No. 26-5486

IN THE SUPREME COURT OF THE UNITED STATES

JORDAN MICHELSON,
Petitioner,
v.
TRUSTEES OF BOSTON COLLEGE,
d/b/a BOSTON COLLEGE LAW SCHOOL,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO
THE MASSACHUSETTS APPEALS COURT

SUPPLEMENTAL APPENDIX

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SUPPLEMENTAL APPENDIX

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- Commonwealth of Massachusetts Statement of the Case Appellate Court Entry Statement [APP565] — Supp. App. 160
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SUPPLEMENTAL APPENDIX A

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COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, ss. **SUPERIOR COURT**
Civil No. 2481CV01856

JORDAN MICHELSON

v.

TRUSTEES OF BOSTON COLLEGE

DECISION AND ORDER ON DEFENDANT'S MOTION TO DISMISS PLAINTIFF'S SECOND COMPLAINT [DKT. 7]

Plaintiff Jordan Michelson ("Michelson") filed this action against the Defendant Trustees of Boston College (the "College") seeking recovery for harm allegedly caused by College programs, policies, and practices that Michelson contends discriminate on the basis of ancestry, color, creed, ethnicity, gender identity, national origin, race, religion, sex, and sexual orientation. Michelson asserts that the College's allegedly discriminatory practices violate numerous federal and state statutes, including but not limited to Title VI of the Civil Rights Act of 1964; Title IX of the Education Amendments of 1972; G.L. c. 151C, § 2; G.L. c. 151B, § 4; and the Massachusetts Civil Rights Act.

In a Decision and Order dated May 8, 2025 (Dkt. 10), the Court stayed this action during the pendency of an appeal Michelson had filed from an adverse judgment entered against him in a previous lawsuit he filed against the College that also alleged discrimination in the College's programs, policies, and practices (hereafter, the "First Action"). The Appeals Court has since affirmed that judgment, and the Supreme Judicial Court has denied Michelson's application for further appellate review.

With the conclusion of Michelson's appeal, the stay in this action has been lifted, and the matter is back before the Court in connection with the College's motion ("Motion") to dismiss Michelson's claims (Dkt. 7) As grounds, the College contends, among other things, that principles of *res judicata* bar Michelson from attempting to litigate in this matter claims and issues that are almost entirely duplicative of the First Action.

The parties previously briefed and argued the Motion prior to entry of the stay. The Court conducted an additional hearing following the conclusion of Michelson's appeal. At that hearing, the Court provided both sides with leave to submit additional briefs addressing, *inter alia*, what significance, if any, the Appeals Court's decision has on the College's *res judicata* arguments.

Following its receipt and review of the parties' supplemental briefs, the Court now **ALLOWS** the College's motion to dismiss, for the reasons set forth below.

BACKGROUND[1]

As noted, this is the second action Michelson has filed against the College alleging discrimination in its programs, policies, and practices. Michelson filed the First Action, captioned *Michelson v. Trustees of Boston College*, No. 2181CV02940, on or about October 26, 2021. At the outset of his Complaint, under a heading captioned "*Summary of the Suit*," Michelson summarized the gravamen of the First Action as targeting conduct by which the College, notwithstanding its "clearly articulated obligations" under G.L. c. 151B, the Civil Rights Act of 1964, and Title IX, allegedly "engages in *prima facie* discrimination on the basis of, *inter alia*, color, national origin, sex, gender, and sexual orientation." *See* Complaint, First Action, Dkt. 1, at 2-3.[2] Michelson sought declaratory relief and $556 million in compensatory and punitive damages for this conduct pursuant to claims for breach of contract (Count I) and violations of the Massachusetts Civil Rights Act and G.L. c. 151B (Counts II-IV).

On May 16, 2022, the Court (Wilkins, J.) allowed the College's motion to dismiss Counts II, III, and IV of the Complaint.

In November 2022, the parties served one another with cross-motions for summary judgment on Count I, which alleged breach of contract and was the sole remaining count. The Rule 9A package containing those pleadings was filed with the Court on December 29, 2022. The Court conducted a Rule 56 hearing on July 18, 2023 and took the motions under advisement.

On November 14, 2023, Michelson filed a motion requesting leave to amend his complaint to add eight additional counts asserting claims under a variety of federal and state anti-discrimination and equal rights statutes. The gravamen of Michelson's proposed additional counts continued to be the College's alleged discrimination on the basis of color, national origin, sex, gender, and sexual orientation.[3] The College opposed the motion for leave to amend on grounds of undue delay, prejudice, futility, and the pendency of the Rule 56 motions. On November 28, 2023, the Court (Frison, J.) denied the motion "[f]or the reasons stated in the opposition to this motion and because the Court already has heard cross-motions for summary judgment."

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[1] In reciting the facts pertinent to the College's motion to dismiss, the Court accepts as true the factual allegations in Michelson's complaints and draws all reasonable inferences from those facts in Michelson's favor. *Foster v. Commissioner of Corr. (No. 2)*, 484 Mass. 1059, 1059 (2020).

[2] Apart from the first page, the pages of the Complaint in the First Action are unnumbered. The Court uses the .pdf page numbers for citation purposes.

[3] Michelson also sought leave to add a retaliation claim. That claim is discussed at greater length *infra*.

On February 6, 2024, the Court (Frison, J.) allowed the College's motion for summary judgment, concluding that Michelson had failed to demonstrate that the College had breached any alleged contract by discriminating against him. Judgment entered that same day. Michelson filed a notice of appeal from that judgment on February 9, 2024.

On July 16, 2024, Michelson filed his Complaint in this action (hereafter, the "Second Action"). In the opening sentence of his Complaint (Dkt. 1), Michelson acknowledged that the conduct giving rise to the Second Action "overlaps substantially" with the allegedly wrongful conduct identified in the First Action. Michelson also disclosed that an adverse judgment had entered against him in the First Action and that he was presently pursuing an appeal from that judgment.

On October 29, 2024, the College filed a motion to dismiss Michelson's Complaint in the Second Action, contending, among other things, that principles of *res judicata* bar Michelson from attempting to litigate in this matter claims and issues that he either had litigated or could have litigated in the First Action. Michelson opposed and, with his opposition, attached a proposed First Amended Complaint that purports to break down his claims, chronologically, into those whose underlying events allegedly occurred *before* commencement of the First Action and those whose underlying events allegedly occurred *after* commencement of the First Action.[4]

As noted above, the Court heard argument on the College's Rule 12 motion, during which it inquired concerning the procedural status of Michelson's appeal as well as the nature of the issues the parties had briefed in that appeal. Based on the parties' responses, the Court determined to stay the action pending the conclusion of the appeal.

In an unpublished decision dated June 6, 2025, the Appeals Court affirmed the judgment entered against Michelson in the First Action. Among other things, the Appeal Court upheld the decision to dismiss Counts II-IV, found no abuse of discretion in the trial judge's denial of Michelson's motion to amend, and affirmed the grant of summary judgment on Michelson's breach of contract claim. On the latter, the Appeals Court concluded that Michelson had failed to introduce facts sufficient to show that he had entered into a contract with the College containing an anti-discrimination clause.

On November 26, 2025, following the denial of two motions that Michelson had filed with the Appeals Court asking it to reconsider its decision, Michelson filed an application for further appellate review. The Supreme Judicial Court denied that application on January 15, 2026. With that denial, the appellate proceedings in the First Action appear to have come to a close.

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[4] The docket for the Second Action does not reflect that Michelson ever sought to have any First Amended Complaint docketed or that he ever requested leave to file a First Amended Complaint. Instead, it appears he simply attached it as an exhibit to other pleadings. For this reason, the Court cites to the original Complaint in this matter (Dkt. 1), albeit with the understanding that the College asserts that all of the reasons that require dismissal of Michelson's original Complaint in the Second Action also would apply to his proposed First Amended Complaint.

The stay is accordingly lifted, and the Court now turns to address the College's pending motion to dismiss this Second Action on *res judicata* grounds, among others.

DISCUSSION

Res judicata encompasses two specific types of preclusion: claim preclusion and issue preclusion. *DeGiacomo v. City of Quincy*, 476 Mass. 38, 41 (2016).

"Claim preclusion makes a valid, final judgment conclusive on the parties and their privies, and prevents relitigation of all matters that were or could have been adjudicated in the action. This is based on the idea that the party to be precluded has had the incentive and opportunity to litigate the matter fully in the first lawsuit. The invocation of claim preclusion requires three elements: (1) the identity or privity of the parties to the present and prior actions, (2) identity of the cause of action, and (3) prior final judgment on the merits." *Santos v. U.S. Bank Nat'l Ass'n*, 89 Mass. App. Ct. 687, 692 (2016) (internal quotation and citation omitted); *see also Heacock v. Heacock*, 402 Mass. 21, 23 (1988).

"The doctrine of issue preclusion provides that when an issue has been actually litigated and determined by a valid and final judgment, and the determination is essential to the judgment, the determination is conclusive in a subsequent action between the parties whether on the same or different claim." *Bigelow v. Reem Property, LLC*, 102 Mass. App. Ct. 590, 593 (2023) (internal quotation and citation omitted). Issue preclusion similarly requires establishment of three elements: "(1) there was a final judgment on the merits in the prior adjudication; (2) the party against whom preclusion is asserted was a party (or in privity with a party) to the prior adjudication; and (3) the issue in the prior adjudication was identical to the issue in the current litigation, was essential to the earlier judgment, and was actually litigated in the prior action." *DeGiacomo*, 476 Mass. at 42 (internal quotations omitted)

Of the two types, the Court finds claim preclusion to provide the better procedural fit to this case.

There is no dispute that the parties in the First and Second Actions are identical. It also is procedurally incontrovertible that the First Action resulted in a final judgment on the merits.[5] The parties stake out different positions, however, regarding the identity of the causes of action. The College asserts that the gravamen of both actions is the same. Michelson disagrees.

Causes of actions are treated as the same for purposes of claim preclusion where "the claims are based on the same series of transactions." *Howard v. Boston Water and Sewer Comm'n*, 96 Mass. App. Ct. 119, 124 (2019) (internal quotation and citation omitted); *see also TLT Construction Corp. v. A. Anthony Tappe & Assocs., Inc.*, 48 Mass. App. Ct. 1, 8 (1999) ("A

[5] Among other reasons, the Court notes that "[u]nder Massachusetts law, as elsewhere, a dismissal for failure to state a claim, under Mass. R. Civ. P. 12(b)(6), operates as a dismissal on the merits ... with res judicata effect." *Mestek, Inc. v. United Pac. Ins. Co.*, 40 Mass. App. Ct. 729, 731 (1996) (internal quotation and citation omitted); *see also Saade v. Wilmington*, 494 Mass. 1013, 1015 (2024).

claim is the same for [claim preclusion] purposes if it is derived from the same transaction or series of connected transactions.") (internal quotation and citation omitted).

It matters not that a party may have revised its legal theories or elected to pursue a different form of liability in one action versus the other. Claims alleging different forms of liability are the same for purposes of claim preclusion if they "grow[ ] out of the same transaction, act, [or] agreement, and seek[] redress for the same wrong." *Charlette v. Charlette Bros. Foundry*, 59 Mass. App. Ct. 34, 45 (2003) (internal quotation and citation omitted); *see also Bagley v. Moxley*, 407 Mass. 633, 638 (1990); *Heacock*, 402 Mass. at 23 ("Claim preclusion applies 'even though the claimant is prepared in a second action to present different evidence or legal theories to support his claim.'").

Consistent with the foregoing principles, "[a] complaint must bring all of the plaintiff's claims that are available at the time of filing, and the plaintiff must act promptly to seek the court's leave to amend their complaint if need be, subject to the court's valid exercise of its discretion." *City of Chelsea v. Vigorito*, 2024 WL 413549, at *7 (Mass. Land Ct. Feb. 5, 2024) (collecting cases).

A final judgment on the merits will preclude even "claim[s] that could have been brought but [were] not." *Howard*, 96 Mass. App. Ct at 124 (internal quotation and citation omitted). In this regard, there is "no principled distinction between a claim that could have been brought (but was not), and one that was untimely brought when it could have been added to the suit properly." *Korn*, 83 Mass. App. Ct. at 439. For this reason, "[i]t is well settled that denial of leave to amend constitutes *res judicata* on the merits of the claims which were the subject of the proposed amended pleading." *Id.* at 437 (internal quotation and citation omitted); *see also Johnson v. SCA Disposal Servs. of New England, Inc.*, 931 F.2d 970, 975-77 (1st Cir.1991) (applying claim preclusion to bar a claim in a second suit that had been the subject matter of a proposed amendment in the first suit where the proposed amendment was denied as untimely).

Application of the foregoing principles compels the dismissal of Michelson's Second Action. A comparison of the Complaints from the two actions demonstrates that Michelson seeks redress for the same wrongs arising out of the same transactions and events – namely, College programs, policies, and practices that Michelson claims discriminate on the basis of ancestry, color, creed, ethnicity, gender identity, national origin, race, religion, sex, and sexual orientation.

Thus, Michelson's Complaint in the First Action alleges that the College's unlawfully discriminatory conduct "includes intentionally biased policies, inequitable allocation of resources, legitimation of illicit classifications and stereotypes, capricious enforcement of rules, and arbitrary double-standards." Complaint, First Action, Dkt. 1, at ¶ 22. According to Michelson, the discrimination begins "even before the first day of classes," *id.* at ¶ 23, and continues following graduation, in the form of bias in the opportunities for postgraduate positions. *Id.* at ¶¶ 29, 38, 53. Michelson further claims that those who express views contrary to such "illicit" classifications and stereotypes pay a price: "being heard defending universal civil rights is social suicide, while being caught on the record with such an opinion is career suicide." *Id.* at ¶ 24.

Michelson's Second Action repeats these themes. With similar breadth, albeit via revised language and reformulated legal theories, Michelson alleges that the College impermissibly has "allocated resources and programming on the basis of ancestry, color, creed, ethnicity, gender identity, national origin, race, religion, sex, and sexual orientation." Complaint, Second Action, Dkt. 1, at ¶ 10. As in the First Action, Michelson alleges that such discrimination begins early, "with different admissions criteria, different financial aid offerings and scholarships, [and] different onboarding and pre-matriculation programs"; that it continues after matriculation, with different programs, events, and activities; and that it persists following graduation, with different career and placement services offered to students and alumni. *Id.* Finally, as before, Michelson alleges that "students who dared to champion *universal* civil rights were subjected to harassment, social isolation, [and] open disparagement" and that it also was "tacitly understood" they "would be blackballed by potential employers." *Id.* ¶ 15. Indeed, Michelson asserts that he, himself, suffered such adverse consequences after filing the First Action, including what he describes as "*ad hominem* attacks and character assassination" as well as an inability "to get even a first-round interview at any major law firm or large company." *Id.* ¶ 16.

Pursuant to the doctrine of claim preclusion, the valid, final judgment that entered against Michelson in the First Action is conclusive and "bars further litigation of all matters that were or should have been adjudicated" in that action. *Massaro v. Walsh*, 71 Mass. App. Ct. 562, 564 (2008). Because, as discussed above, Michelson's First and Second Actions "grow[] out of" the same transactions and events and "seek[] redress for the same wrong," principles of *res judicata* require dismissal of the Second Action. *Charlette*, 59 Mass. App. Ct. at 45; *see also Isaac v. Schwartz*, 706 F.2d 15, 17-18 (1st Cir. 1983) (collecting and discussing Massachusetts cases).

Michelson advances three principal arguments to try to avoid this outcome. The Court finds none of them persuasive.

Michelson asserts, first, that the Appeals Court did not reach or decide the question of whether the summary judgment record contained sufficient evidence to establish the discriminatory nature of the College's programs and practices. Instead, it based its affirmance on the absence of sufficient evidence to prove that Michelson formed a contract with the College containing an anti-discrimination clause. Citing principles of issue preclusion, Michelson contends that by deciding the case on contract formation grounds, the Appeals Court "mooted" the College's dismissal arguments because "issue preclusion does not attach to issues an appellate court declines to consider on appeal." Michelson Br., Dkt. 21, at 4-5.

The problem with this contention is that the College's principal dismissal argument rests on the doctrine of *claim* preclusion. *See* Dkt. 7.1, at 8–12. As discussed above, claim preclusion does not turn on the identity of the specific legal or factual issues actually or necessarily decided. Rather, it asks whether final judgment entered in a prior action between the same parties arising out of the same transactions and events. If yes, the doctrine "bars further litigation of all matters that were or should have been adjudicated in the action" regardless of whether the claimant advances different legal theories in support of his claims. *Heacock*, 402 Mass. at 23.

Here, it is incontrovertible that Michelson's claims in the Second Action arise out of the same allegedly discriminatory College programs and practices that Michelson challenged in the First Action. Although Michelson may have modified the legal theories pursuant to which he seeks redress for the wrongs those programs and practices allegedly caused him, the gravamen of both Actions is the same.

Undeterred, Michelson asserts, second, that there is a "clear temporal delineation" between the events that underpinned his First Action and the events that underpin this Second Action. Michelson Br., Dkt. 7.2, at 6.[6] Specifically, Michelson contends that his First Action involved events that occurred prior to the date on which he filed the Complaint in that action (October 26, 2021) while the Second Action focuses on post-October 26, 2021 events. Because of this "temporal delineation," and due also to the denial of his motion to amend the Complaint in the First Action, Michelson asserts that he never had an opportunity to litigate the "events and occurrences" alleged in the Second Action and thus *res judicata* does not apply. *Id.*

There are at least two deficiencies in this argument. As a threshold matter, the argument disregards the central inquiry of claim preclusion, which asks whether a party's claims derive from the same transaction or series of connected transactions. Here, the Court has answered that question "yes," based on its determination that Michelson's claims in both actions arise out of the same constellation of allegedly discriminatory College programs and practices.

Michelson's argument is also undercut by cases holding that claim preclusion bars not only claims that could have been brought (but weren't) but also claims that could have been added through a timely motion to amend but that were denied as untimely when leave to amend was finally sought. *See, e.g.*, *Korn*, 83 Mass. App. Ct. at 439 ("[W]e see no principled distinction between a claim that could have been brought (but was not), and one that was untimely brought when it could have been added to the suit properly.").

Here, to the extent Michelson's Second Action contains allegations concerning post-October 26, 2021 events, those events appear to have occurred during Michelson's final year in the College's law school, from which he graduated in 2022. *See* Complaint, Second Action, at ¶¶ 16, 18. Notably, however, Michelson did not file his motion seeking leave to amend his Complaint in the First Action until November 2023, a year later.[7] At that point, with the parties' competing summary judgment motions already briefed, argued, and under advisement, the Court (Frison, J.) denied Michelson leave to amend. Given the above chronology, that denial "constitutes *res judicata* on the merits of the claims which were the subject of the proposed amended pleading." *Korn*, 83 Mass. App. Ct. at 437; *see also Johnson v. SCA Disposal Servs. of New England, Inc.*, 931 F.2d 970, 975 (1st Cir. 1991) (applying claim preclusion to bar a claim in a second suit that had been the subject matter of a proposed amendment in the first suit where the proposed amendment was denied as untimely).

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[6] Due to the number of briefs Michelson has filed in this matter, the Court distinguishes between them by reference to the docket number.

[7] Based on record citations provided by the College, it appears that Michelson expressed an *intent* to seek leave to amend at earlier points in time. *See* Dkt. 22, at 2. He did not actually *file* a fully briefed motion for leave to amend with the Court until November 2023.

The same deficiencies undercut Michelson's third and final argument, in which he contends that the Second Action contains a retaliation claim – nowhere alleged in the First Action – that comprises "a distinct cause of action that is separate from his other discrimination claims" and therefore is not precluded. Michelson Br., Dkt. 7.2, at 7-8.

As with Michelson's other post-October 26, 2021 allegations, the specific events underpinning his retaliation claims appear to have occurred during Michelson's final year in law school. *See* Complaint, Second Action, Dkt. 1, at ¶¶ 16, 18. Further, as alleged by Michelson in both his First Action and his Second Action, the fact that he allegedly experienced retaliation as well as the nature of the acts that comprised that retaliation was a known aspect of the discrimination that Michelson claims the College fostered through its programs, practices, and policies. Indeed, Michelson expressly alleged in his opening complaint in the First Action that any person who dared "to champion principles of equal opportunity and non-discrimination" would experience the equivalent of social and career "suicide." *See* Complaint, First Action, Dkt. 1, at ¶ 24. Michelson repeated that allegation in the Second Action. *See* Complaint, Section Action, Dkt. 1, at ¶ 15.

Given the foregoing, the Court concludes that retaliation was part of the constellation of wrongful conduct for which Michelson sought redress in the First Action. The Court further concludes that Michelson could and should have timely sought leave to amend his complaint in the First Action if he wished to plead allegations specific to post-October 26, 2021 events that occurred during his final year in law school. For these reasons, the Court determines that principles of claim preclusion bar Michelson from pursuing retaliation claims that he asserted or could have asserted in the First Action.

In sum, having compared the two Action's allegations and claims, the Court concludes that Michelson seeks redress in this action for the same wrongs, arising out of the same transactions and events, as he did in the First Action – namely, College programs, policies, and practices that Michelson claims discriminate on the basis of ancestry, color, creed, ethnicity, gender identity, national origin, race, religion, sex, and sexual orientation and that punish anyone who dares to question those programs or the philosophy underpinning them.

Because the doctrine of claim preclusion bars Michelson from filing additional actions that seek to litigate matters that "were or should have been litigated" in the First Action, *Jarosz v. Palmer*, 436 Mass. 526, 530 n.3 (2002), the Court **ALLOWS** the College's motion to dismiss Michelson's Complaint.[8]

[8] In light of the Court's reliance on *res judicata* principles as the basis for dismissal, the Court need not and does not address the additional arguments the College has advanced in support of its motion. *See* Dkt. 7.3, at 6-13 (setting forth additional arguments).

CONCLUSION AND ORDER

For the reasons set forth above, the Court **ALLOWS** the College's motion to dismiss and **ORDERS** that Michelson's Complaint be dismissed with prejudice. Judgment shall enter consistent with this Decision and Order.

SO ORDERED.

Michael J. Pineault
Associate Justice of the Superior Court

Dated: March 17, 2026

SUPPLEMENTAL APPENDIX B

2481CV01856 Michelson, Jordan L vs. Trustees of Boston College

- Case Type:
- Administrative Civil Actions
- Case Status:
- Open
- File Date
- 07/16/2024
- DCM Track:
- A - Average
- Initiating Action:
- Civil Rights Act, G.L. c. 12 § 11H
- Status Date:
- 07/16/2024
- Case Judge:
-
- Next Event:
-

All Information | Party | Event | Tickler | Docket | Disposition

Party Information

Michelson, Jordan L
- Plaintiff

Alias

Party Attorney
- Attorney
- Pro Se
- Bar Code
- PROPER
- Address
- Phone Number
-

More Party Information

Trustees of Boston College
- Defendant

Alias

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More Party Information

Events

Date	Session	Location	Type	Event Judge	Result
03/26/2025 03:00 PM	Civil C Rm 610	Courtroom 740	Rule 12 Hearing	Pineault, Hon. Michael	Held - Under advisement
08/06/2025 02:00 PM	Civil C Rm 610	Courtroom 740	Conference to Review Status	White, Hon. Asha Z	Rescheduled
08/21/2025 02:00 PM	Civil C Rm 610	Courtroom 740	Conference to Review Status	White, Hon. Asha Z	Held via Video/Phone
10/16/2025 03:00 PM	Civil C Rm 610	Courtroom 740	Rule 12 Hearing	Hogan, Hon. Maureen	Rescheduled
01/08/2026 03:00 PM	Civil C Rm 610	Courtroom 740	Rule 12 Hearing	Pineault, Hon. Michael	Held as Scheduled

Ticklers

Tickler	Start Date	Due Date	Days Due	Completed Date
Service	07/16/2024	10/15/2024	91	
Answer	07/16/2024	11/13/2024	120	
Rule 12/19/20 Served By	07/16/2024	11/13/2024	120	03/19/2026
Rule 12/19/20 Filed By	07/16/2024	12/13/2024	150	03/19/2026
Rule 12/19/20 Heard By	07/16/2024	01/13/2025	181	03/19/2026
Rule 15 Served By	07/16/2024	09/09/2025	420	03/19/2026
Rule 15 Filed By	07/16/2024	10/09/2025	450	03/19/2026

Tickler	Start Date	Due Date	Days Due	Completed Date
Rule 15 Heard By	07/16/2024	10/09/2025	450	03/19/2026
Discovery	07/16/2024	07/06/2026	720	03/19/2026
Rule 56 Served By	07/16/2024	08/05/2026	750	03/19/2026
Rule 56 Filed By	07/16/2024	09/04/2026	780	03/19/2026
Final Pre-Trial Conference	07/16/2024	01/04/2027	902	03/19/2026
Judgment	07/16/2024	07/16/2027	1095	03/19/2026

Docket Information

Docket Date	Docket Text	File Ref Nbr.	Image Avail.
07/16/2024	Complaint electronically filed.	1	Image
07/16/2024	Civil action cover sheet filed.	2	Image
07/16/2024	Case assigned to: DCM Track A - Average was added on 07/16/2024		
07/16/2024	Demand for jury trial entered.		
07/17/2024	Affidavit of Indigency and request for waiver substitution of state payment of fees and costs filed without Supplemental affidavit On 07/17/2024. Affidavit ALLOWED as to filing fee and service of process. (Bloomer,J.).	3	
08/07/2024	Attorney appearance On this date Meredith Wilson Doty, Esq. added as Private Counsel for Defendant Trustees of Boston College		
08/07/2024	Attorney appearance On this date Alan D Rose, Esq. added as Private Counsel for Defendant Trustees of Boston College		
08/07/2024	Attorney appearance electronically filed.		Image
08/07/2024	Defendant Trustees of Boston College's Motion to Extend Time to Answer or Otherwise Respond to Plaintiff Jordan Michelson's Second Complaint	4	Image
08/13/2024	Endorsement on Motion to Extend Time to Answer or Otherwise Respond to Plaintiff Jordan Michelson's Second Complaint (#4.0): ALLOWED After review and by agreement, motion allowed. Dated 8/9/24 and notices mailed on 8/13/24. Judge: Bloomer, Hon. William F		Image
09/17/2024	Defendant Trustees of Boston College's Motion to Extend time to answer or otherwise respond to Plaintiff, Jordon Michelson's second Complaint	5	Image
09/19/2024	Endorsement on Motion to Extend time to answer or otherwise respond to Plaintiff, Jordon Michelson's second Complaint (#5.0): ALLOWED After review, motion ALLOWED. Dated 9/18/24 and notices mailed on 9/19/24. Judge: Barry-Smith, Hon. Christopher K		Image
09/20/2024	Defendant Trustees of Boston College's Notice of service of motion under Superior Court Rule 9A	6	Image
10/29/2024	Defendant Trustees of Boston College's Motion to dismiss certain counts Plaintiff's Second Complaint or, in the Alternative, to Stay the Second Action Pending Resolution of the Prior Pending Action	7	Image
10/29/2024	Trustees of Boston College's Memorandum of Law in Support of its Motion to Dismiss Plaintiff's Second Complaint or, in the Alternative, to Stay the Second Action Pending Resolution of the Prior Pending Action	7.1	Image
10/29/2024	Opposition to to the Defendant's Motion to Dismiss or, in the Alternative, to Stay the Second Action Pending Resolution of the Prior Action filed by	7.2	Image
10/29/2024	Reply/Sur-reply Applies To: Rose, Esq., Alan D (Attorney) on behalf of Trustees of Boston College (Defendant)	7.3	Image
10/29/2024	Jordan L Michelson's Appendix of Exhibits		Image
10/31/2024	Plaintiff Jordan L Michelson's Objection to the defendant's reply memo	8	Image
11/07/2024	Defendant Trustees of Boston College's Motion for leave to exceed the page limit of their reply memorandum by eight pages.	9	Image
11/07/2024	Objection to the defendant's reply memo. filed by Jordan L Michelson	9.1	Image
11/07/2024	Defendant Trustees of Boston College's Notice of filing pursuant to superior court rule 9A.	9.2	Image
12/17/2024	Endorsement on Motion to Leave to Exceed the Page Limit of Their Reply Memorandum by Eight Pages. (#9.0): ALLOWED 12/17/2024 Upon consideration, motion allowed.		Image
03/26/2025	Matter taken under advisement: Rule 12 Hearing scheduled on: 03/26/2025 03:00 PM Has been: Held - Under advisement Hon. Michael Pineault, Presiding Appeared: Plaintiff Jordan L Michelson Defendant Meredith Wilson Doty, Esq., Private Counsel Alan D Rose, Esq., Private Counsel Staff: Arthur T DeGuglielmo, Assistant Clerk Magistrate		
05/09/2025	Endorsement on Motion to Dismiss Plaintiff's Second Complaint or, in the Alternative, to Stay the Second Action Pending Resolution of the Prior Pending Action (#7.0): ALLOWED 5/8/2025 For the reasons set forth in the Court's separate Decision and Order issued this same date, the Court hereby STAYS this litigation, including its consideration of Defendant's Motion to Dismiss, until the conclusion of Plaintiff's appeal on Appeal No. 2024-P-0714.		Image

Docket Date	Docket Text	File Ref Nbr.	Image Avail.
	Pineault, J.		
05/09/2025	ORDER: DECISION AND ORDER STAYING LITIGATION Which see 3 scanned pages. CONCLUSION AND ORDER: For the foregoing reasons, the Court ORDERS that this action be STAYED pending a decision by the Appeals Court in Case No. 2024-P-0714. The parties shall advise the Court within seven days of the Appeals Court's issuance of its decision. The Court will then schedule a status conference to address the appropriate next steps in this action. SO ORDERED. Dated: May 8, 2025 Pineault, J.	10	Image
06/12/2025	Plaintiff Jordan L Michelson's Notice of Decision	11	Image
06/13/2025	Defendant Trustees of Boston College's Notice of Appeals Court Decision	12	Image
06/30/2025	Defendant Trustees of Boston College's Assented to Motion to Continue the Status Conference until after August 11, 2025	13	Image
06/30/2025	Defendant Trustees of Boston College's Notice of Proceedings in the Appeals Court and Supreme Judicial Court	14	Image
07/07/2025	Endorsement on Motion to Continue the Status Conference Until After August 11, 2025 (#13.0): ALLOWED 2025 July 7 After review, motion allowed. Status Conference continued to August 21, 2025 @ 2:00pm via Zoom. Howe, J.		Image
07/07/2025	Event Result:: Conference to Review Status scheduled on: 08/06/2025 02:00 PM Has been: Rescheduled For the following reason: Request of Defendant Hon. Janice W Howe, Presiding Staff: Arthur T DeGuglielmo, Assistant Clerk Magistrate		
08/20/2025	Conference Memorandum Pre-Status Conference Submission Applies To: Trustees of Boston College (Defendant)	15	Image
08/20/2025	Plaintiff Jordan L Michelson's Submission of Pre-Status Conference Submission	16	Image
08/21/2025	Event Result:: Conference to Review Status scheduled on: 08/21/2025 02:00 PM Has been: Held via Video/Phone Hon. Asha Z White, Presiding Appeared: Plaintiff Jordan L Michelson Defendant Meredith Wilson Doty, Esq., Private Counsel Alan D Rose, Esq., Private Counsel Caroline Schuckel, Esq. Staff: Arthur T DeGuglielmo, Assistant Clerk Magistrate		
08/22/2025	Endorsement on Submission of Pre-Status Conference Submission (#15.0): Other action taken The Court informed the parties that the Court will have a hearing on the defendant's motion to dismiss on 10-16-20, regardless of the status of the FAR. Discovery is stayed until the Court decides the motion to dismiss. White, J. 8-21-25		Image
10/03/2025	Plaintiff Jordan L Michelson's Assented to Motion for a Continuance of the Scheduled October 16, 2025, Hearing	17	Image
10/08/2025	Endorsement on Motion for a Continuance of the Scheduled October 16, 2025, Hearing (#17.0): ALLOWED 2025 October 7 After review, motion allowed, but hearing continued to January 8, 2026 @ 3:00pm in Room 740. Sarrouf, J.		Image
10/08/2025	Event Result:: Rule 12 Hearing scheduled on: 10/16/2025 03:00 PM Has been: Rescheduled For the following reason: Joint request of parties Hon. Maureen Hogan, Presiding Staff: Arthur T DeGuglielmo, Assistant Clerk Magistrate		
01/06/2026	Conference Memorandum Defendant Trustees of Boston College's pre-hearing report.	18	Image
01/07/2026	Conference Memorandum The pro se plaintiff's pre-hearing report.	19	Image

Docket Date	Docket Text	File Ref Nbr.	Image Avail.
01/08/2026	Event Result:: Rule 12 Hearing scheduled on: 01/08/2026 03:00 PM Has been: Held as Scheduled Comments: Further briefs not exceeding 10 pages due. Plaintiff- 1/29 Defendant - 2/12 Hon. Michael Pineault, Presiding Appeared: Plaintiff Jordan L Michelson Defendant Meredith Wilson Doty, Esq., Private Counsel Alan D Rose, Esq., Private Counsel Staff: Arthur T DeGuglielmo, Assistant Clerk Magistrate		
01/16/2026	Self-Represented Plaintiff Jordan L Michelson's Notice of Decision	20	Image
01/28/2026	Self-Represented Plaintiff Jordan L Michelson's Submission of Brief Brief On The Issue of Issue Preclusion	21	Image
02/13/2026	Plaintiff Trustees of Boston College's Submission of Brief in Further Support of Its Motion to Dismiss	22	
03/18/2026	Endorsement on Motion of Defendant Trustees of Boston College to Dismiss Plaintiff's Second Complaint or, in the Alternative, to Stay the Second Action Pending Resolution of the Prior Pending Action (#7.0): ALLOWED 3/17/2026 After hearing, Defendant's motion to dismiss is ALLOWED for the reasons set forth in the Decision and Order the Court has issued this same date. Pineault, J.		Image
03/18/2026	ORDER: DECISION AND ORDER ON DEFENDANT'S MOTION TO DISMISS PLAINTIFF'S SECOND COMPLAINT [DKT. 7] Which see 9 scanned pages. CONCLUSION AND ORDER: For the reasons set forth above, the Court ALLOWS the College's motion to dismiss and ORDERS that Michelson's Complaint be dismissed with prejudice. Judgment shall enter consistent with this Decision and Order. SO ORDERED. Dated: March 17, 2026 Pineault, J.	23	Image
03/19/2026	JUDGMENT on Defendants, Trustees of Boston College 12(b) motion to dismiss against Plaintiff(s) Jordan L Michelson. It is ORDERED and ADJUDGED: That the plaintiff Jordan Michelson's complaint be and hereby is dismissed. Judge: Pineault, Hon. Michael	24	Image
04/07/2026	Plaintiff Jordan L Michelson's Notice to Court	25	Image
04/22/2026	Plaintiff Jordan L Michelson's Motion for stay of judgment and motion for reconsideration in the event of reversal by Supreme Court.	26	Image
04/22/2026	Opposition to #26 motion. filed by Trustees of Boston College	26.1	Image
04/22/2026	Reply/Sur-reply Plaintiff's reply to defendant Trustees of Boston College's opposition to #26 motion.	26.2	Image
05/01/2026	Endorsement on Motion for Stay of Judgment and Motion for Reconsideration in the Event of Reversal by Supreme Court (#26.0): DENIED 4/30/2026 After review, plaintiff's motion for stay is DENIED. As a matter of both Massachusetts and Federal law, " a trial court judgment is final and has preclusive effect regardless of the fact that it is on appeal." O'Brien v. Hanover Ins. Co, 427 Mass. 194, 201 (1998). Plaintiff's motion for reconsideration is also DENIED. Plaintiff has identified no ground that warrants reconsideration under Superior Court Rule 9D or governing Massachusetts authority. Pineault, J.		Image

Case Disposition

Disposition	Date	Case Judge
Judgment after Finding on Motion	03/19/2026	

SUPPLEMENTAL APPENDIX C

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APPEALS COURT
Full Court Panel Case
Case Docket

JORDAN L MICHELSON vs. TRUSTEES OF BOSTON COLLEGE
2024-P-0714

CASE HEADER

Case Status	Closed: Rescript issued	**Status Date**	01/15/2026
Nature	Contract dispute	**Entry Date**	06/20/2024
Appellant	Plaintiff	**Case Type**	Civil
Brief Status		**Brief Due**	
Arg/Submitted	04/15/2025	**Decision Date**	06/06/2025
Panel	Meade, Hodgens, Toone, JJ.	**Citation**	105 Mass. App. Ct. 1132
Lower Court	Middlesex Superior Court	**TC Number**	2181CV02940
Lower Ct Judge	Shannon Frison, J.	**TC Entry Date**	10/26/2021
SJ Number		**FAR Number**	FAR-30416
SJC Number			

INVOLVED PARTY	ATTORNEY APPEARANCE
Jordan L Michelson Pro Se Plaintiff/Appellant Blue br, app & reply br filed 4 Enls, 23 Days	
Trustees of Boston College Defendant/Appellee Red brief filed 3 Enls, 53 Days	Alan D. Rose, Sr., Esquire Meredith Wilson Doty, Esquire

DOCKET ENTRIES

Entry Date	Paper	Entry Text
06/20/2024	#1	Lower Court Assembly of the Record Package
06/20/2024		Notice of entry sent.
06/20/2024	#2	Civil Appeal Entry Form filed by Jordan L Michelson.
06/20/2024	#3	Certificate of Service filed by Jordan L Michelson.
06/20/2024	#4	Affidavit of indigency (IMPOUNDED) filed for Jordan L Michelson by Attorney .
06/20/2024	#5	Motion to Waive entry fee filed by Jordan L Michelson. The Motion to Waive entry fee is allowed conditionally, subject to review by the single justice. This appeal is now

		docketed for purposes of Mass. R. A. P. 19(a), which requires the appellant to serve and file the appeals brief and record appendix within the next forty days. Notice Sent.
06/24/2024		RE#5 ALLOWED FORTHWITH. The appellant's Affidavit of Indigency appears regular and complete on its face, and indicates that the appellant is indigent. The court hereby allows the Motion to Waive entry fee. *Notice sent.
07/01/2024		DAR-29886 opened on DAR APPLICATION filed by Jordan L. Michelson.
07/29/2024	#6	Motion of Appellant to extend date for filing brief and appendix filed by Jordan L Michelson.
07/29/2024	#7	RESPONSE to Paper #6, filed for Trustees of Boston College by Attorney Alan Rose.
07/30/2024		RE#6: Allowed to 08/05/2024. Notice sent.
07/30/2024		RE#7: Noted that appellee assents to appellant's enlargement request. *Notice.
08/06/2024		Notice of rejection of brief/appendix of Jordan L Michelson as noncompliant for the reasons indicated on the checklist: 3 (Appendix missing Cover page and Table of Contents with page references), 11 (Scanned documents in Appendix), 17(Missing), 18(Missing), 22(Missing), 25 (Missing), 26(Missing), Other: See also #30 when resubmitting conforming appendix. Accordingly, on or before 08/16/2024, you must correct the above-listed nonconformities and submit a conforming brief and appendix. *Notice sent.
08/19/2024		Notice of rejection of brief/appendix of Jordan L Michelson as noncompliant for the reasons indicated on the checklist: 25. Accordingly, on or before 08/22/2024, you must correct the above-listed nonconformities and submit a conforming brief and/or appendix. *Notice sent.
08/20/2024	#8	Letter re: 08/19/24 Notice of Rejection filed for Trustees of Boston College by Attorney Alan Rose.
08/20/2024	#9	RESPONSE to Paper #8, filed by Jordan L Michelson.
08/22/2024	#10	Appellant brief filed by Jordan L Michelson.
08/22/2024	#11	Appendix filed by Jordan L Michelson.
08/23/2024		RE#8 & #9: Referred to the panel designated to decide this appeal. *Notice
09/13/2024	#12	MOTION of Appellee to extend brief due date filed for Trustees of Boston College by Attorney Alan Rose.
09/18/2024		RE#12: Allowed to 10/23/24. Notice
10/02/2024		DAR DENIED (on 10/01/2024).
10/18/2024	#13	MOTION of Appellee to extend brief due date filed for Trustees of Boston College by Attorney Alan Rose.
10/21/2024		RE#13: Allowed to 11/13/2024. Notice sent.
11/13/2024	#14	MOTION of Appellee to extend brief due date filed for Trustees of Boston College by Attorney Alan Rose.
11/14/2024		RE#14: Allowed to 11/15/2024. Notice sent.
11/15/2024	#15	Appellee brief filed for Trustees of Boston College by Attorney Alan Rose.
11/25/2024	#16	Motion of Appellant to extend date for filing Reply Brief filed by Jordan L Michelson.
11/26/2024		RE#16: Allowed to 12/13/24. *Notice.
12/12/2024	#17	Motion of Appellant to extend date for filing Reply Brief filed by Jordan L Michelson.

12/17/2024		RE#17: Allowed to 12/20/24. *Notice.
12/20/2024	#18	Reply brief filed by Jordan L Michelson.
04/15/2025		Under consideration by Panel. (Meade, J., Hodgens, J., Toone, J.).
06/06/2025	#19	Decision: Rule 23.0 Judgment affirmed. (Meade, Hodgens, Toone, JJ.). *Notice.
06/20/2025	#20	Motion for Reconsideration or modification of decision filed by Jordan L Michelson.
06/24/2025		FAR-30416 opened on MOTION to file FAR application late filed by Jordan L Michelson.
10/23/2025		RE#20: After consideration, the motion filed pursuant to Rule 27 is denied. (Meade, Hodgens, Toone, JJ.). *Notice.
10/29/2025	#21	Motion for Reconsideration or modification of decision filed by Jordan L Michelson.
10/29/2025		RE#21: Denied. (Meade, Hodgens, Toone, JJ.) *Notice.
11/04/2025	#22	RESPONSE filed by Jordan L Michelson.
11/05/2025		RE#22: Denied. (Meade, Hodgens, Toone, JJ.) *Notice.
01/15/2026		FAR DENIED (on 01/15/2026).
01/15/2026		RESCRIPT to Trial Court.
03/09/2026	#23	Copy of notice regarding writ of certiorari received from US Supreme Court.
09/22/2026	#24	Letter RE: Writ of Certiorari from US Supreme Court

As of 09/23/2026 11:15am

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SUPPLEMENTAL APPENDIX D

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SUPREME JUDICIAL COURT
for the Commonwealth
Case Docket

JORDAN L. MICHELSON vs. TRUSTEES OF BOSTON COLLEGE
DAR-29886

CASE HEADER

Case Status	DAR denied	**Status Date**	10/01/2024
Nature	Contract dispute	**Entry Date**	07/01/2024
Appeals Ct Number	2024-P-0714	**Response Date**	07/15/2024
Appellant	Plaintiff	**Applicant**	Plaintiff
Citation		**Case Type**	Civil
Full Ct Number		**TC Number**	2181CV02940
Lower Court		**Lower Ct Judge**	

INVOLVED PARTY	ATTORNEY APPEARANCE
Jordan L. Michelson Pro Se Plaintiff/Appellant	
Trustees of Boston College Defendant/Appellee	Alan D. Rose, Sr., Esquire Meredith Wilson Doty, Esquire

DOCKET ENTRIES

Entry Date	Paper	Entry Text
07/01/2024		Docket opened.
07/01/2024	#1	DAR APPLICATION filed by Jordan L. Michelson.
07/15/2024	#2	Opposition to DAR application filed for Trustees of Boston College by Attorney Alan Rose.
10/01/2024	#3	DENIAL of DAR application.

