; JA17). Upon subsequent request (D.I. 30; JA18), and approval (D.I. 31; JA18), Defendants filed a single consolidated Reply. (D.I. 32; JA18). On March 9, 2026, the District Court issued a Memorandum Opinion and Order granting the five defense motions in their entirety and dismissing the case, and administratively closed it. (D.I. 33-34; JA2-13, 18). A timely Notice of Appeal was filed on April 8, 2026. (D.I. 35; JA1, 18).

This is the Brief of Appellant and Joint Appendix.

## **STATEMENT OF FACTS**

### **A. The Parties.**

#### **1. Plaintiff Dr. Shelton.**

Plaintiff Dr. Daniel C. Shelton is a highly decorated, 52 year old veteran Delaware public school administrator with an impeccable employment record over his 26 years in Delaware education. He has no workplace disciplinary history and instead has repeatedly received the highest statewide and national educational awards for his outstanding job performance. (¶¶ 6-20, 1; JA19-23).<sup>1</sup> He earned his doctorate in Educational Leadership and Public Policy, Masters of Education in Curriculum and Instruction, and Bachelors of Science in Health, Physical Education, with a minor in Computer Science, all from the University of Delaware. (¶¶ 11, 13; JA21-22).

#### **a. Professional Reputation.**

Dr. Shelton's professional, educational and administrative excellence has been widely recognized, both locally and nationally. For example, in April 2022, his peers in the Delaware Association of School Administrators, the state-level affiliate of the American Association of School Administrators, voted him Delaware's Superintendent of the Year for the 2022-2023 period. The award is

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<sup>1</sup> Unless context indicates otherwise, all "¶" citations herein are to the Complaint, found at JA19.

based on Dr. Shelton’s leadership for learning, communication, professionalism and community involvement. In the words of one fellow Delaware Superintendent and member of the national governing Board, Dr. Shelton has “shown passion and commitment to the students, staff and families of his district and has made deep and lasting contributions to education here in Delaware.” (¶ 7; JA21).

Years earlier, in 2012 he was selected by his peers as the “National Distinguished Principal” by the National Association of Elementary School Principals. Two years later, in 2014, he was awarded the highest honor given by the Delaware Association of School Leaders, the Paul Carlson Award. (¶ 9; JA21).

From 2020-2021, he served as president of the Chief School Officers Association of Delaware, and has held positions on numerous other councils, committees and boards throughout Delaware. (¶¶ 8, 10; JA21).

**b. Work History.**

After beginning as a classroom Technology teacher, Dr. Shelton slowly rose up through the ranks and served first as an Assistant Principal, and then later as Principal at three different Elementary and Middle schools in Christina School District where his successes were widely acknowledged. (¶¶ 13-14; JA22).

In 2015, he was selected for a particularly challenging position, to serve as Superintendent at Capital School District in Dover (DE), a district with a “long

history of racial tensions and poor performance,” which had “eroded the trust of the community.” In his five years there, Dr. Shelton saw “significant gains” not just in test scores but also in community trust and appreciation, culminating in his successfully navigating that district through the educational crisis when COVID landed during early 2020. (¶¶ 15-16; JA22).

In 2020, Dr. Shelton was recruited to apply for the Superintendent position back at Christina School District, which was having difficulties coping with pandemic challenges. He was hired and immediately engaged with teachers, employees and parents to navigate children through that difficult time, with documented success. (¶¶ 17-20, 35; JA23, 25).

## **2. Defendants.**

Defendant Board of Education of the Christina School District (the “Board”) is a reorganized school board that does business as the Christina School District (the “District”). By Delaware statute and five decades of District of Delaware precedent, it is the recognized final decisionmaker and policymaker for all employment, personnel and contractual decisions involving the Superintendent of the District. (¶¶ 21-28, 98-99; JA24-24,33).

Defendant Donald Patton is the elected Board President. He was previously employed by the District until “certain incidents [ ] occurred [which] provide

various motives for him to dislike and retaliate against” Dr. Shelton. (¶¶ 29-30; JA24). Defendants Naveed Baqir, Yun Fei Lou and Alethea Smith-Tucker also are Board members. (¶¶ 31-33; JA24-25).

**B. The Two Employment Contracts.**

**1. 2020-2025 - the Initial Five Year Contract.**

Dr. Shelton was “unanimous[ly]” hired by the Board for a five year term running from July 1, 2020 through June 30, 2025. (¶ 34; JA25). Certain terms are memorialized in a written four page contract attached to the Complaint. (JA42).

**a. Written Notice, Fair Hearing and Other “Good and Just Cause” Termination Protections.**

The contract states that it cannot be terminated:

- “except for good and just cause;”
- unless the Board “provide[s] the opportunity for a fair hearing” before the Board or a designated Hearing Officer;
- unless that “fair hearing” is preceded by the Board providing him with “a written statement of the reasons for termination;”
- if the Board does not hold the hearing itself, the Hearing Officer who does must provide a “report and recommendation” to the Board; and
- the Board’s final decision must be given to Dr. Shelton “in writing.”

(¶¶ 34-38; Contract at ¶ 9; JA25, 44).

**b. Confidential Evaluation Requirements.**

It specifically requires:

- the “evaluation of the Administrator shall at all times be conducted in closed session, and the evaluation and information concerning the evaluation, of whatever nature, shall be considered confidential information;”
- semi-annual evaluation of Plaintiff’s performance;<sup>2</sup>
- application of “the evaluation procedures required under Delaware law;” and
- if the Board changes to “new and different performance expectations,” Plaintiff “shall be provided a reasonable period of time to demonstrate such expected performance before being evaluated.”

(Contract at ¶ 6(b); JA43) (emphasis added).

**c. Other Requirements.**

Other contract provisions also require that:

- it “will automatically result in a one year extension of the existing agreement” if the Board fails “to notify” Dr. Shelton “in writing by certified mail” that it is not being renewed;
- pay of \$199,000 per year, with 2% annual increases, as well as other increases;
- reimbursement of assorted fees for membership in philanthropic community organizations; and
- various rules and regulations of the State and District are expressly

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<sup>2</sup> The Board’s policies require an annual evaluation, responsibility for which is on Defendant Patton. (JA47 at III.A.6.).

incorporated.

(¶ 37; Contract at ¶¶ 8, 2-4; JA25, 42-44).

**2. 2025-2026 - the One Year Contract Extension.**

On December 12, 2023, “the Board approved a one year extension of Plaintiff’s contract through June 30, 2026,” with salary in the amount of \$219,898.

(¶ 39; JA26). “Plaintiff agreed to and accepted this extension.” (¶ 40; JA26).

**a. Additional Facts Pled.**

**(1). Legislative Adoption and Ratification.**

At the next January 2024 Board meeting, “the Board approved the minutes of their prior Board meeting which included the extension of Plaintiff’s contract.”

(¶ 41; JA26).

**(2). Written Admission by the Board Attorney.**

“The Board’s longtime attorney admitted in writing on March 13, 2024 that this ‘extension’ of Plaintiff’s contract ‘was approved December 12, 2023.’” (¶ 42;

JA26).

**(3). Public Admission By Defendant Lou.**

“On March 12, 2024, Defendant Lou publicly admitted that the Board had approved a one year extension of Plaintiff’s contract.” (¶ 43; JA26).

**b. Judicially Noticed Facts Confirm This.**

Because Defendants challenged the factual existence of this contract in their briefing below, Plaintiff invoked Fed.R.Evid. 201 and requested judicial notice be taken of several relevant adjudicative public record facts - the Board Defendant's own publicly posted Meeting Minutes, Agenda and Policies - confirming the factual existence and formal legislative adoption of the specific contract extension at issue. (See D.I. 28 at 8-11; JA17). This included:

- the Agenda of the Board Meeting on 12/12/23 reflecting the contract extension issue (JA70), an Agenda prepared in accord with the Board's policies (see JA47-48, 54-55);
- the Board's Administrative Contract Renewals document attached to the Agenda identifying Dr. Shelton's extension (JA79);
- the official Minutes of the 12/12/23 Meeting reflecting the vote and adoption, (JA88);
- the Board's Agenda at its 1/17/24 Meeting approving the 12/12/23 Minutes, (JA95); and
- the official Minutes of the 1/17/24 Meeting reflecting approval of the 12/12/23 Meeting Minutes documenting the actions taken at the prior meeting. (JA109).

**C. Breach of Both Contracts.**

Thereafter, Defendants "materially breached both of Plaintiff's employment contracts," in "numerous ways" on "numerous occasions," all "by repeated 4-3 Board votes," with all four individual Defendants always voting in favor of the

breaching action. (¶¶ 44-46; JA26).

**1. Termination of the One Year Contract Extension.**

On March 12, 2024, the Board unilaterally cancelled Plaintiff’s one year contract extension by a 4-3 vote. All four individual Defendants flip-flopped from their approval vote 3 months earlier and now voted to terminate it. (¶¶ 50, 86; JA27, 31). As already noted, this was after Plaintiff had accepted the contract extension. (¶ 40; JA26).

“[N]o written notice of the reasons was given to Plaintiff; no ‘fair hearing’ was held before doing so; and no ‘good and just cause’ existed to justify this material breach of contract.” (¶ 51; see ¶ 157; JA27, 39).

**a. The Delaware Department of Justice Concluded This Was Illegal and Done “For An Improper Purpose.”**

On June 26, 2024, the Delaware Department of Justice (“DOJ”) ruled that the lack of any notice here violated state law. “[W]e must conclude that a violation of FOIA occurred regarding the notice of the contract rescission.” (JA122-23). The DOJ also concluded that this was done “for an improper purpose.” (JA123).

