IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 16-cv-00318-RM-CBS

DANIELE LEDONNE,

Plaintiff,

v.

DR. BEVERLEE MCCLURE, in her official capacity as President of Adams State University, and in her individual capacity; and
PAUL GROHOWSKI, in his official capacity as Chief of Adams State Police Department, and in his individual capacity,

Defendants.

DEFENDANTS' RESPONSE TO PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION [DOC. #2]

Defendants, Dr. Beverlee McClure and Paul Grohowski, through undersigned counsel, respond to Plaintiff's Motion for Preliminary Injunction [Doc. #2], as follows:

INTRODUCTION

On October 14, 2015, Plaintiff, a former employee of Adams State University (ASU), was served with a no trespass order prohibiting him from being on the ASU campus. [*Motion,* Doc. #2 at 5]. In response, Plaintiff sued the Defendants in both their individual and official capacities alleging a procedural due process violation and a retaliation claim for practicing his First Amendment rights. [*Complaint,* Doc. #1 at ¶ 81-112]. The focus of Plaintiff's motion for preliminary injunction is the alleged due process

violation. [*Id.* at 2 n.1].[1] The relief Plaintiff seeks is to have the no trespass order lifted. [*Id.* at 24]. For the reasons stated more completely below, Plaintiff's motion should be denied.

STANDARD OF REVIEW

"In general, 'a preliminary injunction is an extraordinary remedy; it is the exception rather than the rule.'" *GMC v. Urban Gorilla, LLC,* 500 F.3d 1222, 1226 (10th Cir. 2007) (quoting *GTE Corp. v. Williams,* 731 F.2d 676, 678 (10h Cir. 1984)). "[T]he right to relief must be clear and unequivocal." *Greater Yellowstone Coalition v. Flowers,* 321 F.3d 1250, 1256 (10th Cir. 2003).

The required elements for a preliminary injunction are: "(1) a substantial likelihood of success on the merits; (2) irreparable injury to the movant if the injunction is denied; (3) the threatened injury to the movant outweighs the injury to the party opposing the preliminary injunction; and (4) the injunction would not be adverse to the public interest." *Dominion Video Satellite, Inc., v. Echostar Satellite Corp.,* 269 F.3d 1149, 1154 (10th Cir. 2001). "The purpose of a preliminary injunction is not to remedy past harm but to protect plaintiffs from irreparable harm that will surely result without their issuance." *Schrier v. University of Colorado,* 427 F.3d 1253, 1267 (10th Cir. 2005).

[1] To the extent that Plaintiff's motion could be construed as also involving both his claims it would then fall within one of the categories of injunctive relief that are disfavored by the Tenth Circuit, as Plaintiff would be requesting all the relief he could receive on a judgment on the merits. *Fundamentalist Church of Jesus Christ of Latter-Day Saints v. Horne,* 698 F.3d 1295, 1301 (10th Cir. 2012).

RESPONSE TO PLAINTIFF'S STATEMENT OF FACTS

In his motion, Plaintiff essentially restates the allegations from his Complaint. [*Motion,* Doc. #2 at 3-12]. An answer to the Complaint is not yet required. For purposes of Plaintiff's preliminary injunction motion, the only relevant material facts are that at the time the no trespass order issued Plaintiff was neither an ASU student nor an employee. Additionally, as discussed more completely below, Plaintiff's allegations do not satisfy the elements for injunctive relief.

ARGUMENT

I. Plaintiff cannot demonstrate a substantial likelihood of success on the merits on his due process claim.[2]

A. Defendants are entitled to qualified immunity.

Plaintiff's claims are brought pursuant to 42 U.S.C. § 1983. [*Complaint,* Doc. #1 at ¶ 3]. Qualified immunity is a defense that a public official has to a § 1983 claim when sued in his or her individual capacity. *Medina v. Cram,* 252 F.3d 1124, 1128 (10th Cir. 2001). "Qualified immunity protects governmental officials from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional

[2] To the extent Plaintiff's request for a declaratory judgment is asserted independently of his request for prospective equitable relief, it is barred by the Eleventh Amendment. *See Jemaneh v. Univ. of Wyo.,* 82 F. Supp. 3d 1281, 1303 (D. Colo. 2015) ("immunity applies to preclude a plaintiff from seeking a declaration that a state officer has violated federal rights in the past, or seeking damages"); *see also Smith v. Plati,* 56 F. Supp. 2d 1195, 1201-1202 (D. Colo. 1999) (discussing sovereign immunity doctrine and limits of *Ex Parte Young*).