As of 10/01/2024 10:20am

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SUPPLEMENTAL APPENDIX E

2181CV02940 Michelson, Jordan L vs. Trustees of Boston College Doing Business as Boston College Law School

- Case Type:
- Equitable Remedies
- Case Status:
- Open
- File Date
- 10/26/2021
- DCM Track:
- F - Fast Track
- Initiating Action:
- Injunction
- Status Date:
- 10/26/2021
- Case Judge:
-
- Next Event:
-

All Information | Party | Event | Tickler | Docket | Disposition

Docket Information

Docket Date	Docket Text	File Ref Nbr.	Image Avail.
10/26/2021	Case assigned to: DCM Track F - Fast Track was added on 10/26/2021		Image
10/26/2021	Civil action cover sheet filed.	2	Image
10/26/2021	Complaint electronically filed.	1	Image
10/26/2021	Affidavit of Indigency and request for waiver substitution of state payment of fees and costs filed without Supplemental affidavit ALLOWED as to filing and service fees (Lu, J.)	3	Image
10/28/2021	Endorsement on Application (#3.0): ALLOWED Dated: 10/27/21, The Application is ALLOWED with respect to the Filing fee and Service. Copy mailed on 10/28/21.		Image
11/11/2021	Plaintiff Jordan L Michelson's Motion for Appointment of Process Server of The Constables Office, located at 675 VFW Pkway#141, Chestnut Hill, MA 02467	4	Image
11/12/2021	Endorsement on Motion for Appointment of Process Server (#4.0): ALLOWED Dated: November 12, 2021 and copy mailed Judge: Buxton, Hon. Kristen		Image
12/02/2021	Plaintiff Jordan L Michelson's Motion for Declaratory Judgement	5	Image
12/08/2021	Plaintiff Jordan L Michelson's Motion for Default Judgment	6	Image
12/10/2021	Attorney appearance On this date Alan D Rose, Esq. added for Defendant Trustees of Boston College Doing Business as Boston College Law School		Image
12/10/2021	Attorney appearance On this date Bernard Flanagan, Esq. added for Defendant Trustees of Boston College Doing Business as Boston College Law School		Image
12/10/2021	Defendant Trustees of Boston College Doing Business as Boston College Law School's Motion to dismiss	7	Image
12/10/2021	Trustees of Boston College Doing Business as Boston College Law School's Memorandum in support of its Motion to Dismiss	7.1	Image
12/10/2021	Jordan L Michelson's Memorandum Opposing Defendant's Motion to Dismiss and Supporting Cross-Motions	7.2	Image
12/10/2021	Reply/Sur-reply Memorandum in Further Support of its Motion to Dismiss Applies To: Trustees of Boston College Doing Business as Boston College Law School (Defendant)	7.3	Image
12/10/2021	Opposition to Plaintiff's Motion for Declaratory Judgment filed by Trustees of Boston College Doing Business as Boston College Law School	7.4	Image
12/10/2021	Opposition to Plaintiff's Motion for Preliminary Injunction filed by Trustees of Boston College Doing Business as Boston College Law School	7.5	Image
12/10/2021	Opposition to Plaintuff's Motion for Damages Under General Laws c. 231, S6F filed by Trustees of Boston College Doing Business as Boston College Law School	7.6	Image
12/10/2021	Affidavit of Compliance with Superior Court Rule 9A Applies To: Trustees of Boston College Doing Business as Boston College Law School (Defendant)	7.7	Image
12/10/2021	Defendant Trustees of Boston College Doing Business as Boston College Law School's Certificate of Compliance Pursuant to Superior Court Rule 9C	7.8	Image
12/10/2021	Opposition to Plaintiff's Unserved Motion of the Plaintiff Pro Se and Plaintiff's Unserved Motion for Default Order (Verified) filed by Trustees of Boston College Doing Business as Boston College Law School	7.9	Image
02/01/2022	The following form was generated: Notice to Appear Sent On: 02/01/2022 09:31:45		

Docket Date	Docket Text	File Ref Nbr.	Image Avail.
02/03/2022	Plaintiff Jordan L Michelson's Motion for expedited relief.	8	Image
02/11/2022	Opposition to motion of the plaintiff pro se for expedited relief. filed by Trustees of Boston College Doing Business as Boston College Law School	9	Image
02/16/2022	Endorsement on Motion for Expedited Relief (#8.0): DENIED without prejudice. Plaintiff must comply with Superior Court rule 9A which sets out procedures for filing & serving motions. Dated: February 12, 2022 Judge: Budreau, Hon. James		Image
04/21/2022	The following form was generated: Notice to Appear Sent On: 04/21/2022 11:47:56		
04/21/2022	Event Result:: Rule 12 Hearing scheduled on: 05/03/2022 02:00 PM Has been: Rescheduled For the following reason: By Court prior to date Hon. Douglas H Wilkins, Presiding Staff: Maria Pantos, Assistant Clerk Magistrate		
04/26/2022	Event Result:: Rule 12 Hearing scheduled on: 05/02/2022 03:00 PM Has been: Rescheduled For the following reason: By Court prior to date Hon. Douglas H Wilkins, Presiding Staff: Maria Pantos, Assistant Clerk Magistrate		
04/26/2022	The following form was generated: Notice to Appear Sent On: 04/26/2022 16:14:42		
05/10/2022	Event Result:: Rule 12 Hearing scheduled on: 05/10/2022 02:00 PM Has been: Held as Scheduled under advisement Hon. Douglas H Wilkins, Presiding Staff: Maria Pantos, Assistant Clerk Magistrate		
05/10/2022	Matter taken under advisement: Rule 12 Hearing scheduled on: 05/10/2022 02:00 PM Has been: Held - Under advisement Hon. Douglas H Wilkins, Presiding Staff: Maria Pantos, Assistant Clerk Magistrate		
05/17/2022	Endorsement on Motion for Declaratory Judgment (#5.0): DENIED After review, denied. Defendant is not in default and has adequately responded to the Complaint. Dated: May 16, 2022 and notices mailed 5/17/22 Judge: Wilkins, Hon. Douglas H		Image
05/17/2022	Endorsement on Motion for Default Judgment (#6.0): DENIED Defendant has appeared and answered. Dated: May 16, 2022 and notices mailed 5/17/22 Judge: Wilkins, Hon. Douglas H		Image
05/17/2022	Endorsement on Motion to dismiss (#7.0): Other action taken After hearing, DENIED as to Count I, ALLOWED as to Counts II, III and IV. The complaint adequately alleges the existence of a contact between the parties, the inclusion of a non discrimination promise and actions in breach of the promise. See Complaint, Pars.29, 52-52, for example, there are no facts alleging "threats, intimidation or coercion" as required for a MCRA Claim. See, eg. Glavsky v.Roche Bros., 469 Mass. 752(2014). Failure to file a MCAD Complaint is a jurisdictional defect and no allegations establish any of the rare exceptions to exhaustion. See Everett v.357 Corp., 453 Mass. 585, 600(2009). The Cross Motions are DENIED for reasons endorsed on the corresponding oppositions (P#7.4, 7.5, 7.6) and 7.9. Dated: May 16, 2022 and notices mailed 5/17/22 Judge: Wilkins, Hon. Douglas H		Image
05/17/2022	Endorsement on Objection to Plaintiff's Motion for Declaratory Judgment (#7.4): Other action taken Motion for Declaratory Judgment Denied. Plaintiff has not shown any exception to the exhaustion requirement in particular, there is no showing of futility. Exhaustion is a jurisdictional requirement, Everett v.357 Corp. 453 Mass.588, 600 (2009) A Declaratory judgment action does not excuse exhaustion, and this court therefore lacks jurisdiction. Moreover, the exhaustion issue is part of this lawsuit's dispute on the merits, precluding any showing that, absent a declaration, the controversy will mentally lead to litigation. Accordingly, there is no "actual controversy" under G.L.c.231A. Dated: May 16, 2022 and notices mailed 5/17/22 Judge: Wilkins, Hon. Douglas H		Image
05/17/2022	Endorsement on Objection to Plaintiff's Motion for Preliminary Injunction (#7.5): Other action taken The Motion for Preliminary Injunction is DENIED. Plaintiff vague contentions do not establish a likelihood of success on the merits, nor has he shown a likelihood of imminent reparable harm, particularly where his imminent graduation likely shows that any harmful action is in the past, as far as BC Law School's acts are concerned. Dated: May 16, 2022 and notices mailed 5/17/22 Judge: Wilkins, Hon. Douglas H		Image
05/17/2022	Endorsement on Objection to Plaintiff's Motion for Damages Under G.L.c.231, §6F (#7.6): Other action taken After hearing, DENIED. There is no "finding, verdict, decision, award, order or judgment". Moreover, not all or substantially all" of the Motion to Dismiss was "wholly insubstantial, frivolous, and not advanced in good faith", indeed, the Motion was successful on three counts, even on Count I, the Motion had plausible merit, as the complaint is exceedingly general, argumentative, vague and evasive, as to Plaintiff's actual and specific contentions.. Even Count I came very close to dismissal for failure to plead faces plausibly showing entitlement to relief. Dated: May 16, 2022 and notices mailed 5/17/22 Judge: Wilkins, Hon. Douglas H		Image
05/17/2022	Endorsement on Response to Plaintiff's unserved Motion of the Plaintiff Pro Se and Plaintiff's unserved Motion for Default Order (#7.9): Other action taken No default may enter, as the defendant has appeared, defended and responded to the complaint by Motion to Dismiss. Dated: May 16, 2022 and notices mailed 5/17/22 Judge: Wilkins, Hon. Douglas H		Image
05/27/2022	Answer to original complaint and Jury demand Applies To: Trustees of Boston College Doing Business as Boston College Law School (Defendant)	10	Image

Docket Date	Docket Text	File Ref Nbr.	Image Avail.
08/04/2022	Plaintiff(s) Jordan L Michelson motion filed to compel defendant to fully answer interrogatories nos. 2, 3, and 4 of plaintiff's first set of interrogatories to defendant	11	Image
08/04/2022	Exhibits/Appendix Exhibit A		Image
08/04/2022	Affidavit of Jordan L. Michelson in support of his Motion to Compel Defendant, Trustees of Boston College D.B.A. Boston College Law School, to Answer Plaintiff's First Set of Interrogatories in Full	11.1	Image
08/04/2022	Affidavit of Indigency and request for waiver substitution of state payment of fees and costs filed without Supplemental affidavit Applies To: Michelson, Jordan L (Plaintiff)	12	
08/12/2022	Endorsement on Motion to Compel (#11.0): No Action Taken at this time by the court. Plaintiff may re-file Motion complying with Sup. Ct. Rule 9A. Dated: August 11, 2022 and notices mailed 8/12/22 Judge: Frison, Hon. Shannon		Image
08/19/2022	Plaintiff(s) Jordan L Michelson motion filed to compel	13	Image
08/19/2022	Exhibits/Appendix (Exhibit A)		Image
08/19/2022	Exhibits/Appendix (Exhibit B)		Image
08/19/2022	Opposition to Motion to Compel filed by Trustees of Boston College Doing Business as Boston College Law School	13.1	Image
08/19/2022	Reply/Sur-reply to Defendant's Opposition to Discovery Motions	13.2	Image
08/19/2022	Affidavit of Compliance with Superior Court Rule 9A Applies To: Pro Se (Attorney) on behalf of Michelson, Jordan L (Plaintiff)	13.3	Image
08/30/2022	The following form was generated: Notice to Appear Sent On: 08/30/2022 10:11:57		
08/30/2022	Endorsement on Motion to Compel (#13.0): Other action taken ALLOWED IN PART. Defendant shall supplement its responses to Interrogatories 2,3, and 4. DENIED as to costs and expenses. Dated: August 30, 2022 and notices mailed Judge: Frison, Hon. Shannon		Image
09/06/2022	Event Result:: Motion Hearing scheduled on: 09/06/2022 02:00 PM Has been: Held as Scheduled For the following reason: Plaintiff/Petitioner failed to appear Hon. Shannon Frison, Presiding Staff: Maria Pantos, Assistant Clerk Magistrate		
10/03/2022	Plaintiff, Defendant Jordan L Michelson, Trustees of Boston College Doing Business as Boston College Law School's Joint Motion to Extend Discovery Deadline and Tracking Order Deadlines	14	Image
10/04/2022	Event Result:: Hearing scheduled on: 10/04/2022 02:00 PM Has been: Held as Scheduled Comments: No action taken Hon. Shannon Frison, Presiding Staff: Maria Pantos, Assistant Clerk Magistrate		
10/11/2022	Endorsement on Motion to extend discovery deadline and tracking order deadlines (#14.0): ALLOWED Motion allowed. Discovery extended to 5-22-2023, Rule 56 filing deadline to 7-21-2023. Dated 10/7/22. Notices mailed 10/11/22 Judge: Frison, Hon. Shannon		Image
12/29/2022	Plaintiff Jordan L Michelson's Motion for Summary Judgment on the Issue of Breach	15	Image
12/29/2022	Jordan L Michelson's Memorandum in support of Motion for Summary Judgment on the Issue of Breach	15.1	Image
12/29/2022	Plaintiff, Defendant Jordan L Michelson, Trustees of Boston College Doing Business as Boston College Law School's Statement of Facts Pursuant to Superior Court Rule 9A(b)(5) (Consolidated)	15.2	Image
12/29/2022	Plaintiff's Affidavit of Compliance with Superior Court Rule 9A Applies To: Pro Se (Attorney) on behalf of Michelson, Jordan L (Plaintiff)	15.3	Image
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05/09/2024	Court received NOTICE OF FAILURE TO ENTER APPEAL TIMELY: related to appeal NOTICE: On March 5, 2024, the Middlesex Superior Court transmitted a notice of assembly to the Appeals Court in the above-referenced case, pursuant to Mass. R.A.P. 9(e). The Appeals Court received the notice on March 5, 2024. Pursuant to Rule 10(a)(1) of the Massachusetts Rules of Appellate Procedure, each appellant has 14 days from receipt of the notice of assembly to docket the appeal in the Appeals Court by paying the required entry fee or moving for waiver of the fee on grounds of indigency. As of today's date, May 7, 2024, no appellant has entered the appeal pursuant to Mass. R.A.P. 10(a)(1). This notice is sent for informational purposes only and does not constitute a dismissal of the appeal. If an appellant or cross-appellant in this matter wishes to pursue the appeal, the party must file a motion to the single justice for leave to docket the appeal late. Otherwise, an appellee may file a motion to dismiss the appeal in the trial court. See Mass. R.A.P. 10(c).	32	
05/09/2024	Plaintiff Jordan L Michelson's Petition to enlarge the time for docketing the appeal or permit the appeal to be docketed out of time	33	Image
05/13/2024	Endorsement on Petition to Enlarge the Time for Docketing The Appeal Or Permit the Appeal to Be Docketed Out of Time (#33.0): ALLOWED for good cause. (Budreau, J.) Judge: Budreau, Hon. James		
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06/24/2024	Notice of docket entry received from Appeals Court JORDAN L MICHELSON vs. TRUSTEES OF BOSTON COLLEGE NOTICE OF ENTRY OF APPEAL In accordance with Massachusetts Rule of Appellate Procedure 10(a)(3), please note that the above-referenced case was entered in this Court on June 20, 2024.	36	Image

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, ss. SUPERIOR COURT DEPARTMENT

JORDAN LEWIS MICHELSON,

Plaintiff,

v.

TRUSTEES OF BOSTON COLLEGE, *d.b.a.* BOSTON COLLEGE LAW SCHOOL,

Defendant.

RECEIVED
10/26/2021 HG

Civil Action No. _____

COMPLAINT OF THE PLAINTIFF *PRO SE*

STATEMENT OF THE CASE

Statement of Purpose

I'm suing my law school for $556 million dollars. It's not personal. My professors taught us that the legal system depends on zealous litigants who are willing to assert their rights in court. Well, here I am, doing precisely that. My hope is that this suit will force the law school and the greater legal community to reckon with their own prejudices and to repudiate the absurdity of anti-discrimination laws that institutional decision-makers can capriciously disregard.

Central Legal Question

At the center of this suit is a question: is it reasonable to expect that an institution of legal education will treat its students as if they have civil rights? Over the past 50 years, equal rights advocates have championed the notion of universal civil rights. Perhaps the most hard-won of these civil rights was the right to equal opportunity in education, employment, and other areas of public life. To have a right to equal opportunity is to have a recourse against discrimination, particularly when that discrimination stems from stereotypes or prejudice. The principle is simple: subjecting a person to discrimination because of *what* they are, rather than judging that person by *who* they are, is repugnant to human dignity and civic equality.

Civil rights advocates typically identify two types of discrimination: *de jure* and *de facto*. *De jure* discrimination occurs when a law or policy is discriminatory on its face. *De facto* discrimination occurs when a facially nondiscriminatory law or policy results in differential treatment in fact. Of the two, *de jure* discrimination is considered a more pernicious attack upon civil rights because it is a blunt repudiation of the constitutional promise of equal protection of the laws. As the Massachusetts Supreme Judicial Court has observed:

> The point of the equal protection guarantee is not to ensure that facially discriminatory laws yield roughly equivalent outcomes or that, in singling out disadvantaged classes, the State subjects them to only mild inequality. Rather, the right to equal protection recognizes that **the act of classification is itself invidious** [and is unconstitutional by default.]

Finch v. Cmmw. Health Ins. Connector Auth., 459 Mass. 655, 676 (2011) (opinion of the Massachusetts Supreme Judicial Court) (emphasis added).

The emphasis that Boston College Law School places on a person's color, national origin, sex, gender identity, and sexual orientation is beyond the pale. As this complaint outlines, the institution engages in *de jure* discrimination because it promulgates policies that are facially biased, champions goals that are explicitly prejudicial, and legitimizes the primacy of stereotypes. In so doing, the institution teaches its students – the next generation of lawyers, lawmakers, judges, and clerks – that "justice" is not derived from fidelity to law, that "civil rights" are not for everyone, and that "equality" is just a rhetorical device. The fact that the school goes on to actively use these protected classifications to allocate benefits and burdens is *de facto* discrimination and is invidious in its own right; but even just the act of classifying students into demographic buckets with differing moral deserts is a *prima facie* violation of civil rights, common decency, and the school's obligations as a matter of law.

Summary of the Suit

Defendant holds itself out as equal opportunity institutions that do not countenance or engage in discrimination on the basis of color, national origin, sex, gender, or sexual orientation. At least, that was Plaintiff's impression when he accepted an offer of admission. However, notwithstanding Plaintiff's manifestly reasonable expectations and Defendant's clearly articulated obligations under, *inter alia*, the American Bar Association's Standards and Rules and Procedures for Approval of Law Schools, Article I of the Massachusetts Constitution (as amended by Article CVI), Massachusetts General Laws 151B § 4, the Civil Rights Act of 1964, and Title IX, Defendant

engages in *prima facie* discrimination on the basis of, *inter alia*, color, national origin, sex, gender, and sexual orientation. In light of this willful breach of contract, Plaintiff asks this Court for compensatory damages, a declaratory judgment affirming Plaintiff's rights, specific performance of ABA Standards 205(b) and 205(d), and an injunction barring Defendant from pursuing ABA reaccreditation until it makes a good-faith effort to abide by ABA Standards 205(b) and 205(d).

Alternatively, Plaintiff contemplates civil claims under the Massachusetts Civil Rights Act (M.G.L. c. 12 § 11I) for coercive interference with Plaintiff's fundamental civil right to equal protection of the laws and under the Commonwealth's antidiscrimination statute (M.G.L. 151B). The Massachusetts Civil Rights Act permits Plaintiff to pursue compensatory damages, injunctive and equitable relief, and civil penalties of up to $5,000 from each named Defendant for every instance of coercive interference. M.G.L. 151B § 4 makes it illegal "to print or circulate or cause to be printed or circulated any statement, advertisement or publication… which expresses, directly or indirectly, any limitation, specification or discrimination as to the race, color, religious creed, national origin, sex, gender identity, sexual orientation" of applicants, while § 9 gives a civil remedy that includes preliminary injunctive relief, actual damages, and punitive damages.

Plaintiff prays for declaratory judgment, nominal damages, statutory damages, and compensatory damages in the amount of $6 million. Plaintiff also contemplates punitive damages of $550 million (disgorgement of $375 million in Federal funding plus an estimated $175 million in nonprofit-status tax exemptions) or such other amount as a jury deems sufficient to reprimand a nationally recognized law school for shameless misconduct evincing a reckless disregard for fundamental rights.

PARTIES

1. Defendant, Trustees of Boston College, is a 501(c)(3) Nonprofit Organization organized under the laws of the Commonwealth of Massachusetts, with its principal place of business at 140 Commonwealth Avenue, Suite 440, Chestnut Hill, MA, 02467, in Middlesex County, Massachusetts.

2. Plaintiff, Mr. Michelson, is an individual residing at 46 Orkney Rd, Brighton, MA 02135. Plaintiff Michelson is a student at Defendant's law school, Boston College Law School. For whatever it is worth, Mr. Michelson is a member of a discrete, insular, and historically persecuted ethnic minority.

JURISDICTION & VENUE

3. The Court has jurisdiction over Defendant, Trustees of Boston College, pursuant to M.G.L. c. 223A, § 2 on the basis that Defendant has its principal place of business in Massachusetts and is organized under the laws of Massachusetts.

4. Venue, pursuant to M.G.L. c. 223, § 1, is proper in Middlesex County, Massachusetts, which is the principal place of business of Trustees of Boston College.

RELEVANT FACTS

5. On or about March 15, 2019, Plaintiff, Mr. Michelson, applied to Defendant's law school, Boston College Law School. On March 29, 2019, Defendant offered Plaintiff a seat in its Class of 2022. In August 2019, Plaintiff accepted Defendant's offer of admittance and enrolled.

6. As of this filing, Plaintiff is a third-year law student enrolled in classes at Boston College Law School and is on track to graduate in the Spring of 2022. He is in good academic standing, has been an active member of the school community, and has formed many positive relationships with peers, professors, and administrators notwithstanding the institutional misconduct recounted herein.

7. Upon information and belief, Defendant is beholden to the laws of the Commonwealth of Massachusetts, including the 106th Article of Amendment to the Massachusetts Constitution. The 106th Article of Amendment added the following language to Article I of the Commonwealth's founding document: "Equality under the law shall not be denied or abridged because of sex, race, color, creed or national origin."

8. Upon information and belief, Defendant university accepts over $125 million per year in Federal funding. Defendant is thus legally obligated to abide by Federal civil rights laws including: the Civil Rights Act of 1964, 42 U.S.C. §2000d et seq. ("No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance"); Title IX of the Education Amendments of 1972, 20 U.S.C. §1681 ("No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance"); and Executive Order 13988 ("All persons should receive equal treatment under the law, no matter their gender identity or sexual orientation").

9. Upon information and belief, Defendant university is classified by the IRS as a "charitable" organization and enjoys 501(c)(3) tax-exempt status. But for this classification, Defendant would be liable for state and federal taxes including income taxes, sales taxes including taxes on revenue currently untaxed, property taxes, and tax on capital gains. Upon information and belief, Defendant has an endowment of over $2.5 billion and controls over $4.5 billion dollars in total assets; it records hundreds of millions of dollars each year in untaxed revenue, government subsidies, and capital gains; and it increased students' tuition during the Covid pandemic. Upon information and belief, Defendant's tax obligations would amount to over $60 million per year in the absence of 501(c)(3) status.

10. Upon information and belief, Defendant's law school is accredited by the American Bar Association ("ABA") and is obligated to uphold the ABA's Standards and Rules and Procedures for Approval of Law Schools (the "ABA Standards"), including ABA Standard 205(b) ("A law school shall foster and maintain equality of opportunity for students, faculty, and staff, without discrimination or segregation on the basis of race, color, religion, national origin, gender, sexual orientation, age, or disability") and ABA Standard 205(d) ("A law school shall communicate to every employer to whom it furnishes assistance and facilities for interviewing and other placement services the school's firm expectation that the employer will observe the principles of non-discrimination and equality of opportunity on the basis of race, color, religion, national origin, gender, sexual orientation, age, and disability in regard to hiring, promotion, retention and conditions of employment.")

11. Upon information and belief, Defendant's law school is currently pursuing a reaccreditation with the ABA. Upon information and belief, ABA reaccreditation, like ABA accreditation, demands strict adherence to the ABA Standards, including Standard 205.

COUNT I: BREACH OF CONTRACT

To demonstrate a colorable claim for breach of contract, Plaintiff must establish four elements: an agreement between the parties, supported by valid consideration; that the Plaintiff was ready, willing, and able to perform; that the Defendant committed a breach of the contract; and that the Plaintiff sustained damages. *477 Harrison Ave. v. JACE Bos.*, 483 Mass. 514, 523, 134 N.E.3d 91, 101 (2019).

A claim for breach of the implied covenant of good faith and fair dealing requires a showing that one party violated the reasonable expectations of the other party concerning the obligations of the contract. *477 Harrison Ave. v. JACE Bos.*, 483 Mass. 514, 523, 134 N.E.3d 91, 101 (2019).

Contract Formation: Offer, Acceptance, Consideration

12. Defendant law school, extended to Plaintiff, a law student, an offer of admission. Plaintiff accepted that offer when he matriculated, thus forming a contractual relationship between the student and the school (the "Covenant").

13. Defendant furnished consideration for the Covenant in the form of a promised seat in the Class of 2022. Plaintiff furnished consideration, and continues to furnish consideration, for the Covenant to the tune of tens of thousands of dollars per year in tuition. Plaintiff also committed to significant changes in position by accepting the Defendant's offer, including forbearance of other opportunities and incurrence of substantial expenses.

Defendant Had an Obligation to Abide by the Principles of Equal Opportunity and Non-Discrimination

14. As with any contract, the Covenant between Plaintiff and Defendant was not limited to explicit clauses or formalities. The Covenant encompassed both express and implied manifestations by the Defendant and its agents. Moreover, it included all reasonable assumptions implied by the circumstances and nature of the covenant. As this Court knows, all reasonable substantive expectations of contracting parties are as much a part of a contract as the literal ink.

15. Plaintiff entered the Covenant with an expectation that he believes to be reasonable: the expectation that Defendant would not countenance – much less encourage or actually engage in – discrimination on the basis of protected characteristics, including color, national origin, sex, gender, or sexual orientation. Plaintiff's expectation extended to a belief that Defendant would prohibit illegal discrimination during school-sponsored hiring/recruitment processes and use its institutional wherewithal to protect its students from unlawful discrimination by employers, especially local law firms that maintain strong reciprocal relationships with the school.

16. In addition to Plaintiff's reasonable expectations, Defendant has legal obligations under, *inter alia*, Article I of the Massachusetts Constitution (as amended by Article CVI), the Civil Rights Act of 1964, and Title IX. Such laws collectively prohibit discrimination on the basis of color, national origin, sex, gender identity, or sexual orientation and create unambiguous legal duties that are terms of the Covenant as a matter of law.

17. Furthermore, in addition to Plaintiff's reasonable expectations and Defendant's legal obligations, Defendant has expressly declared that it abides by principles of equality of opportunity and non-discrimination. In a "Notice of Nondiscrimination" on its website, Defendant "rejects and condemns all forms of harassment, wrongful discrimination, and disrespect" and avers that it

"compl[ies] with all state and federal laws prohibiting discrimination… in its educational programs and activities on the basis of a person's race, color, national origin, sex… [or] sexual orientation."

Defendant Has an Affirmative Duty to Champion the Principle of Equal Opportunity and Protect Students from Discrimination

18. Defendant has an affirmative duty to protect students, including Plaintiff, from discrimination on the basis of, *inter alia*, color, national origin, sex, gender, or sexual orientation.

19. Defendant law school touts its ABA accreditation, a certification that commits it to the ABA's accreditation standards.

20. ABA Rule 205(b) obliges Defendant to "foster and maintain equality of opportunity for students… without discrimination or segregation on the basis of race, color, religion, national origin, gender, sexual orientation, age, or disability."

21. ABA Rule 205(d) creates an affirmative obligation for Defendant to communicate to prospective employers "the school's firm expectation that the employer will observe the principles of non-discrimination and equality of opportunity on the basis of race, color, religion, national origin, gender, sexual orientation, age, and disability in regard to hiring, promotion, retention and conditions of employment."

Defendant Has Clearly (and Willfully) Breached Its Obligations to Abide by the Principles of Equal Opportunity and Non-Discrimination

22. Notwithstanding Plaintiff's reasonable expectations, Defendant's express manifestations, and the plain language of numerous laws, Defendant has countenanced, encouraged, and actually engaged in *prima facie* discrimination on the basis of, *inter alia*, color, national origin, gender, sex, and sexual orientation. Defendant's misconduct includes intentionally biased policies, inequitable allocation of resources, legitimation of illicit classifications and stereotypes, capricious enforcement of rules, and arbitrary double-standards. In addition to the material dispossession of Plaintiff's contractual and civil rights, this conduct produces an insular and discrete minority of law students whose educational experiences are marred by antipathy, disparagement, stigma, and systematic discrimination, resulting in stereotype threat, internalized prejudice, learned helplessness, anxiety, and depression.

23. Even before the first day of classes, Defendant encouraged the classification of students by color, national origin, gender, and sexual orientation. Defendant facilitated a pre-matriculation retreat to instill in invited students a sense of solidarity on the basis of shared color,

national origin, gender, and sexual orientation. Furthermore, Defendant's agents urged intergroup solidarity on the basis of not being characterized by a particular color, national origin, gender, or sexual orientation. During orientation, the Dean expounded upon the significance of a person's sex as a metric by which they contribute to the legal profession.

24. Thereafter, Defendant and its agents have frequently articulated the belief that a person's color, national origin (including race and ethnic background), sex, gender, and sexual orientation are of paramount significance and that individuals can/should be pre-judged accordingly. So frequently, in fact, that pro-discrimination discourse is the default on campus rather than the exception. In numerous classes and messages, peers and even professors have advocated for the use of classifications and stereotypes when making both individual judgments and policy decisions. Meanwhile, opinions tending to champion principles of equal opportunity and non-discrimination have been aggressively marginalized: on Defendant's campus, the prevailing wisdom is that being heard defending universal civil rights is social suicide, while being caught on the record with such an opinion is career suicide.

25. Defendant and its agents, including those acting in an official capacity, have frequently expressed the belief that all Americans have a moral obligation to allocate resources and opportunities on the basis of, *inter alia*, color, national origin, gender, sex, and/or sexual orientation. Consequently, Defendant enacted policies with the express goal of allocating resources and opportunities according to those protected characteristics. Upon information and belief, Defendant succeeded in allocating resources and opportunities accordingly.

Defendant Has Unequivocally Breached Its Affirmative Duty to Enforce the Principles of Equal Opportunity and Non-Discrimination

26. Defendant has unequivocally refused to perform its affirmative duties under ABA Standard 205(b) and has, in fact, manifested a willful resolve to embrace discriminatory policies. Moreover, the law school and its agents have, through official and unofficial actions, legitimized platforms that engage in stereotyping, scapegoating, and group-libel, while renouncing and minimizing positions in favor of universal civil rights and non-discrimination. Defendant thereby cultivated a campus culture wherein Plaintiff is routinely subjected to discrimination on the basis of protected characteristics such as color, national origin (including race and ethnicity), sex, gender identity, and sexual orientation.

27. Upon information and belief, and notwithstanding Standard 205(d), Defendant did not "communicate to every employer to whom it furnishes assistance and facilities for interviewing

and other placement services the school's firm expectation that the employer will observe the principles of non-discrimination and equality of opportunity on the basis of race, color, religion, national origin, gender, sexual orientation, age, and disability in regard to hiring, promotion, retention and conditions of employment."

28. To the contrary, Defendant has manifested a firm expectation that employers should *not* observe the principles of equality of opportunity and non-discrimination on the basis of color, national origin, sex, gender identity, and sexual orientation. Consequently, and upon information and belief, students with certain protected characteristics are at an artificial premium in the legal job market and have been pursued aggressively relative to their peers, even peers who are more qualified or who come from less affluent backgrounds. Upon information and belief, Defendant and its agents are aware of, and encourage, these double standards.

29. Upon information and belief, Defendant goes a step further by willfully facilitating discriminatory conduct by third parties. As an example of such conduct, Defendant actively cultivates and directly oversees a segregated system of scholarships, internships, fellowships, and job openings. Defendant's official job board even allows users to filter searches accordingly. There is one set of scholarships, internships, fellowships, and employment opportunities open to all students and another set available only to certain students. The latter set includes the best scholarships, the most prestigious and highest-paying 1L summer internships, and a not-insignificant share of the summer and postgraduate positions advertised overall. Upon information and belief, eligibility for these opportunities rests substantially or entirely on the bare fact of a student's color, national origin, gender identity, sex, and/or sexual orientation.

Plaintiff Has Suffered Both Legal Injury and Actual Injuries as a Result of Defendant's Breach of Contractual Obligations

30. Defendant's conduct has subjected Plaintiff to discrimination on the basis of protected characteristics. This breach has adversely and materially affected Plaintiff's enjoyment of the parties' contractual relationship under the Covenant.

31. First and foremost, by denying that Plaintiff has the right to equal protection of unambiguously-worded civil rights laws, Defendant essentially strips him of those civil rights and thereby relegates him to second-class status. This reckless disregard for Plaintiff's fundamental rights *by an institution entrusted with safeguarding legal principles and passing on legal knowledge* is against the law and violates the very purpose of legal education.

32. Additionally, flagrant classification on the basis of protected characteristics is injurious as a matter of law. Defendant's unique position as an institution of learning makes this particularly invidious because it effectively deprives Plaintiff of civil rights under color of law. Additionally, such conduct teaches the next generation of lawyers, lawmakers, and judges that such shallow categorizations are relevant fodder for decision-making. Legitimation of such blunt classifications is as inequitable as it is ham-handed.

33. Additionally, Defendant's breach has prevented Plaintiff from taking full advantage of available courses, facilities, and other programs, leaching value from Plaintiff's overall law school experience. This constitutes denial of educational benefits.

34. Additionally, Defendant's policies have caused material emotional distress and psychological injuries to Plaintiff, including well-documented negative effects on mental health, loss of *joie de vivre*, hopelessness, and physical ailments arising from stress and distress.

35. Additionally, Defendant's policy of countenancing, encouraging, and even facilitating overt discrimination on the basis of protected characteristics materially disadvantaged Plaintiff's prospects in the job market. The legal job market is an intensely competitive arena; one that is, in any given year, essentially a zero-sum game. Thus, when Defendant facilitates advantages for some, it necessarily imposes disadvantages upon others. This is especially true here, where Defendant classifies a *majority* of Plaintiff's peers as meriting advantage.

36. Finally, Defendant's conduct contributes to systemic discrimination. Upon information and belief, law schools, law firms, and other institutions across the country discriminate in substantially the same manner as Defendant with impunity, constituting exactly the type of invidious systemic paradigm that civil rights laws were intended to thwart.

Plaintiff Continues to Suffer Damages as a Result of Defendant's Continuing Non-Performance and Breach of Contractual Obligations

37. Defendant continues to countenance and facilitate discrimination to Plaintiff's detriment on the basis of protected classifications. Defendant's willful conduct continues to adversely and materially affects Plaintiff's enjoyment of the parties' contractual relationship.

38. Defendant's continuing breach is particularly damaging as Plaintiff is actively searching for postgraduate employment. Upon information and belief, Plaintiff would be better off if employers were discouraged from overtly discriminating against people like him on the basis of protected characteristics. This constitutes an immediate and continuing injury.

39. Defendant's continuing breach also threatens Plaintiff with irreparable harm because, upon information and belief, one's first job out of law school has a significant causal impact on one's ultimate career trajectory and expected earnings. E.g., legal employers are reputed to give significant weight to an applicants' first job out of law school throughout that person's career.

40. Many law firms and other employers make use of Defendant's job board or career services department to recruit talent and many institutions look to law schools for guidance on discrimination best practices. If Defendant were to affirm its duty to enforce equal opportunity employment, rather than repudiating that obligation, it could have a ripple effect throughout the industry that would materially level the playing field, to Plaintiff's benefit.

Plaintiff Seeks Damages, Declaratory Relief, an Injunction, and Specific Performance of Defendant's Contractual and Legal Duties

41. Plaintiff asks this Court for injunctive relief against further interference or injury. Injunctive relief is proper where a plaintiff faces irreparable damages that cannot be adequately remedied at law. Here, in the absence of injunctive relief, Plaintiff faces imminent and continuing consequences and a high likelihood of irreparable harm.

42. Plaintiff asks this Court for specific performance of Defendant's affirmative duties under the Covenant. Specific performance, like an injunction, is equitable relief that is proper where a plaintiff faces irreparable damages that cannot be adequately remedied at law. Here, in the absence of specific performance, Plaintiff faces imminent and continuing consequences and a high likelihood of irreparable harm.

43. Plaintiff asks this Court for an injunction preventing Defendant from pursuing ABA accreditations until the resolution of this suit or, at the very least, until Defendant demonstrates a substantive good-faith effort to abide by ABA Standards 205(b) and 205(d).

44. Plaintiff asks this Court for a refund of his tuition and compensatory damages sufficient to make him whole, which may include, *inter alia*: restitution of tuition and fees; recompense for change in position; economic damages such as incurred expenses, loss of enjoyment of property, and opportunity costs; and non-economic damages including emotional distress, pain and suffering, physical amortization, inconvenience, and loss of enjoyment of life.

45. Plaintiff asks this Court for punitive damages to discourage egregious conduct in the future. This might take the form of multiple damages or, if the Court is serious about discouraging the reckless disregard for equal protection doctrine and civil rights laws *by an institution entrusted with passing the torch of American jurisprudence on to future generations*, it could command

disgorgement of the $375 million Defendant wrongfully received in Federal funding and/or the estimated $175 million it wrongfully received in nonprofit-status tax exemptions over the course of Plaintiff's tenure.

COUNT II: COERCIVE INTERFERENCE WITH CIVIL RIGHT TO FREEDOM FROM DISCRIMINATION ON THE BASIS OF PROTECTED CHARACTISTICS

46. Plaintiff incorporates by reference the facts alleged in paragraphs 1–45.

47. Plaintiff contemplates civil claims under the Massachusetts Civil Rights Act (M.G.L. c. 12 § 11I) for coercive interference with Plaintiff's civil right to freedom from discrimination on the basis of, *inter alia*, color, national origin, sex, gender, and sexual orientation. Plaintiff alleges that Defendant used its unique position and institutional largesse to negate his civil right and legitimize discrimination. Indeed, the particular position of Defendant as an institution of legal education entails that its conduct was effectuated "under color of law."

48. M.G.L. c. 12 § 11I permits Plaintiff to pursue compensatory damages, injunctive and equitable relief, and civil penalties of up to $5,000 from each named Defendant, which may include individual agents complicit in the institutional Defendant's misconduct.

COUNT III: COERCIVE INTERFERENCE WITH FUNDAMENTAL RIGHT TO EQUAL PROTECTION OF THE LAWS

49. Plaintiff incorporates by reference the facts alleged in paragraphs 1–48.

50. Plaintiff contemplates civil claims under the Massachusetts Civil Rights Act (M.G.L. c. 12 § 11I) for coercive interference with Plaintiff's constitutional right to equal protection of the laws. Defendant's conduct repudiates the notion that Plaintiff enjoys the protection of state and Federal laws, solely on the basis of his color, national origin, sex, gender, and/or sexual orientation. Plaintiff alleges that Defendant used its unique position and institutional largesse to eclipse Plaintiff's fundamental, Constitutional, and human right to equal protection of the laws.

COUNT IV: VIOLATION OF M.G.L. 151B, THE COMMONWEALTH'S ANTIDISCRIMINATION STATUTE

51. Plaintiff incorporates by reference the facts alleged in paragraphs 1–50.

52. Plaintiff contemplates statutory claims under the Commonwealth's antidiscrimination statute, M.G.L. 151B. Under Massachusetts law, Defendant's career services activities, including

running a job board, make it an "employment agency." M.G.L. 151B § 4 makes it illegal for an "employment agency" "to print or circulate or cause to be printed or circulated any statement, advertisement or publication, or to use any form of application for employment or to make any inquiry or record in connection with employment, which expresses, directly or indirectly, any limitation, specification or discrimination as to the race, color, religious creed, national origin, sex, gender identity, sexual orientation, [etc.]"

53. Defendant's job board advertises openings that are limited to "diversity" candidates, which, upon information and belief, is an expression of limitation on the basis of color, national origin, sex, gender identity, and/or sexual orientation.

54. M.G.L. 151B § 9 creates a civil remedy that includes preliminary injunctive relief, actual damages, and punitive damages.

DEMAND FOR JURY TRIAL

Plaintiff demands a trial by jury.

PRAYER FOR RELIEF

Plaintiff respectfully requests that the Court enter an award and judgment in their favor, and against all Defendants jointly and severally, as follows:

a. Specific performance of Defendant's obligations;
b. Injunctive relief against further interference or injury;
c. Temporary injunction prohibiting Defendant from pursuing ABA reaccreditation;
d. Declaratory judgment pursuant to M.G.L. c. 231A;
e. Nominal damages in the amount of one candy corn;
f. Refund of Plaintiff's tuition money, plus interest;
g. Damages sufficient to make Plaintiff whole;
h. Statutory damages and penalties;
i. Punitive damages to discourage egregious conduct; and
j. Such other relief as the Court deems just.

Respectfully submitted,
/s/ JORDAN L. MICHELSON
Jordan Lewis Michelson
Plaintiff *pro se*
46 Orkney Rd. #1
Brighton, MA 02135
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(781) 608-8978

Dated: October 26, 2021

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, ss. **SUPERIOR COURT**
CIVIL ACTION
NO. 2181CV02940

JORDAN LEWIS MICHELSON,

Plaintiff,

v.

TRUSTEES OF BOSTON COLLEGE,
d.b.a. BOSTON COLLEGE LAW SCHOOL;

Defendant.