**2. Multiple Breaches of the Five Year Contract.**

**a. Failure to Pay His Agreed Upon Salary.**

That same day, the Board also voted 4-3 to withhold a portion of Plaintiff’s

contracted salary. (¶¶ 47-48; JA26-27). As a result, Plaintiff “lost three days of his negotiated wages.” (¶ 47; JA27). The Board characterized this as his being “suspended and reprimanded without pay effective for three days from April 1, to April 3, 2024.” (¶¶ 47, 86; JA27, 31). However, no provision of his contract or District Policy provides for this type of suspension. (Compare JA42).

Defendant Patton admitted that there had been no discussion with Plaintiff of the reasons for this suspension, no notice in writing and no fair hearing where Plaintiff would be able to respond. (¶ 49; JA27).

**b. Canceling His Mandatory “Confidential” Evaluation in “Closed” Session and Instead Taking a Public Vote of “No Confidence” in Public Session.**

On May 24, 2024, the Board was scheduled to give Plaintiff the confidential written evaluation required by: (1) his contract (¶ 53; Contract at ¶ 6(b); JA27, 43); (2) District Policy (see JA47 at III.A.6.); and (3) Delaware law. But the Board removed that agenda item and did not conduct the confidential evaluation as required. Instead, in public session, Defendants voted “no confidence” in Plaintiff. (¶¶ 52, 86; JA27, 31). This came “as a total surprise and with no prior warning,” and there was no notice in writing or otherwise, no hearing held and just cause given whatsoever. (¶¶ 52, 54; JA27).

**(1). The DOJ Again Concluded This Was Illegal and Done “For An Improper Purpose.”**

The DOJ again ruled that the Board's actions here were illegal and violated Delaware law. (¶ 56; JA27-28). In the DOJ's words, "we agree that the lack of notice for this vote of no confidence in the superintendent constitutes a second violation" of FOIA (JA119, 123), and was done "for an improper purpose." (JA 123).

**(2). The Board's Longtime Legal Counsel Also Admitted This Was Illegal and Done "For An Improper Purpose."**

The Board's counsel also "conceded" that the Board's actions here were illegal. (¶ 56; JA28). The DOJ noted in its written opinion that based upon written submissions by the Board's attorney, "[t]he Board concedes" that it had called an illegal procedural session that was "not noticed" in order to discuss the 'no confidence' vote, all "for an improper purpose." (JA118).

**c. Permanent Suspension, Reprimand, Administrative Leave, Loss of All Job Duties, Replacement & Termination.**

On July 9, 2024, the Board voted 4-3 to "permanently suspend," "reprimand" and place Plaintiff on what it termed "administrative leave." (¶¶ 86, 57; JA31, 28).

Thereafter he was denied access to his offices and all systems of the District and he was denied supervision of any of its activities or personnel and not allowed to perform any of his prior job duties and responsibilities identified above. His email was turned off, and his office keys were demanded.

(¶ 57; JA28).

On August 13, 2024, by another 4-3 vote, the Board “hired a replacement Superintendent and gave him a one year term of office.” “As a result, Plaintiff was out of a job.” (¶¶ 59-60, 86; JA28,31). He was “fired” and “terminated.” (¶¶ 1-2, 45, 89, 123, 125, 128, 144; JA19, 26, 32, 36, 38).

Again, no written notice of the reasons for these actions was given to Plaintiff, no “fair hearing” was ever held before doing so, and no “good and just cause” existed to justify any of this. (¶¶ 58, 61, 2, 118-19, 121, 125-26; JA28, 19, 35-36).

### **3. Defendants’ Public Attacks on Plaintiff’s Integrity, Competence and Morals.**

Contemporaneous with the public actions recounted above, Defendants launched a devastating public media campaign, attacking Dr. Shelton’s integrity, morals and very competence as an educator. (¶¶ 84-96; JA31-33). Defendants “made numerous false, misleading and defamatory written and oral statements” about Plaintiff, “by name” (¶¶ 87-88; JA31), suggesting “that he is guilty of some type of grievous and immoral wrongdoing.” (¶ 86; JA31).

The gist of these statements is that Plaintiff is a racist, a liar, immoral and an inept and incompetent educational administrator who engaged in workplace wrongdoing so severe that it justified two mid-contract firings.

(¶ 89; JA32). By way of “example” only, the Complaint recounts how Defendant

Patton went on the television show of a well-known former Wilmington politician where Patton publically and falsely accused Dr. Shelton of being a “racist,” and singling out Patton (Plaintiff’s boss) “because I am black.” (¶ 90; JA32).<sup>3</sup>

**a. The Totality of These in Context.**

A brief time line summary of adverse employment actions includes:

- March 12<sup>th</sup> - the Board publically suspends Dr. Shelton, withholds his pay and unilaterally cancels his binding contract extension;
- May 24<sup>th</sup> - the Board publically votes “no confidence” in Dr. Shelton’s abilities, leadership and overall job performance;
- July 9<sup>th</sup> - the Board publically and permanently suspends, reprimands, places on leave, removes all of his job duties and terminates Dr. Shelton’s employment; and
- August 13<sup>th</sup> - the Board publically hires a new superintendent to replace him.

Viewing these many actions in context together with the contemporaneous publicity campaign attacking his good name and reputation, (¶¶ 86, 95; JA31-32), they “in their totality convey the message that Plaintiff engaged in grievous educational and or other wrongdoing at work” and that he is “an inept and incompetent educational administrator.” (¶¶ 95-96; JA32-33).<sup>4</sup> Defendants’

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<sup>3</sup> Dr. Shelton is not black. (¶ 6; JA20).

<sup>4</sup> All of the many attacks on Dr. Shelton’s good name, integrity, morality and professional competence are completely and categorically false. (¶ 91; JA32).

public attacks and their many adverse employment actions “have been widely followed by taxpayers and legislators as well as extensively covered by the local news media.” (¶ 1; JA19).

**b. Plaintiff Was Left “Unemployable” With His Reputation Destroyed.**

As a result, “Plaintiff is unemployable” because his good name and reputation have been “destroyed.” This recent Superintendent of the Year, and Principal of the Year before that, cannot even get a job interview in Delaware, Pennsylvania or Maryland because his personal and professional “reputation has been destroyed in: (1) the local, regional and national educational communities; and (2) the public at large.” (¶¶ 84-86, 92-97, Wherefore Cl. at ¶ C; JA31-33, 40).

**D. Why This Is Occurring - Evidentiary Admissions Made by the Board’s Longtime Counsel.**

**1. The Longtime Attorney-Client Relationship.**

For more than four decades, the Board and District have been represented by the Wilmington law firm of Morris James LLP. Their longtime lead legal counsel has been the “distinguished” James H. McMackin, III, Esquire, an attorney “widely known for his wisdom, ethics and zealous advocacy on behalf of his clients.” (¶¶ 62-63, 135; JA28, 37).

**2. The Uncontested Waiver of Attorney-Client Privilege.**

“For reasons unknown, the Board waived attorney-client privilege” as to various matters, including the employment situation and circumstances surrounding Dr. Shelton and “allowed the news media subsequently and independently to publish numerous written warnings from the Board’s own attorney that its treatment of the dedicated Dr. Shelton was blatantly unconstitutional, illegal and would result in an award of ... punitive damages” under 42 U.S.C. § 1983. (¶ 1, see ¶¶ 64-66, 76-77; JA19, 29-30).

### **3. Admissions Made by the Board’s Attorney.**

Attorney McMackin advised the Board and all four individual Defendants, in writing, that:

- they “were engaging in a ‘witch hunt’ towards” Dr. Shelton, (¶¶ 69, 2; JA29, 20);
- “there was a ‘mountain’ of evidence that the[y] ... were not impartial towards” him, (¶ 70; see ¶ 135; JA29, 37);
- “Defendants had displayed a ‘public record of animus’ towards” him, (¶¶ 71, 2; see ¶ 135; JA29, 20, 37);
- “[g]iven public statements and actions, one or more board members ... will have an ‘impossible’ hill to climb if they claim to be impartial,” (¶¶ 72, 2; see ¶ 135, 2; JA29, 20, 37);
- “this lack of impartiality would result in a constitutional ‘due process’ violation,” which will “give rise to personal liability” of the Board members, (¶¶ 73-74; JA29);
- “he would not and could not be a party to the Board’s wholesale

illegal behavior,” (¶ 76; JA30);

- “the Board’s ‘wholesale disregard of the law’ was greatly troubling and illegal,” (¶ 77; JA30);
- their actions met the standard required for “punitive damages” under § 1983, (¶ 1; JA19);<sup>5</sup> and
- “I am not sure what the Board’s goal is, but it is not adherence to the law.” (¶ 78; JA30).

Other factual charges in the Complaint also bear out this bias of the individual Defendants. (¶¶ 132-42; JA37-38).

Ultimately, “[i]n accord with the finest traditions of the Delaware Bar,” attorney McMackin and Morris James resigned from representing the Board rather than participate in such illegal behavior. (¶¶ 76, 79; JA30).

### **SUMMARY OF THE ARGUMENT**

1. Defendants factually read the Complaint as asserting a due process liberty interest in reputation as demonstrated by the fact that they moved to dismiss and briefed that legal ground. Plaintiff briefed it in opposition. The District Court erred in ruling no liberty interest was at issue because the rules and case law are clear that motion to dismiss practice focuses solely on the facts as pled, not on legal conclusions in the pleadings. Because this issue was fully

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<sup>5</sup> Which requires recklessness, intent or malice. See, e.g. Smith v. Wade, 461 U.S. 30, 51, 56 (1983); Springer v. Henry, 435 F.3d 268, 281 (3d Cir. 2006).

briefed below, this Court should reach, resolve and reverse because the Complaint meets the stigma-plus test.