rights of which a reasonable person would have known." *Weise v. Casper,* 593 F.3d 1163, 1166 (10th Cir. 2010) (internal quotation marks omitted); *Reinhardt v. Kopcow,* 66 F. Supp. 3d 1348, 1360 (D. Colo. 2014) (noting that the doctrine applies to even nominal damages claims).[3] To overcome the defense of qualified immunity a plaintiff bears "a heavy two-part burden." *Albright v. Rodriguez,* 51 F.3d 1531, 1534 (10th Cir. 1995). A plaintiff must demonstrate that (1) the facts alleged make out a violation of a constitutional or statutory right, and (2) that the right at issue was "clearly established" at the time of the defendant's alleged misconduct. *Medina,* 252 F.3d at 1128.

In determining whether a right was clearly established, judges "look for Supreme Court or Tenth Circuit precedent on point or clearly established weight of authority from other courts finding the law to be as the plaintiff maintains." *Lundstrom v. Romero,* 616 F.3d 1108, 1119 (10th Cir. 2010). The right has to be sufficiently clear so that a person in the defendant's shoes would understand that what he or she did violated that right. *Casey v. W. Las Vegas Indep. Sch. Dist.,* 473 F.3d 1323, 1327 (10th Cir. 2007). As explained in the next section of this response, Plaintiff's allegations do not overcome the defense of qualified immunity.

B. Plaintiff's allegations do not state a claim for a procedural due process violation.

A procedural due process claim involves two elements: (1) is there a constitutionally protected liberty or property interest, and (2) was there an inappropriate

[3] To the extent Plaintiff seeks nominal damages against Defendants in their official capacities their relief would be barred as state officials are not "persons" for purposes of § 1983. *Will v. Michigan Dept. of State Police,* 491 U.S. 58, 65-66, 71 (1989).

level of process. *Couture v. Bd. of Educ. Albuquerque Pub. Schs.,* 535 F.3d 1243, 1256 (10th Cir. 2008). The question of whether a liberty or property interest exists is ultimately a question of federal constitutional law. *Estate of Dimarco v. Wyoming Dept. of Corrections,* 473 F.3d 1334, 1339 n.3 (10th Cir. 2007); *Town of Castle Rock v. Gonzales,* 545 U.S. 748, 756 (10th Cir. 2005).

Plaintiff relies on *Watson v. Board of Regents of the University of Colorado,* a 1973 Colorado Supreme Court decision, for the proposition that as a non-student and non-employee he has a constitutionally protected interest in accessing ASU's campus. [*Motion*, Doc. #2 at 15]. However, in *Watson* the Court did not provide any analysis regarding the interest possessed by a member of the general public in accessing a public university campus. A review of *Watson's* subsequent history does not yield a line of cases relying on it for the proposition that a non-employee and non-student has a constitutionally protected interest in accessing a public university campus.

The United States Supreme Court has held that in the First Amendment context, "a university differs in specific respects from public forums such as streets or parks or even municipal streets." *Widmar v. Vincent,* 454 U.S. 263, 267-268 n.5 (1981). Because a university's mission is educational, Supreme Court decisions "have never denied a university's authority to impose reasonable regulations compatible with that mission upon the use of its campus and facilities. *Id.* Therefore, the Court "[has] not held, for example that a campus must make all of its facilities available to students and nonstudents alike, or that a university must grant free access to all of its grounds or buildings." *Id.*

While Defendants could not find any Tenth Circuit Court of Appeals decision on point, Colorado district courts have held that parents do not have a constitutionally protected right to enter their child's elementary school campus. In *O'Connor v. Bassoff,* No. 15-cv-02121-GPG, 2015 U.S. Dist. LEXIS 162366, at *4-5 (D. Colo. Dec. 3, 2015), a parent was banned from his child's school campus unless he had the principal's prior approval because the parent was allegedly being "hostile and confrontational" with school staff. The district court found that "the law is well established that parents have no constitutional right to physically access school grounds." *Id.* at *10; *Abegg v. Adams/Arapahoe Sch. Dist. J8/Aurora Pub. Schs,* No. 12-cv-01084-REB-MJW, 2012 U.S. Dist. LEXIS 187055, at *13-17 (D.Colo. Oct. 9, 2012); *Knight v. Bieneman,* No. 14-cv-2641-WJM-CBS, 2015 U.S. Dist. LEXIS 4305, at *18-19 (D. Colo. Jan. 14, 2015).