RECEIVED
12/10/2021

BOSTON COLLEGE'S MOTION TO DISMISS

Pursuant to Mass. R. Civ. P. 12(b)(6), defendant Trustees of Boston College, d.b.a. Boston College Law School ("Boston College" or "Defendant") respectfully moves to dismiss plaintiff Jordan Lewis Michelson's ("Mr. Michelson" or "Plaintiff") Complaint of the Plaintiff *Pro Se* ("Complaint" or "Compl.") in its entirety. The Complaint fails to state a claim on which relief may be granted.

Mr. Michelson admits that he is a third-year law student in good standing. He has had and continues to have the same opportunity as his peers to seek a position with the employers who recruit, interview, and hire Boston College Law School students. Nevertheless, Mr. Michelson appears to allege, in substance, that Boston College has discriminated against him in "school-sponsored hiring/recruitment processes" because "students with certain protected characteristics are at an artificial premium in the legal job market." Mr. Michelson does not, however, identify the allegedly favored minorities and he does not explain how he is

disadvantaged as a result. Compl. ¶¶ 2, 22, 28, and 35. Mr. Michelson does not allege he is a member of a protected class, does not explain how Boston College discriminated against him, and does not explain how he has been harmed.

Boston College does not discriminate and did not discriminate against Mr. Michelson. Furthermore, Boston College does not condone discriminatory behavior by any prospective employer in its recruiting and interviewing of students at Boston College Law School.

The Court should dismiss Mr. Michelson's Complaint in its entirety for the following reasons:

- Count I (breach of contract) should be dismissed for two reasons: (1) Mr. Michelson's own allegations demonstrate that Boston College has performed its contractual obligations; and (2) Mr. Michelson does not allege that he was actually harmed by Boston College's supposed breach;

- Counts II and III (under M.G.L. c. 12, §11I (the "Massachusetts Civil Rights Act" or the "MCRA")) should be dismissed because Mr. Michelson does not allege, as he must under the MCRA, any "threats, intimidation or coercion" by Boston College; and

- Count IV (under M.G.L. c. 151B) should be dismissed because Mr. Michelson does not allege, as he must under Chapter 151B, that he exhausted his administrative remedies prior to filing his Complaint with this Court.

In support of this motion, Boston College relies upon Boston College's Memorandum in Support of its Motion to Dismiss.

REQUEST FOR ORAL ARGUMENT

Boston College respectfully requests a hearing on this motion.

Respectfully submitted,

TRUSTEES OF BOSTON COLLEGE,
d.b.a. BOSTON COLLEGE LAW SCHOOL

By its attorneys,

/s/ Alan D. Rose
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November 17, 2021

CERTIFIATE OF COMPLIANCE PURSUANT TO SUPERIOR COURT RULE 9C

I, B. Aidan Flanagan, pursuant to Superior Court Rule 9C, hereby certify that on November 16, 2021, I communicated with Mr. Michelson by telephone to attempt to narrow the areas of disagreement regarding the relief sought in this motion. The parties were not able to narrow the areas of disagreement.

CERTIFICATE OF SERVICE

I, B. Aidan Flanagan, hereby certify that on November 17, 2021, I served a copy of the foregoing by email and U.S. Mail upon plaintiff, Jordan Lewis Michelson.

/s/ B. Aidan Flanagan
B. Aidan Flanagan

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, ss.

SUPERIOR COURT
CIVIL ACTION
NO. 2181CV02940

JORDAN LEWIS MICHELSON,

Plaintiff,

v.

TRUSTEES OF BOSTON COLLEGE,
d.b.a. BOSTON COLLEGE LAW SCHOOL;

Defendant.

RECEIVED
12/10/2021

BOSTON COLLEGE'S MEMORANDUM IN SUPPORT OF ITS MOTION TO DISMISS

Defendant Trustees of Boston College, d.b.a. Boston College Law School ("Boston College" or "Defendant") respectfully submits this memorandum in support of its Motion to Dismiss Complaint of the Plaintiff *Pro Se* ("Complaint" or "Compl."). The Court should dismiss plaintiff Jordan Lewis Michelson's ("Mr. Michelson" or "Plaintiff") Complaint in its entirety. The Complaint fails to state a claim on which relief may be granted.

Introduction

Mr. Michelson admits that he is a third-year law student in good standing. He has had and continues to have the same opportunity as his peers to seek a position with the employers who recruit, interview, and hire Boston College Law School students. Nevertheless, Mr. Michelson appears to allege, in substance, that Boston College has discriminated against him in "school-sponsored hiring/recruitment processes" because "students with certain protected characteristics are at an artificial premium in the legal job market." Mr. Michelson does not,

however, identify the allegedly favored minorities and he does not explain how he is disadvantaged as a result. Compl. ¶¶ 2, 22, 28, and 35. Mr. Michelson does not allege he is a member of a protected class, does not explain how Boston College discriminated against him, and does not explain how he has been harmed.

Boston College does not discriminate and did not discriminate against Mr. Michelson. Furthermore, Boston College does not condone discriminatory behavior by any prospective employer in its recruiting and interviewing of students at Boston College Law School.

The Court should dismiss Mr. Michelson's Complaint in its entirety for the following reasons:

- Count I (breach of contract) should be dismissed for two reasons: (1) Mr. Michelson's own allegations demonstrate that Boston College has performed its contractual obligations; and (2) Mr. Michelson does not allege that he was actually harmed by Boston College's supposed breach;

- Counts II and III (under M.G.L. c. 12, §11I (the "Massachusetts Civil Rights Act" or the "MCRA")) should be dismissed because Mr. Michelson does not allege, as he must under the MCRA, any "threats, intimidation or coercion" by Boston College; and

- Count IV (under M.G.L. c. 151B) should be dismissed because Mr. Michelson does not allege, as he must under Chapter 151B, that he exhausted his administrative remedies prior to filing his Complaint with this Court.

Facts[1]

The Contract Alleged

Mr. Michelson asserts that in 2019, Boston College offered, and he accepted, a spot in the Class of 2022, and that he is on track to graduate in 2022. He admits that he is in good standing and has formed positive relationships with peers, professors, and administrators. He alleges that when he accepted Boston College's offer of admission, a contract (the "Covenant") was created,

[1] For purposes of this motion only, Boston College must assume as true Mr. Michelson's factual allegations. Boston College reserves the right to contest his allegations if proceedings continue.

in the form of "a promised seat in the Class of 2022," in return for which Mr. Michelson has furnished consideration in the amount of "tens of thousands of dollars per year." Compl. ¶¶ 5, 6, and 13.

The Supposed Additional Terms of the Contract

Mr. Michelson asserts that the Covenant "was not limited to explicit clauses or formalities." Mr. Michelson asserts that the Covenant included his "expectation" that Boston College would not countenance or engage in unlawful discrimination and that Boston College would prohibit employers from engaging in unlawful discrimination during "school-sponsored hiring/recruitment processes." Mr. Michelson further asserts that under the Covenant Boston College promised Mr. Michelson, *as a matter of contract*, that it would abide by its obligations under state and federal law (i.e., Article I of the Massachusetts Constitution (as amended by Article CVI, the Civil Rights Act of 1964, and Title IX) and the ABA's Standards and Rules of Procedure for Approval of Law Schools (the "ABA Accreditation Standards"). Compl. ¶¶ 14, 15, 16, and 19. Mr. Michelson points to no writing in which Boston College made such promises to him.

Boston College's Supposed Breach of the Contract

Mr. Michelson asserts that Boston College breached its contract with him through "intentionally biased policies, inequitable allocation of resources, legitimation of illicit classifications and stereotypes, capricious enforcement of rules, and arbitrary double-standards." Compl. ¶ 22. Mr. Michelson cites no facts in support of this conclusion.

Mr. Michelson's Supposed Harm "as a Result of Defendant's Breach of Contractual Obligations"

Mr. Michelson asserts that Boston College's breach: (1) denied him his right to equal protection under the law; (2) prevented him from taking full advantage of available courses,

facilities, and other programs; and (3) disadvantaged his "prospects in the job market" because "students with certain protected characteristics are at an artificial premium in the legal job market and have been pursued aggressively relative to their peers, even peers who are more qualified or who have come from less affluent backgrounds." Compl. ¶¶28, 31, 33, and 35. Once again, Mr. Michelson cites no facts to support these conclusions.

What Mr. Michelson's Complaint Does Not Allege

Mr. Michelson's Complaint does not:

- allege that he is a member of a protected class or that Boston College discriminated against him on the basis of his protected characteristics;
- identify any of Boston College's policies that are intentionally biased;
- identify what resources Boston College allocated in an inequitable manner;
- identify any classifications or stereotypes that were legitimized by Boston College;
- identify any rules that were capriciously enforced by Boston College;
- identify any double-standards that were employed by Boston College;
- identify which groups of students with certain protected characteristics are at an artificial premium in the legal job market or the peers who are more qualified or who come from less affluent backgrounds; and
- explain how his prospects in the job market were disadvantaged by Boston College.

Standards

Mass. R. Civ. P. 12(b)(6)

Under Mass. R. Civ. P. 12(b)(6), a complaint shall be dismissed for failure to state a claim upon which relief can be granted where the plaintiff has not met his/her obligation to allege facts that "provide the grounds of his entitle[ment] to relief." Iannacchino v. Ford Motor Co., 451 Mass. 623, 636 (2008) (internal quotations omitted). A complaint "requires more than labels and conclusions … [w]hat is required at the pleading stage are factual 'allegations

plausibly suggesting (not merely consistent with)' an entitlement to relief." Id. (internal quotations omitted). Indeed, to survive a motion to dismiss, a plaintiff's "[f]actual allegations must be enough to raise a right to relief above the speculative level … [based] on the assumption that all the allegations in the complaint are true (even if doubtful in fact) …." Id. (quoting Bell Atlantic Corp. v. Twombly, 127 S. Ct. 1955, 1964-1965 (2007)). In other words, the factual allegations must "possess enough heft to 'sho[w] that the pleader is entitled to relief.'" Id. at 636 (quoting Twombly, 127 S. Ct. at 1966). The Court need "not accept legal conclusions cast in the form of factual allegations." Schaer v. Brandeis Univ., 432 Mass. 474, 477 (2000) (affirming dismissal of complaint against Brandeis). "The purpose of Rule 12(b)(6) is to permit prompt resolution of a case where the allegations in the complaint clearly demonstrate that the plaintiff's claim is legally insufficient." Harvard Crimson, Inc. v. President & Fellows of Harvard Coll., 445 Mass. 745, 748 (2006) (affirming dismissal of complaint against Harvard).

Breach of a University-Student Contract

"Under Massachusetts law, a breach of contract claim requires the plaintiff to show that (1) a valid contract between the parties existed, (2) the plaintiff was ready, willing, and able to perform, (3) the defendant was in breach of the contract, and (4) the plaintiff sustained damages as a result." Squeri v. Mount Ida Coll., Civil Action No. 18-12438-RGS, 2019 WL 2249722, at *5 (D. Mass. May 24, 2019) (quoting Bose Corp. v. Ejaz, 732 F.3d 17, 21 (1st Cir. 2013), citing Singarella v. City of Boston, 342 Mass. 385, 387 (1961)).

"It is well-established that the student-college relationship is contractual in nature." Doe v. Brandeis Univ., 177 F. Supp. 3d 561, 593 (D. Mass. 2016) (citing Mangla v. Brown University, 135 F.3d 80, 83 (1st Cir. 1998)). "'[I]t is essential to state with substantial certainty the facts showing the existence of the contract and the legal effect thereof.'" Squeri v. Mount

Ida Coll., 954 F.3d 56, 71 (1st Cir. 2020) (quoting Tel. Answering Serv. of Bos., Inc. v. New Eng. Tel. & Tel. Co., 358 Mass. 822 (1971)) (internal quotation marks from Tel. Answering Serv. and citation omitted). "At a minimum, a plaintiff must explain what obligations were imposed on each of the parties by the alleged contract." Barkhordar v. President and Fellows of Harvard Coll., Civil Action No. 1:20-cv-10968-IT, 2021 WL 2535512, at *4 (D. Mass. June 21, 2021) (internal quotation and citation omitted).

"When a court interprets the terms of a university-student contract, it applies a 'reasonable expectation' standard, in other words, 'what meaning the party making the manifestation, the university, should reasonably expect the [student] to give it.'" Barkhordar, 20201 WL 2535512, at *4 (quoting Schaer, 432 Mass. at 478).

Massachusetts Civil Rights Act, M.G.L. c. 12, §11I

To establish a claim under the Massachusetts Civil Rights Act, M.G.L. c. 12, §11I (the "MCRA"), a plaintiff "must prove that (1) his exercise or enjoyment of rights secured by the Constitution or the laws of either the United States or of the Commonwealth (2) has been interfered with, or attempted to be interfered with, and (3) that the interference or attempted interference was by 'threats, intimidation or coercion.'" Bally v. Northeastern Univ., 403 Mass. 713, 718 (1989) (citing M.G.L. c. 12, §§11I, 11H). "The Civil Rights Act was 'intended to provide a remedy for victims of racial harassment.'" Id. (quoting O'Connell v. Chasdi, 400 Mass. 686, 694 (1987), citing Batchelder v. Allied Stores Corp., 393 Mass. 819, 821 (1985)). "We have also recognized that, by reaching private party actions, the Legislature did not intend to create "a vast constitutional tort,' and thus explicitly limited the Civil Rights Act's remedy to situations where the derogation of secured rights occurs by threats, intimidation or coercion." Id. (citing Bell v. Mazza, 394 Mass. 176, 182-183 (1985)). "Furthermore, the alleged threat,

intimidation or coercion must be aimed at a particular individual or group of individuals and the harm involved must be sufficiently serious." Kappa Alpha Theta Fraternity, Inc. v. Harvard Univ., 397 F. Supp. 3d 97, 109 (D. Mass. 2019) (citing Bally, 403 Mass. at 718-720). While "Massachusetts courts have recognized that coercion may take various forms, including economic coercion, which can potentially be found where one party deprives another of rights due under a contract[,] … [i]n order for the breach of a contract to be coercive for purposes of the MCRA, the party breaching the contract must not simply deprive a plaintiff of a secured right, but must also be trying to interfere with the plaintiff's own exercise of a secured right." Doe v. Amherst Coll., 238 F. Supp. 3d 195, 225 (D. Mass. 2017) (internal quotations and citations omitted).

Argument

I. THE COURT SHOULD DISMISS COUNT I (BREACH OF CONTRACT) FOR FAILURE TO STATE A CLAIM.

The Court should dismiss Count I (breach of contract) for two reasons. First, Mr. Michelson's own allegations demonstrate that Boston College has not breached the contract it has with him (i.e., what Mr. Michelson labels the "Covenant"). Second, assuming, *arguendo*, that Boston College breached the Covenant, Mr. Michelson fails to allege, other than in a conclusory manner, that he actually sustained damages as a result.

A. Mr. Michelson's Own Allegations Show that Boston College Has Not Breached the Covenant.

Mr. Michelson's own allegations demonstrate that Boston College has not breached its contract with him. Mr. Michelson alleges the following as the contract: Mr. Michelson promised to pay tuition and Boston College promised to provide Mr. Michelson a legal education. Compl. ¶¶12, 13. Mr. Michelson's own allegations demonstrate that Boston College has performed its

promise to provide him a legal education. First, Mr. Michelson does not allege that Boston College failed to provide him a legal education. Second, Mr. Michelson admits that he is a third-year law student in good standing on track to graduate in the spring of 2022 and that he has formed positive relationships with peers, professors, and administrators. Compl. ¶6. According to the Complaint, Boston College has performed under the contract.

Despite alleging a simple and straightforward contract, Mr. Michelson asserts, *without any basis*, that the Covenant contains additional terms beyond payment of tuition in exchange for provision of a legal education. Specifically, Mr. Michelson asserts that the contract included his *expectation* that Boston College would, *as a matter of contract*, abide by state and federal law, and the ABA Accreditation Standards (the "Additional Terms"). Compl. ¶¶15, 16, 20, and 21. While Boston College certainly must, and does, abide by state and federal law and the ABA Accreditation Standards, there is no reason to read them into the Covenant *as contractual terms* between Boston College and Mr. Michelson.

B. Mr. Michelson Fails to Allege that he Sustained Damages as a Result of Boston College's Supposed Breach of the "Additional Terms."

Assuming, *arguendo*, that the Covenant included the Additional Terms and further assuming, *arguendo*, that Boston College breached those Additional Terms, Count I still fails because Mr. Michelson does not allege that he sustained damages as a result of Boston College's supposed breach. Mr. Michelson alleges, in a conclusory manner entirely unsupported by specific factual allegations,[2] that Boston College's breach: (1) denied him his right to equal protection under the law; (2) prevented him from taking full advantage of available courses, facilities, and other programs; and (3) disadvantaged his "prospects in the job market" because

[2] This is an independent reason to dismiss Count I. See Iannacchino, 451 Mass. at 636 (A complaint "requires more than labels and conclusions[.]").

"students with certain protected characteristics are at an artificial premium in the legal job market and have been pursued aggressively relative to their peers, even peers who are more qualified or who have come from less affluent backgrounds." Compl. ¶¶28, 31, 33, and 35.[3]

Mr. Michelson does not allege that Boston College violated the Additional Terms or that he suffered damages as a result. With regard to (1), Mr. Michelson references the following civil rights laws:

- "the 106th Article of Amendment to the Massachusetts Constitution … 'Equality under the law shall not be denied or abridged because of sex, race, color, creed or national origin[,]'" Compl. ¶7;

- "the Civil Rights Act of 1964, 42 U.S.C. §2000 et seq [sic] ('No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance')," Compl. ¶8;

- "Title IX of the Education Amendments of 1972, 20 U.S.C. §1681 ('No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance')[,]" Compl. ¶8; and

- "Executive Order 13988 ('All persons should receive equal treatment under the law, no matter their gender identity or sexual orientation')[,]" Compl. ¶8.

Mr. Michelson does not, however, allege that Boston College:

- denied or abridged Mr. Michelson's equality under the law on the basis of Mr. Michelson's sex, race, color, creed or national origin;

- excluded Mr. Michelson from participation in, denied Mr. Michelson the benefits of, or subjected Mr. Michelson to discrimination on the basis of Mr. Michelson's race, color, or national origin;

- excluded Mr. Michelson's participation in, denied Mr. Michelson the benefits of, or subjected Mr. Michelson to discrimination on the basis of Mr. Michelson's sex; or

- failed to provide Mr. Michelson equal treatment under the law on the basis of Mr. Michelson's gender identity or sexual orientation.

[3] Mr. Michelson further asserts that he suffered "emotional distress," "psychological injuries," and a "loss of *joie de vivre*" as a result of Boston College's supposed breach. Compl. ¶34.

Indeed, Mr. Michelson does not explain whether he is a member of a protected class; instead, Mr. Michelson makes the following, obtuse allegation: "For whatever it is worth, Mr. Michelson is a member of a discrete, insular, and historically persecuted ethnic minority." Compl. ¶2. But he does not say that Boston College or any employer discriminated against him on the basis of whatever minority group Mr. Michelson claims membership in; moreover, Mr. Michelson does not state that Boston College violated the ABA Accreditation Standards or that Mr. Michelson was harmed as a result. With regard to (2), Mr. Michelson does not identify any available courses, facilities, and other programs he was prevented from taking or using to full advantage. With regard to (3), relating to the "job market," Mr. Michelson does not state that he was denied employment as a result of any action taken by Boston College.[4] In short, Mr. Michelson does not allege that: Boston College has not adhered to state and federal law or the ABA Accreditation Standards; that Boston College has discriminated against him; or that he has been harmed as a result.

The Court should dismiss Count I for failure to state a claim.

II. THE COURT SHOULD DISMISS COUNTS II (MCRA) AND III (MCRA) FOR FAILURE TO STATE A CLAIM.

The Court should dismiss Counts II and III because Mr. Michelson does not sufficiently allege and cannot establish any violations of the MCRA. To state a claim under the MCRA, Mr. Michelson must allege that Boston College interfered with his enjoyment of rights by "threats,

[4] With regard to his allegations of emotional distress type damages, such damages are not recoverable for a breach of contract. See e.g., Roe v. Northeastern Univ., Civil Action No. 16-03335-C, 2019 WL 1141291, at *15 (Mass. Sup. Ct. March 8, 2019) (quoting John Hancock Mut. Life Ins. Co. v. Banerji, 447 Mass. 875, 888 (2006) ("'[D]amages for mental suffering are generally not recoverable in an action for breach of contract' … [s]uch damages are only recoverable in the limited instances where emotional harm results from physical injury, or when it is 'the result of intentional or reckless conduct of an extreme and outrageous nature.'").

intimidation or coercion" aimed specifically at him that caused harm that was "sufficiently serious." See e.g., Bally, 403 Mass. at 718-720. Mr. Michelson alleges, in a conclusory manner entirely unsupported by specific factual allegations,[5] that Boston College violated the MCRA by "us[ing] its unique position and institutional largesse to negate his civil right and legitimize discrimination" and by "us[ing] its unique position and institutional largesse to eclipse Plaintiff's fundamental, Constitutional, and human right to equal protection of the laws." Compl. ¶¶47, 50.

Mr. Michelson's MCRA claims fail for the simple reason that Mr. Michelson does not allege any threats, intimidation or coercion. This is fatal to his claims under the MCRA. Beyond this omission, Mr. Michelson's MCRA claims fail for the independent reason that he does not allege, and cannot allege, that any such threat, intimidation or coercion by Boston College was aimed at him. To the extent Mr. Michelson relies on Boston College's supposed breach of the "Covenant," such breach is not sufficient because Mr. Michelson does not allege, and cannot allege, that Boston College, in supposedly breaching the Covenant, was trying to interfere with Mr. Michelson's exercise of a secured right. See Doe, 238 F. Supp. 3d at 225 ("In order for the breach of a contract to be coercive for purposes of the MCRA, the party breaching the contract must not simply deprive a plaintiff of a secured right, but must also be trying to interfere with the plaintiff's own exercise of a secured right.") (internal quotations and citations omitted).

The Court should dismiss Counts II and III for failure to state a claim.

III. THE COURT SHOULD DISMISS COUNT IV (M.G.L. C. 151B) FOR FAILURE TO STATE A CLAIM.

The Court should dismiss Count IV because Mr. Michelson cannot establish any violations of M.G.L. c. 151B. Mr. Michelson alleges that "Defendant's career services activities,

[5] This is an independent reason to dismiss Counts II and III. See Iannacchino, 451 Mass. at 636 (A complaint "requires more than labels and conclusions[.]").

including running a job board, make it an 'employment agency.'" Compl. ¶52. Count IV fails for several reasons. First, the mere facts that Boston College has a career services office and permits potential employers to conduct on-campus recruiting/interviewing, does not convert Boston College Law School into an "employment agency," as that term is used in Chapter 151B. See M.G.L. c. 151B, §1 ("The term 'employment agency' includes any person undertaking to procure employees or opportunities to work.").[6] Second, Mr. Michelson does not allege that he participated in on-campus recruiting/interviewing, that he was a job applicant, or that he was denied employment as a result of discrimination. Third, Mr. Michelson does not allege, as he must, that he exhausted his administrative remedies; Mr. Michelson does not allege that he filed a complaint with the Massachusetts Commission Against Discrimination at least ninety days prior to filing his Complaint in this Court. M.G.L c. 151B, §9; 804 CMR §1.04(12); Butner v. Dep't of State Police, 60 Mass. App. Ct. 461, 467 (2004) ("Under G.L. c. 151B, §9, the exclusive remedy for a c. 151B violation is a complaint to the MCAD, i.e., a complainant may not bring a civil action against defendants … without first complaining to the MCAD.").

The Court should dismiss Count IV for failure to state a claim.

Conclusion

For the above reasons, Boston College respectfully requests that the Court dismiss Mr. Michelson's Complaint in its entirety.

[6] Undersigned counsel is not aware of any case law to support Mr. Michelson's assertion that Boston College is an employment agency for Chapter 151B purposes.

Respectfully submitted,

TRUSTEES OF BOSTON COLLEGE,
d.b.a. BOSTON COLLEGE LAW SCHOOL

By its attorneys,

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baf@rose-law.net

November 17, 2021

CERTIFICATE OF SERVICE

I, B. Aidan Flanagan, hereby certify that on November 17, 2021, I served a copy of the foregoing by email and U.S. Mail upon plaintiff, Jordan Lewis Michelson.

/s/ B. Aidan Flanagan
B. Aidan Flanagan

Date Filed 8/19/2022 4:51 PM
Superior Court - Middlesex
Docket Number 2181CV02940

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, ss. SUPERIOR COURT DEPARTMENT
Civil Action No. 2181CV02940

JORDAN LEWIS MICHELSON,
Plaintiff,
v.
TRUSTEES OF BOSTON COLLEGE, *d.b.a.* BOSTON COLLEGE LAW SCHOOL,
Defendant.

FIRST SET OF INTERROGATORIES TO DEFENDANT

Pursuant to Massachusetts Rules of Civil Procedure 26 and 33 and Superior Court Rule 30A, Plaintiff *pro se* hereby request that Defendant, *Trustees of Boston College*, serve its response to each of the following interrogatories, in writing and under the penalties of perjury. Please respond within thirty (30) days of the service of these interrogatories. Please raise any initial objections to these interrogatories within fifteen (15) days of service.

INSTRUCTIONS

1. Defendant must respond to each interrogatory in accordance with Massachusetts Rules of Civil Procedure 26 and 33 and Massachusetts Superior Court Rules 30 and 30A.

2. Answer each question below completely. With respect to any interrogatory, if Defendant contends that the interrogatory is in some way "burdensome" or "oppressive," please state the specific reasons for this objection.

3. In answering each interrogatory, Defendant is to furnish all information available to it, including information in the possession of its agents, representatives, and attorneys, and not merely information within any individual's personal knowledge. If Defendant cannot answer the following interrogatories in full after exercising due diligence to secure the information to do so, Defendant should so state and answer to the fullest extent possible, specifying and explaining its inability to answer the remainder of the interrogatory, including an identification of the steps that

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its agents or advocates took to exercise due diligence in answering the interrogatory, and stating whatever information or knowledge it has concerning the unanswered portion.

4. For each interrogatory question requiring specific or general knowledge of facts relating to Defendant's organization or operations, please identify a "corporate representative" who is responsible for averring, under oath, to the verity of the information provided. Each "corporate representative" shall:

a. State your authority for providing answers to these interrogatories on behalf of Trustees of Boston College
b. Identify each person and entity with whom you consulted or caused to be consulted with respect to the matters inquired about in these interrogatories.
c. Identify all persons and entities who provided the information used, and all documents reviewed or referenced, to answer these interrogatories.

5. Unless otherwise specified in any of the interrogatories below, these interrogatories cover the time period from January 1, 2019 through the present.

6. Defendant's answers and objections to these interrogatories shall be served by email upon the plaintiff pro se at jmichelson141@gmail.com.

DEFINITIONS

All definitions under Superior Court Rule 30A(1)(c) are incorporated here by reference. The following definitions shall apply to these interrogatories:

a) "**Complaint"** means the Complaint in the above-captioned action.

b) **"Answer"** means Defendant's Answer to the Complaint in the above-captioned action.

c) **"Relate" "related"** or **"relating"** mean, in addition to their usual and customary meanings, concerning, referring to, reflecting, regarding, pertaining to, addressing, discussing, alluding to, describing, evidencing, constituting, ascertaining, embodying, dealing with, or otherwise having any logical or factual connection with the subject.

d) **"And"** and **"or"** shall be construed either disjunctively or conjunctively as necessary to bring within the scope of an interrogatory all responses that otherwise might be construed to be outside its scope.

e) **"Any"** shall be construed to include **"all"** and vice versa, to make the interrogatory inclusive rather than exclusive.

f) **"Each"** shall be construed to include **"every"** and vice versa, to make the interrogatory inclusive rather than exclusive.

g) Any word in the singular form shall be construed to also include the plural form and vice versa, to make the interrogatory inclusive rather than exclusive.

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h) The past tense shall be construed to also include the present tense and vice versa, to make the interrogatory inclusive rather than exclusive.

FIRST FIVE INTERROGATORIES

1. **Please identify Defendant's policy regarding data and information retention, including all measures that Defendant is taking to preserve and maintain potentially relevant documents and prevent spoliation of evidence.**

"Document" is synonymous in meaning and equal in scope to its usage in Superior Court Rule 30A(1)(2) and Massachusetts Rule of Civil Procedure 34(a), which includes "writings, drawings, graphs, charts, photographs, sound recordings, images, and any other data or data compilations stored in any medium from which information can be obtained either directly, or, if necessary, after translation by the responding party into a reasonably usable form." An earlier draft is a separate document within the meaning of "document." The term "document" shall also include electronically stored information. "Electronically stored information" ("ESI") may be generated or stored in several locations, including workplace or personal computers, smartphones, tablets, databases, shared drives, the cloud, platforms for social media or other online content, devices connected to the Internet of Things (IoT), devices generating or storing geolocation data, workplace collaboration tools (WCTs), and ephemeral messaging applications. These may include chat rooms, blogs, online forums, and social media or networking websites, applications, services, software, and platforms (including but not limited to video sharing, photograph sharing, blogging, messaging or ephemeral messaging) for which Defendant or its agents have posted, sent, or received content (including but not limited to photographs, videos, posts, messages, comments, "likes," or digital images or icons such as emoji).

2. **Please identify and explain all Boston College policies and programs that are sensitive to students' sex, color, gender, sexuality, race, ethnicity, national origin, and creed.**

Programs and policies that are "sensitive to" such classifications include those that are in any way targeted at or towards any group of students on the basis of sex, color, gender, sexuality, race, ethnicity, national origin, or creed; or which express any class distinctions between human beings on the basis of one or more of those categories; or which cause benefits to inure to some students, but not others, in a manner predicted by one or more of those classifications.

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"Programs" and "policies" are to be understood expansively, including any and all student resources, student services, student organizations, special considerations, services rendered, working groups, departmental resources, faculty positions and assignments, student and faculty retreats, school-sponsored events, university-recognized affiliate groups, training programs, written institutional policies, and consulting engagements.

Defendant may use common sense to narrow the aperture of this interrogatory but should note the manner in which it does so. Please include all policies and programs that are available to law students, graduate students, and law school faculty, noting those that have been initiated or changed within the past five years (and how). With regard to sex and gender, please do not include policies relating to restrooms, dormitories, or other facilities unless those policies pertain to the school's pedagogical product, career services, or student resources. With regard to creed, please do not include any policies that are solely sensitive to the university's Jesuit or Catholic underpinnings.

3. **How much state and federal funding (or other assistance) does Boston College receive per year?**

Please answer this interrogatory, where possible, on a per annum basis with the most recent available data. Please provide all information relating to state and federal funding for the most recent three academic years (Fall 2019 through Spring 2022). Please provide all information relevant to the total state and federal funding during the most recent five years available. If any assistance is not reducible to financial terms, please list.

4. **Please provide a definition of the word "discrimination" insofar as it forms the basis of Defendant's averments that Boston College does not engage in, countenance, facilitate, advocate for, or encourage discrimination "of any kind."**

Defendant's Answer uses the word "discrimination" no less than thirty-three times, usually in reference to the school's absolute denial that Boston College has "engaged in," "countenanced," "facilitated," "advocated" or "encouraged" "discrimination of any kind." ¶¶ 16, 22, 23, 24, 25, 26, 28, 29, 30, 31, 32, 35, 36, 37, 38, & 40, and answers to headings on pp. 4, 5, 6, & 7. Sometimes the reference is more specific, as when the Defendant "denies that it enacted policies to allocate resources and opportunities in a discriminatory manner." ¶ 25. Or when school affirmatively avers that "Boston College abides by the principles of equal opportunity and non-discrimination."

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(Answer p. 4). Or when BC's published Notice of Nondiscrimination states that "Boston College rejects and condemns all forms of harassment, wrongful discrimination, and disrespect" and avers that BC abides by all state and federal laws "prohibiting discrimination in employment and in its educational programs and activities on the basis of a person's race, color, national origin, sex, religion… genetic information or … sexual orientation." ¶ 17.

"Discrimination" refers to a type of conduct that is not necessarily unlawful. In fact, with narrow exceptions enshrined in state, federal, and constitutional law, discrimination is almost always legal. In its most common form, discrimination describes a banal, everyday occurrence:

> discrimination n. (1866) 1. The intellectual faculty of noting differences and similarities.
>
> lawful discrimination. (1893) 1. Discrimination based on a criterion that is not characteristic of a protected class; discrimination that is not statutorily forbidden.

Discrimination, BLACK'S LAW DICTIONARY (11th ed. 2019). Thus, Boston College must discriminate using some criteria, such as academic merit, class rank, or whether a student has paid tuition. Yet Defendant nonetheless issues a blanket denial, averring that Boston College has not "engaged in," "countenanced," "facilitated," "advocated" or "encouraged" "discrimination of any kind." ¶¶ 16, 22-26, 28-32, 35-38, 40, and answers to headings on pp. 4, 5, 6, & 7.

Moreover, the specific assertions (or denials) made by Defendant seem inapposite to the plain meaning of "discrimination" in the context of demographic preference and prejudice:

> 2. The effect of a law or established practice that confers privileges on a certain class or that denies privileges to a certain class because of race, age, sex, nationality, religion, or disability.
>
> 3. Differential treatment; esp., a failure to treat all persons equally when no reasonable distinction can be found between those favored and those not favored.

Discrimination, Black's Law Dictionary (11th ed. 2019) (accessed May 31, 2022).

> Unjust or prejudicial treatment of a person or group, esp. on the grounds of race, gender, sexual orientation, etc.; frequently with *against*.
>
> Also (with *in favour of*): favourable treatment of a person or group, in order to compensate for disadvantage or lack of privilege.

Discrimination, *n*., OED Online (updated March 2022) (accessed May 31, 2022).

> "To 'discriminate' against someone means to treat that person differently, or less favorably, for some reason."

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U.S. Equal Employment Opportunity Commission, https://www.eeoc.gov/youth/what-employment-discrimination (accessed May 31, 2022).[1]

Thus, anyone with even a passing understanding of the English language (let alone Defendant's programs and policy) would have to conclude that there is clearly a linguistic disconnect between the term "discrimination" as used by the Plaintiff and the term "discrimination" as used by the Defendant. Assuming otherwise would suggest that Defendant's Answer contains misinformation or disinformation, which would tend to deprive the verifying attorney of the presumptions of good faith and competence.

In an effort to avoid further miscommunications or needless embarrassment, the Plaintiff *pro se* requests that Defendant provide its understanding of the word "discrimination" – especially insofar as it relates to Defendant's numerous contentions that Boston College does not engage in, countenance, facilitate, advocate for, or encourage discrimination "of any kind." When answering this interrogatory, please include any relevant related forms (e.g., "discriminate," "discriminatory," and "nondiscrimination") and effect meant to be afforded to such terms as part of, or in conjunction with, related terms or phrases (e.g., "wrongful discrimination," "discrimination on the basis of _____," "discriminatory conduct," "anti-discrimination laws," "nondiscrimination principles," "equal treatment," "fair treatment," and "equal opportunity").

---

[1] Other types of discrimination, according to Black's Law Dictionary, include:

- direct discrimination. (1869) Differential treatment of a person or a particular group of people based on race, gender, or other characteristic.
- employment discrimination. (1932) Discrimination against an employee, former employee, or job applicant by an employer based on a characteristic or status such as race, age, religion, disability, or sexual orientation.
- indirect discrimination. (1923) Discrimination arising from the application of a provision, criterion, or policy in such a way that a particular definable group is disadvantaged.
- invidious discrimination (in-vid-ee-əs) (1856) Discrimination that is offensive or objectionable, esp. because it involves prejudice or stereotyping.
- national-origin discrimination. (1949) Discrimination based on the country or place where a person was born or a person's ancestors lived; discrimination based on a person's ethnicity (or presumed ethnicity), cultural heritage, or association with a certain ethnic group or organization.
- racial discrimination. (1891) Discrimination based on race.
- reverse discrimination. (1964) Preferential treatment of minorities, esp. through affirmative-action programs, in a way that adversely affects members of a majority group; specif., the practice of giving unfair treatment to a group of people who have traditionally been privileged in an attempt to be fair to the group of people unfairly treated in the past.
- sexual-orientation discrimination. (1979) Discrimination based on a person's predisposition or inclination to be romantically or sexually attracted to a certain type of person (i.e., heterosexuality, homosexuality, bisexuality, or asexuality), or based on a person's gender identity (i.e., a person's internal sense of gender).
- systemic discrimination. (1969) An ingrained culture that perpetuates discriminatory policies and attitudes toward certain classes of people within society or a particular industry, profession, company, or geographic location. … Also termed institutionalized discrimination; systematic discrimination.

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5. Please provide the legal and factual basis for Defendant's affirmative defenses.

In its Answer, Defendant raises two interrelated affirmative defenses: (2) "Mr. Michelson has not suffered any damages by Boston College's alleged conduct. Alternatively, any injury, loss, or damage alleged in the Complaint resulted in whole or in part from Mr. Michelson's conduct and/or other intervening factors and any action on the part of Boston College was not the proximate and/or competent producing cause of such alleged injuries, losses, or damages." (3) "Mr. Michelson's claim is barred, in whole or in part, to the extent Mr. Michelson failed to mitigate, or reasonably attempt to mitigate, his alleged damages."

Please provide the legal and factual basis, if any, upon which Defendant raises its affirmative defenses. In answering this interrogatory, please FIRST provide the legal basis for the affirmative defense (including whether it is, indeed, an *affirmative* defense rather than merely an anticipated defense against an element of the claim) and then substantiate with all facts known to the Defendant that corroborate that legal claim.

Respectfully submitted,
/s/ JORDAN L. MICHELSON
Jordan Lewis Michelson
Plaintiff *pro se*
46 Orkney Rd. #1
Brighton, MA 02135
jmichelson141@gmail.com
(781) 608-8978

Dated: May 31, 2022.

CERTIFICATE OF SERVICE

I, Jordan Lewis Michelson, hereby certify that a true copy of the above document, **FIRST SET OF INTERROGATORIES TO DEFENDANT**, was served upon the attorney of record for TRUSTEES OF BOSTON COLLEGE by email on MAY 31, 2022.

/s/ JORDAN L. MICHELSON

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opp. J

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, ss. SUPERIOR COURT DEPARTMENT
Civil Action No. 2181CV02940

JORDAN LEWIS MICHELSON,
Plaintiff,
v.
TRUSTEES OF BOSTON COLLEGE, *d.b.a.* BOSTON COLLEGE LAW SCHOOL,
Defendant.

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8/19/2022

Upon Review: ALLOWED in part. Defendant shall supplement its responses to Interrogatories 2, 3, and 4. DENIED as to costs and expenses.
8-30-22

MOTION TO COMPEL

PURSUANT TO RULE 37 OF THE MASSACHUSETTS RULES OF CIVIL PROCEDURE, PLAINTIFF MOVES THE COURT FOR AN ORDER COMPELLING DEFENDANT TO FULLY ANSWER INTERROGATORIES NOS. 2, 3, AND 4 OF PLAINTIFF'S FIRST SET OF INTERROGATORIES TO DEFENDANT.

Plaintiff's First Set of Interrogatories was served on Defendant by Plaintiff via email pursuant to Rule 33 of the Massachusetts Rules of Civil Procedure on May 31, 2022. Defendant was dilatory in answering Plaintiff's interrogatories, filing an answer 48 calendar days after receipt of service. Defendant subsequently refused to fully answer Interrogatories Nos. 2, 3, and 4 based on boilerplate objections, despite Plaintiff's clarifications and accommodations. Parties held a Rule 9C conference on July 28, 2022, but were unable to reach an accord. Plaintiff's interrogatories are relevant, straightforward, and do not unduly burden the Defendant; they should be answered in full without further delay.

PURSUANT TO RULE 37 OF THE MASSACHUSETTS RULES OF CIVIL PROCEDURE, PLAINTIFF MOVES FOR PAYMENT OF COSTS AND EXPENSES.

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COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, ss. SUPERIOR COURT DEPARTMENT
Civil Action No. 2181CV02940

JORDAN LEWIS MICHELSON,
Plaintiff,
v.
TRUSTEES OF BOSTON COLLEGE *d.b.a.* BOSTON COLLEGE LAW SCHOOL,
Defendant.

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12/29/2022

PLAINTIFF *PRO SE*'S MOTION FOR SUMMARY JUDGMENT ON THE ISSUE OF BREACH

Pursuant to Massachusetts Rule of Civil Procedure 56, the Plaintiff *Pro Se* respectfully moves for summary judgment on the issue of whether Defendant, Trustees of Boston College *d.b.a.* Boston College Law School, breached the nondiscrimination clause that inheres to every student/university relationship as a matter of law. Specifically, Plaintiff requests that the Court grant summary judgment on the following issues of contract liability:

(1) Parties entered into a valid contract;
(2) A nondiscrimination clause was a term of that contract;
(3) Defendant engaged in "discrimination" as a matter of law;
(4) Defendant thereby breached its obligations under the nondiscrimination clause.

In support of this motion, the Plaintiff *Pro Se* has submitted a Memorandum of Law dated October 19, 2022, which is being served contemporaneously upon the counsel of record for Defendant pursuant to Superior Court Rule 9A.

Respectfully submitted,
/s/ JORDAN L. MICHELSON
Jordan Lewis Michelson
Plaintiff *Pro Se*

KO

Date Filed 12/29/2022 5:55 PM
Superior Court - Middlesex
Docket Number 2181CV02940

46 Orkney Rd. #1
Brighton, MA 02135
jmichelson141@gmail.com
(781) 608-8978

Dated: October 19, 2022.

CERTIFICATE OF SERVICE

I, Jordan Lewis Michelson, hereby certify that a true copy of the above document was served upon the attorney of record for TRUSTEES OF BOSTON COLLEGE by email on October 19, 2022.

/s/ JORDAN L. MICHELSON

Date Filed 12/29/2022 5:55 PM
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Docket Number 2181CV02940

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, ss. SUPERIOR COURT DEPARTMENT
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JORDAN LEWIS MICHELSON,
Plaintiff,
v.
TRUSTEES OF BOSTON COLLEGE *d.b.a.* BOSTON COLLEGE LAW SCHOOL,
Defendant.