2. The District Court violated basic Rule 12(b)(6) pleading standards in declining to recognize facts expressly pled, and in not giving Plaintiff the fair inferences from those same facts, in determining that no due process property interest was factually pled in the Complaint. Defendants' unilateral repudiation and total breach of Plaintiff's binding 1 year "just cause" contract extension, as well as the termination, suspensions and other violations of his 5 year "just cause" contract give rise to property interests under state law requiring reversal.

3. The Complaint factually pled numerous breaches of multiple terms of both of Plaintiff's contracts.

## **ARGUMENT**

### **I. STANDARD OF REVIEW.**

#### **A. The Factual Plausibility Test.**

Appellate review of a motion to dismiss under Fed.R.Civ.P. 12(b)(6) is plenary. Connelly v. Lane Constr. Corp., 809 F.3d 780, 786 n.2 (3d Cir. 2016). A "complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face." Id. at 786. "[D]etailed pleading is not generally required." Id. Instead, the Rules require "only 'a short and plain

statement of the claim showing that the pleader is entitled to relief,’ in order to ‘give the defendant fair notice of what the ... claim is and the grounds upon which it rests.’” Id.

A “complaint’s allegations of historical fact continue to enjoy a highly favorable standard of review at the motion-to-dismiss stage of proceedings.” Id. at 790. Although mere legal conclusions are disregarded, the Court “must still ... assume all remaining factual allegations to be true, construe those truths in the light most favorable to the plaintiff, and then draw all reasonable inferences from them.” Id.

**B. Facts as Pled, Not Magic Words About Legal Theories.**

In the same way, the motion to dismiss analysis focuses on the sufficiency of the facts pled in the Complaint in order to provide fair notice to the defense, not on the use of magic words in articulating or identifying the legal theory. See, e.g. Johnson v. City of Shelby, Miss., 574 U.S. 10, 11 (2014)(per curiam) (“Federal pleading rules call for ‘a short and plain statement of the claim showing that the pleader is entitled to relief,’ Fed.R.Civ.P. 8(a)(2); they do not countenance dismissal of a complaint for imperfect statement of the legal theory supporting the claim asserted”); Skinner v. Switzer, 562 U.S. 521, 530 (2011) (“a complaint need not pin plaintiff’s claim for relief to a precise legal theory. Rule 8(a)(2) ...

generally requires only a plausible ‘short and plain’ statement of the plaintiff’s claim, not an exposition of his legal argument.”).

**C. Facts Helpful to the Plausibility Analysis.**

This Court has identified certain types of facts that may be helpful to the plausibility analysis. First, it has noted that the existence of a “detailed insider account,” although not necessary for a complaint, “strongly supported [ ] plausibility.” Schuchardt v. President of the United States, 839 F.3d 336, 348 (3d Cir. 2016). Relatedly, statements by uniquely placed witnesses who by the nature of their position or job duties may have particular insight also may be helpful. See Est. of Roman v. City of Newark, 914 F.3d 789, 800 (3d Cir. 2019) (“Stewart is not some unreliable, rogue officer – he is the head of the police union,” as it weighed the plausibility of his statements about the City’s policies affecting his membership).

Finally, it also has looked to official government orders, especially when they “cover[] the same type of conduct” charged in the complaint, finding such evidence “echoes” and “fortifies” a plaintiff’s factual allegations. Id. at 799.

**D. The Complaint is Viewed as a Factual Whole, Not as Pieces in Isolation.**

“The inquiry ... is whether *all* of the facts alleged, taken collectively, give rise to a strong inference of scienter, not whether any individual allegation,

scrutinized in isolation, meets that standard.” Kedra v. Schroeter, 876 F.3d 424, 441 (3d Cir. 2017). This is in accord with the Supreme Court’s requirement that the plausibility analysis must look at the complaint “*in toto*.” Bell Atl. Corp. v. Twombly, 550 U.S. 544, 569 n.14 (2007).

**E. What Other Sources of Facts Beyond the Complaint May Be Considered?**

The Court also may look to “documents incorporated into the complaint by reference, and matters of which a court may take judicial notice.” Tellabs, Inc. v. Makor Issues & Rts., Ltd., 551 U.S. 308, 322 (2007); accord Est. of Roman, 914 F.3d at 796-97; see also Doe v. Univ. of Scis., 961 F.3d 203, 208 (3d Cir. 2020) (matters of “public record” may be considered).

**1. Conversion Into a Motion for Summary Judgment.**

If the facts considered go beyond this limited scope, the defense motion is converted into a motion for summary judgment.

If, on a motion under Rule 12(b)(6) ..., matters outside the pleadings are presented to and not excluded by the court, the motion must be treated as one for summary judgment under Rule 56.

Fed.R.Civ.P. 12(d). “The element that triggers the conversion ... is a challenge to the sufficiency of the pleader’s claim supported by extra-pleading material.” Bruni v. City of Pittsburgh, 824 F.3d 353, 360 (3d Cir. 2016). “The reason that a court must convert a motion to dismiss to a summary judgment motion if it considers

extraneous evidence submitted by the defense is to afford the plaintiff an opportunity to respond.” Id. at 360-61. As the rule states, “[a]ll parties must be given a reasonable opportunity to present all the material that is pertinent to the motion.” Fed.R.Civ.P. 12(d).

## **II. THE COMPLAINT PLAUSIBLY PLED THE FACTUAL EXISTENCE OF A PROTECTED LIBERTY INTEREST IN REPUTATION UNDER THE FOURTEENTH AMENDMENT.**

### **A. Standard of Review.**

The standard of review is plenary. (See Argument I.A. above)

### **B. All Defendants Read the Complaint As Factually Asserting a Due Process Liberty Interest in Reputation and Moved to Dismiss on That Ground.**

Review of the five separate sets of motions to dismiss and Opening Briefs below (D.I. 13-22, 25-26; JA16-17), reveals that Defendants read the Complaint as factually asserting a due process liberty interest arising from the complete destruction of Plaintiff’s good name and reputation, as joined with his termination and loss of future employment. Each Defendant separately moved to dismiss Counts I and II and filed five Opening Briefs which: (1) specifically moved on and briefed the legal issue of stigma-plus due process liberty interest in reputation but argued it failed under the case law;<sup>6</sup> and/or (2) expressly adopted and incorporated

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<sup>6</sup> (Board - D.I. 20 at 9-11; Patton - D.I. 14 at 9-11; Lou - D.I. 16 at 14-18; Smith-Tucker - D.I. 18 at 2, 13, 18-19; JA16-17).

the legal arguments of the other Defendants who did.<sup>7</sup> In their own representative words:

- “Plaintiff seemingly brings a due process claim for violation of a liberty interest in his reputation,” and “avers that [Defendants] stigmatized his reputation in violation of his constitutionally protected liberty interest.” (Board - D.I. 20 at 10; JA17).
- “Plaintiff appears to allege that he was ‘terminated’ without the protections of procedural due process, and that as a result, he was deprived of the property interest in his employment and a liberty interest with respect to his reputation.” (Lou - D.I. 16 at 14; JA16).
- “Plaintiff’s Fourteenth Amendment due process claims also fail because he does not sufficiently plead deprivation of a constitutionally protected liberty-interest in his reputation.” (Smith-Tucker - D.I. 18 at 2; JA17);
- “Plaintiff cannot sustain his Fourteenth Amendment procedural due process claims because he cannot prove deprivation of a constitutionally protected interest in his employment or reputation.” (Smith-Tucker - D.I. 18 at 13; JA17) (some capitalization removed);
- “[S]tigma to reputation alone, absent some accompanying deprivation of present or future employment, is not a liberty interest protected by the Fourteenth Amendment.” (Patton - D.I. 14 at 10-11; JA16).
- Plaintiff “cannot satisfy the ‘stigma-plus’ doctrine” because “[h]e cannot prove the ‘plus’ requirement of the doctrine because he has not been deprived of ‘some additional right or interest.’” (Smith-Tucker - D.I. 18 at 19; JA17).

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<sup>7</sup> (Board - D.I. 20 at 2 n.1; Patton - D.I. 14 at 11; Lou - D.I. 16 at 2, D.I. 15 at 2; Baqir - D.I. 26/22 at 13; Smith-Tucker - D.I. 17 at 1; JA16-17). The District Court noted and approved the mass cross adoption and incorporation of legal arguments by Defendants in its decision. (Op. at 5 n.1; JA7).

Defendants specifically briefed and argued that Plaintiff's case failed the stigma-plus procedural due process test, arguing case law from the Supreme Court, this Court and several districts within our Circuit. (See Board - D.I. 20 at 10-11; Patton - D.I. 14 at 10-11; Lou - D.I. 16 at 16-17; Smith-Tucker - D.I. 18 at 18-19; JA16-17).

Several Defendants also read the Complaint as asserting a liberty interest under substantive due process and briefed that legal ground as well. (See Board - D.I. 20 at 9-11; Patton - D.I. 14 at 10-11; Lou - D.I. 16 at 16-17; JA16-17).