Factual disputes over a Plaintiff's alleged conduct are immaterial in determining whether or not a plaintiff has a constitutionally protected right. *O'Connor,* No. 15-cv-02121-GPG, 2015 U.S. Dist. LEXIS 162366, at *10-11. In support of that proposition the district court in *O'Connor* referenced a New Jersey federal district court case where the judge "acknowledged that the substance and tone of plaintiff's contacts with the school were in genuine dispute, but held the disputes were not material to the underlying assertion of a violation of plaintiff's constitutional rights." *Id.* at 11. Accordingly, the court in *O'Connor* held that "even if, as Plaintiff alleges, he was not threatening or abusive, the Defendants' actions did not violate his constitutional due process." *Id.* at *10.

Courts in other federal circuits have held that non-students and non-employees do not have a constitutionally protected interest in accessing public campuses. For instance, the Second Circuit Court of Appeals has held that a plaintiff who was a nonstudent and non-employee when he received a persona non grata letter excluding him from a university campus for reportedly making threats of violence to a faculty member had the status of a visitor and therefore, did not "have a Fourteenth Amendment liberty or property interest in being present on campus." *Moore v. Ricotta,* No. 01-7264, 2002 U.S. App. LEXIS 19742, at *3 (2nd Cir. 2002).

Similarly, a Fourth Circuit district court held that neither an alumnus nor a prospective student had a constitutionally protected interest in accessing campus facilities. *Uzoukwu v. Prince George's Community College Board of Trustees,* No. DKC 12-3228, 2013 U.S. Dist. LEXIS 115262, at *21-22 (D. MD August 15, 2013). An Eighth Circuit district court held that "members of the general public have neither a liberty nor property interest in being present on a university campus, and, absent any such interest, are not entitled to the procedural due process protections of the Fourteenth Amendment." *Holbach v. Jenkins,* No. 4:09-cv-026, 2009 U.S. Dist. LEXIS 67525, *14-15 (D. N.D. July 15, 2009).

The Ninth Circuit Court of Appeals has held that there is no constitutionally-protected interest for non-students and non-employees to be on a public university campus. In *Souders v. Lucero,* 196 F.3d 1040, 1044 (9th Cir. 1999), a university issued a partial exclusion ban against an alumnus accused of stalking, and then broadened the ban to include the entire campus after the alumnus violated the initial restriction. When

the alumnus challenged the restriction the court held that the university had "not so completely abandoned control that [its campus became] indistinguishable from a public street." *Id.* at 1046.[4] Therefore, the court held that the plaintiff had failed to establish a constitutionally protected interest in having access to the university. *Id.* Accordingly, the court held that because there was no constitutionally protected interest it need not decide whether the due process procedures were adequate. *Id.*

In a Ninth Circuit district court case, an unsuccessful job applicant for a university position seeking to protest the university's application process alleged that his First Amendment rights were violated when the university directed that his communications be restricted to university general counsel and prohibited him from contacting university employees. *Player v. University of Idaho-Moscow,* No. 3:14-CV-00128-EJL-REB, 2015 U.S. Dist. LEXIS 175398, at *7 (D. Idaho August 3, 2015). Relying on *Souders,* the district court held that "non-students, including alumni, do not have the same rights to travel around the campus and access its buildings and programs as do the students and employees." *Id at* *8. Therefore, the district court held that the exclusion of the non-student from the campus did not violate his constitutional rights. *Id.* at *9.

Along these same lines the Eleventh Circuit has held that with respect to universities, "the First Amendment does not guarantee access to property just because it is owned by the government." *Bloedon v. Grube,* 631 F.3d 1218, 1230 (11th Cir. 2011)

[4] The court cited *Watson* as an example where the validity of an exclusion order was denied.

(for First Amendment purposes plaintiff sought to enjoin university from regulating the access that the general public had to a university campus).

On a related point, a First Circuit district court held that a college student who was on a partial campus ban was not deprived of a right to use the public pool on campus or attend a campus "pinning" ceremony because these activities were unrelated to the plaintiff's association with the college as either a student or employee and plaintiff was essentially a member of the public. *Price v. Mount Wachusett Community College,* No. 11-10922-FDS, 2012 U.S. Dist. LEXIS 118185, at *21-22 (D. Mass. Feb. 17, 2012) ("[Plaintiff] offers no case law suggesting that, as a member of the public, she had a constitutionally protected interest in access to a state-college campus for these purposes."). These federal court cases demonstrate that the prevailing rule is that a non-student and a non-employee do not have a constitutionally protected interest in accessing a public university campus. In the absence of a constitutionally protected interest, a plaintiff cannot sustain a due process violation.