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12/29/2022

MEMO OF THE PLAINTIFF *PRO SE* IN SUPPORT OF HIS MOTION FOR SUMMARY JUDGMENT ON THE ISSUE OF BREACH

The Plaintiff *Pro Se* respectfully petitions this court for summary judgment pursuant to Mass. R. Civ. P. 56(c) on the issue of breach. This court should grant said motion because Defendant's breach of the nondiscrimination clause of the contract can be established on the undisputed facts set out below. As a matter of law, the contract between a law school and its student includes a nondiscrimination guarantee. Defendant's contradictory statements and sworn entries upon the record effect an admission that the law school either made a mistake of law when it crafted its nondiscrimination policies or affirmatively repudiated its duties, and in either case did not abide by its contractual obligations to its students. As this court is no doubt aware, "ignorance of the law is not an excuse" – a maxim that applies to a law school with particular force.

A. UNDISPUTED FACTS

1. Defendant, Trustees of Boston College *d.b.a.* Boston College Law School ("BC Law"), is an educational institution with its principal place of business at 140 Commonwealth Avenue, Suite 440, Chestnut Hill, MA, 02467. Complaint/Answer ("¶" or "¶¶") ¶ 1.
2. Defendant is subject to Massachusetts and federal law. ¶¶ 7, 16, 17.
3. In 2019, Plaintiff applied to BC Law, was offered a seat in the Class of 2022, and enrolled

as a student for the 2019 fall semester. ¶ 5 Thereafter, at all relevant times, Plaintiff remained a student in good standing at Boston College Law School. ¶¶ 2, 6. He received a J.D. from BC Law in May 2022.

4. Defendant receives funding from state and federal governments and is subject to state and federal nondiscrimination laws and regulations. ¶ 8, Supp. Answer to Interrogatories ("Supp. IROG #") at Interrogatory #3.

5. Defendant admits that it has published on its website a Notice of Nondiscrimination that warrants that "Boston College rejects and condemns all forms of harassment, wrongful discrimination, and disrespect" and that "it is the policy of Boston College … to comply with all state and federal laws prohibiting discrimination in employment and in its educational programs and activities on the basis of a person's race, color, national origin, sex, religion, disability, age, marital or parental status, genetic information or family medical history, or military status, and to comply with state law prohibiting discrimination on the basis of a person's sexual orientation." ¶ 17.

6. In its Answer, Defendant averred that Boston College Law School has never "engaged in," "countenanced," "facilitated," "advocated," or "encouraged" "discrimination of any kind." *E.g.*, Defendant's Answer at ¶¶ 16, 22, 23, 24, 25, 26, 28, 29, 30, 31, 32, 35, 36, 37, 38, 40.

7. As of October 13, 2022: "Boston College states that **all** its policies and programs are, in some form, sensitive to students' sex, color, gender, sexuality, race, ethnicity, national origin, and creed." Supp. IROG #2 (emphasis added).

8. BC Law's recruiting events and programs sponsored by the Office of Admissions and Financial Aid are sensitive to students' sex, color, gender, sexuality, race, ethnicity, national origin, and creed. Supp. IROG #2.

9. BC Law's 1L orientation programs, mandatory curriculae, and alumni programming are all sensitive to students' sex, color, gender, sexuality, race, ethnicity, national origin, and creed. Supp. IROG #2.

10. BC Law's Career Services Office ("CSO") sponsors programs, panels, workshops, social, and community events that are sensitive to students' sex, color, gender, sexuality, race, ethnicity, national origin, and creed. Supp. IROG #2.

11. BC Law has a formally established "umbrella organization" that effects a formal segregation of the student body according to classifications pertaining to national origin, color, race, ethnicity, gender, and/or sexuality. Through this "umbrella organization," BC Law provides programs, panels, workshops, social events, community events, and preorientation retreats on a segregated basis. Supp. IROG #2.

12. On July 18, 2022, Defendant stated: "'Discrimination' is defined in Massachusetts and federal antidiscrimination laws and in the hundreds, if not thousands, of cases applying such antidiscrimination laws." First Answer to Interrogatory #4.

13. On July 18, 2022, Defendant swore, under penalty of perjury, that "Boston College defines and uses the term 'discrimination' as that term is defined by Massachusetts and federal law." First Answer to Interrogatory 4.

14. On October 13, 2022, Defendant swore, under penalty of perjury, that "Boston College generally interprets the term 'discrimination' to mean the unfair or prejudicial treatment of an individual or group motivated by a wrongful animus toward a protected characteristic of the individual or group and prohibited by applicable law." Supp. IROG #4.

B. LEGAL STANDARDS

1. Summary Judgment

Summary judgment is appropriate when there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. *Community Nat'l Bank v. Dawes*, 369 Mass. 550, 553 (1976); *accord*, *Barron Chiropractic v. Norfolk & Dedham Grp*., 469 Mass. 800, 804 (2014); *Bell v. Cuff*, No. 2015-0455C, at *3 (2017). If the moving party, in its pleadings and supporting documentation pursuant to Mass. R. Civ. P. 56 (c), asserts the absence of any triable issue, the nonmoving party must respond and make specific allegations sufficient to establish a genuine issue of material fact. *Barron Chiropractic*, *supra*, at 804; *see* Mass. R. Civ. P. 56 (e) ("A party may not rest upon the mere allegations or denials of his pleading"); *Bell*, *supra*, at *3 ("Bare assertions and conclusions are not enough to withstand a well-pleaded motion for summary judgment.") When appropriate, summary judgment may be rendered as to certain issues only, leaving other issues to be tried by the jury because they present a genuine issue of material fact. *Dawes*, *supra*, at 553.

2. Breach of Contract

Under Massachusetts law, a breach of contract claim requires the plaintiff to show that (1) a valid contract between the parties existed, (2) the plaintiff was ready, willing, and able to perform, (3) the defendant was in breach of the contract, and (4) the plaintiff sustained damages

as a result.[1] *Squeri v. Mount Ida Coll.*, Civil Action No. 18-12438-RGS, 2019 WL 2249722, at *5 (D. Mass. May 24, 2019) (citing *Singarella v. City of Boston*, 342 Mass. 385, 387 (1961)).

3. Discrimination

"The point of the equal protection guarantee is not to ensure that facially discriminatory laws yield roughly equivalent outcomes or that, in singling out disadvantaged classes, the State subjects them to only mild inequality. Rather, the right to equal protection recognizes that the act of classification is itself invidious and is thus constitutionally acceptable only where it meets an exacting test." *Finch v. Commonwealth Health Ins. Connector Auth*., 459 Mass. 655, 676 (2011). Thus, classifications relating to race, color, national origin, sex, gender, sexual orientation, religion, and creed are almost always prohibited by the law. *See City of Cleburne v. Cleburne Living Ctr*., 473 U.S. 432, 440 (1985) ("race, alienage, or national origin … are so seldom relevant to the achievement of any legitimate state interest that laws grounded in such considerations are deemed to reflect prejudice and antipathy-a view that those in the burdened class are not as worthy or deserving as others"); *Goodridge v. Dep't of Pub. Health*, 440 Mass. 309, 331 (2003) (extending *Cleburne's* reasoning to sex and sexual orientation). Consequently, "it is especially important that the reasons for any such classification be clearly identified and unquestionably legitimate." *Fullilove v. Klutznick*, 448 U.S. 448, 533–35 (1980), (Stevens, J., concurring).

With a narrow carve-out for a university's First Amendment right to discriminate in admissions in pursuit of an heterogenous student body,[2] institutions of higher education are

[1] Although Plaintiff asks would reserve the question of damages pending further factfinding, a breach of the nondiscrimination clause would imply injury, and therefore damages, as a matter of law. *See Parents Involved in Cmty. Sch. v. Seattle Sch. Dist. No. 1*, 551 U.S. 701, 719 (2007) ("one form of injury under the Equal Protection Clause is being forced to compete in a race-based system that may prejudice the plaintiff").

[2] *See Regents of Univ. of California v. Bakke*, 438 U.S. 265, 312, 313, 320 (1978) (finding limited right to

constrained with equal, if not greater, force. *See* 20 U.S.C. § 1681 (Title IX) ("No person in the United States shall, on the basis of sex, be … subjected to discrimination under any education program or activity receiving Federal financial assistance"); 42 U.S.C. § 2000d (Title VI) (same, but "on the ground of race, color, or national origin"); 42 U.S.C. § 2000d-4a (the term "program or activity" includes "all of the operations of… a college, university, or other postsecondary institution").

Accordingly, once matriculants arrive on campus and the composition of the student body solidifies, any license to discriminate disintegrates; at that point, the constitutional, statutory, and commonsense prohibitions against invidious discrimination become categorical once more. *See Norwood v. Harrison*, 413 U.S. 455, 469 (1973) ("There is no reason to discriminate against students for reasons wholly unrelated to individual merit unless the artificial barriers are considered an essential part of the educational message"); *Bob Jones Univ. v. U.S.*, 461 U.S. 574, 593 (1983) (affirming that "discrimination in education violates a most fundamental national public policy, as well as rights of individuals.")

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discriminate in public university admissions rooted in the First Amendment); *accord*, *Grutter v. Bollinger*, 539 U.S. 306, 329 (2003); *Gratz v. Bollinger*, 539 U.S. 244, 271-72 (2003); *Fisher v. Univ. of Texas at Austin*, 579 U.S. 365, 376-77 (2016); *but see Parents Involved in Cmty. Sch. v. Seattle Sch. Dist. No. 1*, 551 U.S. 701, 724 (2007) (holding that the rationale of *Bakke* and *Grutter* applies only to postsecondary admissions); *Schuette v. Coal. to Defend Affirmative Action, Integration & Immigrant Rts. & Fight for Equal. By Any Means Necessary (BAMN)*, 572 U.S. 291, 314 (2014) (finding "no authority in the Constitution of the United States or in this Court's precedents for the Judiciary to set aside Michigan laws that commit this policy determination to the voters.")

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C. ARGUMENT

It is undisputed that Plaintiff and Defendant entered into a contractual relationship when Plaintiff matriculated to BC Law; that Plaintiff fulfilled all contractual obligations of that relationship; and that Plaintiff received a legal education and obtained a J.D. from BC Law. Undisputed Facts ("¶" or "¶¶") ¶ 3. The question today before the court is whether a non-discrimination guarantee was part of the bargain. This court should affirm that the answer is "yes." *See Moran v. Stonehill College*, 2077CV00431, 2021 WL 965754, at *5 & n. 3 (Mass. Super. 2021) (the contractual relationship between a student and an institution of higher education goes beyond a transaction for services); *Norwood v. Harrison*, 413 U.S. 455, 468–469 (1973) ("Discriminatory treatment exerts a pervasive influence on the entire educational process.")

Plaintiff's theory is simple. By (*inter alia*) posting a "Notice of Nondiscrimination" on its website,[3] BC Law made an explicit promise to all prospective students: it promised "to comply with all state and federal laws prohibiting discrimination in employment and in its educational programs and activities." ¶ 5. Recent revelations clearly and unambiguously demonstrate that the school did not abide by that promise. ¶¶ 7-14. First, Defendant has abandoned the mantra that BC Law does not engage in discrimination "of any kind" (¶ 6) and now tacitly admits that the law school misjudged the scope of its nondiscrimination obligation as a matter of law. ¶¶ 12-14. Second, the record now reflects that, to use Defendant's phrasing, "*all* [the law school's] policies and programs are, in some form, sensitive to students' sex, color, gender, sexuality, race, ethnicity, national origin, and creed." ¶ 7 (emphasis added); *see also* ¶¶ 8-11.

These revelations would be independently devastating to BC's case; together, they are

[3] Such notice is mandated by law. *See U.S. Department of Education Office of Civil Rights, "Notice of Non-Discrimination"* (2010) https://www2.ed.gov/about/offices/list/ocr/docs/nondisc.html).

more than fatal. To the extent that BC Law has a contractual obligation "to comply with all state and federal laws prohibiting discrimination … in its educational programs and activities," ¶ 5, no reasonable jury could elide the conclusion that the law school has breached. The court has no choice but to find that Defendant is in breach of contract as a matter of law and is liable for any actual or expectation damages flowing from that breach. *See Community Nat'l Bank v. Dawes*, 369 Mass. 550, 553 (1976) (liability); *Hawkins v. McGee*, 84 N.H. 114 (1929) (expectation damages); *Sullivan v. O'Connor*, 363 Mass. 579 (1973) (actual damages).

1. **Defendant has admitted to using a flawed definition of "discrimination" in the administration of its programs and policies.**

Through its responsive discovery (or lack thereof), Defendant tacitly admits that the law school's administration of its programs and policies has fallen short of its legal obligations under state and federal antidiscrimination law. ¶¶ 4, 13-14. Caught between the facts on the ground and its prior falsehoods (i.e., Defendant's solemn and repeated assertions that the law school has never "engaged in," "countenanced," "facilitated," "advocated," or "encouraged" "discrimination of any kind," ¶ 6), Defendant now recedes from its prior sworn statement that "Boston College defines and uses the term 'discrimination' as that term is defined by Massachusetts and federal law." ¶ 13. In so doing, the school necessarily concedes one of two possibilities: either the law school administered its programming under a mistaken understanding of the law; or someone is guilty of perjury.

In its most recent testimonial, Defendant states that "Boston College generally interprets the term 'discrimination' to mean the unfair or prejudicial treatment of an individual or group motivated by a wrongful animus toward a protected characteristic of the individual or group and prohibited by applicable law." ¶ 14. In addition to being a veritable word salad, this new definition directly contradicts Defendant's prior sworn statement; for it is wholly inapposite to the manner

in which "the term 'discrimination' … is defined by Massachusetts and federal law." ¶ 13. "'Discrimination' is defined in Massachusetts and federal antidiscrimination laws and in the hundreds, if not thousands, of cases applying such antidiscrimination laws," as BC Law noted previously. ¶ 12. Yet nowhere in those statutes, cases, or the entire canon of Anglo-American law can the law school's newest definition be found.

The reason is simple: BC Law's new definition is antithetical to the core principles established by those "hundreds, if not thousands" of cases. For although "'discrimination' … is susceptible of varying interpretations," *Regents of Univ. of California v. Bakke*, 438 U.S. 265, 284 (1978), even to this day, *see Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.*, 211 L. Ed. 2d 604 (Jan. 24, 2022) (granting cert.), certain principles are well-established. For instance: the *actus reus* of "discrimination" is the act of classification,[4] the requisite *mens rea* is general intent,[5] and "[p]referring members of any one group for no reason other than race or

[4] *See, e.g., Hirabayashi v. United States*, 320 U.S. 81, 100 (1943) ("Distinctions between citizens solely because of their ancestry are by their very nature odious to a free people whose institutions are founded upon the doctrine of equality"); *City of Cleburne, Tex. v. Cleburne Living Ctr.*, 473 U.S. 432, 439 (1985) (non-discrimination under the Equal Protection Clause "is essentially a direction that all persons similarly situated should be treated alike"); *Plyler v. Doe*, 457 U.S. 202, 216 (1982) ("The Equal Protection Clause directs that 'all persons similarly circumstanced shall be treated alike'"); *Finch v. Commonwealth Health Ins. Connector Auth*., 459 Mass. 655, 676 (2011) ("the right to equal protection recognizes that the act of classification is itself invidious").

[5] *See Smith Coll. v. Massachusetts Comm'n Against Discrimination*, 376 Mass. 221, 227–28 (1978) (even where "facially neutral practices" are challenged, "discriminatory motive is not an essential part of the proof"); *Goodridge v. Dep't of Pub. Health*, 440 Mass. 309, 331 (2003) (regardless of animus, sexual orientation does not provide a rational basis for differentiation); *Personnel Amd'r of Mass. v. Feeney*, 442 U.S. 256, 272 (1979) ("Certain classifications… in themselves supply a reason to infer antipathy. Race is the paradigm. A racial classification, regardless of purported motivation, is presumptively invalid and can be upheld only upon an extraordinary justification.") (emphasis added).

ethnic origin is discrimination for its own sake." *Bakke*, *supra*, at 307; *accord*, *City of Richmond v. J.A. Croson Co.*, 488 U.S. 469, 496 (1989); *Gratz v. Bollinger*, 539 U.S. 244, 270 (2003); *Parents Involved in Cmty. Sch. v. Seattle Sch. Dist. No. 1*, 551 U.S. 701, 729 (2007).

By contrast, the law school's new definition would recast the *actus reus* as "unfair or prejudicial treatment," the *mens rea* as "wrongful animus," and the universal right to freedom from invidious discrimination as "dependent on the race [or color, ethnicity, national origin, gender, sexuality, or creed] of those burdened or benefited by a particular classification." *Adarand Constructors, Inc. v. Pena,* 515 U.S. 200, 201 (1995). No American court has ever countenanced such a definition. Had they done their homework, the law school would have known as much. Of course, such knowledge would entail that this new definition is a post-hoc contrivance that the law school conjured out of whole cloth in response to this litigation, and thereafter perjuriously swore to. ¶ 14.

Accordingly, the most charitable inference to be drawn from Defendant's contradictory statements, ¶¶ 12-13, is that Boston College Law School misapprehended its obligations under state and federal law. This does not, of course, excuse the law school from the consequences of its conduct. *See Jerman v. Carlisle, McNellie, Rini, Kramer & Ulrich LPA*, 559 U.S. 573, 581 (2010) ("We have long recognized the 'common maxim, familiar to all minds, that ignorance of the law will not excuse any person, either civilly or criminally'") (quoting *Barlow v. United States*, 7 Pet. 404, 411, 8 L.Ed. 728 (1833)). Thus, at a minimum, this court should conclude that the law school acted upon a mistake of law and is liable for the consequences.

2. The undisputed facts demonstrate that BC Law School engaged in conduct that constitutes "discrimination" as a matter of law, thereby breaching its explicit warranty of nondiscrimination as a matter of law.

Whether born of an innocent mistake of law or of willful disregard for fundamental civil

rights, the facts ineludibly demonstrate that BC Law manifested "discrimination" within the meaning of state and federal law (which is the kind of "discrimination" that the U.S. Department of Education is referring to when it mandates that schools, like BC Law, post a "Notice of Nondiscrimination" conspicuously on its website,[6] ¶ 5).

In fact, Defendant admits that "*all* its policies and programs are, in some form, sensitive to students' sex, color, gender, sexuality, race, ethnicity, national origin, and creed." ¶ 7 (emphasis added). From before the first day of orientation (¶¶ 8, 11), until after the last day of graduation (¶ 9), and at every step in between (¶¶ 9-11), BC Law students' sex, color, gender, sexuality, race, ethnicity, national origin, and creed ("illicit classifications") are salient to the programming and services available to them. ¶¶ 7-11; *see*, *generally*, Supp. Answer to Interrogatory #2 (providing an extensive but not exhaustive list of specific programs). Defendant and its agents not only condone the myriad programs and policies at BC Law that make these illicit distinctions salient to the student experience; they actively facilitate them. ¶¶ 8, 10, 11.

This divvying-up of programs and opportunities according to illicit classifications is not only ubiquitous at BC Law; it is also systematic. The law school administration exerts top-down authority to split the student body into two along specific demographic lines for the purpose of allocating resources and opportunities. ¶ 11. Based solely on specific classifications pertaining to national origin, color, race, ethnicity, gender, and sexuality, BC Law invites some students to join the school's "umbrella organization." Through this school-sponsored student group, Defendant provides students of selected classifications with exclusive access to various programs, panels, workshops, social events, community events, and retreats – effecting a hubristic wayward pantomime of historical segregation *de jure*. ¶ 11.

[6] *U.S. Department of Education Office of Civil Rights, "Notice of Non-Discrimination"* (2010) https://www2.ed.gov/about/offices/list/ocr/docs/nondisc.html.

In sum, discrimination on the basis of sex, color, gender, sexuality, race, ethnicity, national origin, and creed is endemic to BC Law's educational services. ¶¶ 7-10. BC Law goes far beyond mere tolerance toward such illicit classifications; it actively facilitates invidious discrimination. ¶¶ 8, 10, 11. The law school formally segregates the student body according to illicit classifications, designates a favored class, and provides exclusive programming for students within that designation. ¶ 11. Since this far exceeds the threshold amount of discrimination allowed under state and federal law (zero[7]), there is no factual ambiguity: to the extent that Boston College Law School has a contractual obligation "to comply with all state and federal laws prohibiting discrimination … in its educational programs and activities," ¶ 5, BC Law is in breach.

[7] *See Finch v. Commonwealth Health Ins. Connector Auth.*, 459 Mass. 655, 676 (2011) (holding that "the scale of the inequality imposed by an invidious classification" is not relevant); *Cooper v. Aaron*, 358 U.S. 1, 19 (1958) ("The right of a student not to be segregated on racial grounds in schools ... is indeed so fundamental and pervasive that it is embraced in the concept of due process of law"); *Brown v. Bd. of Ed. of Topeka,* 347 U.S. 483, 495 (1954) ("'separate but equal'… is inherently unequal").

CONCLUSION

WHEREFORE, the Plaintiff *Pro Se* prays the court grant summary judgment on the issue of contract liability; specifically, to find that (1) a contract existed between the parties, (2) a nondiscrimination clause was a term of that contract, and (3) Defendant breached its obligations under that nondiscrimination clause by engaging in "discrimination" as a matter of law.

Respectfully submitted,
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Dated: October 19, 2022.

CERTIFICATE OF SERVICE

I, Jordan Lewis Michelson, hereby certify that a true copy of the above document was served upon the attorney of record for TRUSTEES OF BOSTON COLLEGE by email on October 19, 2022.

/s/ JORDAN L. MICHELSON

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Docket Number 2181CV02940

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, ss. SUPERIOR COURT DEPARTMENT
Civil Action No. 2181CV02940

JORDAN LEWIS MICHELSON,
Plaintiff,
v.
TRUSTEES OF BOSTON COLLEGE *d.b.a.* BOSTON COLLEGE LAW SCHOOL,
Defendant.

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12/29/2022

THE PARTIES' CONSOLIDATED STATEMENT
OF FACTS PURSUANT TO SUPERIOR COURT RULE 9A(b)(5)

Pursuant to Massachusetts Rule of Civil Procedure 56 and Superior Court Rule 9A, the Plaintiff *Pro Se* respectfully submits this "Statement of Facts" in connection with his motion for partial summary judgment. Apologies for the delay and gratitude to opposing counsel for drawing my attention to the Superior Court Rules during our Rule 9C conference.

The Defendant Trustees of Boston College ("Boston College") has included its responses to Mr. Michelson's stated facts and has set forth Boston College's Statement of Additional Facts, both in opposition to Plaintiff's [Mr. Michelson] *Pro Se* Motion for Summary Judgment on the Issue of Breach and in support of Boston College's Cross-Motion for Summary Judgment.

I. PLAINTIFF *PRO SE*'S STATEMENT OF FACTS IN SUPPORT OF PARTIAL SUMMARY JUDGMENT.

1. Defendant, Trustees of Boston College, is a 501(c)(3) Nonprofit Organization organized under the laws of the Commonwealth of Massachusetts, with its principal place of business at 140 Commonwealth Avenue, Suite 440, Chestnut Hill, MA, 02467, in Middlesex County, Massachusetts. Complaint of the Plaintiff *Pro Se* at ¶ 1; Boston College's Answer

and Jury Demand ("Answer") at ¶ 1.

RESPONSE: Admitted.[1][2]

2. At all relevant times, Plaintiff was a student at Boston College Law School. Answer at ¶ 2.

RESPONSE: Boston College admits that Mr. Michelson was a student at Boston College Law School from the fall semester of 2019 through the spring semester of 2022. Joint Record Appendix ("R.A.") 001 (Affidavit of Jennifer Perrigo ("Perrigo Aff.")) at ¶ 2.

3. At all relevant times, Plaintiff was a student in good standing at BC Law School. Answer at ¶ 6.

RESPONSE: Admitted. R.A. 001 (Perrigo Aff.) at ¶¶ 2, 3.

4. Plaintiff graduated with a J.D. from Boston College Law School in May 2022. *See* Answer at ¶ 6; R.A. 001 (Perrigo Aff.) At ¶ 2.

RESPONSE: Admitted. R.A. 001 (Perrigo Aff.) at ¶ 2.

5. Boston College is subject to the laws of Massachusetts. Answer at ¶ 7.

RESPONSE: Admitted.

6. Boston College receives funding from the federal government and Boston College is subject to federal law. Answer at ¶ 8.

RESPONSE: Admitted.

7. Boston College receives state funding. R.A. 014 (Exhibit A).

RESPONSE: Admitted.

8. At all relevant times, Boston College published "Notice of Nondiscrimination" on its

[1] Boston College states that Mr. Michelson's citations to paragraphs in his un-verified complaint are improper as such allegations are not evidence.
[2] Mr. Michelson notes that the only citation to a paragraph in his "un-verified complaint" is a partial cite to ¶ 1, a paragraph to which Boston College unequivocally "admitted." *See* Answer at ¶ 1. It is therefore part of the undisputed record.

website. Answer at ¶ 17 (citing https://www.bc.edu/content/bc-web/offices/human-resources/sites/oid/Policies-and-Compliance/Notice-of-Nondiscrimination.html); R.A. 008 (Exhibit A) (also citing https://www.bc.edu/content/bc-web/offices/human-resources/sites/oid/Policies-and-Compliance/Notice-of-Nondiscrimination.html); R.A. 010 (Exhibit A) (citing https://www.bc.edu/content/bc-web/offices/human-resources/sites/employee-handbook/employment-policies-and-procedures.html#equal).

RESPONSE: Admitted.

9. In its Answer submitted May 27, 2022, Defendant averred the following:

i. "Boston College denies that it engaged in discrimination of any kind." Answer at ¶ 16.

ii. "Boston College denies that it countenanced, encouraged, or engaged in discrimination of any kind." Answer at ¶ 22.

iii. "Boston College denies that it engaged in or encouraged discrimination of any kind." Answer at ¶ 23.

iv. "Boston College denies that it engaged in, encouraged, or advocated discrimination of any kind." Answer at ¶ 24.

v. "Boston College denies that it engaged in discrimination of any kind and denies that it enacted policies to allocate resources and opportunities in a discriminatory manner." Answer at ¶ 25.

vi. "Boston College denies that it engaged in discrimination of any kind." Answer at ¶ 26.

vii. "Boston College denies that it engaged in discrimination of any kind." Answer at ¶ 28.

viii. "Boston College denies that it engaged in or facilitated discrimination of any kind." Answer at ¶ 29.

ix. "Boston College denies that it engaged in discrimination of any kind." Answer at ¶ 30.

x. "Boston College denies that it engaged in discrimination of any kind."

Answer at ¶ 31.

xi. "Boston College denies that it engaged in discrimination of any kind." Answer at ¶ 32.

xii. "Boston College denies that it engaged in discrimination of any kind." Answer at ¶ 35.

xiii. "Boston College denies that it engaged in discrimination of any kind." Answer at ¶ 36.

xiv. "Boston College denies that it engaged in, countenanced, or facilitated discrimination of any kind." Answer at ¶ 37.

xv. "Boston College denies that it engaged in, countenanced, or facilitated discrimination of any kind." Answer at ¶ 38.

xvi. "Boston College denies that it engaged in discrimination of any kind." Answer at ¶ 40.

RESPONSE: Admitted.

10. The following are Defendant's Answers to Interrogatory No. 2, both initial and supplemental, in substantial part (R.A. 008 – R.A. 013 (Exhibit A)):

Interrogatory No. 2

Please identify and explain all Boston College policies and programs that are sensitive to students' sex, color, gender, sexuality, race, ethnicity, national origin, and creed.

Response No. 2

Boston College objects to Interrogatory No. 2 as overbroad, unduly burdensome, and not reasonably calculated to lead to relevant and admissible evidence given that it seeks all policies and programs that are sensitive to students' protected characteristics. Boston College further objects to Interrogatory No. 2 as vague and ambiguous in that it fails to define "sensitive to." Subject to these objections, and without waiving the same, Boston College states that, in its policies and programs, it abides by state and federal

antidiscrimination laws, and that Boston College "commits itself to maintaining a welcoming environment for all people and extends its welcome in particular to those who may be vulnerable to discrimination on the basis of their race, color, national origin, sex, religion, disability, age, marital or parental statue, sexual orientation, military service, or other legally protected status." See Boston College's Notice of Nondiscrimination, https://www.bc.edu/content/bc-web/offices/humanresources/sites/oid/Policies-and-Compliance/Notice-of-Nondiscrimination (last visited July 6, 2022).

Supplemental Response No. 2

Boston College understands "policies and programs that are sensitive to students' sex, color, gender, sexuality, race, ethnicity, national origin, and creed" as policies that specifically address diversity and/or discrimination that are applicable to the Law School, including policies generally applicable to the Boston College community, and programs that specifically address diversity and/or discrimination that are offered by the Law School or are available to all members of the Boston College community. Further answering Interrogatory No. 2, Boston College states that all its policies and programs are, in some form, sensitive to students' sex, color, gender, sexuality, race, ethnicity, national origin, and creed. Further answering Interrogatory No. 2, Boston College identifies the following specific, current policies and programs as some, but not all, of Boston College's policies and programs that are sensitive to students' sex, color, gender, sexuality, race, ethnicity, national origin, and creed:

…

<u>Programs</u>

Specific to the Law School

- **1L Orientation Programs**
  - Introduction to Jesuit Education and Student Formation
  - Intercultural Ethics & Professionalism: A Foundation for Learning and Practice
- **Director of Diversity, Equity, Inclusion and Belonging**
  - Includes programs, panels, workshops, social and community events planned in

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collaboration with this position

- **Law School Chaplain**
- **Office of Admissions and Financial Aid** (including various recruiting events and participation in pipeline programs)
- **Career Services Office** (including various programs, panels, workshops, social, and community events)
- **Critical Perspectives in Law and Professional Identity**
    - 1L one credit required course (P/F)
- **LAHANAS**. This group serves as an umbrella organization to the Asian Pacific American Law Students Association (APALSA), Black Law Students Association (BLSA), Disability Law Students Association (DLSA), Latin American Law Students Association (LALSA), Lambda Law Students Association, Middle Eastern Law Students Association (MELSA), Native American Law Students Association (NALSA), South Asian Law Students Association (SALSA). The abbreviation used to represent the first letters in each organization's name. Since the program has expanded over time and includes other underrepresented groups, this name for the organization no longer applies, but the organization is still referred to as "LAHANAS." (Includes various programs, panels, workshops, social, and community events)
    - LAHANAS 1L Retreat
- **Student Organizations** (Includes various programs, panels, workshops, social, and community events)
    - Law Student Association Diversity Committee
    - Asian Pacific American Law Students Association
    - BC Christian Law Fellowship
    - Black Law Student Association
    - Jewish Law Students Association
    - Latin American Law Student Association
    - Lambda
    - Middle Eastern Law Students Association
    - Native American Law Students Association
    - South Asian Law Students Association
    - St. Thomas More Society
    - Women's Law Center
- **Black Alumni Network (BAN)**

Available to the General Boston College Community

- **Office for Institutional Diversity**
    - Cultural Competence Engagement Modules (CCEM)

  - Diversity and Inclusion Summit
  - Living Out the Jesuit Mission
  - Table Talk Diversity Series
  - University Affiliates Program
  - Voices of Diversity and Inclusion Forum
- **Thea Bowman AHANA and Intercultural Centre**
  - Options through Education
  - Community Research Program
  - AHANA Summit
  - Benjamin E. Mays Mentoring Program
  - Bowman Advocates for Inclusive Culture
  - Magis Civil Rights Immersion Trip
  - Community Advocacy and Research Engagement Program
  - Dialogues on Race
  - Racial Identity Development Experience
  - Spiritual; Engagement & Outreach Initiatives
  - Lift as You Climb Mentorship Program
  - Sr. Thea's Ladies AHANA Leadership Program
  - The AHANA Male Leadership Program
- **Forum on Racial Justice in America**

…

RESPONSE: Admitted that the above quoted language is the entirety of Boston College's initial Response to Interrogatory No. 2 and some of Boston College's Supplemental Response to Interrogatory No. 2. R.A. 002 (Perrigo Aff.) at ¶5; R.A. 006 – R.A. 018 (Ex. A to Perrigo Aff.).

11. The following are Defendant's Answers to Interrogatory No. 4, both initial and supplemental, in full. R.A. 014 – R.A. 015 (Exhibit A).

Interrogatory No. 4

Please provide a definition of the word "discrimination" insofar as it forms the basis of Defendant's averments that Boston College does not engage in, countenance, facilitate, advocate for, or encourage discrimination "of any kind."

Response No. 4

"Discrimination" is defined in Massachusetts and federal antidiscrimination laws and in the hundreds, if not thousands, of cases applying such antidiscrimination laws. Indeed, in his Complaint, [Plaintiff] cites numerous antidiscrimination laws. Boston College defines and uses the term "discrimination" as that term is defined by Massachusetts and federal law. Boston College abides by its obligations under Massachusetts and federal non-discrimination laws. Moreover, Boston College Law School communicates the following to all potential employers who recruit and/or interview on campus:

> **Anti-Discrimination Policy**
>
> As recognized by the faculty, Boston College Law School does not discriminate against any person on the basis of the identities referenced in our statement of diversity and inclusion in admission to, access to, treatment in, or employment in its programs and activities. Boston College Law School has instituted policies and procedures to ensure a safe and non-discriminatory environment and to meet legal requirements, including Title IX of the Education Amendments of 1972. All employers using the facilities and services of the career services offices and Externship Program must comply with these policies and procedures. Boston College Law School makes one exception to this policy. Under threat of loss of funding to the University resulting from the Solomon Amendment, the application of our anti-discrimination policy is suspended for military recruiters. This exception to our policy does not reflect our acceptance of or agreement with discriminatory hiring policies.

Supplemental Response No. 4

Boston College generally interprets the term "discrimination" to mean the unfair or prejudicial treatment of an individual or group motivated by a wrongful animus toward a protected characteristic of the individual or group and prohibited by applicable law.

RESPONSE: Admitted. R.A. 002 (Perrigo Aff.) at ¶5; R.A. 006 – R.A. 018 (Ex. A to Perrigo Aff.).

II. BOSTON COLLEGE'S STATEMENT OF ADDITIONAL FACTS.

Numbering continues from Mr. Michelson's Statement of Facts.

11. Mr. Michelson attended Boston College Law School from the fall of 2019 to the spring of 2022 and graduated in 2022 with a J.D. R.A. 001 (Perrigo Aff.) at ¶2.

    RESPONSE: Admitted.

12. At all times while a student at Boston College Law School, Mr. Michelson was in good standing. R.A. 001 (Perrigo Aff.) at ¶3.

    RESPONSE: Admitted.

13. Mr. Michelson paid tuition to Boston College Law School and Boston College Law School provided Mr. Michelson with a legal education. R.A. 002 (Perrigo Aff.) at ¶4.

    RESPONSE: Admitted.

14. Boston College Law School has various student-run affinity groups (the "Affinity Groups"), several of which are part of the student-run umbrella organization known as LAHANAS. LAHANAS includes the following Affinity Groups: Asian Pacific American Law Students Association; Black Law Students Association; Latin American Law Students Association; LAMBDA (Coalition of LGBTQIA+ Students); Native American Law Students Association; South Asian Law Students Association; Disability Law Students Association; and Middle Eastern Law Students Association. R.A. 002 (Perrigo Aff.) at ¶6.

    RESPONSE:

    - Admitted insofar as Boston College Law School has various affinity groups ("Affinity Groups"). R.A. 028 – R.A. 031 (Affidavit of Jordan L. Michelson, appended hereto as Exhibit D ("JLM Aff.")); R.A. 028 (JLM Aff.) at ¶¶ 1 – 2.

- Admitted insofar as several Affinity Groups are part of the "umbrella organization" known as LAHANAS. R.A. 029 (JLM Aff.) at ¶ 2.

- Admitted insofar as LAHANAS includes the following Affinity Groups: Asian Pacific American Law Students Association; Black Law Students Association; Latin American Law Students Association; LAMBDA (Coalition of LGBTQIA+ Students); Native American Law Students Association; South Asian Law Students Association; and Middle Eastern Law Students Association. R.A. 029 (JLM Aff.) at ¶ 3.

- Denied insofar as BC characterizes its "Affinity Groups" and LAHANAS as "student-run." R.A. 028 (JLM Aff.) at ¶ 1.

- Denied insofar as the school is inconsistent as to whether the Disability Law Students Association is an "Affinity Group" and whether it is part of LAHANAS. R.A. 028 – R.A. 029 (JLM Aff.) at ¶¶ 2 – 3.

- Otherwise denied. R.A. 028 – R.A. 029 (JLM Aff.) at ¶¶ 1 – 3.

15. The Affinity Groups are open to all students; the Affinity Groups are not exclusive to the particular group specified in their names. For example, a student does not need to be native American to join the Native American Law Students Association. R.A. 002 (Perrigo Aff.) at ¶7.

RESPONSE: Admitted insofar as Boston College does not have an official policy expressly prohibiting students from joining any Affinity Groups. Otherwise denied. R.A. 028 – R.A. 030 (JLM Aff.) at ¶¶ 4 – 7.

16. Students can join the Affinity Groups at any point throughout the year but most students tend to join during the student organization fair, at which the Affinity Groups and other

student organizations are present, held at the beginning of each academic year. Students can join the Affinity Groups at any time through MyBC, an online portal available to all students at the Law School. R.A. 002 (Perrigo Aff.) at ¶8.

RESPONSE:

- Admitted that most students tend to join Affinity Groups during the student organization fair, at which the Affinity Groups and other student organizations are present, held at the beginning of each academic year. R.A. 029 (JLM Aff.) at ¶ 4.
- Admitted insofar as it not impossible for students to join Affinity Groups at any time through MyBC, an online portal available to all students at the Law School. R.A. 028 – R.A. 030 (JLM Aff.) at ¶ 5.
- Otherwise denied. R.A. 028 – R.A. 030 (JLM Aff.) at ¶¶ 4 – 7.

17. The Affinity Groups offer various programming (e.g., speaker events, social events, networking events, etc.). R.A. 002 (Perrigo Aff.) at ¶9.

RESPONSE: Admitted.

18. The programming offered by the Affinity Groups is open to all members of the Boston College Law School community. All community members are free to partake in the programming offered by the Affinity Groups regardless of whether they are members of the particular Affinity Group presenting the programming. R.A. 003 (Perrigo Aff.) at ¶10.

RESPONSE: Admitted insofar as Boston College has no official policy expressly denying any student access to Affinity Group programming. R.A. 029 – R.A. 030 (JLM Aff.) at ¶ 5. Otherwise denied. R.A. 030 (JLM Aff.) at ¶¶ 6 – 7.

19. When an Affinity Group schedules a particular event or program it is offering, the Affinity

Group posts a notice of the event or program on MyBC. All students at the Law School have access to MyBC. R.A. 003 (Perrigo Aff.) at ¶11.

RESPONSE:

- Admitted insofar as all students at the Law School have access to MyBC.
- Admitted insofar as Affinity Groups sometimes post notices of events and programs on MyBC.
- Denied insofar as this implies that Affinity Groups always post notices of events and programs on MyBC. R.A. 029 – R.A. 030 (JLM Aff.) at ¶¶ 5 & 7.

20. Each Monday morning, the Law School sends out the "Monday Headlines" email to all community members to inform them of all the events and programming, including the events and programming of the Affinity Groups, scheduled for the week. R.A. 003 (Perrigo Aff.) at ¶12.

RESPONSE: Admitted insofar as the Law School sends out a "Monday Headlines" email to law students to inform them of some events and programming, including some events and programming put on by the Affinity Groups, scheduled for the week. Otherwise denied. R.A. 029 – R.A. 030 (JLM Aff.) at ¶¶ 5 – 8.

Respectfully submitted,

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Dated: December 29, 2022

Respectfully submitted,

TRUSTEES OF BOSTON COLLEGE,
d.b.a. BOSTON COLLEGE LAW SCHOOL

By its attorneys,

/s/ Alan D. Rose
Alan D. Rose (BBO #427280)
B. Aidan Flanagan (BBO #675667)
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CERTIFICATE OF SERVICE

I, Jordan Lewis Michelson, hereby certify that a true copy of the above document was served upon the attorney of record for TRUSTEES OF BOSTON COLLEGE by email on December 29, 2022.

/s/ JORDAN L. MICHELSON

Date Filed 12/29/2022 5:55 PM
Superior Court - Middlesex
Docket Number 2181CV02940

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, ss. **SUPERIOR COURT**
CIVIL ACTION
NO. 2181CV02940

JORDAN LEWIS MICHELSON,

Plaintiff,

v.

TRUSTEES OF BOSTON COLLEGE,
d.b.a. BOSTON COLLEGE LAW SCHOOL;

Defendant.

BOSTON COLLEGE'S *SUPPLEMENTAL* RESPONSES TO PLAINTIFF'S FIRST SET OF INTERROGATORIES TO DEFENDANT

Pursuant to the Mass. R. Civ. P. 26, Mass. R. Civ. P. 33, the rules and standing orders of the Massachusetts Superior Court, and the Court's August 30, 2022 Order, Defendant Trustees of Boston College d/b/a Boston College Law School ("Boston College" or the "College") hereby makes its *Supplemental* responses to Interrogatories 2, 3, and 4 of Plaintiff Jordan Lewis Michelson's ("Mr. Michelson") First Set of Interrogatories to Defendant (the "Interrogatories"). Boston College reserves its right to supplement these responses as necessary.

GENERAL OBJECTION

Boston College objects to the Interrogatories to the extent they purport to impose obligations on Defendant greater than its obligations under the Massachusetts Rules of Civil Procedure and the rules and standing orders of the Massachusetts Superior Court.

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RESPONSES TO SPECIFIC INTERROGATORIES

Interrogatory No. 2

Please identify and explain all Boston College policies and programs that are sensitive to students' sex, color, gender, sexuality, race, ethnicity, national origin, and creed.

Response No. 2

Boston College objects to Interrogatory No. 2 as overbroad, unduly burdensome, and not reasonably calculated to lead to relevant and admissible evidence given that it seeks all policies and programs that are sensitive to students' protected characteristics. Boston College further objects to Interrogatory No. 2 as vague and ambiguous in that it fails to define "sensitive to." Subject to these objections, and without waiving the same, Boston College states that, in its policies and programs, it abides by state and federal antidiscrimination laws, and that Boston College "commits itself to maintaining a welcoming environment for all people and extends its welcome in particular to those who may be vulnerable to discrimination on the basis of their race, color, national origin, sex, religion, disability, age, marital or parental statue, sexual orientation, military service, or other legally protected status." See Boston College's Notice of Nondiscrimination, https://www.bc.edu/content/bc-web/offices/human-resources/sites/oid/Policies-and-Compliance/Notice-of-Nondiscrimination (last visited July 6, 2022).