Defendant Smith-Tucker briefly noted that the face of the Complaint had not specifically identified a specific liberty interest legal theory of relief. (D.I. 18 at 18, 22; JA17). But given the extensive factual pleading detailing the attacks on and destruction of Plaintiff's reputation that left him "unemployable" (Facts at C.3.), she continued and identified liberty interest in his reputation as one of her numbered "Summary of the Argument" points (D.I. 18 at 2; JA17), and briefed the legal merits of the stigma-plus liberty interest legal theory, arguing that the facts of the Complaint failed to meet the stigma-plus legal test. (D.I. 18 at 18-19; JA17).

### **C. Plaintiff Exhaustively Briefed This Issue.**

In response, Plaintiff exhaustively briefed the stigma-plus due process liberty interest issue in his consolidated Answering Brief below, both legally

under the case law (see D.I. 28 at 30-45, 1; JA17), and factually from the Complaint. (See id. at 2-4, 16-20, 13-15; JA17). Ultimately, at least 28 of the 83 briefing pages below, more than 33%, addressed due process liberty interest in response to Defendants having moved on and briefed this legal ground.

In light of Defendant Smith-Tucker’s brief point about not identifying the proper legal theory, the very first sentence of Plaintiff’s Standard of Review in his Answering Brief below cited and quoted the most recent reported U.S. Supreme Court and Third Circuit decisions on this, describing their combined holding as “[T]he focus at the motion to dismiss stage is on the facts alleged providing fair notice to the defense, not magic words in articulating the legal theory.” (D.I. 28 at 26 - citing Johnson, 574 U.S. at 11 and Jutrowski v. Twp. of Riverdale, 904 F.3d 280, 293 n.14 (3d Cir. 2018); JA17).

**D. The Defense Change of Tactic in Reply.**

Defendants then tried a new approach even beyond the filing of a single consolidated Reply Brief. (D.I. 32; JA18). First, they argued they had been improperly sandbagged by Plaintiff briefing liberty interest. (Id. at 31; JA18). Second, they argued that Plaintiff was legally barred from asserting that he had a due process liberty interest in his reputation that they had been destroyed. (Id. at 30-32; JA18). The defense did not cite to, acknowledge, attempt to rebut or

address in any way the cited holdings of Johnson, 574 U.S. at 11 and Jutrowski, 904 F.3d at 293 n.14, that the motion to dismiss analysis focuses on the facts alleged, not on legal conclusions.

**E. The Ruling Below Adopts the New Defense Approach.**

The District Court adopted Defendants’ new approach. The decision only passingly alluded to liberty interest in a single strongly worded footnote. (See Op. at 8 n.2; JA10). It stated that “the Complaint does not allege a liberty interest-based Due Process claim.” (Id.). It described the specific pages of Plaintiff’s brief below legally addressing liberty interest as “irrelevant, over-the-top argument,” and specifically and repeatedly criticized his use of the words “Stigma” and “Plus.” (Id.). It characterized paragraphs of Plaintiff’s Complaint addressing Plaintiff’s prior reputation in Delaware’s general and educational communities as “read[ing] more like a press release than a legal filing.” (Id.).

The District Court also did not address in any way the binding case law under the standard of review from both the Supreme Court and this Court holding that the facts as pled govern motions to dismiss.

**F. Legal Error.**

**1. The Law.**

The legal error made by the District Court is of a type recently described by

a sister Circuit as arising from “a deep and too-common misunderstanding of federal pleading requirements.” Zall v. Standard Ins. Co., 58 F.4th 284, 295 (7<sup>th</sup> Cir. 2023).

The Federal Rules of Civil Procedure do not require a plaintiff to plead legal theories. Also, when a complaint does present legal theories, those theories may later be altered or refined.

Id. (internal citations and punctuation omitted).

This goes back to the very reasons our civil procedural rules were enacted.

In this Court’s words -

[t]he promulgation of the Federal Rules of Civil Procedure, with their emphasis on securing “the just, speedy, and inexpensive determination of every action,” Fed.R.Civ.P. Rule 1, initiated a revolution in the litigation process in the federal courts in this country.

In re Bayer AG, 146 F.3d 188, 189 (3d Cir. 1998); see Grider v. Keystone Health Plan Central, Inc., 580 F.3d 119, 123 (3d Cir. 2009) (“ushered in a new era”).

Professors Wright and Miller have long chronicled that the 1938 enactment of the Rules “effectively abolish[ed] the restrictive theory of the pleadings doctrine” previously followed under the old codes. 5 C. Wright and A. Miller, Federal Practice and Procedure § 1219 p. 277 (3d ed. 2004). The Rules now “make[] it very plain” that such a “mentality has no place under federal practice.” Id. at 279.

Since then, motions to dismiss have focused exclusively on the sufficiency of the facts pled in the Complaint in order to provide fair notice to the defense, not

on the use of magic words in articulating or identifying the legal theory. So long as the factual basis is properly pled, the legal theory identified is irrelevant. This has been long and widely recognized by:

- the U.S. Supreme Court;<sup>8</sup>
- the Third Circuit;<sup>9</sup>
- sister Circuits;<sup>10</sup> and

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<sup>8</sup> See Johnson, 574 U.S. at 11 (because federal pleading rules focus on the facts alleged, “they do not countenance dismissal of a complaint for imperfect statement of the legal theory supporting the claim asserted.”); Skinner, 562 U.S. at 530 (“a complaint need not pin plaintiff’s claim for relief to a precise legal theory.”); id. (it does not need “an exposition of his legal argument” or be “a model of the careful drafter’s art”).

<sup>9</sup> See Jutrowski, 904 F.3d at 293 n.14 (the rules “do not countenance dismissal of a complaint for imperfect statement of the legal theory supporting the claim asserted.”) (quoting Johnson, 574 U.S. at 11); Bechtel v. Robinson, 886 F.2d 644, 649 n.9 (3d Cir. 1989) (“Under the federal rules, as long as the issue is pled, a party does not have to state the exact theory of relief in order to obtain a remedy.”); see also Pollis v. Bd. of Chosen Freeholders of County of Sussex, N.J., 523 Fed.Appx. 187, 189 (3d Cir. 2013) (because the factual basis was present in the Complaint, and the legal issue was briefed when challenged, it was reversible error for a district court to refuse to address an Eighth Amendment failure to protect claim when the Complaint had only expressly addressed kindred Eighth Amendment conditions of custody and denial of medical care claims).

<sup>10</sup> See, e.g. Nat’l Press Photographers Ass’n v. McCraw, 90 F.4th 770, 797 n. 158 (5<sup>th</sup> Cir. 2024) (“Legal theories ... need not be raised in a complaint to be considered”); Stanton v. Elliott, 25 F.4th 227, 238 (4<sup>th</sup> Cir. 2022) (“Plaintiffs need not put a claim under a special heading, quote the statute, or use magic words to make out a claim. Courts should focus on the substance of the allegations to avoid making pleading a formalistic headache,” especially when the facts “naturally fit” elsewhere legally); Zimmerman v. Bornick, 25 F.4th 491, 493 (7<sup>th</sup> Cir. 2022) (“Rule 8(a) does not require plaintiffs to ‘pin’ their claim for relief to any

- every district court in the Third Circuit, including the District of Delaware.<sup>11</sup>

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particular legal theory at the pleading stage.”); McCreight v. Auburnbank, 117 F.4th 1322, 1332-33 (11<sup>th</sup> Cir. 2024)(factual notice is key, not theories of legal liability); In re SuperValu, Inc., 870 F.3d 763, 772 (8<sup>th</sup> Cir. 2017)(“So long as the facts” are there, “it is unnecessary to set out a legal theory”); Kobold v. Good Samaritan Reg’l Med. Ctr., 832 F.3d 1024, 1038 and n.4 (9<sup>th</sup> Cir. 2016)(finding a legal claim was “so strongly suggested by the facts that only an unreasonable defendant would fail to make the connection,” and noting that “a claim of prejudice is unpersuasive where defendants fully argued an issue in the ... briefing.”); Quinones v. City of Binghamton, 997 F.3d 461, 468-69 (2d Cir. 2021)(reversible error for a district court to decline to consider a claim not separately “enumerated” in the complaint when, factually, the claim was fairly pled so defendants were on notice and had even moved to dismiss it); Mayhew v. Town of Smyrna, Tenn., 856 F.3d 456, 466-67 (6<sup>th</sup> Cir. 2017)(reversible error to refuse to address a legal theory “not explicitly” raised in the complaint when the underlying facts were included); McBeth v. Himes, 598 F.3d 708, 716 (10<sup>th</sup> Cir. 2010)(“Generally, failure to set forth in the complaint a theory upon which the plaintiff could recover does not bar a plaintiff from pursuing a claim.”); Fitzgerald v. Codex Corp., 882 F.2d 586, 589 (1<sup>st</sup> Cir. 1989)(recognizing that the “theory of the pleadings” doctrine was rejected by the federal rules); Johnson v. United States, 547 F.2d 688, 691 (D.C. Cir. 1976)(“the label which a plaintiff applies to a pleading does not determine the nature of the cause of action which he states.”); Gins v. Mauser Plumbing Supply Co., 148 F.2d 974, 976 (2d Cir. 1945) (“particular legal theories of counsel yield to the court’s duty to grant the relief to which the prevailing party is entitled, whether demanded or not.”).