In this case, Plaintiff was neither a student nor an employee at the time the no trespass order was issued. [*Complaint,* Doc. #1 at ¶ 16]. Pursuant to the applicable federal cases, Plaintiff did not have a constitutionally protected interest in accessing ASU's campus. Even if a constitutionally protected right existed for a non-student and non-employee to access a public campus, at the very least, the applicable federal case law does not establish that the right was clearly established. Therefore, the Defendants would be entitled to qualified immunity on Plaintiff's individual capacity claims. Plaintiff's

official capacity claims should be dismissed for the same reasons as the federal law does not support the finding of a constitutionally protected interest.

For the reasons discussed above, Plaintiff's allegations also fail to support a stigma-plus claim. As Plaintiff notes, the elements of a stigma-plus claim are: "(1) government defamation and (2) an alteration in legal status." *Guttman v. Khalsa,* 669 F.3d 1101, 1125 (10th Cir. 2012). Plaintiff alleges that his legal status has changed because he cannot enter ASU's campus. [*Motion,* Doc. #2 at 16]. However, as discussed above, this deprivation does not amount to a legal change in status because Plaintiff does not have a constitutionally protected interest in accessing ASU's campus. *See Uzoukwu,* No. DKC 12-3228, 2013 U.S. Dist. LEXIS 115262, at *32 (plaintiff failed to state a claim for a stigma-plus violation where he did not have a constitutional protected interest in accessing community college facilities). Therefore, Plaintiff's stigma-plus claim fails as a matter of law.

Even if Plaintiff could establish a constitutionally protected interest, his allegations do not support a due process violation. Plaintiff's allegations reflect that the no trespass order was issued because "[his] alleged behavior [was] deemed to be detrimental to the well-being of the institution and/or incompatible with the function of the University." [*Complaint,* Doc. #1 at ¶ 35; *Complaint* at Exhibit 2]. The order was issued for an indefinite period subject to an appeal. [*Id.* at ¶ 37; Exhibit 2].

Plaintiff's allegations further reflect that when he disputed the propriety of the no trespass order, ASU's vice-president proposed a meeting where Plaintiff would be provided "an opportunity to provide information to [his] appeal." [*Id.* at ¶ 38-39].

Subsequently, in response to an email from Plaintiff regarding the proposed meeting, the vice president provided further information regarding the no trespass order stating that it was based on multiple reports that ASU administration had received from ASU employees who felt "harassed, annoyed or alarmed by the repeated contact and communications made by [him]." [Exhibit A and A-1]. Plaintiff's allegations reflect that he chose not to meet with ASU's vice president. Therefore, even if Plaintiff could allege a constitutionally protected interest that was clearly established, his allegations do not state a claim for a due process violation.

II. Plaintiff's allegations fail to demonstrate irreparable harm.

"[C]ourts have consistently stated that 'because a showing of probable irreparable harm is the single most important prerequisite for the issuance of a preliminary injunction, the moving party must first demonstrate that such injury is likely before the other requirements for the issuance of an injunction will be considered.'" *Dominion Video Satellite, Inc., v. Echostar Satellite Corp.,* 356 F.3d 1256, 1260 (10th Cir. 2004) (quoting *Reuters Ltd. v. United Press Int'l, Inc.,* 903 F.2d 904, 907 (2nd Cir. 1990). "Establishing irreparable harm is 'not an easy burden to fulfill.'" *Hunter v. Hirsig,* 614 Fed. App'x 960, 962 (10th Cir. 2015) (quoting *Greater Yellowstone Coalition,* 321 F.3d at 1258).

"In defining the contours of irreparable harm, case law indicates that the injury 'must be both certain and great, and that it must not be merely serious or substantial." *Dominion Video Satellite, Inc.,* 356 F.3d at 1262 (quoting *Prairie Band of Potawatomi*

Indians v Pierce, 253 F.3d 1234, 1250 (10th Cir. 2001) (internal citation and quotations omitted). To obtain injunctive relief, the injury complained of must be "of such *imminence* that there is clear and present need for equitable relief to prevent irreparable harm." *Heideman v. South Salt Lake,* 348 F.3d 1182, 1189 (10th Cir. 2003) (quoting *Wis. Gas Co. v. FERC, 758 F.2d 669,* 674 (D.C. Cir. 1985) (emphasis in original) (brackets, citations and internal quotation marks omitted).