Supplemental Response No. 2

Boston College understands "policies and programs that are sensitive to students' sex, color, gender, sexuality, race, ethnicity, national origin, and creed" as policies that specifically address diversity and/or discrimination that are applicable to the Law School, including policies generally applicable to the Boston College community, and programs that specifically address

diversity and/or discrimination that are offered by the Law School or are available to all members of the Boston College community. Further answering Interrogatory No. 2, Boston College states that all its policies and programs are, in some form, sensitive to students' sex, color, gender, sexuality, race, ethnicity, national origin, and creed. Further answering Interrogatory No. 2, Boston College identifies the following specific, current policies and programs as some, but not all, of Boston College's policies and programs that are sensitive to students' sex, color, gender, sexuality, race, ethnicity, national origin, and creed:

Policies

Applicable to the Law School Community

- Boston College Law School's Student Policies & Procedures Handbook, 2022-2023, available at https://www.bc.edu/content/dam/bc1/schools/law/top-bar/current-students/Academics/documents-forms/academic_policies_and_procedures.pdf (last visited Oct. 4, 2022): in particular, Sections III (Discrimination/Harassment Policy) and IV (BC Law Diversity, Equity and Inclusion Concern Procedure) of the School Policy and Procedures;

- Boston College Law School Diversity, Equity and Inclusion Concern Procedure, available at https://www.bc.edu/content/dam/bc1/schools/law/top-bar/current-students/Academics/documents-forms/bclaw-dei-concern-policy.pdf (last visited Oct. 4, 2022);

- Career Services Employer Policies & Guidelines (regarding nondiscrimination), available at https://www.bc.edu/bc-web/schools/law/sites/employers.html#tab-policies

Applicable to the General Boston College Community

- Boston College's Student Code of Conduct, 2022-2023, available at https://www.bc.edu/content/dam/bc1/offices/StudentAffairs/main/StudentGuide/Student-Code-of-Conduct.pdf (last visited Oct. 4, 2022);

- Boston College's Student Sexual Misconduct Policy, 2022-2023, available at https://www.bc.edu/content/dam/files/offices/dos/pdf/bcssmp2018.pdf (last visited Oct. 4, 2022);

- Boston College's Title IX Harassment Policy, available at https://www.bc.edu/content/dam/bc1/sites/policies/Title-IX-Harassment-Policy.pdf (last visited Oct. 4, 2022);

- Boston College's Hate Crimes and Bias-Related Incidents Protocol, available at https://www.bc.edu/content/bc-web/offices/human-resources/sites/oid/Policies-and-Compliance/Hate-Crimes-and-Bias-Related-Incidents-Protocol.html (last visited Oct. 4, 2022);

- Boston College's Campus Sexual Violence and Misconduct Response and Prevention Program, available at https://www.bc.edu/content/dam/bc1/sites/policies/Sexual-Violence-Response-Prevention.pdf (last visited Oct. 4, 2022);

- Boston College's Consensual Relationships Policy, available at https://www.bc.edu/content/dam/files/offices/policies/pdf/policies/2019/Consensual%20Relationship%20Policy%2011.18_.pdf (last visited Oct. 4, 2022);

- Boston College's Discrimination Grievance Policy, available at https://www.bc.edu/content/dam/bc1/sites/policies/Discrimination-Grievance-Policy.pdf (last visited Oct. 4, 2022);

- Boston College's Discriminatory Harassment Policy, available at https://www.bc.edu/content/dam/bc1/sites/policies/Discriminatory-Harassment-Policy.pdf (last visited Oct. 4, 2022);

- Boston College's Professional Standards and Business Conduct, available at https://www.bc.edu/content/dam/files/offices/policies/pdf/policies/2019/2019professionalstandardbusinessconduct.pdf (last visited Oct. 4, 2022);

- Boston College's Faculty Handbook, available at https://www.bc.edu/content/dam/files/offices/policies/pdf/policies/2019/2019professionalstandardbusinessconduct.pdf (last visited Oct. 4, 2022);

- Boston College's Equal Employment Opportunity and Affirmative Action, available at https://www.bc.edu/content/bc-web/offices/human-resources/sites/employee-handbook/employment-policies-and-procedures.html#equal (last visited Oct. 4, 2022);

Programs

Specific to the Law School

- **1L Orientation Programs**
  - Introduction to Jesuit Education and Student Formation
  - Intercultural Ethics & Professionalism: A Foundation for Learning and Practice

- **Director of Diversity, Equity, Inclusion and Belonging**
  - Includes programs, panels, workshops, social and community events planned in collaboration with this position

- **Law School Chaplain**

- **Office of Admissions and Financial Aid** (including various recruiting events and participation in pipeline programs)

- **Career Services Office** (including various programs, panels, workshops, social, and community events)

- **Critical Perspectives in Law and Professional Identity**
  - 1L one credit required course (P/F)

- **LAHANAS**. This group serves as an umbrella organization to the Asian Pacific American Law Students Association (APALSA), Black Law Students Association (BLSA), Disability Law Students Association (DLSA), Latin American Law Students Association (LALSA), Lambda Law Students Association, Middle Eastern Law Students Association (MELSA), Native American Law Students Association (NALSA), South Asian Law Students Association (SALSA). The abbreviation used to represent the first letters in each organization's name. Since the program has expanded over time and includes other underrepresented groups, this name for the organization no longer applies, but the organization is still referred to as "LAHANAS." (Includes various programs, panels, workshops, social, and community events)
  - LAHANAS 1L Retreat

- **Student Organizations** (Includes various programs, panels, workshops, social, and community events)
  - Law Student Association Diversity Committee
  - Asian Pacific American Law Students Association
  - BC Christian Law Fellowship
  - Black Law Student Association
  - Jewish Law Students Association
  - Latin American Law Student Association
  - Lambda
  - Middle Eastern Law Students Association
  - Native American Law Students Association
  - South Asian Law Students Association
  - St. Thomas More Society
  - Women's Law Center

- **Black Alumni Network (BAN)**

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Available to the General Boston College Community

- **Office for Institutional Diversity**
  - Cultural Competence Engagement Modules (CCEM)
  - Diversity and Inclusion Summit
  - Living Out the Jesuit Mission
  - Table Talk Diversity Series
  - University Affiliates Program
  - Voices of Diversity and Inclusion Forum

- **Thea Bowman AHANA and Intercultural Centre**
  - Options through Education
  - Community Research Program
  - AHANA Summit
  - Benjamin E. Mays Mentoring Program
  - Bowman Advocates for Inclusive Culture
  - Magis Civil Rights Immersion Trip
  - Community Advocacy and Research Engagement Program
  - Dialogues on Race
  - Racial Identity Development Experience
  - Spiritual; Engagement & Outreach Initiatives
  - Lift as You Climb Mentorship Program
  - Sr. Thea's Ladies AHANA Leadership Program
  - The AHANA Male Leadership Program

- **Forum on Racial Justice in America**

- **Office for Mission and Ministry**
  - Campus Ministry
  - Center for Ignatian Spirituality
  - Center for Student Formation
  - First Year Experience
  - Intersections
  - Ministry to Priests
  - Montserrat
  - Pastoral Support
  - The Volunteer and Service Learning Centre

- **Student Organizations** (Includes various programs, panels, workshops, social, and community events)
  - African Student Organization
  - AHANA
  - Allies
  - ASiAM
  - Asian Caucus
  - Black Christian Fellowship

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- Black Student Forum
- Campus Ministry
- Caribbean Culture Club
- Chinese Student Association
- Christian Life Club
- Cuban-American Student Association
- Dominican Association
- Episcopal Community at Boston College
- Ethiopian and Eritrean Student Association
- FACES
- First Generation Club of Boston College
- Girls Who Code
- Gratia Plena
- Hillel
- I AM THAT GIRL
- Ignatian Society
- Korean Students Association
- L'Association Haïtienne
- LAMBDA BC
- LABC
- Latter-day Saint Student Association
- Lebanese Club of Boston College
- LGBTQ+ Student Outreach and Support
- Mexican Association of Students
- Mission and Ministry
- Muslim Student Association
- Network of Enlightened Women at Boston College
- OLAA
- Orthodox Christian Fellowship
- PATU
- Philippine Society
- Puerto Rican Student Association
- Smart Woman Securities
- Sons of St. Patrick
- South Asian Student Association
- St. Thomas More Society
- Stem and Health Organization for AHANA
- Strong Women Strong Girls
- Taiwanese Culture Organization
- SACNAS BC
- Vietnamese Students Association
- Women in Business
- Women in STEM
- Women Innovators Network

Interrogatory No. 3
How much state and federal funding (or other assistance) does Boston College receive per year?

Response No. 3

Boston College objects to Interrogatory No. 3 as overbroad, unduly burdensome, and not reasonably calculated to lead to relevant and admissible evidence given that it seeks information wholly irrelevant to Mr. Michelson's sole remaining claim for breach of contract. Boston College further objects to Interrogatory No. 3 as vague and ambiguous in that it fails to define "other assistance." Based on these objections, Boston College will not answer Interrogatory No. 3.

Supplemental Response No. 3

Pursuant to Mass. R. Civ. P. 33(c), Boston College produces the attached Report of Federal Awards in Accordance With the Uniform Guidance, May 31, 2021, which is publicly available at https://www.bc.edu/content/dam/bc1/offices/FVP/BostonCollegeFY21UGReport.pdf (last visited October 12, 2022). With regard to state funding, Boston College received $1,438,585.76 in FY2021.

Interrogatory No. 4
Please provide a definition of the word "discrimination" insofar as it forms the basis of Defendant's averments that Boston College does not engage in, countenance, facilitate, advocate for, or encourage discrimination "of any kind."

Response No. 4

"Discrimination" is defined in Massachusetts and federal antidiscrimination laws and in the hundreds, if not thousands, of cases applying such antidiscrimination laws. Indeed, in his Complaint, Mr. Michelson cites numerous antidiscrimination laws. Boston College defines and

uses the term "discrimination" as that term is defined by Massachusetts and federal law. Boston College abides by its obligations under Massachusetts and federal non-discrimination laws. Moreover, Boston College Law School communicates the following to all potential employers who recruit and/or interview on campus:

> **Anti-Discrimination Policy**
>
> As recognized by the faculty, Boston College Law School does not discriminate against any person on the basis of the identities referenced in our statement of diversity and inclusion in admission to, access to, treatment in, or employment in its programs and activities. Boston College Law School has instituted policies and procedures to ensure a safe and non-discriminatory environment and to meet legal requirements, including Title IX of the Education Amendments of 1972. All employers using the facilities and services of the career services offices and Externship Program must comply with these policies and procedures. Boston College Law School makes one exception to this policy. Under threat of loss of funding to the University resulting from the Solomon Amendment, the application of our anti-discrimination policy is suspended for military recruiters. This exception to our policy does not reflect our acceptance of or agreement with discriminatory hiring policies.

Supplemental Response No. 4

Boston College generally interprets the term "discrimination" to mean the unfair or prejudicial treatment of an individual or group motivated by a wrongful animus toward a protected characteristic of the individual or group and prohibited by applicable law.

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Respectfully submitted,

TRUSTEES OF BOSTON COLLEGE,

By its attorneys,

/s/ Alan D. Rose
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B. Aidan Flanagan (BBO #675667)
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October 13, 2022

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VERIFICATION

I, Jennifer Perrigo, hereby certify that I have read the contents of the foregoing supplemental answers to interrogatories 2, 3, and 4 and that the foregoing responses are true to the best of my present knowledge, information, and belief. I declare under the penalties of perjury that the foregoing is true and correct, this 13th day of October, 2022.

/s/ Jennifer Perrigo
Jennifer Perrigo
Associate Dean for Strategic & Student Affairs
Boston College Law School

Date Filed 12/29/2022 5:55 PM
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Docket Number 2181CV02940

CERTIFICATE OF SERVICE

I, B. Aidan Flanagan, hereby certify that on October 13, 2022, I served a copy of the foregoing by email and U.S. Mail upon plaintiff, Jordan Lewis Michelson.

/s/ B. Aidan Flanagan
B. Aidan Flanagan

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Superior Court - Middlesex
Docket Number 2181CV02940

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, ss.	SUPERIOR COURT DEPARTMENT Civil Action No. 2181CV02940

JORDAN LEWIS MICHELSON,
Plaintiff,
v.
TRUSTEES OF BOSTON COLLEGE *d.b.a.* BOSTON COLLEGE LAW SCHOOL,
Defendant.

AFFIDAVIT OF JORDAN L. MICHELSON IN OPPOSITION TO BOSTON COLLEGE'S CROSS-MOTION FOR SUMMARY JUDGMENT

I, Jordan Lewis Michelson, hereby depose and state under oath as follows:

1. Boston College Law School maintains a number of student organizations for the benefit of its students. Although many of these groups have student leadership teams, it would be a stretch to call these organizations "student-run" because they are so firmly within the Boston College ecosystem. As I understand it:

   a. Student organizations are school-sanctioned, school-funded groups that operate under the supervision of Boston College and in tandem with faculty and staff.

   b. Student organizations recruit and hold meetings on BC grounds and use BC infrastructure such as @bc.edu listservs and the MyBC portal.

   c. Boston College has significant control over the programs and activities of student organizations and could, for example, prevent an organization from hosting or sponsoring events if the school administration deemed such events to be inapropos.

   d. Student misconduct in relation to student groups is considered to be school-related conduct for purposes of disciplinary actions.

2. The law school classifies some student organizations as "Affinity Groups." The purpose of and basis for this designation is unclear.

   a. The school is often inconsistent in its application of the "Affinity Group"

designation. For instance, the Jewish Law Students Association ("JLSA"), and First Generation Professionals groups were billed as "Affinity Groups" in 2021 but not in 2022. *Compare* LAHANAS Brochure 2021 *with* LAHANAS Brochure 2022.

b. By contrast, the Asian Pacific American Law Students Association ("APALSA"), Black Law Students Association ("BLSA"), Latin American Law Students Association ("LALSA"), LAMBDA (Coalition of LGBTQIA+ Students), Native American Law Students Association ("NALSA"), South Asian Law Students Association ("SALSA"), and Middle Eastern Law Students Association ("MELSA") groups are always considered to be "Affinity Groups."

3. The law school bundles some of these "Affinity Groups" into the "umbrella organization" LAHANAS. The purpose of and basis for this designation is unclear.

a. BC always designates the following Affinity Groups as constituting "LAHANAS": APALSA, BLSA, LALSA, LAMBDA, NALSA, SALSA, and MELSA.

b. BC has sometimes designated the Disability Law Students Association, DLSA, as a part of the LAHANAS constituency. Other times it has not.

c. BC has never countenanced JLSA as a part of the LAHANAS.

4. I do not have personal knowledge as to whether Affinity Groups are intended to be exclusive to the particular demographic constituency specified in their names. I do know that these groups get most of their constituents at the Student Organization Fair ("Org Fair"). Further, in my experience, the demographic particularities of these groups' student Org Fair recruiters overwhelmingly corresponded with the named demographic constituency. Further, these recruiters (and other members generally) specifically target those with like identities for recruitment.

5. MyBC is not widely used by BC students when it comes to organizing and maintaining student groups. It has a poor user interface and does not make intuitive sense. Consequently, law students have never, to my knowledge, relied on MyBC when it comes to student organizations.

a. As far as I know, virtually all student organization recruitment occurs at the Org Fair. Consequently, I don't know how to join a student group on MyBC and my

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impression is that most students don't know how to join a student group on MyBC.

b. Most student group communications occur through listservs, text, or social media.

c. Many programs and events that are put on by student groups are *not* posted on MyBC.

6. Not all programming offered by Affinity Groups is open to all members of the Boston College Law School community. Based on my knowledge and experience, a student who obviously and without explanation presented as *not* a member of the named demographic group would be unwelcome in many "affinity spaces."

7. BC Law community members are *not* equally "free" to partake all of the programming and activities offered by Affinity Groups.

a. *Some* Affinity Group programming and *some* Affinity Group activities are presented by Affinity Groups for the benefit of the greater community.

b. Other Affinity Group programming is not so inclusive. Based on my knowledge and experience, someone who is not a member of the named demo would be strongly discouraged from partaking of Affinity Group resources that were not "for" them.

8. BC's "Monday Headlines" email to does not inform community members of "all" the events and programming, including the events and programming of the Affinity Groups, scheduled for the week.

Respectfully submitted,

/s/ JORDAN L. MICHELSON
Jordan Lewis Michelson
Plaintiff *Pro Se*
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(781) 608-8978

CERTIFICATE OF SERVICE

I, Jordan Lewis Michelson, hereby certify that a true copy of the above document was served upon the attorney of record for TRUSTEES OF BOSTON COLLEGE by email on December 14, 2022.

/s/ JORDAN L. MICHELSON

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, ss. **SUPERIOR COURT**
CIVIL ACTION
NO. 2181CV02940

JORDAN LEWIS MICHELSON,

Plaintiff,

v.

TRUSTEES OF BOSTON COLLEGE,
d.b.a. BOSTON COLLEGE LAW SCHOOL;

Defendant.

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BOSTON COLLEGE'S
CROSS-MOTION FOR SUMMARY JUDGMENT

Pursuant to Mass. R. Civ. P. 56, defendant Trustees of Boston College ("Boston College" or "Defendant") respectfully cross-moves for summary judgment for Boston College on Count I (breach of contract), the sole remaining claim in the Complaint of the Plaintiff [Jordan Lewis Michelson ("Mr. Michelson")] *Pro Se*.

The Court should enter summary judgment for Boston College because of the following separate and independent reasons:

1. Mr. Michelson has not established, *and cannot establish*, that he and Boston College entered into a contract that included a nondiscrimination provision. The *only* evidence Mr. Michelson points to is a legally-required Notice of Nondiscrimination (the "Notice") that Boston College has posted on its website that states Boston College's policy, not a contractual promise: "it is the *policy* of Boston College … to comply with all state and federal laws prohibiting discrimination." (emphasis added). While Boston College must, and does, comply with state and federal antidiscrimination laws, *it does not do so as a matter of contract* with its students. Mr. Michelson does not identify any other evidence to demonstrate that he and Boston College entered into a contract that included a nondiscrimination provision; and

KO

2. Mr. Michelson has not established, *and cannot establish*, that Boston College breached a contract with him by discriminating against him. The fundamental flaws in Mr. Michelson's argument are that he has not established, and cannot establish, that Boston College violated any nondiscrimination law or discriminated against him. More specifically, (i) Mr. Michelson has not established that he is a member of a protected class and (ii) Mr. Michelson has not established that Boston College treated him improperly because of his membership in such a protected class. Indeed, Mr. Michelson neither pleads nor proves these key elements. See, e.g., Bulwer v. Mount Auburn Hosp., 473 Mass. 672, 680 (2016) (citing Lipchitz v. Raytheon Co., 434 Mass. 493, 501 (2001) (noting that a plaintiff alleging discrimination must demonstrate "that he [] is a member of a protected class; that he [] was subject to an adverse employment action; that the employer bore 'discriminatory animus' in taking that action; and that that animus was the reason for the action (causation)"). Instead, Mr. Michelson asserts that Boston College engaged in discrimination on the basis of: (1) Boston College's definition of the term "discrimination" in response to an interrogatory; and (2) Boston College's response to an interrogatory requiring Boston College to identify all programs and policies that are "sensitive to" students' sex, color, gender, sexuality, race, ethnicity, national origin, and creed (to which Boston College raised a number of objections, including that Mr. Michelson did not define "sensitive to" and that the term is vague and ambiguous). As explained more fully in the accompanying memorandum, neither (1) nor (2) demonstrates a breach by Boston College.

In support of this Cross-Motion, Boston College relies upon its Opposition to Plaintiff's *Pro Se* Motion for Summary Judgment on the Issue of Breach *and* Boston College's Memorandum in Support of Boston College's Cross-Motion for Summary Judgment, the Parties' Consolidated Statement of Facts, and the Affidavit of Jennifer Perrigo.

REQUEST FOR ORAL ARGUMENT

Boston College respectfully requests a hearing on its Cross-Motion.

Respectfully submitted,

TRUSTEES OF BOSTON COLLEGE,

By its attorneys,

/s/ Alan D. Rose
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November 21, 2022

CERTIFICATE OF SERVICE

I, B. Aidan Flanagan, hereby certify that on November 21, 2022, I served a copy of the foregoing by email and U.S. Mail upon plaintiff, Jordan Lewis Michelson.

/s/ B. Aidan Flanagan
B. Aidan Flanagan

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COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, ss. **SUPERIOR COURT**
CIVIL ACTION
NO. 2181CV02940

JORDAN LEWIS MICHELSON,

Plaintiff,

v.

TRUSTEES OF BOSTON COLLEGE,
d.b.a. BOSTON COLLEGE LAW SCHOOL;

Defendant.

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12/29/2022

BOSTON COLLEGE'S OPPOSITION TO PLAINTIFF'S *PRO SE* MOTION FOR SUMMARY JUDGMENT ON THE ISSUE OF BREACH *AND* BOSTON COLLEGE'S MEMORANDUM IN SUPPORT OF BOSTON COLLEGE'S CROSS-MOTION FOR SUMMARY JUDGMENT

Defendant Trustees of Boston College ("Boston College" or "Defendant") submits this Opposition to Plaintiff [Jordan Lewis Michelson's ("Mr. Michelson")] *Pro Se* Motion for Summary Judgment on the Issue of Breach ("Motion" or "Mot.") *and* Memorandum in Support of Boston College's Cross-Motion for Summary Judgment. The Court should: (1) deny Mr. Michelson's Motion; (2) grant Boston College's Cross-Motion for Summary Judgment; and (3) enter summary judgment for Boston College on Mr. Michelson's breach of contract claim (Count I), the sole remaining claim. Boston College relies upon the Parties' Consolidated Statement of Facts ("Consolidated SOF" or "CSOF") and the Affidavit of Jennifer Perrigo.

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Introduction

The Court should deny Mr. Michelson's Motion and grant Boston College's Cross-Motion for two main reasons.

First, Mr. Michelson has not established, *and cannot establish*, that he and Boston College entered into a contract that included a nondiscrimination provision. Mr. Michelson points to a legally-required Notice of Nondiscrimination (the "Notice") that Boston College has posted on its website that states Boston College's policy, not a contractual promise: "it is the *policy* of Boston College … to comply with all state and federal laws prohibiting discrimination." (emphasis added). While Boston College must, and does, comply with state and federal antidiscrimination laws, it does not do so as a matter of contract with its students. Indeed, Mr. Michelson does not even assert as an undisputed fact that he and Boston College entered into a contract that included a nondiscrimination provision. See CSOF at Section I.

Mr. Michelson does not point to any other evidence to demonstrate that he and Boston College entered into a contract that included a nondiscrimination provision. Given that Mr. Michelson cannot establish that he and Boston College entered a contract that included a nondiscrimination provision, Mr. Michelson will not be able to prove his breach of contract claim (Count I) and summary judgment should enter for Boston College.

Second, Mr. Michelson has not established, *and cannot establish*, that Boston College breached a contract with him by discriminating against him. The fundamental flaws in Mr. Michelson's argument are that he has not established, and cannot establish, that Boston College violated any nondiscrimination law or discriminated against him. More specifically, (i) Mr. Michelson has not established that he is a member of a protected class and (ii) Mr. Michelson has not established that Boston College treated him improperly because of his membership in such a

protected class. Indeed, Mr. Michelson neither pleads nor proves these key elements. See, e.g., Bulwer v. Mount Auburn Hosp., 473 Mass. 672, 680 (2016) (citing Lipchitz v. Raytheon Co., 434 Mass. 493, 501 (2001) (noting that a plaintiff alleging discrimination must demonstrate "that he [] is a member of a protected class; that he [] was subject to an adverse employment action; that the employer bore 'discriminatory animus' in taking that action; and that that animus was the reason for the action (causation)"). Instead, Mr. Michelson asserts that Boston College engaged in discrimination on the basis of: (1) Boston College's definition of the term "discrimination" in response to an interrogatory; and (2) Boston College's response to an interrogatory requiring Boston College to identify all programs and policies that are "sensitive to" students' sex, color, gender, sexuality, race, ethnicity, national origin, and creed (to which Boston College raised a number of objections, including that Mr. Michelson did not define "sensitive to" and that the term is vague and ambiguous). Memo. at pp. 7-11. First, there is nothing improper about Boston College's definition of the term "discrimination." Even assuming, arguendo, that there were a problem with Boston College's definition of "discrimination," that does not show that Boston College discriminated against Mr. Michelson. Second, simply because Boston College stated in response to an interrogatory that *in some form*, its policies and programs are "sensitive to" students' characteristics does not mean that those policies and programs are discriminatory. Lastly, Mr. Michelson argues that there is a "divvying-up of programs and opportunities according to illicit classifications" and points to the existence of student-run affinity groups, the student-run umbrella organization known as LAHANAS, and Mr. Michelson's assertion that "[t]hrough [LAHANAS], Defendant provides students of selected classifications with exclusive access to various programs, panels, workshops, social events, community events, and retreats[.]" Memo. at p. 10. Mr. Michelson is simply

wrong on the facts. First, the affinity groups are open to all students and any student can join any affinity group at any time throughout the year. Second, the programming put on by the affinity groups is open to everyone, including people who are not members of the particular affinity group putting on the programming. Moreover, the programming offered by the affinity groups is communicated to all students through MyBC, an online portal available to all students, and by a "Monday Headlines" email that goes to the members of the Boston College Law School community to inform them of the events and programming scheduled for that week.

Mr. Michelson does not point to any other evidence to demonstrate that Boston College breached a supposed contract with him by discriminating against him. Given that Mr. Michelson cannot demonstrate that Boston College discriminated against him, he will not be able to prove that Boston College breached any contract with him; thus, Mr. Michelson will not be able to prove his breach of contract claim (Count I) and summary judgment should enter for Boston College.

Background

Mr. Michelson attended Boston College Law School from the fall of 2019 to the spring of 2022 and graduated in 2022 with a J.D. CSOF ¶11. At all times, while a student at Boston College Law School, Mr. Michelson was in good standing. CSOF ¶12. Mr. Michelson paid tuition to Boston College Law School and Boston College Law School provided Mr. Michelson with a legal education. CSOF ¶13.

Boston College Law School has various student-run affinity groups (the "Affinity Groups"), several of which are part of the student-run umbrella organization known as LAHANAS, that offer various programming (e.g., various speaker events, social events,

networking events, etc.). CSOF ¶¶14, 17.[1] The Affinity Groups are open to all students – i.e., any student is free to join any of the Affinity Groups regardless of the student's identity and/or characteristics. CSOF ¶¶15, 16. For example, a student need not be native American to join the Native American Law Students Association. CSOF ¶15. Students can join the Affinity Groups at any point throughout the year but most tend to join during the student organization fair, at which the Affinity Groups and other student organizations are present, held at the beginning of each academic year; students can also join the Affinity Groups at any time through MyBC, an online portal available to all students at the Law School. CSOF ¶16. The programming offered by the Affinity Groups is open to all members of the Boston College Law School community, regardless of whether they are members of the particular Affinity Group that is offering the programming. CSOF ¶18. When the Affinity Groups schedule programming, they post a notice of the programming on MyBC; all students have access to MyBC and therefore can see such postings. CSOF ¶19. Moreover, all events and programming posted on MyBC is communicated to all students by way of the "Monday Headlines" email that goes out each Monday to all students to let them know of the events scheduled for the upcoming week. CSOF ¶¶19-20.

In October 2021, Mr. Michelson sued Boston College in four counts, alleging breach of contract (Count I), two counts under the Massachusetts Civil Rights Act (Counts II and III), and a claim under M.G.L. c. 151B (Count IV). Dkt. No. 2. The Court (Wilkins, J.) granted Boston College's Motion to Dismiss as to three of the counts, leaving in place only Mr. Michelson's

[1] LAHANAS is the umbrella organization that includes Boston College's diverse, student-run affinity groups. See https://www.bc.edu/content/dam/bc1/schools/law/about/dei/LAHANAS-Brochure.pdf (last visited Oct. 24, 2022). LAHANAS includes the following Affinity Groups: Asian Pacific American Law Students Association; Black Law Students Association; Latin American Law Students Association; LAMBDA (Coalition of LGBTQIA+ Students); Native American Law Students Association; South Asian Law Students Association; Disability Law Students Association; and Middle Eastern Law Students Association.

breach of contract claim. Dkt. Entry (May 17, 2022). In ruling on one of Mr. Michelson's cross-motions, Judge Wilkins said, "the motion [to dismiss] was successful on three counts, even on Count I [breach of contract], the motion had plausible merit, as the complaint is exceedingly general, argumentative, vague and evasive, as to Plaintiff's actual and specific contentions. Even Count I came very close to dismissal for failure to plead facts plausibly showing entitlement to relief." Dkt. Entry (May 17, 2022).

Standard

"Summary judgment is appropriate where there are no genuine issues of material fact in dispute and the moving party is entitled to judgment as a matter of law." Barron Chiropractic & Rehab., P.C. v. Norfolk & Dedham Grp., 469 Mass. 800, 804 (2014) (citation omitted); see also, Kourouvacilis v. Gen. Motors Corp., 410 Mass. 706, 716 (1991). The moving party bears the burden of affirmatively demonstrating that there is no genuine issue of material fact. Pederson v. Time, Inc., 404 Mass. 14, 17 (1989). The moving party may satisfy this burden by demonstrating that the nonmoving party has no reasonable expectation of proving an essential element of his case at trial. Flesner v. Technical Commc'ns Corp., 410 Mass. 805, 809 (1991) (citing Kourouvacilis, 410 Mass. at 716); Fiduciary Trust Co. v. Bingham, Dana & Gould, et al., 58 Mass. App. Ct. 245, 251 (2003). Under these standards, Boston College is entitled to summary judgment.

Argument

I. THE COURT SHOULD DENY MR. MICHELSON'S MOTION FOR SUMMARY JUDGMENT AS TO BREACH AND GRANT BOSTON COLLEGE'S CROSS-MOTION FOR SUMMARY JUDGMENT.

a. Mr. Michelson Has Not Established – *and Cannot Establish* – that He and Boston College Entered into a Contract that Included a Nondiscrimination Provision.

Mr. Michelson has not demonstrated, and cannot demonstrate, that he and Boston College entered into a contract that included a nondiscrimination clause. In his Statement of Facts in Support of Partial Summary Judgment ("Michelson's SOF"), Mr. Michelson does not state the terms of the contract or that the contract specifically included a nondiscrimination provision. See CSOF at Section I ("Plaintiff *Pro Se*'s Statement of Facts in Support of Partial Summary Judgment"). Moreover, in his Memorandum, Mr. Michelson tacitly acknowledges that the undisputed facts do not show that he and Boston College entered into a contract that contained a nondiscrimination provision:

> It is undisputed that Plaintiff and Defendant entered into a contractual relationship when Plaintiff matriculated to BC Law; that Plaintiff fulfilled all contractual obligations of that relationship; and that Plaintiff received a legal education and obtained a J.D. from BC Law … The question today before the court is whether a non-discrimination guarantee was part of the bargain. This court should affirm that the answer is "yes."

Memo. at p. 6. At best, the undisputed facts demonstrate that Boston College promised to provide a legal education to Mr. Michelson in exchange for tuition.

Mr. Michelson, citing Squeri v. Mount Ida Coll., Civil Action No. 18-12438-RGS, 2019 WL 2249722 (D. Mass. May 24, 2019), correctly states what he must show to establish a breach of contract. Memo. at pp. 3-4. Mr. Michelson fails, however, to acknowledge that he *first* must establish what the actual terms of the contract he had with Boston College were. As the Squeri court explained, "[a]t a minimum, the plaintiff must 'explain what obligations were imposed on

each of the parties by the alleged contract.'" Squeri, 2019 WL 2249722, at *5 (quoting Buck v. Am. Airlines, Inc., 476 F.3d 29, 38 (1st Cir. 2007)); see also Barkhordar v. President and Fellows of Harvard Coll., Civil Action No. 1:20-cv-10968-IT, 2021 WL 2535512, at *4 (D. Mass. June 21, 2021) (internal quotation and citation omitted) (same). In Squeri, the plaintiff-students made the following allegations:

- Plaintiffs "'fulfilled their contractual obligations to Mount Ida by remitting tuition payments … for the purpose of receiving a degree in their selected field' and 'complied with all their financial and academic obligations[;]'" and
- Defendants "'breached their contractual duty by failing to provide the education bargained for and paid for.'"

Squeri, 2019 WL 2249722, at *5 (quoting Am. Comp. ¶¶107-109). The District Court dismissed the plaintiff-students' breach of contract claim: "[t]hese bare allegations do not suffice for a breach of contract claim." Squeri, 2019 WL 2249722, at *5 (citation omitted). The First Circuit affirmed the dismissal of the breach of contract claim, explaining, "'it is essential to state with substantial certainty the facts showing the existence of the contract and the legal effect thereof.'" Squeri v. Mount Ida Coll., 954 F.3d 56, 71 (1st Cir. 2020) (quoting Tel. Answering Serv. Of Bos., Inc. v. New Eng. Tel. & Tel. Co., 358 Mass. 822 (1971)) (internal quotation marks from Tel. Answering Serv. and citation omitted).

Mr. Michelson's SOF does not state the terms of the contract he and Boston College supposedly entered. See CSOF at Section I. Looking to Mr. Michelson's Complaint, his allegations regarding the contract he and Boston College supposedly entered are similar to the insufficient allegations made by the plaintiff-students in Squeri. Mr. Michelson alleges:

> 12. Defendant law school, extended to Plaintiff, a law student, an offer of admission. Plaintiff accepted that offer when he matriculated, thus forming a contractual relationship between the student and the school (the 'Covenant').

> 13. Defendant furnished consideration for the Covenant in the form of a promised seat in the Class of 2022. Plaintiff furnished consideration, and continues to furnish consideration, for the Covenant to the tune of tens of thousands of dollars per year in tuition. Plaintiff also committed to significant changes in position by accepting the Defendant's offer, including forebearance of other opportunities and incurrence of substantial expenses.

Compl. ¶¶12-13. In essence, Mr. Michelson's allegations make clear that Boston College promised to provide him a legal education in exchange for tuition. While the Court (Wilkins, J.) did not dismiss Mr. Michelson's breach of contract claim, it indicated that Mr. Michelson's claim "came very close to dismissal for failure to plead facts plausibly showing entitlement to relief." Dkt. Entry (May 17, 2022).

Here, Mr. Michelson has not established, and cannot establish, that he and Boston College entered a contract that included a nondiscrimination provision, let alone stated with substantial certainty the facts showing the existence of the contract and the legal effect thereof. In arguing that the contract included a nondiscrimination provision, Mr. Michelson points to a legally-required Notice of Nondiscrimination that is posted on several Boston College webpages. Mr. Michelson's reliance on the Notice is misplaced. The plain language of the Notice demonstrates that it states a policy, not a contractual promise: "it is the *policy* of Boston College … to comply with all state and federal laws prohibiting discrimination." (emphasis added). While Boston College certainly must, and does, abide by state and federal antidiscrimination laws, *it does not do so as a matter of contract* and there is no basis to read such laws as *contractual* terms between Boston College and Mr. Michelson. Mr. Michelson does not identify

any other evidence that demonstrates that he and Boston College entered into a contract that included a nondiscrimination provision.[2] Thus, the Court should deny Mr. Michelson's Motion.

Given that Mr. Michelson has not established that he and Boston College entered into a contract that contained a nondiscrimination provision, Mr. Michelson "has no reasonable expectation of proving an essential element of his case at trial." Flesner v. Technical Commc'ns Corp., 410 Mass. 805, 809 (1991) (citing Kourouvacilis, 410 Mass. at 716). As a result, the Court should grant Boston College's Cross-Motion and enter summary judgment for Boston College.

b. Mr. Michelson Has Not Established – *and Cannot Establish* – that Boston College Discriminated Against Him.

Assuming, arguendo, that Mr. Michelson and Boston College did enter a contract that contained a nondiscrimination provision, Mr. Michelson has not demonstrated, and cannot demonstrate, that Boston College breached such a contract by discriminating against him. First, Mr. Michelson has not established that he is a member of a protected class. Second, Mr. Michelson has not established that Boston College treated Mr. Michelson in an improper way because of his membership in a protected class. See, e.g., Bulwer, 473 Mass. 672, 680 (citing Lipchitz v. Raytheon Co., 434 Mass. 493, 501 (2001) (noting that a plaintiff alleging discrimination must demonstrate "that he [] is a member of a protected class; that he [] was subject to an adverse employment action; that the employer bore 'discriminatory animus' in taking that action; and that that animus was the reason for the action (causation)"). Indeed, Mr. Michelson's SOF and the facts section of Mr. Michelson's Memorandum are silent as to: (1) Mr. Michelson's membership in a protected class; and (2) that Boston College treated Mr. Michelson

[2] If Mr. Michelson had other evidence to support his assertion that he and Boston College entered into a contract that contained a nondiscrimination provision, he presumably would have presented it in his Motion and his SOF.

in a particular way because of his membership in a protected class. Moreover, Mr. Michelson neither cites any legal authority nor establishes any legal basis for the premise that Boston College has engaged in any discrimination in violation of state or federal antidiscrimination laws.

Mr. Michelson tries to argue that Boston College has engaged in discrimination and has thereby breached a contract with Mr. Michelson because of: (1) Boston College's definition of "discrimination," provided over its objections in response to an interrogatory Mr. Michelson propounded in this litigation; and (2) Boston College's statement, provided over its objections in response to an interrogatory Mr. Michelson propounded in this litigation, that "its policies and programs are, in some form, sensitive to students' sex, color, gender, sexuality, race, ethnicity, national origin, and creed."

Again, assuming, arguendo, that Mr. Michelson and Boston College entered into a contract that contained a nondiscrimination provision, neither (1) nor (2) demonstrates a breach by Boston College.

i. Definition of "Discrimination."

Mr. Michelson argues that Boston College's definition of "discrimination," in response to an interrogatory, demonstrates that Boston College engaged in illegal discrimination. This argument fails.

Mr. Michelson propounded the following interrogatory: "Please provide a definition of the word 'discrimination' insofar as it forms the basis of Defendant's averments that Boston College does not engage in, countenance, facilitate, advocate for, or encourage discrimination 'of any kind.'" Boston College responded:

> "Discrimination" is defined in Massachusetts and federal antidiscrimination laws and in the hundreds, if not thousands, of cases applying such antidiscrimination laws. Indeed, in his Complaint, Mr. Michelson cites numerous antidiscrimination laws. Boston College defines and uses the term "discrimination" as that term is defined by Massachusetts and federal law. Boston College abides by its obligations under Massachusetts and federal

> non-discrimination laws. Moreover, Boston College Law School communicates the following to all potential employers who recruit and/or interview on campus:
>
> **Anti-Discrimination Policy**
> As recognized by the faculty, Boston College Law School does not discriminate against any person on the basis of the identities referenced in our statement of diversity and inclusion in admission to, access to, treatment in, or employment in its programs and activities. Boston College Law School has instituted policies and procedures to ensure a safe and non-discriminatory environment and to meet legal requirements, including Title IX of the Education Amendments of 1972. All employers using the facilities and services of the career services offices and Externship Program must comply with these policies and procedures. Boston College Law School makes one exception to this policy. Under threat of loss of funding to the University resulting from the Solomon Amendment, the application of our anti-discrimination policy is suspended for military recruiters. This exception to our policy does not reflect our acceptance of or agreement with discriminatory hiring policies.

Mr. Michelson then moved to compel a further response to his interrogatory, the Court granted his motion, and Boston College supplemented its response with the following: "Boston College generally interprets the term 'discrimination' to mean the unfair or prejudicial treatment of an individual or group motivated by a wrongful animus toward a protected characteristic of the individual or group and prohibited by applicable law."

Mr. Michelson argues that Boston College's supplemental response contradicts Boston College's initial response and is flawed because "nowhere in those statutes, cases, or the entire canon of Anglo-American law can the law school's newest definition be found." Memo. at p. 8. Boston College has neither abandoned nor contradicted its initial response. Boston College's supplemental response did just that: supplemented its initial response. Moreover, Boston College's supplemental response comports with common definitions of "discrimination." See, e.g., the Massachusetts Commission Against Discrimination's ("MCAD") Mission Statement ("Anyone who lives in, works in, or visits Massachusetts may file a Discrimination Complaint if they believe they were treated differently or unfairly based on their identity as a member of a protected class (e.g., race, disability, age, national origin, gender, sexual orientation, or veteran's

status).”), available at https://www.mass.gov/info-details/about-the-commission-against-discrimination#mission- (last visited Nov. 4, 2022); the MCAD’s Overview of Types of Discrimination in Massachusetts (“Massachusetts Law outlaws treating people unfairly based on the persons membership in a ‘protected class,’ such as your race, national origin, religion, disability, age, sexual orientation, or gender identity. If you feel that you have been treated unfairly based on protected class, you may file a Complaint of Discrimination at the MCAD.”), available at https://www.mass.gov/info-details/overview-of-types-of-discrimination-in-massachusetts (last visited Nov. 4, 2022). Indeed, in the interrogatory Mr. Michelson propounded, he cited similar definitions of the “discrimination:”

> Unjust or prejudicial treatment of a person or group, esp. on the grounds of race, gender, sexual orientation, etc. (citing definition of discrimination in OED Online (updated March 2022) (accessed May 31, 2022)).
>
> …
>
> To discriminate against someone means to treat that person differently, or less favorably, for some reason. (citing U.S. Equal Employment Opportunity Commission, https://www.eeoc.gov/youth/what-employment-discrimination (accessed May 31, 2022).

There is nothing wrong with how Boston College defined the term “discrimination” in its response and supplemental response to Mr. Michelson’s interrogatory.

Moreover, Mr. Michelson’s focus on how Boston College has defined the term “discrimination” in response to an interrogatory is entirely misplaced. Mr. Michelson alleges that Boston College discriminated against him. Mr. Michelson’s apparent disagreement with Boston College’s definition of the term “discrimination” in response to an interrogatory does not demonstrate that Boston College discriminated against Mr. Michelson. Mr. Michelson has not pointed to any evidence to establish that he is a member of a protected class or to establish that

Boston College treated him in some improper manner because of his membership in the protected class.

ii. Boston College's Statement About Policies and Programs that are "Sensitive to" Students' Characteristics.

Mr. Michelson argues that Boston College engaged in discrimination based on Boston College's response to an interrogatory, that "its policies and programs are, in some form, sensitive to students' sex, color, gender, sexuality, race, ethnicity, national origin, and creed." Mr. Michelson tries to use Boston College's response to assert that "BC Law students' sex, color, gender, sexuality, race, ethnicity, national origin, and creed ('illicit classifications') are salient to the programming and services available to them" and that this results in a "divvying-up of programs and opportunities according to illicit classifications[.]" Memo. at p. 10. Boston College's interrogatory response, provided over its objection, including, in part, due to the vagueness and ambiguity of the term "sensitive to," does not demonstrate that Boston College's policies and programs are discriminatory. Mr. Michelson's argument is fundamentally flawed.