<sup>11</sup> See, e.g. Elkin Valley Baptist Church v. PNC Bank, N.A., 748 F.Supp.3d 293, 318 n.44 (W.D.Pa. 2024) (citing, *inter alia*, Bechtel, 886 F.2d at 649 and Johnson, 574 U.S. at 11); Cresci v. Kazan, 2020 WL 5700754, \*1 n.3 (D.N.J. Sept. 24, 2020) (citing, *inter alia*, Bechtel, 886 F.2d at 649 n.9); Sanabria v. Brackett, 2024 WL 4827320, \*5 (D.Del. Nov. 19, 2024) (analyzing and relying on Johnson, 574 U.S. at 10-12); Arkose Labs Holdings, Inc. v. DataDome, 2025 WL 1885692, \*3 (D.Del. July 8, 2025) (quoting Johnson, 574 U.S. at 11); DiBlasi v. Guthrie/Robert Packer Hosp., 2025 WL 2796781, \*4 n.3 (M.D.Pa. Sept. 29, 2025) (citing Johnson, 574 U.S. at 11); Gordon v. Nat’l R.R. Passenger Corp., 2024 WL

These holdings are often grounded in the very purpose underlying the enactment of the Federal Rules of Civil Procedure 88 years ago, which is why so many cite to Professors Wright and Miller, who have thoroughly addressed it.<sup>12</sup>

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6984316, \*2 (E.D. Pa. Mar. 29, 2024) (citing Johnson, 574 U.S. at 11); Oelsner v. Virgin Islands Dep't of Prop. & Procurement, 2024 WL 3014982, \*7 n.17 (D.V.I. Mar. 5, 2024) (quoting Johnson, 574 U.S. at 11), report and recommendation adopted as modified sub nom, Oelsner v. Maduro, 2024 WL 3013767 (D.V.I. June 14, 2024)).

<sup>12</sup> See, e.g. 5 Fed. Prac. and Proc. § 1219 p. 277-78 (“it is unnecessary to set out a legal theory for the plaintiff’s claim for relief”); id. at p. 281-82 (“The federal rules, and the decisions construing them, evince a belief that when a party has a valid claim, he should recover on it regardless of his counsel’s failure to perceive the true basis of the claim at the pleading stage.”); id. at § 1216, p. 220-27 (“the complaint must contain either direct allegations on every material point necessary to sustain a recovery on any recognizable legal theory, even though that theory may not be the one suggested or intended by the pleader, or the pleading must contain allegations from which an inference fairly may be drawn by the district court that evidence on these material points will be available and introduced at trial.”); id. at p. 234 (“The pleader is entitled to considerable latitude regarding the mode of stating a claim for relief, provided the pleading gives reasonable notice of the claims that are being asserted.”); 5B Fed. Prac. and Proc. § 1357, p. 676 (“Many federal courts have concluded that the complaint should not be dismissed merely because the plaintiff’s allegations do not support the legal theory he or she intends to proceed on, since the district court is under a duty to examine the complaint to determine if the allegations provide for relief on any possible theory.”); see also 5 Fed. Prac. and Proc. § 1209, p. 139-40 (“the great weight of authority makes it clear that a failure to name the particular statute, treaty or provision of the Constitution under which the action arises is not fatal if the remainder of the complaint shows that a federal question actually is involved or relied upon by the pleader.”); id. at p. 142-43 (“this undoubtedly reflects the federal rules’ policy of liberal construction of the pleadings embodied in Rule 8(f) and the system’s quest for judicial economy and its desire to decide cases on their merits that the rule serves.”); id. at p. 172-73 (“a basic objective of the rules is to

Others ground their reasoning in the plain text of various Federal Rules of Civil Procedure,<sup>13</sup> which themselves reflect “fundamental values that are at the heart of our Nation’s commitment to process, as parties to litigation seek the vindication of legal rights and the enforcement of legal duties in federal courts.” In re Wawa, Inc. Data Sec. Litig., 141 F.4th 456, 461 (3d Cir. 2025); see Lundy v. Adamar of N.J., Inc., 34 F.3d 1173, 1186 (3d Cir. 1994) (citing Rules 1, 8 and 61 and explaining “the liberality of federal pleading practices” is “expressed throughout the Rules” and “is enshrined in a long and distinguished history”); Parrish v. United States, 605 U.S. 376, 388 (2025) (“the spirit of the Federal Rules is that decisions on the merits should not be avoided on the basis of mere technicalities.”) (cleaned up).

## 2. Discussion.

The District Court committed clear legal error in refusing to address stigma-

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avoid civil cases turning on technicalities and to require that the pleading discharge the function of giving the opposing party fair notice of the nature and basis or grounds of the pleader’s claim and a general indication of the type of litigation that is involved.”)

<sup>13</sup> See Rules 1 (“These rules ... should be construed, administered, and employed by the court and the parties to secure the just, speedy, and inexpensive determination of every action and proceeding”); 8(a)(2) (requiring only “a short and plain statement”); 8(e) (“Pleadings must be construed so as to do justice”); 54(c) (“judgment should grant the relief to which each party is entitled, even if the party has not demanded that relief in its pleadings.”); 61 (“At every stage of the proceeding, the court must disregard all errors and defects that do not affect any party’s substantial rights”).

plus liberty interest. The factual basis of Defendants’s destruction of Plaintiff’s reputation, leaving him “unemployable,” was pled in detail in the Complaint. All five Defendants were on notice factually as they moved to dismiss and briefed stigma-plus. The defense framing of the contested legal issue in this way is simply the “party presentation” principle, see Margolin v. Nat’l Ass’n of Immigr. Judges, 608 U.S. --, 146 S.Ct. 1285, 1288 (2026); Adler v. Gruma Corp., 135 F.4th 55, 77 (3d Cir. 2025), in action. Plaintiff then exhaustively briefed it in opposition. There was neither unfair surprise nor prejudice. The District Court was legally required to address this issue but declined to do so. That is reversible legal error under 88 years of consistent case law across all federal jurisdictions, including our own, and violates one of the core purposes underlying the enactment of the Federal Rules of Civil Procedure in 1938. Any other approach “would invite inefficient utilization of judicial resources and unnecessary litigation expense in violation of the dictates of Federal Rule of Civil Procedure 1.” Herber v. Johns-Manville Corp., 785 F.2d 79, 88 (3d Cir. 1986).

**G. This Court’s Standard to Reach This Issue Is Satisfied.**

For similar reasons of efficiency, the Court should continue, address and rule upon stigma-plus because our facts herein meet this Court’s standard. See, e.g. Mirza v. Ins. Adm’r of Am., Inc., 800 F.3d 129, 133 n.4 (3d Cir. 2015) (“It is

generally appropriate for an appellate court to reach the merits of an issue not decided by the district court if the factual record is developed and the issues provide purely legal questions, upon which an appellate court exercises plenary review”)(cleaned up); Ingram v. Experian Info. Sols., Inc., 83 F.4th 231, 240 n.5 (3d Cir. 2023)(the Court may “consider pure questions of law which are closely related to arguments that the parties did raise and for which no additional fact-finding is necessary”)(cleaned up).

Our facts are well-developed, the issue was fully briefed below and due process, like all constitutional questions, receives *de novo* review. See Cabrera v. Att’y Gen. United States, 921 F.3d 401, 403 n.2 (3d Cir. 2019)(“We review constitutional claims *de novo*.”). There is no bar to addressing due process liberty interest and stigma-plus.

#### **H. Protected Fourteenth Amendment Interest.**

The U.S. Supreme Court has explained that the original meaning of due process, going back to the “law of the land” clause in Chapter XXIX of the Magna Carta in 1215, includes a person being “put from his livelihood without answer.” Kerry v. Din, 576 U.S. 86, 91 (2015) (quoting 1 E. Coke, The Second Part of the Institutes of the Laws of England 47 (1797 ed.)); see also Coke, Institutes at 45-46 (“no man shall be disseised ... of his ... livelihood, or of his liberties ... unlesse it

be by the ... law of the land (that is, to speak it once for all) by the due course, and processe of law”).<sup>14</sup>

The right to procedural due process is one of the few “absolute” constitutional rights, Carey v. Piphus, 435 U.S. 247, 266 (1978); CMR D.N. Corp. v. City of Phila., 703 F.3d 612, 627 (3d Cir. 2013), because “the law recognizes the importance to organized society that those rights be scrupulously observed.” Carey, 435 U.S. at 266. Procedural due process analysis has two steps. First, whether there is a life, liberty or property interest. Second, the process that is due. Hill v. Borough of Kutztown, 455 F.3d 225, 233-34 (3d Cir. 2006).

## **I. Liberty Interests.**

### **1. How Liberty Interests Are Created.**

“The liberty rights protected by procedural due process ... may arise from the Constitution itself, by reason of guarantees implicit in the word ‘liberty,’ or ... from an expectation or interest created by state laws or policies.” Steele v. Cicchi, 855 F.3d 494, 507 (3d Cir. 2017) (cleaned up).

### **2. Interest in Reputation - the Stigma-Plus Test.**

Developing across a series of Supreme Court decisions from the 1970’s, the stigma-plus test is now well-established in our case law. See, e.g. Wisconsin v.

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<sup>14</sup> To reflect that the “long s” is no longer in use, spelling has been updated. See [prologue.blogs.archives.gov/2021/12/14/the-long-s/](http://prologue.blogs.archives.gov/2021/12/14/the-long-s/)

Constantineau, 400 U.S. 433, 437 (1971) (“certainly where the State attaches ‘a badge of infamy’ to the citizen, due process comes into play...Where a person’s good name, reputation, honor or integrity is at stake because of what the government is doing to him, notice and an opportunity to be heard are essential.”); Paul v. Davis, 424 U.S. 693, 701-12 (1976) (surveying and synthesizing prior decisions and ultimately holding that public injury to one’s reputation when joined together with a Fourteenth Amendment interest, implicates due process protections).

“[T]o make out a due process claim for deprivation of a liberty interest in reputation, a plaintiff must show a stigma to his reputation *plus* deprivation of some additional right or interest.” Hill, 455 F.3d at 236. The stigmatizing statement must: (1) be made publicly; and (2) be false. Id.

In the public employment context, the stigma-plus test has been applied to mean that when an employer creates and disseminates a false and defamatory impression about the employee in connection with his termination, it deprives the employee of a protected liberty interest.

Id. (cleaned up).

**a. Part 1 - the Stigma.**

The public attacks by Defendants on Plaintiff’s reputation, good name, integrity, morality and very competence as an educator already are recounted in detail above. (Facts at **C.3.**, **C.3.a.** and **C.2.b.**). They were leveled orally and in

writing. (¶ 87; JA31). Both individually and collectively, these many stigmatizing attacks suggest that Plaintiff:

- “engaged in grievous educational and[/]or other wrongdoing at work,” (¶ 95; JA32);
- is “an inept and incompetent educational administrator,” (¶ 96; JA32-33);
- “is guilty of some type of grievous and immoral wrongdoing” (¶ 86; JA31); and
- “is a racist, a liar, immoral and an inept and incompetent educational administrator who engaged in workplace wrongdoing so severe that it justified two mid-contract firings.” (¶ 89; see ¶ 90; JA32).

These constitute “a badge of infamy” and injure Plaintiff’s reputation in numerous ways. (See ¶¶ 84-86, 92-96; JA31-33). The Board’s own attorney described these many same “public statements and actions” as the “public record of animus” towards Plaintiff that Defendants had created. (Facts at **D.3.**).

These stigmatizing public attacks were leveled in numerous venues, including by going on a public television show hosted by a well-known community activist (¶ 90; JA32), and also in crowded public Board meetings (¶¶ 52, 47, 57, 45, 59, 49, 52, 86, 1; JA26-28, 31, 19). All were “extensively covered by the local news media.” (¶¶ 1, 66; JA19, 29). This Court has previously held that such attacks on a public employee made “at Borough Council meetings and in newspaper articles” by an elected official satisfies the stigma standard. Hill, 455

F.3d at 236-37.

Additionally, the attacks on Plaintiff's professional competence and good name in the many public Board meetings - including but not limited to the 'no confidence' vote, the suspensions and termination - were contrary to the requirements of Plaintiff's employment contract which required strict confidentiality "at all times" in non-public "closed session" when it came to "the evaluation and information concerning the evaluation, of whatever nature."

(Compare Facts at **B.1.b.** with Facts at **C.2.b.**, **C.2.c.**, **C.2.a.**, **C.3.**).

All of these statements and other attacks also were unequivocally false (¶¶ 91, 87, 96, 93; JA31-33), have gravely damaged Plaintiff's previously sterling reputation and left this recent Delaware Superintendent of the Year as "unemployable." (¶¶ 84-86; JA31).

Importantly, there are no federalism concerns weighing against protecting Plaintiff's reputation from such stigma in our case. This Court has long recognized that inclusion of reputation protections in a state's constitution is significant reassurance that the "liberty" interest to be protected in a procedural due process case does not "unduly unsettle" principles of federalism in the event that a state has chosen not to protect their citizens' reputation interests under their own state law. McKnight v. Se. Pa. Transp. Auth., 583 F.2d 1229, 1239 (3d Cir.

1978). But here, Plaintiff’s interest in protecting his reputation is a long recognized interest of constitutional dimension in Delaware, expressly protected by several provisions of the Delaware Constitution,<sup>15</sup> which the Delaware Supreme Court has described as “a strong state constitutional basis for remedies to recompense damage to one’s reputation.” Kanaga v. Gannett Co., Inc., 687 A.2d 173, 177 (Del. 1996).

For these reasons, the “stigma” test is satisfied.

**b. Part 2 - the Plus.**

The general roots of the “plus” analysis arise from whether “a right or status previously recognized by state law was distinctly altered or extinguished.” Paul, 424 U.S. at 711. By “officially removing the interest from the recognition and protection previously afforded,” due process protections are implicated. Id. In the employment context, this often involves looking to whether the challenged government action “foreclosed his freedom to take advantage of other employment opportunities.” Bd. of Regents of State Colleges v. Roth, 408 U.S. 564, 573 (1972).

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<sup>15</sup> See Del.Const., Pmbl. (“all people have by nature the rights of ... acquiring and protecting reputation” and “these rights are essential to their welfare”); id. at Art. I, § 9 (“every individual for an injury done to the individual’s reputation...shall have remedy by the due course of law....”); id. at Art. I, § 5 (“any citizen may freely speak, write, and print on any subject, being responsible for the abuse of that liberty.”).

**(1). Devastating Impact on Future Employment Prospects is Established.**

This Court has long and repeatedly held that demonstrated factual harm to future employment prospects satisfies the “plus” requirement. See, e.g. Baraka v. McGreevey, 481 F.3d 187, 209 n.17 (3d Cir. 2007) (“must allege harm that forecloses future opportunities”) (citing Roth, 408 U.S. at 574); Ersek v. Twp. of Springfield, 102 F.3d 79, 84 (3d Cir. 1996) (finding “ample evidence” of harm to the employee’s “opportunities for future employment”); Versarge v. Twp. of Clinton N.J., 984 F.2d 1359, 1371 (3d Cir. 1993) (surveying the case law and finding that “lost opportunity for employment” is key and that failure of a plaintiff to “assert[] that his future employment opportunities have been adversely affected” is fatal to the plus analysis); Robb v. City of Phila., 733 F.2d 286, 294 (3d Cir. 1984) (“deprivation of present or future employment”) (citing Roth, 408 U.S. at 573-74); McKnight, 583 F.2d at 1236-38 (“foreclosed him from future employment opportunities by harming his reputation” and analyzing the logical and evidentiary foundations necessitating this legal holding).

The thoughtful analysis of these issues in Karr v. Castle, 768 F.Supp. 1087, 1097-1101 (D.Del. 1991), also is instructive. There, our District carefully explained -

The bulk of the case law indicates that a government employer infringes an

individual's liberty interest when the employer so stigmatizes the individual as to impair that individual's ability to obtain alternative employment.

Id. at 1097. Key is the range of the employment opportunities foreclosed. If the challenged action merely "forecloses an individual from working at one isolated and specific" work site, there is no violation. Id. at 1098. But "[a]s the range of employment or professional opportunities foreclosed increases, however, it becomes more likely that a liberty interest will be implicated." Id. This is in recognition of the fact that "to be deprived not only of present government employment but of future opportunity for it is certainly no small injury." Id. (quoting Roth, 408 U.S. at 574) (cleaned up). "[W]hether a liberty interest is implicated depends in part upon the definition of the scope of employment opportunities from which the individual is foreclosed." Id.

The broad scope of the severe impact upon Plaintiff's employment opportunities caused by the destruction of his reputation is clear. As the Complaint succinctly and factually states -

Plaintiff is unemployable. After applications, he cannot even obtain an initial interview as an administrator or educator either in Delaware, Pennsylvania or Maryland.

(¶ 85, see Wherefore Cl. at C.; JA31, 40). All of this for a highly decorated recent Superintendent of the Year (¶ 7; JA21), National Distinguished Principal before that (¶ 9; JA21) and winner of the "highest honor given in the Delaware

Association of School Leaders.” (Id.). This man cannot even get an initial interview. This is a compelling example of what Blackstone meant in writing -

The security of his reputation or good name from the arts of detraction and slander, are rights to which every man is intitled, by reason and natural justice; since without these it is impossible to have the perfect enjoyment of any other advantage or right.

1 W. Blackstone, Commentaries on the Laws of England 134 (3d ed. 1769)

(emphasis added). Because his good name has been demolished, Plaintiff’s future employment prospects and ability to provide for his family have been destroyed.

**(2). Termination.**

Defendants also fired Plaintiff and terminated both of his employment contracts. (Facts at **C.1.** and **C.2.c.**). In our Circuit, loss of a job - be it an actual firing or constructive discharge - even if it is at-will employment lacking an independent “just cause” property interest in that position, satisfies the “plus” standard. Hill, 455 F.3d at 237-39 (conclusively resolving this legal question for our Circuit and analyzing prior Circuit and Supreme Court precedent); see also Graham v. City of Phila., 402 F.3d 139, 142 n.2 (3d Cir. 2005) (noting our Circuit’s prior approach of assuming without deciding that the loss of at-will employment satisfies the “plus”).

**(3). Suspension Without Pay, Permanent Suspension and Administrative Leave With Pay and Loss of All Job Duties.**

Although not viewed in a vacuum under the standard of review (see Argument **I.D.** above), it also is clear that (1) the March 2024 suspension without pay for 3 days (Facts at **C.2.a.**),<sup>16</sup> and (2) later “permanent suspension,” “administrative leave” and loss of all job duties (Facts at **C.2.c.**), also meet the “plus” standard, both independently and *in toto*. See Otto v. Williams, 2016 WL 3136923, at \*5 (E.D.Pa. June 6, 2016) (the ‘plus’ is satisfied by “termination, constructive discharge, suspension, or demotion.”), *aff’d*, 704 Fed.Appx. 50 (3d Cir. 2017); Suniaga v. Downingtown Area Sch. Dist., 765 F.Supp.3d 413, 427 (E.D. Pa. 2025) (same, in context of both suspensions without pay and short term administrative leave with pay), appeal filed C.A.No. 25-2023 (3d Cir.).