As a factual matter, Mr. Michelson is simply wrong that opportunities are "divvyed-up" according to illicit classifications and Mr. Michelson does not cite any evidence that supports his assertion. Mr. Michelson points to LAHANAS, a student-run umbrella organization of student-run Affinity Groups at Boston College Law School,[3] and asserts that "[t]hrough this school-sponsored student group, Defendant provides students of selected classifications with exclusive access to various programs, panels, workshops, social events, community events, and retreats[.]" Memo. at p. 10. This is simply not true. The Affinity Groups at Boston College Law School are open to all students – i.e., any student is free to join any of the Affinity Groups regardless of the students' identity or characteristics. CSOF ¶¶14, 15. Any student can join any Affinity Group at

[3] See supra FN 1.

any point through the year; most students tend to join the Affinity Groups at the student organization fair at the beginning of each year; students can also join the Affinity Groups at any time through MyBC, an online portal available to all students. CSOF ¶16. Moreover, the programming offered by the Affinity Groups is open to everyone, regardless of whether they are members of the Affinity Group that is offering the programming. CSOF ¶¶17, 18. Indeed, the various programming offered by the Affinity Groups is communicated to all students in two ways. First, when an Affinity Group plans programming, it posts it to MyBC, which is available to all students at the Law School. Second, each Monday, the Law School sends out the "Monday Headlines" email to all students at the Law School to inform them of all the programming, including the programming offered by the various Affinity Groups, scheduled for the week. CSOF ¶¶19, 20.

Mr. Michelson does not point to any other evidence to show that Boston College has breached its contract with Mr. Michelson by discriminating against him.[4]

Mr. Michelson does not cite any legal authority that stands for the proposition that simply because Boston College's policies and programs are "*in some form, sensitive to*" students' characteristics that Boston College's policies and programs are therefore discriminatory. Instead, Mr. Michelson selectively quotes language from several cases to argue that the act of classification based on protected characteristics is impermissible. See Memo. at pp. 4-5. But Mr. Michelson ignores the context of the cases he cites. The cases address the denial of services and/or benefits to individuals by the government based on those individuals' protected characteristics. In reviewing such government action, the courts have held that the act of

[4] If Mr. Michelson had other evidence to support his assertion Boston College discriminated against him, thus breaching a supposed contract between Mr. Michelson and Boston College, he presumably would have presented it in his Motion and SOF.

classification is potentially impermissible if the government's denial of services and/or benefits to individuals based on their protected characteristics does not survive strict scrutiny judicial review.[5] For example: in Finch v. Commonwealth Health Ins. Connector Auth., the Supreme Judicial Court (the "SJC") addressed the denial of public benefits to a group of individuals based on their alienage, 459 Mass. 655, 656-657 (2011); in City of Cleburne, Texas v. Cleburne Living Center, the U.S. Supreme Court addressed the denial of a special use zoning permit to a group home for the "mentally retarded" because of their status as "mentally retarded," 473 U.S. 432, 435 (1985); in Goodridge v. Dept. of Public Health, the SJC addressed the denial of marriage licenses to same-sex couples because they were same-sex couples, 440 Mass. 309, 312 (2003). None of the cases Mr. Michelson cites stands for the proposition that a university, in providing its policies and programs, may not be "sensitive to" its diverse student body or acknowledge that its student body is made of students with a diverse array of characteristics, as long as it is abiding by applicable nondiscrimination laws.

Neither the facts nor the law supports Mr. Michelson's argument that Boston College breached a contract with him by supposedly discriminating against him. As a result, the Court should deny Mr. Michelson's Motion.

Given that Mr. Michelson has not established that Boston College discriminated against him, Mr. Michelson will not be able to demonstrate that Boston College breached a supposed contract with Boston College. Thus, Mr. Michelson "has no reasonable expectation of proving an essential element of his case at trial." Flesner, 410 Mass. at 809 (citing Kourouvacilis, 410

[5] "'To pass the strict scrutiny standard, [a State action] must be narrowly tailored to further a legitimate and compelling governmental interest and must be the least restrictive means available to vindicate that interest.'" Finch v. Commonwealth Health Ins. Connector Authority, 459 Mass. 655, 669 (2011) (quoting Commonwealth v. Weston W., 455 Mass. 24, 35 (2009)).

Mass. at 716). As a result, the Court should grant Boston College's Cross-Motion and enter summary judgment for Boston College.

Conclusion

For the above reasons, Boston College respectfully requests that the Court: (1) deny Mr. Michelson's Motion; (2) grant Boston College's Cross-Motion; and (3) enter summary judgment for Boston College.

Respectfully submitted,

TRUSTEES OF BOSTON COLLEGE,

By its attorneys,

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November 21, 2022

CERTIFICATE OF SERVICE

I, B. Aidan Flanagan, hereby certify that on November 21, 2022, I served a copy of the foregoing by email and U.S. Mail upon plaintiff, Jordan Lewis Michelson.

/s/ B. Aidan Flanagan
B. Aidan Flanagan

Date Filed 12/29/2022 5:55 PM
Superior Court - Middlesex
Docket Number 2181CV02940

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, ss. SUPERIOR COURT DEPARTMENT
Civil Action No. 2181CV02940

JORDAN LEWIS MICHELSON,
Plaintiff,
v.
TRUSTEES OF BOSTON COLLEGE *d.b.a.* BOSTON COLLEGE LAW SCHOOL,
Defendant.

RECEIVED
12/29/2022

PLAINTIFF'S REPLY TO BOSTON COLLEGE'S OPPOSITION AND PLAINTIFF'S MEMORANDUM IN OPPOSITION TO BC'S CROSS-MOTION FOR SUMMARY JUDGMENT

Plaintiff respectfully submits this memorandum in support of PLAINTIFF'S *PRO SE* MOTION FOR SUMMARY JUDGMENT ON THE ISSUE OF BREACH (the "Motion"), in reply to BOSTON COLLEGE'S OPPOSITION TO PLAINTIFF'S *PRO SE* MOTION FOR SUMMARY JUDGMENT ON THE ISSUE OF BREACH (BC's "Opposition" or "Opp.") and in opposition to BOSTON COLLEGE'S CROSS-MOTION FOR SUMMARY JUDGMENT (BC's "Cross-Motion"). For the reasons set forth below, the Court should grant Plaintiff's Motion and should reject BC's Cross-Motion.

INTRODUCTION

"*Boston College denies that it engaged in discrimination of any kind*" is the new "*I did not have sexual relations with that woman*." *Compare* Statement of Facts ("SOF") ¶ 9 (quoting BC's Answer, *passim*) with Peter Tiersma, *The Language of Perjury* (http://www.languageandlaw.org/PERJURY.HTM) (quoting former president Bill Clinton during the Lewinsky scandal). Both assertions are categorical untruths that are not *technically* lies – given enough definitional flexibility.[1] This strategy did not pan out

[1] "Because *Lewinsky* engaged in oral sex on *him*, and not vice versa, Clinton argued that *she* had engaged in contact with one of *his* relevant body parts, so under the definition *she* had had sexual relations with *him*. But he argued that *he* had never engaged in contact with one of *her* listed body parts, so that under the definition he had not engaged in 'sexual relations' with her." Tiersma, *The Language of Perjury.*

KO

for Mr. Clinton. *Jones v. Clinton*, 36 F. Supp. 2d 1118, 1131 (E.D. Ark. 1999) (holding the sitting president in contempt of court because "it simply is not acceptable to employ deceptions and falsehoods in an attempt to obstruct the judicial process"). BC's "deceptions and falsehoods" should fare no better.

Ben Franklin taught that "Half the Truth is often a great Lie." Benjamin Franklin, *Poor Richard Improved* (1758). When it comes to the proposition "Boston College does not engage in discrimination on the basis of race, ethnicity, color, national origin, sex, gender, sexual orientation, or creed," however, "Half the Truth" is all too generous – which is why the university has yet to produce a member of its faculty or administration willing to issue such a denial under penalty of perjury.[2] In fact, the university has backpedaled so far as to unveil a new, unprecedented, ultra-narrow definition of "discrimination" that it crafted out of whole cloth when ordered by this court to "provide a definition of the word 'discrimination' insofar as it forms the basis of Defendant's averments that Boston College does not engage in, countenance, facilitate, advocate for, or encourage discrimination 'of any kind.'" SOF ¶ 11; Dkt Entry (#13.0) (Frison, J.) (August 30, 2022). When it comes to summary judgment, this kind of revisionist wordsmithing simply will not suffice. If Boston College cannot state, on the record, that it does not engage in "discrimination" *as that word is defined by law*, then this court should assume that it does.

This Motion asks the court to cut though the university's wordplay. Does Boston College engage in "discrimination of any kind"? Yes. Does Boston College engage in "discrimination" on the basis of race, ethnicity, color, national origin, sex, gender, sexual orientation, and/or creed? Unequivocally. Does Boston

[2] This can be distinguished from **(1)** sworn averments quoting BC's official policies, e.g., SOF ¶ 11 ("Boston College Law School does not discriminate against any person on the basis of [*inter alia*, race, ethnicity, color, national origin, sex, gender identity & expression, or sexual orientation] in admission to, access to, treatment in, or employment in its programs and activities") and **(2)** sworn statements that are ostensibly opinions of law and are therefore **not** subject to the same rules of perjury, e.g., SOF ¶ 11 ("Boston College states that, in its policies and programs, it abides by state and federal antidiscrimination laws") – even though BC has *also* receded from those statements, *e.g.*, AFFIDAVIT OF J.P. IN SUPPORT OF BOSTON COLLEGE'S OPPOSITION AND IN SUPPORT OF BOSTON COLLEGE'S CROSS-MOTION FOR SUMMARY JUDGMENT (BC's "Opp. Affidavit" or "Opp. Aff.") (avoiding *any* mention of the words "discriminate" and "discrimination").

College do the very thing that nondiscrimination laws[3] prohibit? Indeed: Boston College simply **does not** provide equal and undifferentiated programming and activities for all students without regard for ancestry, color, sex, orientation, and creed.[4] On the facts, Plaintiff will prevail; *and BC knows it*.

This Memorandum asks the Court to recognize that Boston College is not litigating out of a sense that it can prevail on the merits, but rather to delay the day on which it will be held accountable for conduct that they know, deep down, to be *mis*conduct. Consequently, the university seeks to make things

[3] *E.g.*, 20 U.S.C. § 1681 (Title IX) ("No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance"); 42 U.S.C. § 2000d (Title VI) ("No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance"); § 2000d-4a (the term "program or activity" includes "all of the operations of… a college, university, or other postsecondary institution").

[4] *Inter alia*, the school divides the student body into two "types" of law student – "diverse" and "not diverse" – based primarily on the color of students' skin (albeit with a bit of ad hoc gerrymandering for the benefit of certain gender, sexuality, and national origin demographics who also stereotypically conform to the same political persuasion as BC Law's faculty). SOF ¶ 10. It funds and maintains an organization, LAHANAS, "that provides comprehensive support to diverse students throughout their time at BC Law." Exhibit B (brochure cited in Opp. n.1 and n.3). It earmarks funding and resources, including a full-time director-level employee, for "Diversity, Equity, Inclusion, and Bias/Belonging" ("DEI&B") – with the explicit purpose of loudly and asymmetrically benefiting "diverse students." SOF ¶ 10. And it provides separate career resources, a separate internship pool, and separate recruiting opportunities for "diverse" individuals. SOF ¶ 10. The school also engages in less ostentatious but perhaps more pernicious sex-based discrimination by sponsoring and facilitating programming and benefits for "women students" (SOF ¶ 10) – notwithstanding that such students consistently achieve better outcomes than their male peers.

Boston College alludes to the stereotype that these classifications are proxies for social or economic disadvantage. But the university does not *need* a proxy for socioeconomic factors – they have detailed background and financial information on substantially all of their students. Classifications based on socioeconomic factors would better serve the goal of "levelling the playing field" – if that were indeed BC's goal – and they have the added benefit of not being illegal. Ultimately, the peculiar parameters of these practices give rise to the inference that Boston College (and particularly the Law School) engages in systematic discrimination for politically motivated reasons. Indeed, the Law School appears to be every bit as politically and ideologically committed to segregation-cum-discrimination in 2022 as VMI was in 1996, Bob Jones University in 1983, and the University of Texas Law School in 1950. *See*, *generally*, *U.S. v. Virginia*, 518 U.S. 515 (1996); *Bob Jones University v. U.S.*, 461 U.S. 574 (1983); *Sweatt v. Painter*, 339 U.S. 629 (1950). The only difference is that administrators at those institutions had the guts to own up to their discriminatory practices.

complicated when they should be simple – and by making a dispositive cross-motion that warps the facts and law, necessitating the response that follows, they have apparently succeeded. Underneath all the legalese and caselaw, however, the theory of Plaintiff's Motion is simple: If the faculty and administration at Boston College Law School truly believe that the school's practices are legally and ethically sound, they deserve the opportunity to have those practices evaluated by a jury of their peers; but if the law school is so impoverished of plausible defenses that it must resort to deception, half-truths, and gaslighting, it deserves nothing but this Court's contempt.

ARGUMENT

DEFENDANT'S OPPOSITION AND CROSS-MOTION FAIL FOR THREE REASONS: THE FACTS, THE LAW, AND *RES JUDICATA*

"The very object of a motion for summary judgment is to separate what is formal or pretended in denial or averment from what is genuine and substantial," according to then-Judge Benjamin Cardozo. *See Doral Country Club, Inc. v. O'Connor*, 355 Mass. 27, 30 (1968) (quoting *Richard v. Credit Suisse*, 242 N.Y. 346, 350 (1926) (Cardozo, J.)) When it comes to BC's opposition papers, however, the terms "genuine" and "substantial" simply do not find purchase. On the facts, Boston College does its best Slick Willie impression: having previously been ordered by this Court to answer Plaintiff's interrogatories fully and in good faith, the school now argues that its interrogatory answers are so vague as to lack any semantic substance.[5] As for the law – if a BC Law student submitted BC's opposition papers in one class and its

[5] Regarding Boston College's suggestion that "Mr. Michelson did not define 'sensitive to'" in his interrogatory (Opp. 3) – that simply is not true. To wit:

> **2. Please identify and explain all Boston College policies and programs that are sensitive to students' sex, color, gender, sexuality, race, ethnicity, national origin, and creed.**
>
> Programs and policies that are "sensitive to" such classifications include those that are in any way targeted at or towards any group of students on the basis of sex, color, gender, sexuality, race, ethnicity, national origin, or creed; or which express any class distinctions between human beings on the basis of one or more of those categories; or which cause benefits to inure to some students, but not others, in a manner predicted by one or more of those classifications.

Plaintiff's First Set of Interrogatories to Defendant ("Exhibit C").

motion to dismiss memo (BC's "MTD" Memo) in another, that student would be brought up for plagiarism. *Res judicata* aside, the school's treatment of contract law is a case study in wishful thinking; and the university's views on the legality of racial segregation are about 70 years out of date.

As for this memorandum, it proceeds in four parts: **Section 1** explains the factual basis for partial summary judgment; **Section 2** argues the effect of *res judicata* on the legal arguments raised; **Section 3** shows that the law unequivocally supports a contractual nondiscrimination provision; and **Section 4** identifies the findings of fact and law that compel partial summary judgment in Plaintiff's favor.

1. THE FACTS DO NOT SUPPORT DEFENDANT'S OPPOSITION AND *CERTAINLY* DO NOT SUPPORT ITS CROSS-MOTION. THEY SUPPORT PLAINTIFF'S MOTION IN FULL.

(A) The facts cannot support Boston College's Cross-Motion for summary judgment in BC's favor because, *inter alia*, the school has not complied with discovery.

Summary judgment in BC's favor is a nonstarter because Boston College has been… less than forthcoming with discovery. Boston College is currently sitting on virtually all of the discovery that Plaintiff has asked for: despite requests for production, interrogatories, and a request to admit, the total discovery that Boston College has provided consists of five (5) interrogatory responses, three of which required a motion to compel. The school has blown past numerous deadlines to produce documents and has vowed to object to every single discovery request, no matter how minute. Thus, to the extent that BC has the pathological audacity to argue that the factual record is lacking, *e.g.*, Opp. 10 & n.2; 15 & n.4, *that underdeveloped record is the school's own doing*. Simply put, *the university has to actually participate in discovery before it can argue that discovery has failed to produce sufficient evidence to try the case*. This order of operations should be self-evident and precludes BC's Cross-Motion as a matter of law.

(B) By contrast, the facts fully support Plaintiff's Motion because they outline a *prima facie* case that Boston College has failed to rebut or even deny.

There are two ways that a plaintiff can prevail on a motion for summary judgment. First, he can produce overwhelming and incontrovertible evidence of the other party's liability, such that no reasonable jury could conceivably fail to infer a finding of liability. That would be very difficult to do where, as here,

the defendant is obfuscating discovery. Fortunately, there is a second avenue by which plaintiff may prevail on a partial summary judgment motion of this nature: by building a *prima facie* case that the defendant simply cannot rebut. That is what we have here. Because a *prima facie* case has been made, and because Boston College has not produced a genuine denial, under oath, of the conduct at issue, summary judgment should be entered against the university on the issue of liability.

i. Rule 56: "When a motion for summary judgment is made and supported as provided in this rule [Rule 56], an adverse party may not rest upon the mere allegations or denials of his pleading, but his response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If he does not so respond, summary judgment, if appropriate, shall be entered against him." MRCP Rule 56. Thus, as recognized by the Supreme Judicial Court, summary judgment is proper where (1) the moving party has shown through its pleadings and affidavit that no genuine issue of liability is raised, and (2) the nonmoving party "has not presented enough countervailing details to demonstrate that material facts exist which, taken for our purposes here as true, entitle him to a jury determination of his liability." *Community Nat. Bank v. Dawes*, 369 Mass. 550, 556–57 (1976).

ii. The Facts: The parties had a valid contract, supported by consideration. SOF ¶¶ 2-4. Under Massachusetts law, that contract includes a nondiscrimination provision: the most obvious manifestation of which is the "Notice of Nondiscrimination" displayed prominently on the school's website. The Notice unambiguously promises "to comply with all state and federal laws prohibiting discrimination … in its educational programs and activities on the basis of a person's race, color, national origin, sex, religion, … [or] sexual orientation." State and federal law prohibit the use of these "impermissible classifications"[6] unless that use is "narrowly tailored" to a "compelling interest." *See Fisher v. U. of Texas at Austin*, 570

[6] BC likes the term "protected class" (Opp. 12-13) because it is ambiguous and confusing. The term "impermissible classification" is more precise and on point. *See Griggs v. Duke Power Co*., 401 U.S. 424, 431 (1971) ("Discriminatory preference for any group, minority or majority, is precisely and only what Congress has proscribed. What is required by Congress is the removal of artificial, arbitrary, and unnecessary barriers to employment when the barriers operate invidiously to discriminate on the basis of racial or other impermissible classification.") (emphasis added). *See also Finch v. Commonwealth Health Ins. Connector Auth.*, 459 Mass. 655, 676 (2011) ("invidious classifications").

U.S. 297, 309–10 (2013) (explaining strict scrutiny test); *Com. v. King*, 374 Mass. 5, 21 (1977) ("The classifications set forth in art. 106 [sex, race, color, creed and national origin]... are permissible only if they further a demonstrably compelling interest and limit their impact as narrowly as possible consistent with their legitimate purpose.") For the reasons set out below, BC's use of "impermissible classifications" cannot have been "narrowly tailored" to a "compelling interest."

a. "Compelling Interest": Federal law unequivocally prohibits discrimination on the basis of race, color, creed and national origin by universities that accept federal funding. 42 U.S.C. § 2000d. But in *Grutter v. Bollinger*, the Supreme Court carved out an exception for university admissions. The "compelling" educational interest approved by the Court in this context was the pursuit of a "critical mass" of students of heterogenous backgrounds for the purpose of achieving a campus with a "robust exchange of ideas." *Grutter v. Bollinger*, 539 U.S. 306, 329 (2003). At Boston College, however, the administration's discriminatory practices have had the opposite effect: they effectively *prevented* a "robust exchange of ideas" by smothering groups that attract viewpoints outside of the school's far-left to center-left Overton Window. Case in point: in 2020-2021, as Boston College was implementing socially popular "DEI" policies at a feverish pace, the BC Republicans disbanded; apparently the organization, which is essentially an "affinity group" for the 25+% of Americans who identify as Republican, could not sustain the necessary "critical mass." *See* Seung Hye Yang, *Student Org Spotlight: BC Law Republicans* (BC Law: Impact, Nov. 21, 2022) https://bclawimpact.org/2022/11/21/student-org-spotlight-bc-law-republicans/ (BC Law Republicans were designated "inactive" in Fall 2021). It was students, not administrators, who found this lack of political diversity troubling and restarted the group. *Id.* In light of the administration's apathy (if not antipathy) toward the "robust exchange of ideas" on campus, no "compelling interest" abides.

b. "Narrow Tailoring": It is also a matter of undisputed fact that Boston College made extensive use of sex, race, color, creed, and national origin classifications (gender, sexuality, and ethnicity fall within these categories). SOF ¶ 10 ("Boston College states that <u>*all*</u> its policies and programs are, in some form, sensitive to students' sex, color, gender, sexuality, race, ethnicity, national origin, and creed.") (emphasis added). The law school has also *specifically* admitted that its Career Services Office, Office of

Admissions and Financial Aid, and Director of DEI&B are organize "various programs, panels, workshops, social, and community events" that are "sensitive to students' sex, color, gender, sexuality, race, ethnicity, national origin, and creed" (SOF ¶ 10) including, *inter alia*:

- Recruiting events and "pipeline programs" through the Office of Admissions and Financial Aid;
- "Various" programs, panels, workshops, social, and community events organized for the benefit of Asian, Pacific American, Black, Latin American, LGBTQIA2S+, Middle Eastern, Native American, and South Asian law students; and
- 1L Orientation Programs, including a pre-orientation retreat organized for Asian, Pacific American, Black, Latin American, LGBTQIA2S+, Middle Eastern, Native American, South Asian matriculants and prospective matriculants.

SOF ¶ 10. BC's manifold uses of sex, color, gender, sexuality, race, ethnicity, national origin, and creed were **far** too ubiquitous to be "narrowly tailored" to any interest, let alone a compelling one. Consequently, it is a matter of record that Boston College did not "comply with all state and federal laws prohibiting discrimination" in its educational programs and thus engaged in "discrimination" as a matter of law.

iii. The Lack of Rebuttal: Given the eyebrow-raising admissions[7] that have been established as a matter of record, BC's failure to address these admissions is damning. *See Mendelsohn v. Leather Mfg. Corp*., 326 Mass. 226, 238 (1950) ("There are instances where the failure of one to deny a statement adversely affecting his rights may constitute an admission provided the statement is of such a nature and is made in such circumstances as to call for a reply"); *Cumpiano v. Banco Santander Puerto Rico*, 902 F.2d 148, 158 (1st Cir. 1990) (bank manager's failure to answer a direct question was, in context, sufficient to

[7] As noted above, Boston College has specifically admitted that its Career Services Office, Office of Admissions and Financial Aid, and Director of DEI&B organize "various programs, panels, workshops, social, and community events" that are "sensitive to students' sex, color, gender, sexuality, race, ethnicity, national origin, and creed" (SOF ¶ 10) – classifications that "are so seldom relevant to the achievement of any legitimate state interest that laws grounded in such considerations are deemed to reflect prejudice and antipathy." *City of Cleburne v. Cleburne Living Ctr*., 473 U.S. 432, 440 (1985). Boston College **does not aver** that any of these "various" programs and activities were narrowly tailored to a compelling interest; and the school **does not deny** that these programs and activities include exclusionary, segregated, or otherwise discriminatory programming. Nonetheless, Boston College asks the court to believe that its statements on the record, SOF ¶¶ 10 & 11 were perfectly innocuous (without requiring the school to produce any *evidence* or even *averments* to that effect). Opp. 15.

form an inference of discrimination; at minimum, it shifted the burden of production onto the employer).

Defendant does submit a twelve (12) paragraph affidavit (the "Affidavit" or "Opp. Aff.") from the school's Associate Dean for Strategic & Student Affairs ("J.P."); however, J.P. does not even *use* the words "discriminate" or "discrimination" – much less *deny* that the school engages in discriminatory conduct. Instead, J.P.'s lonely Affidavit raises a straw man in the form of BC's "student-run affinity groups." Opp. Aff. ¶¶ 6-12. But "affinity group" programming is not a pillar upon which this motion for summary judgment rests – which is why they were not mentioned *at all* in Plaintiff's Motion or his original memo in support thereof. Boston College introduces them into the summary judgment record *precisely because* "affinity group" programming is *unlike* its other demographically "sensitive" programming, including LAHANAS and DEI&B programming, which is not even nominally all-inclusive.[8] This straw man argument is the spitting antithesis of a "genuine and substantial" denial of the conduct at issue. *Doral Country Club*, 355 Mass. at 30 ("'The very object of a motion for summary judgment is to separate what is formal or pretended in denial or averment from what is genuine and substantial'") (quoting Cardozo, J.)

iv. Conclusion: Because plaintiff's Motion rests upon facts and allegations that are completely unrebutted, the only question before the court is whether plaintiff has made out a *prima facie* case. *Community Nat. Bank*, 369 Mass. at 558-59 (where plaintiff "alleged the necessary elements" of a *prima facie* case, and defendant "did not meet his burden" of rebuttal, plaintiff "was entitled to judgment as a matter of law.") Here, (1) Boston College did, as a matter of uncontested fact, publish a Notice of Nondiscrimination in various places on its website and literature; and (2) Boston College has admitted to

[8] Although the subject of Opp. Aff. ¶ 6 is LAHANAS (an "umbrella organization" through which BC channels exclusive opportunities), BC's Affidavit is silent as to whether LAHANAS programming is "open to all students" without distinction. Opp. Aff. ¶¶ 1-12. However, according to the link cited by Boston College, *see* Opp. at 5 n.1 & 13 n.3, "LAHANAS is a student-led organization that provides comprehensive support *to diverse students* throughout their time at BC Law." Boston College Law School, *Resource Guide to LAHANAS* (emphasis added); Exhibit B. The arbitrary classification of some students as "diverse students" merely on the basis of race, color, gender, sexual orientation, ethnicity, or national origin – and the intentional allocation of resources "to" those students purely on account of that classification – *is invidious discrimination* as a matter of law.

engaging in conduct that is, by definition, "discrimination." Consequently, the only real issue at bar is one of law: whether BC's Notice of Nondiscrimination is binding on the university as a contractual term. If the answer is "yes" (*and the answer is "yes" – see infra*), Boston College cannot avoid liability for breach.

2. BC'S ARGUMENTS OF LAW WERE ALREADY LITIGATED BY THE PARTIES AND DECIDED AGAINST BC. THEY ARE BARRED BY THE DOCTRINE OF *RES JUDICATA*.

Res judicata (also known as "issue preclusion") prevents a party from raising the same arguments again and again, angling for a different result.[9] As explained by the Supreme Judicial Court:

> The doctrine of issue preclusion provides that when an issue has been "actually litigated and determined by a valid and final judgment, and the determination is essential to the judgment, the determination is conclusive in a subsequent action between the parties whether on the same or different claim." *Cousineau v. Laramee*, 388 Mass. 859, 863 n. 4, 448 N.E.2d 756 (1983), quoting Restatement (Second) of Judgments § 27 (1982).

Jarosz v. Palmer, 436 Mass. 526, 530–31 (2002). "When an issue is properly raised, by the pleadings or otherwise, and is submitted for determination, and is determined, the issue is actually litigated within the meaning of this Section. An issue may be submitted and determined on a motion to dismiss for failure to state a claim". Restatement (Second) of Judgments § 27 (1982). "The appropriate question is whether the issue was subject to an adversary presentation and consequent judgment that was not a product of the parties' consent." *Jarosz*, 436 Mass. at 531 (cleaned up).

In its Opposition and Cross-Motion, BC propounds three legal theories that were previously litigated and rejected by Judge Wilkins on the school's motion to dismiss. These are:

i. The "not a *contractual* obligation" defense:

> "While Boston College certainly must, and does, abide by state and federal law and the ABA Accreditation Standards, there is no reason to read them into the Covenant *as*

[9] This doctrine is especially important with a new trier of law, to avoid any appearance of "judge shopping." *Cmmw. v. Gebo*, 489 Mass. 757, 768–69 (2022) ("'Judge shopping' refers to a litigant's attempt to steer a case toward or away from a particular judge, generally out of some belief that the judge's idiosyncrasies would make it more or less beneficial to the litigant that that particular judge preside over the litigation. The practice is inherently unfair to other litigants, undermines public confidence in the judiciary, and properly has earned the condemnation of courts across the country.") (internal citations omitted)

contractual terms between Boston College and Mr. Michelson." MTD 8.

"While Boston College certainly must, and does, abide by state and federal antidiscrimination laws, *it does not do so as a matter of contract* and there is no basis to read such laws as *contractual* terms between Boston College and Mr. Michelson." Opp. 9.

ii. The "Separate but Equal"[10] defense:

"Assuming, *arguendo*, that the Covenant included the Additional Terms and further assuming, *arguendo*, that Boston College breached those Additional Terms, Count I still fails because Mr. Michelson does not allege that he sustained damages as a result of Boston College's supposed breach." MTD 8.

"Assuming, arguendo, that Mr. Michelson and Boston College did enter a contract that contained a nondiscrimination provision, Mr. Michelson has not demonstrated, and cannot demonstrate, that Boston College breached such a contract by discriminating against him." Opp. 10.

iii. The "but what *are* you?" defense:

"Mr. Michelson does not explain whether he is a member of a protected class ... [and] he does not say that Boston College or any employer discriminated against him on the basis of whatever minority group Mr. Michelson claims membership in." MTD 10.

"First, Mr. Michelson has not established that he is a member of a protected class. Second, Mr. Michelson has not established that Boston College treated Mr. Michelson in an improper way because of his membership in a protected class." Opp. 10.

Any of those three theories would have been dispositive. Indeed, had Boston College prevailed, they would no doubt be invoking *res judicata* in any future claims. But Judge Wilkins correctly found all three defenses to be meritless as a matter of law. *See* Dkt. Entry (#7.0)[11] (May 17, 2022) (Wilkins, J.) ("The complaint adequately alleges the existence of a contract between the parties, the inclusion of a non-discrimination

[10] Notably, D.C. segregationists made this same argument the lynchpin of their brief in favor of segregation in 1952, arguing that segregating students by race and color did not create any legally cognizable injury to the students. *See Bolling v. Sharpe*, Brief for Respondents, 1952 WL 47258 (U.S.), at 8 ("The Complaint Filed Below States No Cause of Action Because, Inter Alia, it Fails to Set Forth Any Injuries To the Petitioners"). *But see Brown v. Bd. of Ed. of Topeka,* 347 U.S. 483, 495 (1954) ("separate but equal" is "inherently unequal").

[11] Boston College duplicitously cites to Judge Wilkins' decision denying Plaintiff's motion for § 6F damages. Opp. 6 & 9 (both citing Dkt. Entry (#7.6)). But the school cannot deny that each of these three legal arguments was propounded by its memorandum and in oral arguments, where they were emphatically rejected by Judge Wilkins. The Judge's eventual determination on the merits is completely inconsistent with these defenses. Dkt. Entry (#7.0).

promise, and actions in breach of the promise.") Consequently, *res judicata* applies.

3. EVEN IF THEY *WERE* GIVEN ANOTHER SHOT AT THE APPLE, BC'S LEGAL THEORIES REMAIN JUST AS MERITLESS TODAY.

Where, as here, the undisputed facts indicate that a university failed to hold itself accountable to state and federal nondiscrimination laws (i.e., by classifying students by sex, color, gender, sexuality, race, ethnicity, and national origin without a "compelling" reason or due regard for "narrow tailoring"), the university cannot possibly *avoid* liability for breach. The law is clear: a university has an obligation to abide by the "reasonable expectations" elicited by the "manifestations" that it makes. *Schaer v. Brandeis Univ*., 432 Mass. 474, 478 (2000); *accord*, *Doe v. Trustees of Boston College*, 892 F.3d 67, 80 (1st Cir. 2018) ("BC I") ("If the facts show that the university has failed to meet the student's reasonable expectations, the university has committed a breach.") This principle has been applied to discrimination in cases like *Doe v. Amherst College*, 238 F. Supp. 3d 195, 218 (D. Mass. 2017) (sex/gender discrimination) and *Doe v. Harvard*, 462 F. Supp. 3d 51, 66-68 (D. Mass. 2020) (race/color discrimination). What courts *do not* apply in this context is the doctrine of *caveat emptor* – "buyer beware." Consequently, the university's legal arguments to the effect that summary judgment should enter *in the school's favor* err closer to Rule 11 sanctions than Rule 56 merit. This court should treat them accordingly.

(A) By publishing its Notice of Nondiscrimination, Boston College made an express promise that it would not engage in discrimination on the basis of race, color, national origin, sex, religion, or sexual orientation.

Boston College holds itself out as an institution that does not discriminate on the basis of race, color, national origin, sex, religion, or sexual orientation. The university publishes a Notice of Nondiscrimination on multiple websites and in various disseminated literature, such as its online employee handbook. SOF ¶ 8. The language of this Notice of Nondiscrimination is consistent. It states:

> Boston College rejects and condemns all forms of harassment, wrongful discrimination, and disrespect. It has developed procedures to respond to incidents of harassment whatever the basis or circumstance. Moreover, it is the policy of Boston College, while reserving its lawful rights where appropriate to take actions designed to promote the Jesuit, Catholic principles that sustain its mission and heritage, to comply with all state and federal laws

> prohibiting discrimination in employment and in its educational programs and activities on the basis of a person's race, color, national origin, sex, religion, disability, age, marital or parental status, genetic information or family medical history, or military status, and to comply with state law prohibiting discrimination on the basis of a person's sexual orientation.

SOF ¶ 8. Any reasonable ignoramus, upon reading this Notice of Nondiscrimination, would be within the bounds of reason to think that Boston College does not engage in "discrimination" in its "educational programs and activities" on the basis of a person's "race, color, national origin, sex" or "sexual orientation" – a takeaway that accords with the title pretty well. In fact, it would be *unreasonable* to read BC's Notice of Nondiscrimination and come away with the contrary expectation.

(B) <u>As a matter of law, BC's Notice of Nondiscrimination can and should be read into the student-university contract as a contractual promise not to engage in discrimination.</u>

The relationship between a private university and its students is governed by contract law. *See Barkhordar v. Pres. and Fellows of Harvard College*, 544 F. Supp. 3d 203, 210 (D. Mass. 2021) ("In Massachusetts, it is well-established that the student-college relationship is contractual in nature") (internal citations omitted); *MIT v. Guzman*, 90 Mass. App. Ct. 1102, *5 (Mass. App. 2016) (unpublished) (holding that "the relationship between a university and its students is essentially a contractual one.") The terms of this contract are inferred from the school's "various manifestations" and the import that a reasonable student would give to those manifestations. *MIT*, 90 Mass. App. Ct. at *5 ("in the context of the unique relationship between a student and her university, we employ the 'reasonable expectation' standard … to determine what meaning the university should reasonably expect students to give to its various manifestations.")

BC's Notice of Nondiscrimination, which was published prominently and in multiple places including BC's main website and its online handbook, SOF ¶ 8, is <u>precisely</u> the sort of "manifestation" that Massachusetts courts read as contractual terms governing the student-university relationship. *See id.* *5 ("The terms of the student-university relationship are informed by, inter alia, written policies"); *Guckenberger v. BU*, 974 F. Supp. 106, 150 (D. Mass. 1997) ("Under Massachusetts law, the promise, offer, or commitment that forms the basis of a valid contract can be derived from statements in handbooks,

policy manuals, brochures, catalogs, advertisements, and other promotional materials").[12]

The Notice is so squarely within that genre of contractual "manifestations," in fact, that it should be read into the instant student-university contract as a matter of law. Boston College makes no valid argument to the contrary. Nor can they argue that the effect of the Notice of Nondiscrimination is subject to differing interpretations – because **the entire point** of such a Notice is that universities receiving federal funding must "notify students, parents and others that they do not discriminate on the basis of race, color, national origin, sex, disability, and age." U.S. Department of Education Office of Civil Rights, *Notice of Non-Discrimination* (2010).[13] Notifying students of a school's duty to refrain from discrimination is the *raison d'etre* of these mandatory disclaimers. It is literally why they exist.

(C) Boston College now attempts to repudiate its promise not to discriminate based on insincere and invalid legal arguments, which fail as a matter of law.

Trustees of Boston College is a sophisticated and experienced actor that is not under any actual delusion as to the contractual import of the Notice of Nondiscrimination; this is not its first rodeo. *E.g.*, *Doe v. Trustees of Boston College*, 892 F.3d 67, 80 (1st Cir. 2018) ("BC I") ("In reviewing a student's breach of contract claim against his or her university, we [courts applying Massachusetts law] employ a reasonable expectations standard in interpreting the relevant contracts. We must ask what meaning the party making the manifestation, the university, should reasonably expect the other party, the student, to give it.") (cleaned up); *Doe v. Trustees of Boston College*, 942 F.3d 527, 533 (1st Cir. 2019) ("BC II") (unrelated case) ("Under Massachusetts breach of contract law as to private academic institutions, [the relevant] test looks at the terms of the contract established between the college and the student and asks whether the reasonable

[12] Suits for partial refunds of in-person tuition during COVID-19 are informative here. *E.g.*, *In re Boston U. COVID-19 Refund Litig.*, 511 F. Supp. 3d 20, 23 (D. Mass. 2021) ("the contractual right to in-person instruction derives from … representations in BU's course registration materials, which implied that plaintiffs would receive traditional, face-to-face instruction at physical locations on campus"); *Moran v. Stonehill College*, 2077CV00431, *5 (Mass. Super. 2021) ("website and marketing materials touting its on-campus experience"); *Omori v. Brandeis*, 533 F. Supp. 3d 49, 55 (D. Mass. 2021) ("promotion of 'hands-on experience' and 'state-of-the-art studios'").

[13] https://www2.ed.gov/about/offices/list/ocr/docs/nondisc.html.

expectations of the parties have been met.") Nevertheless, Boston College now attempts to repudiate its Notice of Nondiscrimination and its obligation not to discriminate more generally. Opp. 7-10. This fails.

i. Policies *are* Promises: BC contends that the Notice "states a policy, not a contractual promise." Opp. 9. This is a distinction without a difference: university policies *create* contractual promises. School policies are the very essence of the student-university contract. *Guckenberger*, 974 F. Supp. at 150; *accord*, *MIT*, 90 Mass. App. Ct. at *5. Moreover, *Boston College knows this to be the case*. *E.g.*, *BC I* at 80 n.4 ("The parties do not dispute that a contractual relationship between Doe and B.C. arises from the Student Guide and the Conduct Board Procedure"); *BC II* at 529 ("The parties agree that the contract involved is found in BC's Student Sexual Misconduct Policy"); Boston College, *Policies and Procedures*, https://www.bc.edu/content/bc-web/sites/Policies-Procedures.html ("University Policies impose binding obligations on faculty, students and/or staff, as applicable.") This meritless argument borders on bad faith.

ii. "Substantial Certainty": BC also advances the notion that the "legal effect" of the nondiscrimination clause is unclear. Opp. 9. In so doing, it advocates for the long-defunct "substantial certainty" standard, which has not been relevant in Massachusetts state courts since the mid-1970s:

> [Beginning in 1975] a complaint need not, as under G.L. c. 231, s 7, Second (now repealed by St.1973, c. 1114, s 157, except as to the District Courts), 'state concisely and with substantial certainty the substantive facts necessary to constitute the cause of action'; it is now enough for the complaint to 'contain . . . a short and plain statement of the claim showing that the pleader is entitled to relief' (Rule 8(a)(1)).

Charbonnier v. Amico, 367 Mass. 146, 152–53 (1975) (emphasis added). Far from being unclear, however, the "legal effect" of a nondiscrimination clause is self-evident: Boston College must not engage in discrimination on the basis of, *inter alia*, race, ethnicity, color, national origin, sex, gender identity & expression, or sexual orientation.[14] This obligation is, *at a minimum*, contemporaneous with the school's duty of nondiscrimination established by federal law, which BC does not (yet) challenge as unconstitutionally vague. *See* 20 U.S.C. § 1681 (Title IX) & 42 U.S.C. § 2000d (Title VI) ("No person in

[14] This is, of course, an *objective* standard – meaning that the school cannot satisfy this obligation by re-imagining the word "discrimination" in a manner hitherto unknown. *E.g.*, SOF ¶ 11.

the United States shall … be subjected to discrimination under any education program or activity receiving Federal financial assistance" on the basis of sex, race, color, or national origin).

The unambiguous promise of the Notice and the clearly enunciated duties imparted by Title VI and Title IX are what distinguish the present facts from *Squeri*, where the plaintiffs did not articulate *any* obligation or promise by school administrators. *Squeri v. Mt. Ida College*, 954 F.3d 56, 72 (1st Cir. 2020) ("These allegations do not plausibly allege a breach of implied contract, let alone an express contract, that the college contracted to give earlier notice than it did [of the school's financial difficulties or abrupt closure] or that there was a contract for four years of education in exchange for only one semester of tuition.") Here, Boston College expressly promises not to engage in certain conduct, SOF ¶ 8, and is expressly obligated by law to refrain from such conduct. *See* SOF ¶¶ 5-7. There is no comparison.

iii. An Unambiguous Contract: The main argument propounded by the school is that Plaintiff "has not established, and cannot establish, that he and Boston College entered a contract that included a nondiscrimination provision." Opp. 9.[15] This is simply a misunderstanding of the instant Motion and the relevant law. The theory of this Motion is that a contractual obligation exists *as a matter of law* because, *inter alia*, the plain language in the Notice of Nondiscrimination unequivocally commits Boston College to a policy of "nondiscrimination." *See Bleiler v. College of Holy Cross*, CIV.A. 11-11541-DJC, at *15 (D. Mass. 2013) ("When interpreting contracts between students and their academic institutions, under Massachusetts law courts 'employ the standard of reasonable expectation — what meaning the party making the manifestation, the university, should reasonably expect the other party to give it'") (quoting

[15] More narrowly, BC argues that Plaintiff's Motion is remiss because his Statement of Facts ("SOF") "does not state the terms of the contract he and Boston College supposedly entered." Opp. 8. However, the reason that the language of the Notice is not quoted in the Statement of Facts is simple: Plaintiff followed the Superior Court Rules. *See* Superior Court Rule 9A (b)(5)(i)(b) (a Statement of Facts "shall not include… Quotations from any contract, trust, agreement, or other transactional document, or any characterizations of the document"). Thus, Plaintiff identified two instances in which Boston College published the Notice of Nondiscrimination, using identical language each time, on its main website and in the university's employee handbook. SOF ¶ 8. It is unclear what more he could have provided, consistent with Rule 9A (b)(5)(i)(b).