Continuing, although described as “permanent suspension” and formally termed “administrative leave,” factually the Complaint explains and details that Plaintiff was stripped of all of his job duties, thrown out of his office, had all digital access shut off, a replacement Superintendent was hired and took over Plaintiff’s job. He was “terminated.” (Facts at **C.2.c.**). The District Court focused solely upon the named form Defendants gave the status, “administrative leave,” but ignored the underlying detailed factual substance of what actually occurred. Such an approach is legal error and contrary to this Court’s instructive prior

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<sup>16</sup> Other than a passing reference in its factual recitation (Op. at 3; JA5), the court below did not address the legal effect of this unpaid suspension.

precedents. In Clark v. Township of Falls, 890 F.2d 611 (3d Cir. 1989), while finding that the plaintiff had failed to factually meet the required standard, this Court left open the due process legal question, id. at 620 n.3, of whether a job action which, factually and independently, “left [the employee] without any job functions,” was objectively “demeaning” and was not “temporary,” id. at 618-19, sufficiently alters or extinguishes an interest in conjunction with harm to reputation. Id. at 620 and n.3. District court decisions since that time have carefully parsed the facts and law of this Court’s Clark decision and suggest that a due process interest would be implicated by such facts.<sup>17</sup>

Our detailed underlying facts discussed immediately above meet the Clark standard for factually implicating such a liberty interest. Plaintiff’s livelihood - past, present and future - has been destroyed. Due process exists precisely for situations such as this. See Kerry, 576 U.S. at 91; Coke, Institutes 45-47; Blackstone, Commentaries 134; Roth, 408 U.S. at 577.

For all of these three independent reasons, the “plus” test is satisfied and Plaintiff plausibly pleaded that he was deprived of a due process liberty interest.

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<sup>17</sup> See Citta v. Borough of Seaside Park, 2010 WL 3862561, \*26-27 (D.N.J. Sept. 27, 2010); Cotner v. Yoxheimer, 2008 WL 2680872, \*10-12 (M.D.Pa. July 2, 2008); Otto, 2016 WL 3136923, \*5; Henry v. City of Allentown, 2013 WL 81394, \*3 (E.D.Pa. Jan. 7, 2013); Wardlaw v. City of Phila., 2011 WL 1044936, \*5 (E.D.Pa. Mar. 21, 2011).

**III. THE COMPLAINT PLAUSIBLY PLED THE FACTUAL EXISTENCE OF A PROTECTED PROPERTY INTEREST UNDER THE FOURTEENTH AMENDMENT.**

**A. Standard of Review.**

The standard of review is plenary. (See Argument I.A. above).

**B. Ruling Below.**

Briefly, the decision below was built upon 3 bases.

1. Because Plaintiff did not allege a factual breach of any term of his employment contracts, legally he can have no property interest. (Op. at 8-10; JA10-12).

2. The Complaint did not factually plead that Plaintiff was terminated; only that he is on administrative leave, and is currently still employed by Defendant. (Op. at 3-4; JA5-6).

3. The Court quoted and discussed an outside-the-record factual affidavit from the District's Chief Financial Officer but stated it was not relying on the affidavit in any way. (Op. at 4; JA6).

**C. Legal Errors.**

Preliminarily, Plaintiff notes that much of the following discussion overlaps with that of the liberty interest in Argument II above, and the breach of contracts in Argument IV below.

## 1. Violations of Pleading Standards.

This Court has repeatedly warned against taking an “unduly crabbed” reading of a complaint which “denies [plaintiff] the inferences to which her complaint is entitled.” Phillips v. Cnty. of Allegheny, 515 F.3d 224, 237 (3d Cir. 2008); accord Kedra, 876 F.3d at 445. The decision erred in this way by not giving Plaintiff the proper factual inferences.

### a. 1 Year Contract Extension - Unilateral Termination.

The Complaint straightforwardly explained that Defendants unilaterally terminated Plaintiff’s 1 year contract extension (Facts at **C.1.**), 3 months after it had been noticed, voted on, approved, legislatively enacted, and accepted by Plaintiff. (Facts at **B.2.**).<sup>18</sup> This breached every term of that contract, including its several “good and just cause,” “fair hearing” and other detailed protections (Facts at **B.1.a.**), which Defendants made no effort to satisfy. (Facts at **C.1.**). This is what the Complaint actually, and factually, states. It cannot be ignored.

Accordingly, because such “for cause” protections create a property interest,<sup>19</sup> the

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<sup>18</sup> All of which satisfied the required “legitimate claim of entitlement” standard and so created a property interest. Stana v. Sch. Dist. of City of Pittsburgh, 775 F.2d 122, 125-26 (3d Cir. 1985); Roth, 408 U.S. at 577.

<sup>19</sup> See, e.g. Logan v. Zimmerman Brush Co., 455 U.S. 422, 430 (1982); Bradley v. Pittsburgh Bd. of Educ., 913 F.2d 1064, 1078 (3d Cir. 1990); Kirschling v. Lake Forest Sch. Dist., 687 F.Supp. 927, 933-34 (D.Del. 1988).

decision below to the contrary was in error.

**b. 5 Year Contract - the Material Fact Dispute Over What Happened in July/August 2024.**

Second, as already addressed in overlapping part in the liberty interest “plus” discussion found on pages 42-44 above (see Argument **II.I.2.b.(3)** and **(2)**), the Complaint factually details that the Board placed Plaintiff on permanent suspension, reprimanded him, locked him out of all physical facilities where he worked, locked him out from all systems needed to work digitally, stripped him of all job duties and responsibilities, and finally hired and installed a new Superintendent to replace him and take over his job. It states this was called “administrative leave” but was really a termination and firing (Facts at **C.2.c.**), leaving Plaintiff “out of a job” (¶ 60; JA28), and requiring he begin submitting applications across multiple states looking for a new job, which is when he discovered just how “unemployable” he now was. (Facts at **C.3.b.**).

In the Complaint, the phrase “administrative leave” was used once (¶ 57; JA28), while variations on the words: “termination,” “fired” and “out of a job” were used 11 times (¶¶ 1-2, 45, 60, 89, 123, 125, 128, 141, 144; JA19-20, 26, 28, 32, 36, 38); “replacement” 2 times (¶¶ 59, 86; JA28, 31); “permanent suspension” and “suspend” 9 times (¶¶ 45, 47, 49, 55, 57, 86, 137, 141; JA31, 26-28, 37-38); and “reprimand” 4 times (¶¶ 47, 57, 86; JA26-28, 31).

Despite this factual record, the court below concluded that the only way to plausibly read the Complaint was that Plaintiff was on administrative leave and continues to be on this status to the present day. Although this is not a ‘numbers game,’ it reveals a legal disconnect that fails to read the Complaint as a whole in violation of the standard of review. (See Argument **I.D.** above). Such a reading does not give Plaintiff the benefit of the many facts as pled or the reasonable inferences arising from those facts. These were not legal conclusions that could be ignored, but instead were numerous corroborating factual details: locked out physically and digitally, keys taken away, access passwords changed, all duties and responsibilities stripped, barred from doing his job and a replacement was actually hired who took over the job.

The only factual support the lower court could draw for its erroneous conclusion was solely from outside the factual record, new documents the defense improperly injected which were the heavy focus across the six defense briefs below. Thirty-five of those 44 pages addressed administrative leave,<sup>20</sup> while the others addressed breach of contract issues. The court quoted the affidavit at length in its decision, but contradictorily stated it was not considering the affidavit as part

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<sup>20</sup> A single 2 page affidavit, not from the District’s Human Resources Director but from the CFO, was included four times, as well as 27 pages of hand-marked and highlighted payroll records. (D.I. 18-1 at 7-36; D.I. 13-1 at 8-9; D.I. 16-1 at 1-2; D.I. 20-1 at 1-2; JA16-17).

of its analysis. (Op. at 4; JA6). But it defies credulity to expressly quote and discuss the affidavit unless it was being relied upon. This violated Fed.R.Civ.P. 12(d) and the Standard of Review found at Argument **I.E.** above.

In Wolfington v. Reconstructive Orthopaedic Assocs. II PC, 935 F.3d 187 (3d Cir. 2019), this Court was faced with a similar situation where it refused to elevate lip service form over actual substance, instead finding that “[a]lthough the District Court stated that it accepted the facts of [the plaintiff’s] Complaint as true and that it did not consider matters outside the pleadings,” because it “nonetheless expressly relied on ... matters outside the pleadings,” it had “erred” and violated Rule 12(d). Id. at 197.

Plaintiff also submitted a timely Rule 56(d) declaration below (JA125), addressing, *inter alia*, what discovery was necessary to respond to Defendants’ new arguments about the meaning of “administrative leave” (see D.I. 28-11 at ¶¶ 7-10, 24-43, 11-23; JA17, 125-34), and identified the issue in his brief (D.I. 28 at 15, 41-43, 72, 77; JA17), but it was not addressed in the decision. This denied Plaintiff the required opportunity to respond when the lower court “considers extraneous evidence submitted by the defense,” Bruni, 824 F.3d at 361, and so violated Rules 12(d) and 56(d).