Schaer v. Brandeis, 432 Mass. at 478); Boston College, *Policies and Procedures*, ("University Policies impose binding obligations").

iv. Conclusion: BC's manifestations are enforceable as contractual terms because they unequivocally "manifest" a nondiscrimination promise. SOF ¶ 8 (Notice of Nondiscrimination); *see also*, SOF ¶ 11 (BC's Anti-Discrimination Policy states that "Boston College Law School does not discriminate against any person on the basis of [*inter alia*, race, ethnicity, color, national origin, sex, gender identity & expression, or sexual orientation] in admission to, access to, treatment in, or employment in its programs and activities.") This nondiscrimination promise is enforceable as a contract term. *Schaer v. Brandeis*, 432 Mass. at 478. It places upon Boston College a duty of nondiscrimination, which, *at a minimum*, prohibits "discrimination" as defined by state and federal law. Since this minimum definition is sufficient for this Motion to succeed, there is no relevant ambiguity and thus no question of fact requiring a jury determination. *Bleiler* at *15 ("Contract interpretation, including whether any ambiguities exist in the disputed contractual terms, is generally a question of law for the Court") (citing *Driscoll v. Bd. of Trustees of Milton Acad*., 70 Mass. App. Ct. 285, 293 (Mass. App. 2007)). As a matter of law, Boston College has a contractual duty not to engage in "discrimination" as that term is defined by law.

(D) BC's other arguments are foreclosed by, *inter alia*, *Brown v. Board of Education*, *Loving v. Virginia*, *McLaurin v. Oklahoma State*, and *University of California v. Bakke*.

i. Separate but Equal: Downplaying its prior admissions, BC now argues that even if the school discriminates **between** students (i.e., is "sensitive to" impermissible classifications, SOF ¶ 10), such fact does not necessarily prove that the school discriminates **against** any particular student. Opp. 3 & 10. As courts have long recognized, this is a distinction without a difference. *Brown v. Bd. of Ed. of Topeka,* 347 U.S. 483, 495 (1954); *see Loving v. Virginia*, 388 U.S. 1, 10 (1967) ("the Equal Protection Clause requires the consideration of whether the classifications drawn by any statute constitute an arbitrary and invidious discrimination"); *Regents of Univ. of California v. Bakke*, 438 U.S. 265, 284 (1978) (Title VI extends this obligation to universities). Thus, contrary to what Boston College would have the court believe, Opp. 15, the act of classifying students based on an impermissible classification **is** "impermissible" and is

"improper" treatment, Opp. 10, as a matter of law. *See Finch*, 459 Mass. at 676 ("the right to equal protection recognizes that the act of classification is itself invidious").

ii. Injury *Per Se*: The use of "impermissible" classifications in an educational setting is injurious *per se*. *Brown v. Bd.,* 347 U.S. at 495; *see Cooper v. Aaron*, 358 U.S. 1, 19 (1958) ("The right of a student not to be segregated on racial grounds in schools ... is indeed so fundamental and pervasive that it is embraced in the concept of due process of law"). Indeed, the mere fact of distinction and classification would harm every BC student, even if the negative consequences were equally distributed among students of all colors, genders, nationalities, and orientations. *Sweatt v. Painter*, 339 U.S. 629, 635 (1950) (nondiscrimination "is not achieved through indiscriminate imposition of inequalities"). Of course, where the university's distinctions could be construed as playing favorites or making a political statement, there should be no question as to whether the resulting stigma is harmful: it simply is. *McLaurin v. Oklahoma State Regents for Higher Ed*. 339 U.S. 637, 640 (1950) (holding that even though the students attended the same graduate school, sat in the same classrooms, studied in the same library, and ate in the same cafeteria, the race- and color-based "separations" imposed by the university were not "merely nominal"). Boston College cannot argue that its discriminatory practices did not harm the Plaintiff; discrimination is an injury *per se*.

iii. "Protected Class": Plaintiff need not declare "membership" in a "protected class" to vindicate fundamental civil rights. *Contra* Opp. 10 (citing one way of making a *prima facie* case of employment discrimination). To start, it is an uncontested fact that plaintiff *was* at all relevant times a member of the "class" (students) that is "protected" against university discrimination by Titles VI and IX. SOF ¶¶ 2 & 3. What the school presumably means, however, is that Plaintiff does not come before the court as a member of a "discrete and insular minority." *U.S. v. Carolene Products*, 304 U.S. 144, 152–153 n. 4 (1938). But membership in some "discrete and insular" group "has never been … a prerequisite to subjecting racial or ethnic distinctions to strict scrutiny." *Bakke*, 438 U.S. at 290 ("Nor has this Court held that discreteness and insularity constitute necessary preconditions to a holding that a particular classification is invidious.") *Accord*, *Atty. Gen. v. MIAA*, 378 Mass. 342, 355 (1979).

4. IF THIS COURT IS WILLING TO MAKE THREE FINDINGS OF LAW AND ONE OF TWO FINDINGS OF FACT, SUMMARY JUDGMENT SHOULD BE ENTERED IN FAVOR OF PLAINTIFF ON THE ISSUE OF BREACH.

(A) As a matter of law, (1) BC had a contractual "duty of nondiscrimination" that (2) obligated it to abstain from conduct evincing "discrimination," (3) which conduct includes, *inter alia*, making distinctions between its students according to impermissible classifications.

Plaintiff's Motion asks this court to make three findings of law. **First**: as a matter of law, where a university publishes a "Notice of Nondiscrimination" conspicuously on its website, it grafts a "duty of nondiscrimination" into the student-university contract. **Second**: *at a minimum*, that "duty of nondiscrimination" requires that the school abstain from actively engaging in "discrimination" as that term is understood in state and federal law. **Third**: where an educational institution uses "impermissible classifications," *Griggs*, 401 U.S. at 431, in a manner that is not "narrowly tailored" to any "compelling interest" in maximizing a "robust exchange of ideas" on campus, *Grutter*, 539 U.S. at 329, that institution engages in "discrimination" as a matter of law, *Finch*, 459 Mass. at 676, and therefore breaches its student-university contract as a matter of law. *Doe v. Amherst College*, 238 F. Supp. at 218.

(B) As a matter of fact, Boston College uses "impermissible classifications" in a manner that is not "narrowly tailored" to any legitimate interest.

With those three pillars of law in mind, Plaintiff asks the court to make one finding of fact: he asks this court to find that Boston College uses "impermissible classifications" in a manner that is not "narrowly tailored" to any legitimate interest. This finding of fact is compelled by the university's admissions and omissions. Boston College has **expressly admitted** that its Career Services Office, Office of Admissions and Financial Aid, and Director of DEI&B are "sensitive to students' sex, color, gender, sexuality, race, ethnicity, national origin, and creed" and organize "various programs, panels, workshops, social, and community events" that are also "sensitive to students' sex, color, gender, sexuality, race, ethnicity, national origin, and creed." SOF ¶ 10. The university **does not argue** that any of these "various" programs and activities are narrowly tailored to a compelling interest. Nor can it – BC's admission that "*all* its policies and programs are, in some form, sensitive to students' sex, color, gender, sexuality, race, ethnicity, national

origin, and creed" (SOF ¶ 10) (emphasis added) precludes "narrow tailoring" as a matter of course. Thus, given the undisputed record, no reasonable jury could elide the conclusion that the school uses "impermissible classifications" in an impermissible manner.

(C) <u>In the alternative, this court can simply infer an admission that Boston College engages in discrimination from the university's silence as to the allegations against it.</u>

"There are instances where the failure of one to deny a statement adversely affecting his rights may constitute an admission provided the statement is of such a nature and is made in such circumstances as to call for a reply." *Mendelsohn*, 326 Mass. at 238; *accord*, *Cumpiano*, 902 F.2d at 158 (First Circuit found that a manager's omission was, in context, sufficient to form an inference of discrimination). Here, despite circumstances that certainly "call for a reply" and numerous opportunities to deny the allegations against it, Boston College has failed to do so. In fact, *Defendant has yet to produce an individual willing to swear, unambiguously and on penalty of perjury, that Boston College does not engage in "discrimination" as that term is defined in state and federal law*. If the school does not engage in discrimination, then it should set the record straight. Otherwise: where an organization is asked, under oath, multiple times, "do you discriminate on the basis of race, color, ethnicity, national origin, sex, gender, or sexual orientation?" and each time it answers with something other than "no," the answer is "yes." *Cumpiano*, 902 F.2d at 158 (quoting Brandeis, J.) ("'Silence is often evidence of the most persuasive character.'")

CONCLUSION

WHEREFORE, the Plaintiff *Pro Se* prays the court grant summary judgment on the issue of contract liability; specifically, to find that (1) a contract existed between the parties, (2) a nondiscrimination clause was a term of that contract, and (3) Defendant breached its obligations under that nondiscrimination clause as a matter of law.

REQUEST FOR ORAL ARGUMENT

The Plaintiff respectfully requests a hearing on this Motion and Cross-Motion.

Respectfully submitted,
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Dated: December 14, 2022.

Date Filed 12/29/2022 5:55 PM
Superior Court - Middlesex
Docket Number 2181CV02940

CERTIFICATE OF SERVICE

I, Jordan Lewis Michelson, hereby certify that a true copy of the above document was served upon the attorney of record for TRUSTEES OF BOSTON COLLEGE by email on December 14, 2022.

/s/ JORDAN L. MICHELSON

23

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, SS

SUPERIOR COURT
CIVIL ACTION
NO. 218CV02940

JORDAN LEWIS MICHELSON

v.

TRUSTEES OF BOSTON COLLEGE, *d.b.a.*
BOSTON COLLEGE LAW SCHOOL

MEMORANDUM OF DECISION AND ORDER ON DEFENDANT'S MOTION FOR SUMMARY JUDGMENT PURSUANT TO F.R.C.P. 56.

Trustees of Boston College ("Boston College Law School" or "Defendant") assert they are entitled to summary judgment on Count I (Breach of Contract) of the plaintiff's complaint. The matter is before this Court on the defendant's motion for summary judgment pursuant to Mass. R. Civ. P. 56. For the reasons that follow the defendant's motion for summary judgment is ALLOWED.

BACKGROUND

The plaintiff, Jordan Lewis Michelson attended Boston College Law School from the fall of 2019 to the spring of 2022 and graduated with his juris doctor degree. While Mr. Michelson was a student at Boston College of Law he remained in good standing. Mr. Michelson paid tuition to Boston College Law School and the law school provided him with a legal education.

Boston College Law School has an array of student-run affinity groups, and several are under the student-run umbrella organization referred to as "LAHANAS,"[1] which offers various speaker events, social events, and networking events. Furthermore, the affinity groups are open to all Boston College Law students. Students are notified of all affinity groups programming through their MyBC accounts. All events and programming posted on their MyBC accounts are also sent via email every Monday to all students.

In October 2021, Mr. Michelson brought suit against Boston College Law School in a four count complaint, alleging breach of contract (Count I), two counts under the Massachusetts Civil Rights Act (Count II and III), and a claim under M.G.L. c. 151B (Count IV). This Court granted Boston College's motion to dismiss as to three of the counts, leaving only Mr. Michelson's breach of contract claim.[2]

STANDARD OF REVIEW

"The standard of review of a grant of summary judgment is whether, viewing the evidence in the light most favorable to the nonmoving party, all material facts have been established and the moving party is entitled to a judgment as a matter of law." *Augat, Inc. v. Liberty Mut. Ins. Co.*, 410 Mass. 117, 120, (1991), citing Mass. R. Civ. P. 56 (c), 365 Mass. 824 (1974). The moving party bears the burden of affirmatively demonstrating there is no

[1] LAHANAS is the umbrella organization that includes Boston College's diverse, student-run affinity groups. See https://www.bc.edu/content/dam/bc1/schools/law/about/dei/LAHANAS- Brochure.pdf (last visited Oct. 24, 2022). LAHANAS includes the following Affinity Groups: Asian Pacific American Law Students Association; Black Law Students Association; Latin American Law Students Association; LAMBDA (Coalition of LGBTQIA+ Students); Native American Law Students Association; South Asian Law Students Association; Disability Law Students Association; and Middle Eastern Law Students Association.

[2] In ruling on Mr. Michelson's cross motions Judge Wilkins stated " the motion [to dismiss] was successful on three counts, even on Count I [breach of contract], the motion had plausible merit, as the complaint is exceedingly general, argumentative, vague and evasive, as to Plaintiff's actual and specific contentions. Even Count I came very close to dismissal for failure to plead facts plausibly showing entitlement to relief."

genuine issue of material fact. *Pederson v. Time, Inc.*, Mass. 14, 17 (1989). The moving party may satisfy this burden by demonstrating the nonmoving party has no reasonable expectation of proving an essential element of [their] case at trial. *Flesner v. Technical commc'ns Corp.*, 410 Mass. 805, 809 (1991); *Fiduciary Trust Co. v. Bingham, Dana & Gould, et al.*, 58 Mass. App. Ct. 245, 251 (2003).

Analysis

A. The Defendant is entitled to Summary Judgment as a Matter of Law

First, to establish a colorable claim for breach of contract the plaintiff must prove the following elements: an agreement between the parties, supported by valid consideration; that the plaintiff was ready, willing, and able to perform; that the defendant committed a breach; and the plaintiff sustained damages. *477 Harrison Ave., LLC v JACE Boston, LLC*, 483 Mass. 514, 523 (2019). Mr. Michelson asserts that the contract he entered with Boston College Law School contained a nondiscrimination provision, however, Mr. Michelson has not demonstrated that Boston College breached this contract by discriminating against him. The Supreme Judicial Court in *Bulwer* articulated that a plaintiff alleging discrimination must illustrate " that he [] is a member of a protected class; that he [] was subject to an adverse employment action; that the employer bore "discriminatory animus" in taking that action; and that the animus was the reason for that action (causation)." *Bulwer v Mount Auburn Hosp.*, 473 Mass 672, 680 (2016); *See Lipchitz v. Raytheon Co.*, 434 Mass. 493, 502 (2001).

Here, Mr. Michelson's complaint is completely devoid of any factual assertion that he is a member of a protected class; and that Boston College Law School treated him differently on the basis of his membership in a protected class. Furthermore, Mr. Michelson does not cite any legal authority or legal basis for his assertion that Boston College Law School engages in any

discrimination in violation of state or federal antidiscrimination law. Therefore, Mr. Michelson has not made a valid claim for discrimination against Boston College Law School.

More specifically, Mr. Michelson asserts that Boston College Law School engaged in discrimination and thereby breached their contract because (1) Boston College's definition of "discrimination," in response to an interrogatory in this litigation; and (2) Boston College's statement, that "its policies and programs are, in some form, sensitive to students' sex, color, gender sexuality, race, ethnicity, national origin, and creed." Here, Mr. Michelson aims his attack on the law school's supplemental response[3] to its initial response[4] of the definition of "discrimination" on the sole basis that "nowhere in those statutes, cases, or the entire canon of Anglo-American law can the law school's newest definition be found." Unfortunately, Mr. Michelson's attack on the law school's definition does not demonstrate that Boston College discriminated against him. Again, Mr. Michelson proffers no evidence that he is a member of a protected class or that Boston College treated him improperly because of his membership in that protected class.

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[3] [Supplemental response] Boston College generally interprets the term 'discrimination' to mean the unfair or prejudicial treatment of an individual or group motivated by a wrongful animus toward a protected characteristic of the individual or group and prohibited by applicable law.

[4] [Initial response]"Discrimination" is defined in Massachusetts and federal antidiscrimination laws and in the hundreds, if not thousands, of cases applying such antidiscrimination laws. Boston College defines and uses the term "discrimination" as that term is defined by Massachusetts and federal law. Boston College abides by its obligations under Massachusetts and federal non-discrimination laws. Moreover, Boston College Law School communicates the following to all potential employers who recruit and/or interview on campus:

Anti-Discrimination Policy

As recognized by the faculty, Boston College Law School does not discriminate against any person on the basis of the identities referenced in our statement of diversity and inclusion in admission to, access to, treatment in, or employment in its programs and activities. Boston College Law School has instituted policies and procedures to ensure a safe and non-discriminatory environment and to meet legal requirements, including Title IX of the Education Amendments of 1972. All employers using the facilities and services of the career services offices and Externship Program must comply with these policies and procedures. Boston College Law School makes one exception to this policy. Under threat of loss of funding to the University resulting from the Solomon Amendment, the application of our anti-discrimination policy is suspended for military recruiters. This exception to our policy does not reflect our acceptance of or agreement with discriminatory hiring policies.

At the same time, Mr. Michelson points to LAHANAS, a student-run umbrella organization of student run affinity groups at Boston College Law School, that "[t]hrough this school- sponsored student group, Boston College Law School provides students of selected classifications with exclusive access to various programs, panels, workshops, social events, community events, and retreats[.]" However, this statement is false because all students may join any of the affinity groups regardless of the students' identity or characteristics. Nevertheless, a school may be "sensitive to" its diverse student body by providing a variety of affinity groups, as long as it is abiding by nondiscrimination laws. Mr. Michelson's claim that Boston College's policies and programs are discriminatory are simply unfounded. Mr. Michelson relies on *Finch v. Commonwealth Health Ins. Connector Auth.*, 459 Mass. 655, 656-657 (2011), in support for his assertions. There the Supreme Judicial Court addressed the denial of public benefits to a group of individuals based on their alienage. This case and the others cited by Mr. Michelson do not support his argument that a university may not be "sensitive to" its diverse student body or acknowledge its student body is made of students with unique characteristics.

Mr. Michelson also never actually defines discrimination in his memorandum and has not shown that Boston College Law School has taken any action against a protected class or against anyone because of their sex, color, gender sexuality, race, ethnicity, national origin, and creed. Secondly, Mr. Michelson has not demonstrated the school breached its contract with him. So, Mr. Michelson "has no reasonable expectation of proving an essential element of his case at trial." *Flesner*, 410 Mass. at 809.

Mr. Michelson complaint launches a host of assertions against Boston College Law School and this Court would be remised if it did not deal with each assertion in turn.

First, the racism Mr. Michelson aims to end is actually historical, not being fostered by Boston College Law School. From the outset of our republic, we have been plagued by racism. In the early republic, Chief Justice Marshall referred to Native Americans as "fierce savages, whose occupation was war, and whose subsistence was drawn chiefly from the forest. To leave them in possession of their country, was to leave the country a wilderness." *Johnson v M'Intosh,* 21 U.S. 543, 590 (1823). Years later, the Supreme Court concluded that Blacks had no rights which the White man was bound to respect. *Dred Scott v Sandford*, 60 U.S. 393, 407 (1857). These cases are examples of how our republic has struggled with racism and, unfortunately, is still struggling today. But, to levy an attack against Boston College Law School without properly understanding racism in its historical context is futile. The fall 2023 entering class at Boston College Law School consisted of 35% students of color, 51% female, and 29 states represented including Puerto Rico and Washington, D.C. This surely illustrates that Boston College Law School is not fostering the historical racism this country has been dealing with since its inception, but simply trying to remedy it.

Second, we need to address how the Harvard Supreme Court decision affects this matter. Though recruitment and on-campus organizations are different than admission. In *Students for Fair Admissions, Inc. v President and Fellows of Harvard Coll.*, 600 U.S. 181, 857 (2023), the Supreme Court concluded that Harvard and UNC's race-based admissions programs fail to meet strict scrutiny, non-stereotyping criteria established in *Grutter*[5] and *Bakke.*[6] However, the Court

[5] *Grutter v Bollinger*, 539 US 306, 123 S Ct 2325, 156 L Ed 2d 304 (2003).
[6] *Regents of Univ. of California v Bakke*, 438 US 265, 98 S Ct 2733, 57 L Ed 2d 750 (1978).

noted that universities were allowed to consider how an applicant's discussion of race affected the applicant's life, so long as that discussion was tied to a quality characteristic or unique ability that the student could contribute to the university.

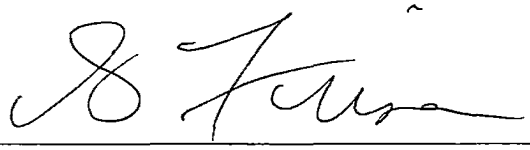
Here, the Boston College Law School admissions program is not on the table, but their concession of being "sensitive to" students and their diverse characteristics is constitutionally permissible because Boston College is simply stating awareness of their students' diversity. Justice Jackson eloquently stated:"[h]istory speaks. In some form, it can be heard forever. The race-based gaps that first developed centuries ago are echoes from the past that still exist today. By all accounts, they are still stark." *Students for Fair Admissions, Inc. v President and Fellows of Harvard Coll.*, 600 U.S. 181, 393 (2023). Jackson's language is significant here because there are race-based gaps that exist today, and likely with students at Boston College. Thus, the actions of Boston College Law School being "sensitive to" their students individual characteristics are laudable and not discrimination.

Third, nondiscrimination does not mean that race and ethnicity cannot be recognized and addressed as real and significant in their effects on jurisprudence and on practicing law. Race and ethnicity add to our nation's ethnic diversity by adding richness to its existence. Boston College Law School is simply aware of these ethnic differences, and is choosing not to be color-blind in a way that ignores all ethnic differences. Moreover, race and ethnicity foster diversity of opinion, which is immensely helpful to the academic experiences of students at Boston College Law School. Lastly, Boston College Law School students will not remain students in perpetuity, therefore, the pluralistic society students will serve after graduation will likely be better served because students will understand the impact of race on the law.

Fourth, Boston College Law School inviting students of color and historically marginalized groups to join an organization that addresses issues specific to those groups is not discrimination against White students. This assertion of reverse racism is simply not true because the affinity groups at Boston College Law School allow every student the option to participate in these groups. Also, the affinity groups allow any student to attend any event of their choosing. For example, a White student or Black student who may want to join the Middle Eastern Law Students Association would not be precluded from joining solely because of their race; if so, that would be clearly unconstitutional. Boston College Law School is legally allowed to invite students to become members of any affinity group on the basis their individual characteristics or values may align with a particular affinity group. Alternatively, Boston College Law School is not permitted to exclude students from affinity groups because of their sex, color, gender sexuality, race, ethnicity, and creed.

ORDER

For the foregoing reasons, it is ORDERED that the defendant's motion for summary judgment on Counts I is ALLOWED.



Honorable Shannon Frison
Justice of the Superior Court

February 6, 2024

COMMONWEALTH OF MASSACHUSETTS
STATEMENT OF THE CASE
APPELLATE COURT ENTRY STATEMENT

Court Department: MIDDLESEX SUPERIOR COURT

Trial Court Docket No(s): 2181CV02940

Case Name: Michelson, Jordan L vs. Trustees of Boston College Doing Business as Boston College Law School

APPEARANCES

Attorney Name for each Plaintiff/Petitioner and Either BBO Number OR Address and Telephone Number	Attorney Name for each Defendant/Respondent and Either BBO Number OR Address and Telephone Number
Jordan L Michelson P.O. Box 588 New London, NH 03257	Alan D Rose #427280 Rose Law Partners LLP One Beacon St 23rd Floor Boston, MA 02108 (617) 536-0040

Nature of the case (Select the most appropriate description): D03 / Injunction

Date Petition, Complaint or Indictment Entered in Trial Court: 10/26/2021

Is the Case or Any Information Impounded? No

If yes, attach a copy of the order of impoundment or provide the citation to the statute or rule pursuant to which the documents were impounded, and specify each impounded document (enter information then "tab" out to view). See S.J.C. Rule 1:15, § 2(a)

Date When Notice of Appeal Filed: Feb 12, 2024

Appeal By (specify each party listed in notice of appeal): Plaintiff

Identify the order or judgment being appealed (enter information then "tab" out to view):

February 6, 2024 / Summary Judgment / Frison, J.

Date Transcripts Ordered: _____ Number of Transcript Volumes: _____

Enclosing CD(s) with PDF(s) of the Transcript: ○ Yes ◉ No

Dates of Transcribed Proceedings: 07/18/2023

In Criminal Cases, has a Stay of Execution of Sentence Been Granted? ○ Yes ○ No

Date Notice of Assembly Issued: Mar 5, 2024

Clerk , Clerk Magistrate, Register, or Recorder

To be filled in by the appellate court:

Date Entered in S.J.C. or Appeals Court: _____ S.J.C. or Appeals Court Docket Number: _____

COMMONWEALTH OF MASSACHUSETTS
SUPREME JUDICIAL COURT
SJC DAR No. _____

Jordan L. Michelson, Plaintiff-Appellant

V.

Trustees of Boston College, Defendant-Appellee

On Appeal from a Decision of the Middlesex County Superior Court
Civil Action No. 218-CV-02940
Appeals Court Docket 2024-P-0714

Plaintiff-Appellant's Petition for Direct Appellate Review

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PETITION FOR DIRECT APPELLATE REVIEW

1. Request for Direct Appellate Review

Petitioner Jordan L. Michelson, pursuant to Rule 11 of the Massachusetts Rules of Appellate Procedure, hereby requests direct appellate review of the decision and order entered against him by the Middlesex Superior Court (Frison, J.) on February 6, 2024, in the matter of *Michelson v. Trustees of Boston College* (Civil Action No. 218CV02940); and of all rulings adverse to the Petitioner subsumed in such judgment, including the rulings by the Middlesex Superior Court on May 17, 2022, and November 27, 2023.

2. Statement of Prior Proceedings

The Complaint:

On October 26, 2021, the Student-Petitioner filed suit (Civil Action No. 218CV02940) in Middlesex Superior Court. The *pro se* Complaint (the "Complaint" or "C¶") alleged that Defendant-Appellee, Trustees of Boston College (together with its subsidiaries and affiliates, the "University"), "countenanced, encouraged, and actually engaged in *prima facie* discrimination on the basis of, inter alia, color, national origin, gender, sex, and sexual orientation," DAR0017 (C¶ 22), when it engaged in various educational and employment-related practices, including:

- Encouraging the classification of Boston College and BC Law School students by color, national origin, gender, and sexual orientation, DAR0017 (C¶ 23), and enacting policies with the express goal of allocating resources and opportunities according to those classifications. DAR0018 (C¶ 25).
- Cultivating a hostile campus culture that subjected students to discrimination and discriminatory harassment on the basis of national origin (including race and ethnicity), color, sex, gender identity, and sexual orientation. DAR0018 (C¶ 26).
- Overseeing a segregated system of scholarships, internships, fellowships, and job openings wherein eligibility was predicated upon on a student's color, national origin, gender identity, sex, and/or sexual orientation. DAR0019 (C¶ 29).
- Advertising, on official job boards maintained by the University's Career Services Office ("CSO"), openings that expressed limitations on the basis of color, national

origin, sex, gender identity, and/or sexual orientation. DAR0019-23 (C¶¶ 29 & 53).

- Encouraging employers *not* to observe the principle of "equal opportunity" (i.e., encouraging employers to affirmatively discriminate on the basis of color, national origin, sex, gender identity, and/or sexual orientation). DAR0019 (C¶ 28).

The Complaint prayed for declaratory and injunctive relief, nominal damages, compensatory damages, statutory damages, contract damages, a tuition refund, punitive damages, and the disgorgement of ill-gotten gains, DAR0023, on the theory that the University's practices: (1) undermined the Student-Petitioner's "reasonable expectations," DAR0016 (C¶ 15); (2) were contrary to the University's own non-discrimination policies, *id.* (C¶ 17); and (3) violated numerous regulatory and legal "obligations under, *inter alia*, the American Bar Association's Standards and Rules and Procedures for Approval of Law Schools, Article I of the Massachusetts Constitution (as amended by Article CVI), Massachusetts General Laws 151B § 4, the Civil Rights Act of 1964, and Title IX." DAR0012 (Complaint summary); *see also* DAR0016 (C¶ 16).

The Student-Petitioner, an anti-identitarian universalist, made a point of abstaining from self-identification as a "member" of any particular demographic group in the body of the Complaint. DAR0013 (C¶ 2). The Complaint nevertheless alleged that, as a direct and proximate consequence of the University's unlawful practices, the Student-Petitioner was personally subjected to on-campus discrimination and discriminatory harassment, DAR0018-19 (C¶¶ 26 & 30), was constructively and/or literally prevented from taking full advantage of educational and career services programs and activities, DAR0020 (C¶ 33), was deprived of equal and undifferentiated enjoyment of the benefits of the student-university relationship, *id.* (C¶ 37), and was subjected to illegal, systematic, and institutionally-facilitated hiring discrimination. *Id.* (C¶ 35). (Foreseeably, this disparate treatment resulted in *vastly* disparate demographic outcomes, as the National Association of Law Placement Report on BC's Class of 2022 amply demonstrates, DAR0446).

BC's Motion to Dismiss:

On November 17, 2021, the University served its Motion to Dismiss pursuant to Massachusetts Rules of Civil Procedure ("MRCP") Rule 12(b)(6),[1] which (pursuant to

[1] And *only* Rule 12(b)(6). DAR0056.

Massachusetts Superior Court Rule 9A) was filed along with the opposition and reply on December 10, 2021. DAR0056-71. The 12(b)(6) motion was argued on May 10, 2022. DAR0004. On May 17, 2022, the 12(b)(6) motion was decided in the Student-Petitioner's favor as to Count I. DAR0125 ("The Complaint adequately alleges the existence of a contract, the inclusion of a nondiscrimination promise, and actions in breach of that promise") (citing Compl. ¶¶ 29, 52-53). Counts II-IV were "dismissed" without prejudice because, according to the judge presiding over the case at the time (Wilkins, J.), (1) the pleadings did not adequately allege "threats, intimidation or coercion" for purposes the MCRA and (2) "[f]ailure to file an MCAD complaint is a jurisdictional defect" as to the Chapter 151B claims. DAR0125. Judge Wilkins also denied the Student-Petitioner's motion for a preliminary injunction on the grounds that Petitioner's "imminent graduation" from the law school made injunctive relief "likely" irrelevant. DAR0127.[2]

BC's Answer:

On May 27, 2022, the University issued its responsive pleadings (the "Answer" or "A¶"), which responded to all numbered paragraphs in the Complaint except for ¶¶ 46-54. DAR0130-140. Of note, Boston College raised three affirmative defenses but chose not to raise a "*Korematsu*" defense – i.e., the school did not argue that it had a narrowly tailored, unquestionably legitimate, and compelling basis for classifying students according to illicit classifications. DAR01138 (failing to raise a *Korematsu* defense); DAR0180-181 (explaining BC's affirmative defenses); *see Regents of Univ. of California v. Bakke*, 438 U.S. 265, 291 (1978) (applying the "strict scrutiny" loophole from *Korematsu v. United States*, 323 U.S. 214, 223 (1944) to disparate treatment by a public medical school); *accord*, *Grutter v. Bollinger*, 539 U.S. 306, 327 (2003) (racially discriminatory public law school prevailed by invoking *Korematsu* defense). Instead, the Answer stated unequivocally that "Boston College abides by the principles of equal opportunity and non-discrimination," DAR0133, and categorically

[2] Of course, by the time that the preliminary injunction was adjudicated, 203 days had elapsed since the suit was first filed in Superior Court. During those 203 days (which spanned the majority of the Student-Petitioner's 3L year), Petitioner suffered ongoing harms and was subjected to particularized hostility, disparagement, and threats by students and administrators. *E.g.*, DAR0073 (notifying the court of ill-advised and unnecessary school-wide email from interim-dean Diane Ring reassuring students that Boston College would respond to Petitioner's Complaint "forcefully" in court); DAR0118 (notifying the court of cafeteria shakedown by fellow students, ostensibly representing various University-affiliated organizations, who threatened to spearhead "a write-in campaign to submarine [Petitioner's] character and fitness evaluation" unless Petitioner dropped all claims and publicly apologized to members of the LAHANAS community for opposing the University's discriminatory practices).

denied that the institution (or its agents or affiliates) had *in any way* countenanced, encouraged, facilitated, engaged in, or advocated for "discrimination of any kind." DAR0133-137 (A¶¶ 16, 22, 23, 24, 25, 26, 28, 29, 30, 31, 32, 35, 36, 37, 38, & 40); *see also* DAR0230-231 (confirming categorical denials).

First Set of Interrogatories:

In May 2022, the Student-Petitioner served "Plaintiff's First Set of Interrogatories," which consisted of five (5) numbered interrogatories, upon the University. DAR0170-176; DAR0268-274. On July 18, 2022, the University served threadbare responses to those five interrogatories. DAR0177-183. The parties quarreled over those responses, and the court ultimately granted Petitioner's motion to compel on August 30, 2022. DAR0167-168; DAR0184-205; DAR0208.

Partial Summary Judgment:

On October 13, 2022, the University served its supplemental responses to the five (5) initial interrogatories. DAR0252-263. Based on the University's concessions in those interrogatories (particularly its retreat from prior categorical denials of *any* discrimination whatsoever), on October 19, 2022, the Student-Petitioner moved for partial summary judgment pursuant to Rule 56(d) to narrow the scope of the issues. DAR0213-227. At that time, discovery was ongoing. *See* DAR0209-211 (parties' joint October 3, 2022, motion to extend discovery and all tracking order deadlines by nine months); DAR0212 (granting joint motion); DAR0348-357 (outstanding interrogatories and document requests).[3]

On November 21, 2022, the University opposed the Petitioner's Rule 56(d) motion and submitted a cross-motion for summary judgment pursuant to Rule 56(b). DAR0280-299. In the cross-motion, Boston College argued that summary judgment in the University's favor should be granted for two "separate and independent" reasons: (1) Boston College argued that summary judgment was justified in the University's favor because the undisputed record "has not established, *and cannot establish*, that [the Student-Petitioner] and Boston College

[3] The additional interrogatories ("Plaintiff's Second Set of Interrogatories") and document requests ("Plaintiff's First Requests for Production") that Petitioner served upon the University on August 22, 2022, were *never* answered. On May 8, 2023, after months of stonewalling, the University moved for a blanket protective order precluding *all further discovery*. DAR0332-345; DAR0362-371. On May 12, 2023, the trial court paused discovery pending the resolution of the summary judgment cross-motions. DAR0376. The motion for a protective order was never resolved.

entered into a contract that included a nondiscrimination provision," DAR0280; and (2) the University argued that summary judgment was necessary because the undisputed factual record "has not established that [Petitioner] is a member of a protected class and … has not established that Boston College treated [Petitioner] improperly because of his membership in such a protected class." DAR0281. Petitioner opposed this Rule 56(b) motion on its merits and on the ground that the Superior Court had already found a colorable claim as to "the existence of a contract, the inclusion of a nondiscrimination promise, and actions in breach of that promise." DAR0125.

In conjunction with its motion papers, the University produced a sworn affidavit from the Associate Dean for Strategic & Student Affairs Jennifer Perrigo (the "Perrigo Affidavit" or "Perrigo Aff.").[4] DAR0246-249. The Perrigo Affidavit acknowledged that the University had previously submitted a list of over on hundred "specific, current policies and programs" that incorporated classifications pertaining to the sex, color, gender, sexuality, race, ethnicity, national origin, or creed of participating students. DAR0253-258; *see* DAR0247 (Perrigo Aff. ¶ 5). Nevertheless, Ms. Perrigo contended that seven particular student groups – the Asian Pacific American Law Students Association ("APALSA"), Black Law Students Association ("BLSA"), Latin American Law Students Association ("LALSA"), Native American Law Students Association ("NALSA"), South Asian Law Students Association ("SALSA"), Middle Eastern Law Students Association ("MELSA"), and the "LAMBDA" Coalition of LGBTQIA+ Students – were "open to all students."[5] DAR0247-248 (Perrigo Aff. ¶¶ 6, 7, & 10). These assertions were <u>not</u> uncontested, DAR0276-279 (Petitioner's Affidavit), and the University submitted no other evidence (exculpatory or otherwise) on the issue of discrimination. DAR0244.

On December 29, 2022, the Student-Petitioner filed the full "Rule 9A Package" containing Petitioner's Rule 56(d) motion for partial summary judgment, DAR0213,

[4] This is distinct from the affidavit submitted by Ms. Perrigo on the topic of discovery burdens, DAR0362-365.

[5] The Perrigo Affidavit never actually *denied* that the University systematically engages in "discrimination" and is silent as to whether any of the University's (admittedly non-neutral) practices might have resulted in the "unfair or prejudicial treatment" of any individual or group on the basis of ancestry, color, creed, ethnicity, gender, national origin, race, religious affiliation, sex, or sexuality. DAR0246-249. Indeed, despite Ms. Perrigo's limber attempts to *imply* that LAHANAS (the umbrella organization that Boston College Law School uses to segregate students and to allocate resources and exclusionary programming) is "open to all students," she never actually *says* as much upon penalty of perjury. DAR0247-248. Nor can she: the undisputed record shows that LAHANAS *isn't* open to *all* students – it is only open to "LAHANAS-identifying" (*a.k.a.* "diverse") students. DAR0382; *see also* DAR0265.

Petitioner's memorandum in support of that motion, DAR0215-226, the parties' consolidated statement of facts ("CSOF"), DAR0228-239, the Perrigo Affidavit, DAR0246-249, the University's supplemental responses to Petitioner's first set of interrogatories, DAR0252-260, a pamphlet advertising separate onboarding programming, resume reviews, networking and mentorship opportunities, mock interviews, and monthly workshops for LAHANAS-identifying individuals (the "LAHANAS Resources Pamphlet"), DAR0265-266, Petitioner's first set of interrogatories, DAR0268-274, Petitioner's affidavit in opposition to the University's cross-motion, DAR0276-279, the University's Rule 56(b) cross-motion, DAR0280-281, the University's memorandum in opposition to Petitioner's Rule 56(d) motion and in support of its Rule 56(b) cross-motion, DAR0283-299, Petitioner's opposition and reply, DAR0300-320, and the University's Reply, DAR0322-327.

BC's Blanket Protective Order:

Oral arguments were set for June 2023. In May 2023, after months of stonewalling on additional discovery requests, the University moved for a protective order to prevent all further discovery. DAR0332-371. The motion sought to preclude responses to Petitioner's second set of interrogatories and Petitioner's first set of requests for production, both of which had been served upon the University on August 22, 2022. DAR0348-350 (interrogatories); DAR0352-357 (RFPs). It also sought to prevent depositions of the Associate Dean of Academic Affairs, the Director of Diversity, Equity, and Inclusion Programs, and a "person of managerial rank in the Career Services Office." DAR0359. In support of the protective order, Associate Dean Perrigo submitted an affidavit stating that a response to the discovery requests would require her office to consult with "approximately ten different offices across the university" and "at least nine different committees," resulting in "approximately 300 hours" of work. DAR0362-363; *see also* DAR0504 (300 hours referred to the total discovery burden). On May 12, 2023, the Middlesex Superior Court (Frison, J.) paused discovery and ruled that the parties could argue the protective order at the June 2023 oral arguments. DAR0376. Those oral arguments were later postponed and ultimately occurred on July 18, 2023. DAR0007-8. The protective order was never resolved.

Declaratory and Injunctive Relief:

In June 2023, in anticipation of his re-enrollment at Boston College to finish the M.A.

requirements of his J.D./M.A. program,[6] the Student-Petitioner moved for declaratory and injunctive relief applicable as to the Fall 2023 and Spring 2024 semesters. DAR0377-400. The requested declaratory relief included a determination on the meaning of the term "discrimination" – and, more specifically, a determination that:

1) Discriminatory Conduct is Discrimination
2) The Actus Reus of Discrimination is the Act of Classification
3) Discrimination is Never a Victimless Crime

DAR0378-379. The requested injunctive relief asked the court to make the University follow the law, the American Bar Association (ABA) accreditation standards, and the University's own official nondiscrimination policy. DAR0379-380. The University vigorously opposed this relief, all the while maintaining that it *does* follow the law, ABA accreditation standards, and its own nondiscrimination policy. DAR0410-418; DAR0498.

The NALP Report:

In August 2023, the National Association for Law Placement compiled the *Boston College Law School Class of 2022 Summary Report* (the "NALP Report"), which the University published on its official Boston College Law School website. DAR0444; *see https://www.bc.edu/content/dam/bc1/schools/law/careers/employment/2022-NALP-Summary.pdf*. The NALP Report included a crude demographic breakdown of law student employment outcomes; this breakdown clearly showed that demographic "identity" was predictive of employment outcomes for BC Law's Class of 2022. DAR0446. The University failed to produce this highly probative document into evidence pursuant to the Massachusetts Rules of Civil Procedure and the ethical obligations of counsel. *See*, *e.g.*, *In re Griffith*, 440 Mass. 500 (2003) (counsel's "material omissions" of probative evidence resulted in one year suspension from the practice of law). Nevertheless, in early September, the Petitioner became aware of the NALP Report, obtained a copy of the document from the University's website, and moved for the admission of the NALP Report via judicial notice. DAR0444-447. The University objected. DAR0448-449; *see also* DAR0451 (Petitioner's Reply). Then: nothing. The matter was never acknowledged or resolved by the lower court.

[6] Petitioner obtained his J.D. in May 2022 but did not finish his dual-degree J.D./M.A. program. After a leave of absence in 2022-23, he re-enrolled in Fall 2023. DAR0384. In May 2024, he obtained an M.A. in Philosophy.

Rule 15 Motion:

On November 11, 2023, the Student-Petitioner submitted a Rule 15 motion[7] to file pleadings that would "incorporate subsequent events, new evidence (including the NALP data and various items gleaned from self-help discovery), and newly ripened causes of action." DAR0454. The Rule 15 Motion would have added claims under Massachusetts law (Chapters 151B, 151C, and MCRA) and federal law (Title VI, Title VII, Title IX, and 42 U.S.C. §§ 1981 & 1983). DAR0454-455. The Petitioner submitted that these pleadings would "consolidate the parallel claims that have been duly filed with the relevant administrative agencies (the Department of Education OCR and/or MCAD), and which are now ripe and within the Superior Court's jurisdiction,"[8] including claims pertaining to "retaliation," "discrimination that occurred or matured after the original complaint was filed," and "patterns and practices that are ongoing." DAR0454. In a one-sentence order dated November 27, 2023, the court below denied the Rule 15 Motion. DAR0471.

Oral Arguments and Decision Below:

The parties ultimately argued four motions during the July 18, 2023, hearing: the Student-Petitioner's Rule 56 motion for partial summary judgment, the University's Rule 56 cross-motion for summary judgment on the merits, the University's motion for a blanket protective order, and the Student-Petitioner's motion for declaratory and injunctive relief pursuant to Rule 57 and/or Chapter 231A. DAR0485. In a decision and order dated February 6, 2024,[9] the court below found that there was "no genuine issue as to material fact" and ruled in the University's favor on the Rule 56 cross-motion, dismissing the cause of action in its entirety. DAR0472-479. The lower court's decision did not address the University's motion for a blanket protective order or the Student-Petitioner's motion for declaratory and

[7] The *pro se* Petitioner was unsure whether to "style" the Rule 15 motion "as amended pleadings, supplemental pleadings, or something else entirely." DAR0462.