Unlike the relatively straightforward facts related to the breach of the 1 year

contract extension, some of the facts related to the breach of Plaintiff's 5 year contract are messy. Perhaps that is inevitable in a situation where a 40 year attorney-client relationship implodes over now former counsel and his law firm's admirable ethical stand in refusing to be party to the "wholesale disregard of the law," violation of "due process" and other legal wrongdoing (Facts at **D.3.**), that had required repeated intervention by both the Delaware General Assembly and the DOJ. (¶¶ 80-81, 56; JA30, 27-28). Nevertheless, these facts were fairly pled, and Plaintiff receives the inferences from them. The decision below reveals the lower court did not think them credible. But the standard of review requires that the court "must ... refrain from engaging in any credibility determinations." United States ex rel. Customs Fraud Investigations, LLC. v. Victaulic Co., 839 F.3d 242, 256 (3d Cir. 2016). This is so "even if it strikes a savvy judge that actual proof of those facts is improbable and that a recovery is very remote and unlikely." Twombly, 550 U.S. at 556.

The only reason the defense attached 44 pages of new and contradictory documents challenging the meaning, scope and duration of "administrative leave" was to dispute the facts in the Complaint. But the time and place to explore and address fact disputes is in discovery, not on a motion to dismiss.

## **2. Identified Breaches of Both Contracts.**

As addressed in Argument **IV** immediately below, Plaintiff factually pled multiple specific breaches of both of his employment contracts, so even under the proffered reasoning of the two decisions cited and relied upon by the District Court in supporting the entirety of its property interest legal analysis (Op. at 8-9; JA10-11) (citing Chenvert v. DeJohn, 2000 WL 1728257 (D.Del. Apr. 11, 2000) and Unger v. Nat’l Residents Matching Program, 928 F.2d 1392 (3d Cir. 1991)), the decision below was in error.<sup>21</sup>

## **IV. THE COMPLAINT PLAUSIBLY PLED THE BREACH OF MULTIPLE TERMS OF BOTH CONTRACTS.**

### **A. Standard of Review.**

The standard of review is plenary. (See Argument **I.A.** above).

### **B. Ruling Below.**

The District Court held that Plaintiff did not identify any terms of the 1 year contract extension or the original 5 year contract that were breached by Defendants. (Op. at 5-8; JA7-10).

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<sup>21</sup> Plaintiff agrees he did not “use a single word” (Op. at 8 n.2; JA10) in his Answering Brief below to discuss Chenvert or Unger. Indeed, only a single one of the six defense briefs below even briefly mentioned them. (See D.I. 18 at 16; JA17). But he did devote at least “a single drop of ink” (Op. at 8 n.2; JA10) to addressing the legal significance of the numerous factual breaches of both contracts in sections entitled “Terms Breached” and “Breach.” (See D.I. 28 at 76-78, 11-18; JA17).

**C. Legal Errors.**

**1. 1 Year Contract - Every Term Breached.**

The 1 year contract extension adopted and enacted by the Board Defendant, and accepted by Plaintiff, extended Plaintiff's five year "good and just cause" employment contract from its original stated end date of June 30, 2025, by 1 year, "through June 30, 2026." (Facts at **B.2.**). Its existence, adoption and enactment are confirmed by the judicial notice materials (see Facts at **B.2.b.** and the pinpoint Appendix citations therein), including the Board Agenda Administrative Contract Renewals document, which notes the specific dates as from "6/30/25" until "6/30/26." (JA79).<sup>22</sup>

The breach occurred when Defendants voted 4-3 at the Board Meeting on March 12, 2024 to cancel it completely, without any effort made to even try to satisfy its "good and just cause," "fair hearing" and other terms. (Facts at **C.1.**).

The wrongful termination of an entire contract breaches every term of that contract. Whether this is called "total breach," Restatement (Second) of Contracts

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<sup>22</sup> While ignoring the facts as pled, the many defense briefs below also contradicted each other about the details of this contract extension. The Board President Defendant produced an unsigned contract that he said contained all material terms but claimed was later "revoked" (D.I. 14 at 2; D.I. 13-1 at 6; JA16), while three other individual Defendants claimed no document ever existed from which terms could ever be determined. (D.I. 26 at 7, 11; D.I. 18 at 12-13; D.I. 16 at 4, 12, 13; JA16-17).

§§ 236, 243 (1981), “repudiation,” id. at §§ 250, 253, or something else, these are well-recognized principles of contract law, regularly applied by this Court, Norfolk Southern Ry. Co. v. Basell USA Inc., 512 F.3d 86, 96-97 (3d Cir. 2008) (applying Delaware contract law), the U.S. Supreme Court, Alabama v. North Carolina, 560 U.S. 330, 350 (2010), the District of Delaware, Principal Life Ins. Co. v. Lawrence Rucker 2007 Ins. Tr., 674 F.Supp.2d 562, 567 (D.Del. 2009), and Delaware state courts. CitiSteel USA, Inc. v. Connell Ltd. P’ship, 758 A.2d 928, 931 (Del. 2000); PJT Holdings, LLC v. Costanzo, 339 A.3d 1231, 1255-56 (Del.Ch. 2025), aff’d 2026 WL 958201 (Del. Apr. 9, 2026) (en banc).

The lower court erred in its conclusion that Plaintiff did not identify any terms that were breached in the 1 year contract extension. Every term was breached when Defendants repudiated the contract, by a 4-3 vote.

## **2. 5 Year Contract - Multiple Terms Breached.**

The entire 5 year written contract was attached to the Complaint and is part of the record. (D.I. 1-1; JA42). Relevant contract terms were already addressed in the Facts. (Facts at **B.1.**). Defendants breached these terms by:

1. Firing Plaintiff without: showing “good and just cause,” giving him any “fair hearing,” or providing any “written” notice of the reasons for his termination. (Compare Facts at **C.2.c.** with Facts at **B.1.a.**).

2. Publically evaluating Plaintiff's job performance by (1) voting "no confidence" in public session, and (2) blasting him in a public media campaign as an "inept and incompetent educational administrator" who is an "immoral" "racist" and "liar" guilty of severe workplace wrongdoing, all despite the contract requirement that his "evaluation and information concerning the evaluation, of whatever nature, shall be considered confidential information" and "shall at all times be conducted in closed session." (Compare Facts at **C.2.b.** and **C.3.** with Facts at **B.1.b.**).

3. Cancelling and not conducting Plaintiff's required confidential evaluation, despite it being required by both the contract and Board policy. (Compare Facts at **C.2.b.** with Facts at **B.1.b.**).

4. Failing to pay Plaintiff's agreed upon salary during his 3 day unpaid suspension which no provision of his contract permits. (Compare Facts at **C.2.a.** with Contract at JA42).

**3. Conflating Damages for a Breach With Nonpayment as a Breach.**

Finally, and briefly due to space constraints, not every material breach of a contract gives rise to salary loss. Throughout its decision, the lower court conflated two separate and distinct contract concepts which can overlap, but do not necessarily overlap in every case: financial payment in the form of salary as a

required term of an employment contract vs. financial payment as economic damages arising from certain types of contract breaches.

Specific to Plaintiff's 5 year contract: only breaches #1 and #4 above can give rise to salary loss that qualifies as a form of economic damages under Delaware contract law. But the contract terms violated by breaches #2 and #3 still caused legal injury, even if no traditional economic damages in the form of salary loss exist.<sup>23</sup> Putting to the side the many equitable remedies under state law, the availability of nominal damages is one of the ways that has developed for contract law to recognize that a legal wrong has nevertheless occurred. See, e.g. Cygnus Opportunity Fund, LLC v. Washington Prime Grp., LLC, 302 A.3d 430, 454 (Del.Ch. 2023) (recognizing the availability of nominal damages to remedy non-economic contract breaches).<sup>24</sup>

Specific to Plaintiff's 1 year contract: both forms exist and overlap because total breach of every contract term has occurred by Defendants' repudiation of the

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<sup>23</sup> Breach #1 also causes independent legal injury even if a defendant's new (or old) legal counsel made a creative strategic effort to undermine an anticipated breach of contract action by attempting to make partial monetary payments. Normally, such facts about the scope and type of damages get flushed out in discovery.

<sup>24</sup> Drawing on the common law of torts, § 1983 does the same. See, e.g. Carey, 435 U.S. at 266; Bradley, 913 F.2d at 1077-78; Allah v. Al-Hafeez, 226 F.3d 247, 251 (3d Cir. 2000).

contract in its entirety.

But the flawed foundation of the lower court's contract analysis is that a breach of contract cannot survive a motion to dismiss without economic injury in the form of salary loss. Although we have such economic injury in this case arising from the breach of both contracts (see ¶¶ 82-83, Wherefore Cl. at C, F-I; JA30-31, 39-40), it is not required as a matter of state contract law. The lower court's implicit conclusion to the contrary is in error.

### **CONCLUSION**

For the reasons set forth above, the lower court's decision below should be reversed in all respects.

Respectfully Submitted,

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Dated: June 10, 2026

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**CERTIFICATE OF BAR MEMBERSHIP**

I certify that I am a member of the bar of the United States Court of Appeals for the Third Circuit.

/s/ Thomas S. Neuberger  
**THOMAS S. NEUBERGER, ESQ.**

**CERTIFICATE OF COMPLIANCE**

Pursuant to Fed.R.App.P. 32(a)(7)(C), I certify, based on the word-counting function of my word processing system (Word Perfect 2020), that this brief complies with the type-volume limitations of Rule 32(a)(7)(B), in that the brief is prepared in a 14-point, proportional format (Times New Roman) and contains fewer than 13,000 words, to wit, no more than 12,945 words.

Pursuant to Local Rule 31.1(c), I certify that the text of the electronic brief is identical to the text of the paper copies. I also certify that a virus detection program, specifically Bitdefender Total Security has been run on this file and that no virus was detected.

/s/ Stephen J. Neuberger  
**STEPHEN J. NEUBERGER, ESQ.**