[8] In the interim, the Student-Petitioner had duly filed (or attempted to duly file) complaints with the Massachusetts Commission Against Discrimination ("MCAD") (which denied that it had jurisdiction over claims against a university) and the U.S. Department of Education Office of Civil Rights ("DOE") (which refused to investigate). The DOE matters (Complaint Nos. 01-23-2022 and 01-23-2023) were dismissed on December 7, 2022, and the final administrative appeal on the MCAD matter (Docket Number 22BED01960) was denied on July 10, 2023 – just 8 days before the lower court heard oral arguments on the summary judgment motions and protective order. Petitioner advised opposing counsel of his intent to amend/supplement *on that very day* (July 10, 2023) and was told that it would be best to wait for the summary judgment cross-motions to resolve before filing a Rule 15 motion.

[9] Judge Frison announced her decision to depart from the Middlesex Superior Court four days before this judgment was issued. https://twitter.com/JudgeFrison/status/1753402276129964290.

injunctive relief. *Id*. The Student-Petitioner appealed. DAR0481.

3. Statement of Facts Relevant to the Appeal

It is undisputed that in the Fall of 2019, Plaintiff-Appellant Jordan L. Michelson ("Petitioner" or "Student-Petitioner") enrolled in classes at Boston College Law School ("BC Law") and began paying tuition to Defendant-Appellee Trustees of Boston College (the "University"), a Massachusetts-based 501(c)(3) nonprofit organization that receives state and federal funding. DAR0014 (C¶¶ 5, 13); DAR0228-237 (CSOF ¶¶ 1, 2, 4, 6, 7, 11, & 13). The Student-Petitioner[10] remained a student in good standing simultaneous at all relevant times and received a J.D. from Boston College Law School in the spring of 2022. DAR0229 (CSOF ¶¶ 3, 4); DAR0236 (CSOF ¶ 12). The Student-Petitioner then took a year away from campus before re-enrolling part-time at Boston College to finish his dual-degree J.D./M.A program. DAR0383-384; DAR0494. He has since graduated with distinctions from Boston College with an M.A. in Philosophy in May 2024.

It is also undisputed that at all relevant times, the University held itself out to the public as an institution that does not condone or engage in discrimination on the basis of students' ancestry, color, creed, ethnicity, gender identity, national origin, race, religion, sex, or sexual orientation. This public representation is manifested most concretely by the University's publication of a "Notice of Nondiscrimination" on its websites and in its institutional handbook, which states:

> Boston College rejects and condemns all forms of harassment, wrongful discrimination, and disrespect. It has developed procedures to respond to incidents of harassment whatever the basis or circumstance. Moreover, it is the policy of Boston College, while reserving its lawful rights where appropriate to take actions designed to promote the Jesuit, Catholic principles that sustain its mission and heritage, to comply with all state and federal laws prohibiting discrimination in employment and in its educational programs and

[10] The record does not identify the Student-Petitioner as belonging to any particular demographic cohort. As noted above, the Petitioner is an anti-identitarian universalist and is ethically opposed to the injection of race science, ethnic demography, or any other identitarian discipline into the civic sphere. He therefore hopes to proceed in this suit without "identifying" as a "member" of a particular demographic constituency; although he does, obviously, have a skin color, sex, sexual orientation, and ancestors that can be identified according to race, ethnicity, national origin, religion, and creed. That said, the University has not disputed that all relevant times the Student-Petitioner did not identify/was not identified as "LAHANAS-identifying," "AHANA," "LGBTQIA+," "diverse," "of Color," or a "woman student," as those terms are defined and used by the University. (Tr. 1 pp.30, 38, & 42).

> activities on the basis of a person's race, color, national origin, sex, religion, disability, age, marital or parental status, genetic information or family medical history, or military status, and to comply with state law prohibiting discrimination on the basis of a person's sexual orientation.

DAR0134; *see also* DAR0193 (BC's initial response to Interrogatory No. 2); DAR0254-255 (BC's supplemental response to Interrogatory No. 2); DAR0402 (screen grab); DAR0427-428 (CSOF ¶ 8). The Notice of Nondiscrimination is a "University Policy" and is therefore considered *by the University* to be "binding" on the University and its agents. *See* DAR0427-428 (web link[11]) ("A University Policy is an official directive of broad and direct application across schools and other administrative units of the University. As such, University Policies impose binding obligations on faculty, students and/or staff, as applicable.")

It is also undisputed that during the period in question, there were dozens upon dozens of University programs, including both law school and "main campus" programming, that were not neutral as to students' demographic identities (e.g., ancestry, color, creed, ethnicity, gender, national origin, race, religion, sex, or sexual orientation). DAR0429-432 (CSOF ¶ 10). In its supplemental response to Interrogatory No. 2, the University listed over 100 such programs and further stated that these represented "some, but not all, of Boston College's policies and programs that are sensitive to students' sex, color, gender, sexuality, race, ethnicity, national origin, and creed." *Id.* (also at DAR0255-DAR0258). Moreover, many of the 100+ identified non-neutral programs[12] encompassed multiple classes of programs or events (for example, the University classified the law school's Career Services Office and "various programs, panels, workshops, social, and community events" sponsored by CSO as a single non-neutral "program"). *Id.* The record therefore reflects that the University (by and through its official practices, agents, or affiliate organizations) sponsors *hundreds* of individual programming events (panels, workshops, social events, community events, etc.)

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[11] The link is on the "Employment Policies and Procedures" handbook landing page. A direct link is available at: https://www.bc.edu/content/bc-web/sites/Policies-Procedures.html.

[12] The Perrigo Affidavit characterized a few of these 100+ programs (identified as "affinity groups") are "open to all students." DAR 0247-248 (Perrigo Aff. ¶¶ 6-12). The extent of that open-ness is hotly disputed. DAR0276-278 (Petitioner Aff. ¶¶ 2-8); DAR0435-436 (CSOF ¶¶ 15 & 18). But even if the court takes the University's representative at her word, *which it cannot for purposes of summary judgment*, it *still* does not follow that the dozens of *other* programs identified in Interrogatory No. 2 are *also* "open to all students." DAR0255-DAR0258; DAR0429-432. The University has certainly made no such assertion. *See* DAR0384 n.5 ("Notably, the University has failed to produce an affidavit unequivocally stating that it *does not* and *will not* partake of discrimination on the basis of illicit classifications.")

that are not neutral as to students' ancestry, color, creed, ethnicity, gender, national origin, race, religion, sex, and sexual orientation. *Id.*

The Student-Petitioner has further alleged, in no uncertain terms, that much of the University's programming is materially segregated according to classifications pertaining to ancestry, color, creed, ethnicity, gender, national origin, race, religion, sex, and sexual orientation. *E.g.*, DAR0017-19 (C¶¶ 22-29). Petitioner has produced evidence tending to substantiate these allegations. *E.g.*, DAR0429-432 (CSOF ¶ 10). Moreover, Petitioner has demonstrated that BC Law divides the student body into two comparably-sized cohorts, "LAHANAS-identifying" students and non-LAHANAS-identifying students,[13] based solely on demographic checkboxes. DAR0265-266 (LAHANAS "Resource Guide"); DAR0435 (CSOF ¶ 15). Likewise, the evidence shows that BC's "main campus" distinguishes "AHANA" students from the rest of the student population and offers distinct programs and activities on the basis of that segregation. DAR0234. Even the court below conceded that the University's policies and programs had the effect of picking winners and losers based on classifications pertaining to ancestry, color, creed, ethnicity, gender identity, national origin, race, religion, sex, or sexual orientation. DAR0477 (finding disparate treatment but not "racism" as it is traditionally conceived).

Why does the University "divvy up" the student body in this way? Although the reason is not *legally* relevant, Petitioner theorizes that these distinctions are instrumental to a deliberate system of "soft" segregation based on political affinities. *See* DAR0397 & n.12-14 (recounting the law school's ideological obsession with demography); DAR0392 ("here, the University appears to prefer demographic cohorts that stereotypically vote the same way as its faculty and staff.") This "soft" segregation scheme, which marries official (*de jure*) classifications and unofficial (*de facto*) prejudices, ultimately results in students receiving substantially different <u>*and unequal*</u> educational programming and employment-related

[13] "LAHANAS" is the law school's riff on the "AHANA" (African, Hispanic, Asian, and Native American) acronym used by BC's main campus. DAR0429-432 (CSOF ¶ 10). Specifically, BC Law School uses the term "LAHANAS-identifying students" (and its *de facto* synonym, "diverse students") to refer to students who identify (or are identified) as "LGBTQIA+," "Black," "Latin American," "Asian/Pacific American," "South Asian," "Native American," and "Middle Eastern." DAR0434-435 (CSOF ¶ 14); DAR0265. The record does not reflect whether "LGBTQIA+" is an acronym or a term of art; however, it is undisputed that the term to refers to a discrete "coalition" of students whose group identity is predicated upon sex, sexuality, gender identity, and/or creed. DAR0435 (CSOF ¶ 14).

opportunities depending on their color, creed, ethnicity, gender, national origin, race, religion, sex, and/or sexual orientation. As the Student-Petitioner stated at oral arguments:

> You might think, as I once did, that BC and BC Law, a prestigious university, and an even more prestigious law school, would know that federally funded educational institutions and unelected administrative bureaucrats at such institutions are specifically forbidden from categorizing and segregating students on the basis of those exact classifications by the statutes I mentioned, among others, yet BC and BC Law went right ahead and subjected students, including myself, to a substantially segregated educational experience.
>
> Based solely on demographic check boxes, it provided us with different on-boarding, different programming, different email listservs, different financial aid and scholarships, different internships and fellowships, different counseling and mental health services. We had different mentors, different advisors, different career services, different networking opportunities, different pipeline programs, different on-campus recruiting, different off-campus recruiting, different academic grievance procedures, different alumni networks, and even different graduation regalia.
>
> And, of course, different did not translate to equivalent. Baked into BC's segregated system were intentional discrepancies in the quality and quantity of programming and services available to any given student.
>
> If that isn't discrimination, I don't know what discrimination is.

DAR0486-488. This emphasis on demography is completely "beyond the pale." DAR0026; *see also* DAR0017-23 (C¶¶ 22-29 & 52-53) (specific allegations); DAR0265-266 (segregated LAHANAS[14] programs); DAR0403 ("If BCLS is the DisneyLand of Law Schools (it is), [the pre-matriculation LAHANAS Diversity Retreat] is the FastPass to the front of the line"); DAR0404-405 (pre-matriculation indoctrination materials).

The natural consequence of the University's segregated system and its unequal treatment of its students was a manifest disparity in students outcomes: students to whom the University allocated more (and better) resources and opportunities ultimately fared

[14] Petitioner also challenges the University's division of the student body into sex and gender siloes, including by using the terms "women students" vs. "male-identifying students" to distinguish between the sexes. DAR0017-19 (C¶¶ 22-29); DAR0523. This Petition focuses more on the "LAHANAS-identifying" *vel non* distinction only because it is more flagrant (and because Title IX discrimination is slightly more nuanced than Title VI).

markedly better than their benchmark[15] peers in the post-graduation job market, as illustrated by the comprehensive National Association for Law Placement ("NALP") report:

Boston College Law School
Class of 2022 Summary Report

			Full-time Long-term Salaries				
	Number Reported	**% of Reported**	**# with Salary**	**25th Percentile**	**Median**	**75th Percentile**	**Mean**
Total Reported = 258							
Gender Reported:							
Women	143	55.9	134	90,000	197,500	205,000	154,252
Men	112	43.8	99	75,901	190,000	205,000	146,061
Non-binary or Chose to Self-identify	1	0.4	.	.	.	.	.
Subtotal	**256**	**100.0**					
Race Reported:							
People of Color	60	25.3	57	140,000	202,500	205,000	169,844
White/Caucasian	177	74.7	159	74,950	160,000	205,000	141,102
Subtotal	**237**	**100.0**					
Gender & Race Reported:							
Women of Color	41	17.3	39	140,000	202,500	205,000	175,618
Men of Color	19	8.0	18	74,600	202,500	215,000	157,333
White/Caucasian Women	93	39.2	86	74,950	164,500	205,000	143,107
White/Caucasian Men	83	35.0	73	75,000	115,000	205,000	138,741
White/Caucasian Non-binary or Chose to Self-identify	1	0.4	.	.	.	.	.
Subtotal	**237**	**100.0**					

DAR0446.[16] These vastly disparate outcomes were not just foreseeable; they were literally

[15] Note: although both the mean and median of BC Law students' "Full-time Long-term Salaries" ("FLS") exhibit substantial disparities, best practices are to evaluate a benchmark disparity (a "Wage Gap") by comparing the median FLS of demographic cohorts. Based on this methodology, the NALP report shows the following "Wage Gaps":

- The median 2022 BC Law graduates who identified as "Men of Color" and "Women of Color" were at pay parity (**no "Wage Gap"**).
- For every $1.00 made by the median 2022 BC Law graduate who identified as a man or woman "of Color," the median 2022 BC Law graduate who identified as a "White/Caucasian" woman made a little over 81¢ (**"Wage Gap" = 19%**).
- For every $1.00 made by the median 2022 BC Law graduate who identified as a "White/Caucasian" woman, the median 2022 BC Law graduate who identified as a "White/Caucasian" man made less than 70¢ (**"Wage Gap" = 30%**).
- For every $1.00 made by the median 2022 BC Law graduate who identified as a man or woman "of Color," the median 2022 BC Law graduate who identified as a "White/Caucasian" man made almost 57¢ (**"Wage Gap" = 43%**).

Methodology source: U.S. Gov't Accountability Office, *Women in the Workforce: The Gender Pay Gap Is Greater for Certain Racial and Ethnic Groups and Varies by Education Level*, GAO-23-106041 (Dec 15, 2022).

[16] Notably, various subsets of the apparently disprivileged "White/Caucasian Men" cohort would still benefit from the challenged practices. For instance, many students are concurrently identified as "White/Caucasian" *and also* "LGBTQIA+," "Latin American," or "Middle Eastern" – and are therefore "LAHANAS-identifying" or "diverse" per University policy. Consequently, the NALP wage gaps likely *understate* the actual disparities.

foreseen by the Student-Petitioner in his October 2021 prayer for injunctive relief. DAR0012-13 (summary); DAR0019-20 (C¶¶ 28 & 35).

4. Issues of Law Raised by the Appeal
   I. What is "discrimination"?
   II. Is "membership" in a "protected class" an "essential element" of a discrimination claim?
   III. Did the University owe its student a *contractual* nondiscrimination duty?
   IV. Absent exculpatory evidence, can a court grant summary judgment on the merits for a defendant prior to the close of discovery?
   V. Did the court below abuse its discretion in denying the Rule 15 motion?
   VI. Were Counts II-IV properly dismissed?
   VII. Is a law school a "vocational training institution"?

5. Argument

I. What is "discrimination"?

Courts have an obligation "to say what the law is." *Marbury v. Madison*, 5 U.S. 137, 177 (1803).[17] In the concurrent jurisdictions of the United States and the Commonwealth of Massachusetts, the law is:

- "No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance." TITLE VI of the CIVIL RIGHTS ACT OF 1964, 42 U.S.C. § 2000d.
- "No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance." TITLE IX of the EDUCATION AMENDMENTS OF 1972, 20 U.S.C. § 1681.
- "[A] school not having a racially nondiscriminatory policy as to students is not 'charitable' within the common law concepts reflected in sections 170 and 501(c)(3) of the Code and in other relevant Federal statutes and accordingly does not qualify as

[17] This differs from the role embodied by Judge Frison, who "said" what – *in her opinion* – the law *ought to be*.

an organization exempt from Federal income tax." REV. RUL. 71-447 (IRS RRU), 1971-2 C.B. 230 (interpreting 26 U.S.C. § 501(c)); *see Bob Jones Univ. v. U.S.*, 461 U.S. 574, 605 (1983) (affirming this interpretation).[18]

Therefore, it is the obligation of any court to "say" that the law prohibits a Massachusetts-based, federally-funded, tax-exempt postsecondary institution from encouraging, facilitating, aiding, abetting, or engaging in "discrimination" on the basis of classifications that pertain to ancestry, color, creed, ethnicity, gender identity, national origin, race, religion, sex, or sexual orientation. This should be uncontroversial.

Here, because the University is playing word games, the Court must go further: it must "say" what discrimination *is* (objective conduct) and what it is *not* (a term of art conditioned upon subjective political mores). In law, the term "discrimination" essentially boils down to the principle that in certain contexts (e.g., education, employment, and state action) the use of certain classifications (e.g., classifications pertaining to ancestry, color, and sex) is verboten. *See Yick Wo v. Hopkins*, 118 U.S. 356, 374 (the Constitution does not permit state actors "to make unjust and illegal discriminations between persons in similar circumstances, material to their rights"); *Plessy v. Ferguson*, 163 U.S. 537, 559 (1896) (Harlan, J., dissenting) ("Our Constitution is color-blind, and neither knows nor tolerates classes among citizens"); *McLaurin v. Oklahoma State,* 339 U.S. 637 (1950) (distinctions based on color invite stigma and are *per se* unconstitutional); *Students for Fair Admissions v. Harvard*, 600 U.S. 181, 214 (2023) (discrimination on the basis of a person's ancestry is "invidious in all contexts").

Accordingly, this Court should make four holdings of law: (1) For purposes of state and federal law, "discrimination" is "a failure to treat all persons equally when no reasonable distinction can be found between those favored and those not favored;"[19] (2) Courts will recognize an *overwhelmingly strong* presumption that classifications based on ancestry, color, creed, ethnicity, gender identity, national origin, race, religion, sex, and sexual orientation are ***not*** reasonable distinctions;[20] (3) When it comes to demographic discrimination, "the act

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[18] *See also* G.L. c. 151C (state analog to Titles VI and IX); Title VII (42 U.S.C. § 2000e), including § 2000e-2(j) ("Preferential treatment [of any demographic cohort is] not to be granted on account of existing number or percentage imbalance"); G.L. c. 151B (state analog to Title VII).

[19] *Discrimination*, Black's Law Dictionary (11th ed. 2019).

[20] *Att'y Gen. v. MIAA*, 378 Mass. 342, 344 & n.4 (1979) (citing Article 1 of the Declaration of Rights of the Massachusetts Constitution).

of classification is itself invidious;"[21] and (4) "Separate but equal" ***is not "equal."*** [22]

II. Is "membership" in a "protected class" an "essential element" of a discrimination claim?

It is not disputed that the Student-Petitioner was a "person in the United States" within the meaning of Title VI and Title IX and a "student" in "a program or course of study leading to a degree, beyond a bachelor's degree" within the meaning of G.L. c. 151C (Chapter 151C). This should have ended any inquiry into whether Petitioner has a statutory right to be free from the effects of discriminatory educational practices by a Massachusetts-based, federally-funded, tax-exempt postsecondary institution. The court below erred by demanding that Petitioner *also* "proffer… evidence that he is a member of a protected class." DAR0475. By this, Judge Frison did not mean that the Student-Petitioner failed to establish that he was a *student* or a *person in the United States* – she meant that Petitioner had failed to assert "membership" in a statutorily "protected" demographic cohort.[23] *Id.* In other words (those of the University's erstwhile counsel), Petitioner ostensibly failed to state a claim because he did not tell the court "what he *is*." DAR0572 (emphasis added).

This pernicious[24] "protected class" theory of demographic discrimination is easily debunked. First, the statutes that prohibit *demographic* discrimination simply do not identify a protected class. This distinguishes these laws from antidiscrimination statutes that *do* identify protected classes – for example, the Americans with Disabilities Act (ADA), 42 U.S.C. § 12112(a), which protects only "qualified individuals" as defined in §12111(8), and the Age Discrimination in Employment Act (ADEA), 29 USC §621 *et seq.*, which requires that claimants be "at least 40 years of age," 29 U.S.C. § 631(a). Thus, the lower court's addition of the "protected class" element (which was, indeed, imported from ADA/ADEA employment discrimination cases) was error.

Second, the "protected class" framework would require the judiciary to decide which

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[21] *Finch v. Commonwealth Health Ins. Connector Authority*, 459 Mass. 655, 676 (2011).

[22] *Brown v. Bd. of Ed. of Topeka*, 347 U.S. 483, 495 (1954).

[23] It is unclear what sort of evidence Petitioner might "proffer" to satisfy this burden. 23andMe results? Genealogical registers? Paper bag test?

[24] The "protected class" theory of demographic discrimination is pernicious because it conceives of certain ancestries, colors, creeds, ethnicities, gender identities, national origins, races, religions, sexes, or sexual orientations as *handicaps*, *cf.* 42 U.S.C. § 12112, implying that individuals of those demographic orientations require special assistance to function at the level of their unassisted peers.

demographic constellations are "protected" and which are "unprotected," which would violate the ***equal*** protection doctrine. *See* M.A. Const. amend 1 ("Equality under the law shall not be denied or abridged because of sex, race, color, creed or national origin"); U.S. Const. amend. XIV ("No State shall … deny to any person within its jurisdiction the equal protection of the laws"); 42 U.S.C. § 1981(a) ("All persons within the jurisdiction of the United States shall have ***the same*** right … to the full and equal benefit of all laws") (emphasis added). Such judicial endeavors are untenable and, historically speaking, have not turned out particularly well. *E.g.*, *Dred Scott v Sandford,* 60 U.S. 393 (1857); *In re Ah Yup*, 1 F. Cas. 223 (C.C.D. Cal. 1878); *Elk v. Wilkins*, 112 U.S. 94 (1884); *Fong Yue Ting v. United States*, 149 U.S. 698 (1893); *Ozawa v. United States*, 260 U.S. 178 (1922); *United States v. Bhagat Singh Thind*, 261 U.S. 204 (1923); *Goesaert v. Cleary*, 335 U.S. 464 (1948); *Bowers v. Hardwick*, 478 U.S. 186 (1986).

Third, the "protected class" framework does not work for "implied"[25] discrimination. Here, Petitioner alleges that the University manifested discriminatory *preferences* and *special benefits* for various demographic cohorts, and that those preferences and benefits necessarily entail "discrimination against all those who do not fit within these classifications." *Bruno v. McIntire*, No. CIV.A.00-3014-F, 2001 WL 359969, at *1 (Mass. Super. Mar. 14, 2001) (Gants, J.) (citing *Adarand Constructors, Inc. v. Pena*, 515 U.S. 200 (1995)). Since implied discrimination turns on preference toward an explicitly *favored* class, rather than express antipathy toward a *disfavored* class, the Student-Petitioner's identity is irrelevant (except insofar as he is not a strictly favored beneficiary). *Regents of Univ. of California v. Bakke*, 438 U.S. 265, 290 (1978); *Grutter v. Bollinger*, 539 U.S. 306 (2003); *Fisher v. Univ. of Texas at Austin*, 570 U.S. 297 (2013).

III. Did the University owe its student a *contractual* nondiscrimination duty?

It is black-letter law that universities owe students a *statutory* duty of nondiscrimination. U.S. Department of Justice Civil Rights Division, TITLE VI LEGAL MANUAL § V.E (as of June 2024); *see, generally*, *Bakke*, 438 U.S. 265 (Title IV); *Cannon v. University of Chicago*, 441 U.S. 677 (1979) (Title IX). The question raised by the University is whether universities also owe a *contractual* duty of nondiscrimination to students; and, if so, the extent of that duty. The decision below held that a University's contractual duty is

[25] "Implied" discrimination is more apt than the term "reverse" discrimination. "Reverse" discrimination is like a "reverse" commute – the modifier changes the *valence*, but not the *nature*, of the underlying noun.

identical to its statutory duty; although it seemingly went on to hold that no *statutory* nondiscrimination duty applied as to the Student-Petitioner. DAR0475.

Here, the University is statutorily *and* contractually bound by its official nondiscrimination policy, which are conspicuously posted on its websites and in its handbooks pursuant to Department of Education guidelines.[26] A nondiscrimination policy that is published in this way is a contractual duty because "the relationship between a university and its students is essentially a contractual one." *MIT v. Guzman*, 90 Mass. App. Ct. 1102, *5 (Mass. App. 2016); *Guckenberger v. Boston Univ.*, 974 F. Supp. 106, 150 (D. Mass. 1997) ("Under Massachusetts law, the promise, offer, or commitment that forms the basis of a valid [student-university] contract can be derived from statements in handbooks, policy manuals, brochures, catalogs, advertisements, and other promotional materials.") Thus, *contractual* nondiscrimination promises are part and parcel of the mutually reinforcing state and federal antidiscrimination framework, forming yet another layer of protection for students. The University's nondiscrimination policy is therefore an *express*[27] term of the student-university contract. *See MIT*, 90 Mass. App. Ct. at *5 ("The terms of the student-university relationship are informed by, inter alia, written policies").

IV. Absent exculpatory evidence, can a court grant summary judgment on the merits for a defendant prior to the close of discovery?

It is easier to prove a positive than to prove a negative. Thus, Petitioner was able to move for partial summary judgment pursuant to Rule 56(d) on a very limited subset of undisputed facts that ostensibly established his *prima facie* case. This does not automatically entitle the University to move for summary judgment pursuant to Rule 56(b) on the grounds that the same limited subset of undisputed facts does not affirmatively prove his *prima facie* case prior to the close of discovery.[28] To the contrary, the SJC has specifically stated that on

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[26] *See*, *generally*, U.S. Dept. of Education, *Notice of Non-Discrimination* (2010) www2.ed.gov/about/offices/list/ocr/docs/nondisc.html / https://www2.ed.gov/about/offices/list/ocr/docs/nondisc.pdf

[27] The Student-Petitioner's theory on summary judgment was modest and specific: the motion did not ask the court to infer an implied contractual term or invoke the doctrine of "good faith and fair dealing," but consigned itself to the most basic theory of express contract based on the "Notice of Nondiscrimination" posted by the University. The SJC is, of course, allowed to find a contract implied in fact or in law.

[28] Recall that sixteen (16) out of Petitioner's twenty-one (21) interrogatories were outstanding at the time and that *no* document discovery had been exchanged. Thus, there remained an entire universe of facts that were not yet entered into the record – for example, the fact that a professor graded Petitioner's class on a "progressive curve" and that, when Petitioner attempted to file an academic grievance with the appropriate dean, he was rebuffed because an

a Rule 56(b) motion, a defendant's "burden is ***not*** sustained by the mere filing of the summary judgment motion or by the filing of a motion together with a statement that the other party has produced no evidence that would prove a particular necessary element of this case." *Kourouvacilis v. Gen. Motors Corp.*, 410 Mass. 706, 714 (1991) (emphasis added). Under this precedent, Rule 56(b) requires a "silver bullet" – affirmative exculpatory evidence, that, if substantiated, would annihilate the plaintiff's claims. *Cf. Douglas v. J.C. Penney Co.*, 422 F. Supp. 2d 260, 273-74 (D. Mass. 2006), *aff'd*, 474 F.3d 10 (1st Cir. 2007) (employer satisfied FRCP summary judgment burden where undisputed facts established a history of poor performance – i.e., a legitimate, non-discriminatory reason for termination).

Here, the gist of the University's Rule 56(b) motion was that Petitioner "has not established, *and cannot establish*," facts that would substantiate his claims. DAR0280-281; *see also* DAR0285 (Petitioner "neither pleads nor proves … key elements" of his case); DAR0286 (Petitioner "will not be able to prove that Boston College breached any contract with him"); DAR0501 (decrying "a total lack of evidence at this point of any conduct by Boston College showing discrimination"). The only ostensibly exculpatory evidence offered by the University was the Perrigo Affidavit – which only testified about a very specific subset of the 100+ student groups that were identified *by the University* as non-neutral as to students' ancestry, color, creed, ethnicity, gender, national origin, race, religion, sex, or sexual orientation – and Petitioner's ostensible inability to offer contrary testimony. DAR0323 n.2 & n.3. In other words, the University relied wholly upon "a statement that the other party has produced no evidence that would prove a particular necessary element of this case," which cannot satisfy its Rule 56(b) burden *as a matter of law*. *Kourouvacilis*, 410 Mass. at 714. Reversal must result.

V. Did the court below abuse its discretion in denying the Rule 15 motion?

On November 11, 2023, the Student-Petitioner submitted a Rule 15 motion to file pleadings that would "incorporate subsequent events, new evidence (including the NALP data and various items gleaned from self-help discovery), and … consolidate the parallel claims that have been duly filed with the relevant administrative agencies (the Department

investigation would be bad optics. The Student-Petitioner's right to discover facts related to this claim (including by obtaining documents showing whether the professor had a prior pattern of discriminatory grading and by conducting depositions of the relevant administrators) has not been extinguished.

of Education OCR and/or MCAD), and which are now ripe and within the Superior Court's jurisdiction." DAR0454. The district court summarily denied the motion on the grounds that a Rule 56 motion was pending. DAR0471. This was error. When a party moves to amend or supplement pursuant to Rule 15, "leave shall be freely given when justice so requires." MRCP 15(a); *see also* MRCP 15(b) (allowing "[a]mendments to conform to the evidence"). This principle is especially applicable here, where there was no prejudice to speak of; indeed, the proposed additional claims were still well within their three-year statutes of limitations. Why would Petitioner be able to file an entirely new suit but not add additional/supplemental claims into a pending suit where discovery was ongoing? *See Guindon Ins. Agency, Inc. v. Com. Union Ins. Co.*, 15 Mass. App. Ct. 931 (1983) (amendment is proper rather than filing of new, separate claims based on same set facts). Reversal is proper.

VI. Were Counts II-IV properly dismissed?

On May 17, 2022, the Middlesex Superior Court (Wilkins, J.) "dismissed" Counts II-IV without prejudice. DAR0125. This was facially improper because "Counts" are conventional and stylistic; they have no formal effect. *See* MRCP 2 ("There shall be one form of action to be known as 'civil action'"); MRCP 8 (pleadings require only "(1) a short and plain statement of the claim showing that the pleader is entitled to relief, and (2) a demand for judgment for the relief to which he deems himself entitled.") Accordingly, a court cannot dismiss individual "Counts" while allowing others to proceed. A "civil action" either proceeds to the merits or it is dismissed – there is no middle ground.

Turning to the merits, the lower court erred in stating that the pleadings did not adequately allege "threats, intimidation or coercion" for purposes the MCRA. "Coercion" in particular is a very low bar. *See Redgrave v. Boston Symphony Orchestra*, 399 Mass. 93 (1987) (breach of contract was "coercion"); *O'Connell v. Chasdi*, 400 Mass. 686 (1987) (sexual harassment was "coercive"); *Planned Parenthood League of Mass., Inc. v. Blake,* 417 Mass. 467 (1994) (recognizing "moral" coercion). Here, the Complaint easily cleared that low bar. Moreover, it alleges that the University acted "under color of law." DAR0022 (C¶ 47). Since the MCRA is strictly *broader* than its federal cousin, § 1983, it follows that actions undertaken "under color of any statute, ordinance, regulation, custom, or usage" (§ 1983) automatically count as "threats, intimidation or coercion." Thus, the MCRA claims were adequately pled.

The court also erred by rejecting the Chapter 151B claim for failure to first exhaust administrative remedies, as this is contrary to the express language of the statute. *See* G.L. c. 151B § 9 ("An aggrieved person may also seek temporary injunctive relief in the superior, housing or probate court within such county at any time to prevent irreparable injury during the pendency of ***or prior to*** the filing of a complaint with the commission") (emphasis added). Moreover, the lower court's rationale (that "[f]ailure to file an MCAD complaint is a jurisdictional defect," DAR0125) reflects an outdated view of administrative law. *See Fort Bend Cnty., Texas v. Davis*, 139 S. Ct. 1843 (2019) (failure to file EEOC complaint is *not* a jurisdictional defect). If Massachusetts follows the lead of the Supreme Court, as it usually does in such matters, reversal is proper.

VII. Is a law school a "vocational training institution"?

Finally, it is unclear why G.L. c. 151C §2A exists, given that it is seemingly eclipsed by the broader (albeit less eloquent) §2. Nevertheless, §2A *does* exist, and the Court should confirm that a law school is a "vocational training institution" for its purposes. *See* G.L. c. 151C §1(d) ("The term 'vocational training institution' shall include any educational institution the primary purpose of which is to offer technical, agricultural, business or trade courses or courses of study leading to employment in recognized trades or occupations.")

6. Statement of Reasons Why Direct Appellate Review is Appropriate

This appeal presents issues that are proper for direct appellate review because "the questions presented by the appeal are (1) questions of first impression or novel questions of law which should be submitted for final determination to the Supreme Judicial Court; (2) questions of law concerning the Constitution of the Commonwealth or questions concerning the Constitution of the United States which have been raised in a court of the Commonwealth; or (3) questions of such public interest that justice requires a final determination by the full Supreme Judicial Court." Mass.R.App.P. 11(a). The weight and importance of these legal questions cannot be overstated, as they affect the prospects, well-being, and fundamental constitutional rights of tens of thousands of students at universities across the Commonwealth.

7. Certified Copies of Docket Entries from the Superior Court Proceedings.

A certified copy of the docket is attached as item 1 in the attached Appendix.

8. Copies of Findings and Rulings Relevant to Issues on Appeal.

The February 6, 2024, decision and order of the Middlesex Superior Court (Frison, J.) can be found below at DAR0472-479. The May 17, 2022, rulings by the Middlesex Superior Court (Wilkins, J.) can be found below at DAR0123-129. The November 27, 2023, rulings by the Middlesex Superior Court (Frison, J.) can be found below at DAR0471. Relevant colloquies and other rulings relevant to the issues set forth in the trial transcript citations above are collectively attached and identified in the Table of Contents of the portions of the trial transcripts collectively attached in the attached Appendix.

CONCLUSION

For the above reasons, the Student-Petitioner requests that this Court grant his application for direct appellate review.

Respectfully Submitted,

Petitioner *Pro Se*
/s/ *Jordan Lewis Michelson*
Jordan L. Michelson
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New London, NH 03257
Phone: (781) 608-8978
Email: jmichelson141@gmail.com

Dated: July 1, 2024

RULE 11(B) CERTIFICATION

I, Jordan L. Michelson, the Petitioner *Pro Se*, certify that this application complies with the rules of court that pertain to the filing of applications for direct appellate review, including, but not limited to: Rule 11(b) (length of argument); Rule 20 (form and length of briefs, appendices, and other documents); and Rule 21 (redaction). Compliance with the applicable length limit of Rule 11(b) was ascertained by use of the Microsoft Word wordcount, which indicates that the length of the Argument is 2999 words.

/s/ *Jordan Lewis Michelson*
Jordan L. Michelson

CERTIFICATE OF SERVICE

I hereby certify that on July 1, 2024, I served the attached document(s) through the Electronic Filing Service Provider (Provider) for electronic service insofar as the below counsel are registered users. Insofar as the below counsel are not registered users, I served the attached by e-mail.

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Jordan L. Michelson

The Commonwealth of Massachusetts
Commission Against Discrimination
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MCAD DOCKET NUMBER: 22BED01960
FILING DATE: 08/24/22

EEOC/HUD CHARGE NUMBER:
VIOLATION DATE: 06/04/22

Name of Aggrieved Person or Organization:
Jordan Michelson
46 Orkney Rd #1
Brighton, MA 02135
Primary Phone: (781) 608-8978

Named is the employer, labor organization, employment agency, state/local government agency, or other entity who discriminated against me:

Boston College Law School
Career Services Office
Attention Director of Human Resources
140 Commonwealth Ave Suite 440
Chestnut Hill, MA 02467

Cause of Discrimination based on:
No Protected Class Identified

The particulars are:
I, Jordan Michelson, the Complainant believe that I was discriminated against by Boston College Law School - Career Services Office.

1. I am a student at Respondent. I do not identify with any protected classes due to ethical reasons.
2. On April 30, 2021, Respondent's online job portal had a posting by Community Legal Advocates for a fellowship position. Respondent added a note to the posting in bold stating, "CSO Note: This fellowship is designed to help recruit BIPOC attorneys." I did not apply for this position as I did not identify with the protected classes listed.
3. On March 7, 2022, Respondent's online job portal had a posting by American Health Law Association for a post-graduate position. Under the qualification section the posting stated, "The law student must be of diverse/minority background." I did not apply for this position as I did not identify with the protected classes listed.
4. On June 4, 2022, Respondent's online job portal had a posting by Spectrum. This positing stated "we have dedicated this job posting to individuals coming from the following communities: Refugee, Neurodivergent, Single Parent, Blind or Low Vision, Ethnic Minority, and the Previously Incarcerated. If you identify with any of the following communities do not hesitate to register, even if you feel that this particular opportunity is not the right fit for you." I did not apply for this position as I did not identify with the protected classes listed.
5. Since 2020, Respondents online job portal has had hundreds of postings that have expressed preferences or limitations on the basis of protected classifications including some that have explicitly only wanted to hire people of certain protected classes. I do not believe that I applied for any of these jobs.
6. In early October 2021, I met with an employee in the Office of Institutional Diversity ("OID") regarding the school's diversity plans and learned there was no actual plan. At another date, I met with the Dean of Academic Affairs regarding discrimination. I attempted to setup an appointment with Respondents Title IX/ADA Coordinator, but I was never able to speak to them.
7. In October of 2021, I filed a suit in superior court against Respondent.
8. Students who did not identify with any protected classes did significantly worse in the hiring process through Respondent's Career Services Office and On-Campus Recruiting (OCI).
9. I have applied for 50-100 internship positions through Respondents Career Services Office and did not receive any offers. I interviewed for 6-9 internships.
10. I have applied to around a dozen post graduate opportunities through Respondents Career Services Office and did not receive any offers. I interviewed for 2-3 of the positions.
11. Respondent actively assists employers with diversity recruiting.

Because of the foregoing, I believe Respondent discriminated against me by allowing potential employers to post employment opportunities on their online job portal that seek candidates of specific protected classes

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I hereby verify, under the pains and penalties of perjury, that I have read this complaint and the allegations contained herein are true to the best of my knowledge.

_____
(Signature of Complainant)

INVESTIGATIVE DISPOSITION

Case Name:	Jordan Michelson v. Boston College Law School
MCAD Docket No.:	22BED01960
EEOC Docket No.:	N/A
No. of Employees:	N/A
Investigator:	Pamela Myers
Recommendation:	**Lack of Jurisdiction**

Introduction

On August 24, 2022, Complainant filed a complaint against Respondent, alleging discrimination on the basis of no protected class, in violation of G.L. c. 151C, § 2(d).

Complainant's Allegations

Complainant alleges the following. Complainant is enrolled at Respondent's law school. Complainant does not identify their membership in any protected class for ethical reasons. In October 2021, Complainant filed a lawsuit in superior court against Respondent. Students who did not identify a protected class did worse in the hiring process through Respondent's Career Services Office (CSO) and On-Campus Recruiting (OCI).

On March 7, 2022, Respondent's online job portal had a posting that stated, "The law student must be of diverse/minority background." Complainant did not apply because they did not identify with the protected class. On June 4, 2022, Respondent's online job portal had a posting that stated, "We have dedicated this job posting to individuals coming from the following communities: Refugee, Neurodivergent, Single Parent, Blind or Low Vision, Ethnic Minority, and the Previously Incarcerated." Complainant did not apply for this position because they did not identify with the protected classes.

Complainant applied for 50-100 internship positions and did not receive any offers. Complainant interviewed for six to nine internships. Complainant applied to a dozen post graduate opportunities through CSO and did not receive any offers. Complainant interviewed for two or three of these positions. Respondent assists employers with diversity recruiting.

Summary of Investigation and Analysis

Complainant alleges that they are enrolled in Respondent, a law school, which is a course of study leading to a degree beyond a bachelor's degree. As such, G.L. c. 151C, § 2(d), the statute governing fair educational practices applies to the present facts. According to G.L. c. 151C, § 2(d), "It shall be an unfair educational practice for an educational institution…To exclude, limit or otherwise discriminate against any person seeking

admission to a program or course of study leading to a degree, beyond a bachelor's degree, because of race, religion, creed, color, age, sex or national origin, or to so discriminate against any student admitted to such program or course of study in providing benefits, privileges and placement services." Here, Complainant does not identify their race, religion, creed, color, age, sex or national origin or allege that Respondent discriminated against them on the basis of their race, religion, creed, color, age, sex or national origin. For this reason, the Commission lacks jurisdiction.

Conclusion

A finding of Lack of Jurisdiction is recommended for Complainant's claims of discrimination against Respondent.

/s/ Pamela Myers
Pamela Myers
Attorney Advisor

Disposition

Pursuant to section 5 of M.G.L. c. 151B, and in conformity with the foregoing findings, I have this day determined that a **Lack of Jurisdiction** is being rendered on this case**.** Complainant will be afforded the opportunity to appeal this decision.

Neldy Jean-Francois
Neldy Jean-Francois
Investigating Commissioner

3/31/2023
Date

- DISMISSAL and NOTICE of RIGHT TO APPEAL -

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To:	Jordan Michelson 46 Orkney Rd #1 Brighton, MA 02135	**Case:** Jordan Michelson v. Boston College Law School **MCAD Docket Number:** 22BED01960 **EEOC Number:** N/A **Investigator:** Pamela Myers

Your complaint has been dismissed as follows:

[X] Pursuant to 804 CMR 1.08(1)(c) (2020), the Commission lacks jurisdiction over the parties or the subject matter of the complaint.

[ ] Pursuant to 804 CMR 1.08(1)(f)(2) (2020), there is insufficient evidence to support a determination of probable cause to credit the allegations of the complaint with respect to all claims in the complaint.

[ ] Pursuant to 804 CMR 1.05(2) (2020), the Commission has determined after a preliminary review of the complaint that further investigation will not serve the public interest.

- NOTICE of RIGHT TO APPEAL -

Pursuant to 804 CMR 1.08(4)(b) (2020), you may appeal to the Commission within 10 days after receipt of this notice. You or your attorney must appeal in writing to the Clerk's Office. **Attention: Nancy To, Massachusetts Commission Against Discrimination, One Ashburton Place, Room 601, Boston, MA 02108 (Nancy.To@mass.gov).**

All employment complaints, where applicable, were filed by the MCAD with the Equal Employment Opportunity Commission. Our finding, which will be forwarded to its area office, JFK Federal Building, Boston, MA will be given substantial weight provided that such findings are in accordance with the requirements of Title VII of the Civil Rights Act of 1964, the ADEA, and/or the ADA, as amended.

Neldy Jean-Francois _____ ___3/31/2023_____

Neldy Jean-Francois
Investigating Commissioner

Date