A delay in filing a motion for injunctive relief may be taken as an indication that the harm would not be serious enough to justify a preliminary injunction. *Utah Gospel Mission v. Salt Lake City Corp.,* 316 F. Supp. 2d, 1201, 1221 (D. Utah 2004). Here, though the no trespass order was delivered to Plaintiff on October 14, 2015 [*Complaint,* Doc. #1 at ¶ 1], he did not move for a preliminary injunction until February 10, 2016. Accordingly, the almost four month delay in filing the motion for preliminary injunction undercuts Plaintiff's argument that he will sustain irreparable harm unless the proposed injunction is granted.

Nor do Plaintiff's allegations otherwise rise to the level of irreparable harm. Plaintiff argues that the requirement of irreparable harm is satisfied where an alleged constitutional right is involved. [*Motion*, Doc. #2 at 21]. However, as discussed above, Plaintiff did not have a constitutionally protected interest in accessing ASU's campus. Accordingly, Plaintiff cannot sustain a claim for a due process violation. *See e.g. Moore,* No. 01-7264, 2002 U.S. App. LEXIS 19742, at *3.

Plaintiff relies on the 2001 Tenth Circuit case *Dominion Video Satellite v. Echostar Satellite Corp.* and an Eighth Circuit case for the proposition that allegations of

reputational damage constitute irreparable harm. [*Motion*, Doc. #2 at 21-22]. More recently, the Tenth Circuit in *Hunter*, a 2015 decision, held that allegations to a litigant's reputation do not rise to the level of irreparable harm. *Hunter,* 614 Fed. App'x at 963 ("[P]laintiff's challenge is meritless because, as a matter of well-settled law, allegations of reputational injury *do not* rise to the level of irreparable harm that could justify injunctive relief.") (emphasis in original); *see Schrier,* 427 F.3d at 1267 ("[Plaintiff] made no attempt to apprise this court of any evidence in the record showing actual or significant risk of loss of prestige, academic reputation or professional opportunities that cannot be remedied by money damages."). Moreover, Plaintiff's allegations of reputational injury target past harm and do not allege any future harm. [*Complaint,* Doc. #1 at ¶ 66 ("[Plaintiff's professional reputation has been *harmed*…" (emphasis added)]. Injunctive relief is not a device to remedy past harm. *Schrier,* 427 F.3d at 1267.

Plaintiff also alleges that the no trespass order is threatening his livelihood, but fails to provide any specific examples. [*Motion,* Doc. #2 at 7]. As discussed above, Plaintiff was not employed by ASU at the time the no trespass order issued. The allegations in Plaintiff's Complaint reflect that after the no trespass order was issued, ASU still allowed Plaintiff to come onto the campus to meet contractual obligations he had to film "The Nutcracker Ballet" and to film an art gallery opening. [*Complaint,* Doc. #1 at ¶ 69; ¶ 70]. Plaintiff does not allege that there were any other requests made to ASU to perform similar work on campus that ASU denied.

Plaintiff alleges that he has a long-running relationship with the Southern Colorado Film Festival and that as a result of the no trespass order he missed the 2015

festival. [*Id.* at ¶ 48]. Plaintiff does not allege that he requested to attend the film festival and was turned down. Moreover, a request for injunctive relief cannot be used to remedy past harm. *Schrier,* 427 F.3d at 1267.

Plaintiff's allegation that he is being denied educational, intellectual, and cultural programs on campus suffers from a similar lack of specificity. [*Motion,* Doc. #2 at ¶ 7-9]. In his motion for preliminary injunction, the only two specific events that Plaintiff alleged requiring immediate action by the Court was a trip to Peru that is scheduled for this summer and a student play he wants to attend. [*Motion,* Doc. #2 at 8-9; *Complaint,* Doc. #1 at ¶ 51]. Based on reason and belief, the Peru trip was open to both ASU students and the community at large and Plaintiff had previously paid for the trip. On February 18th, defense counsel informed Plaintiff's counsel that Plaintiff would be able to go on the trip. The resolution of this issue is yet another reason that merits against the entry of injunctive relief. Plaintiff does not allege that he requested and was denied an opportunity to attend the play. Moreover, Plaintiff's allegations regarding the play do not rise to the level of irreparable harm which requires that the alleged harm be "both certain and great" and something more than "merely serious or substantial." *Dominion Video Satellite, Inc.,* 356 F.3d at 1262 (quoting *Pierce,* 253 F.3d at 1250 (internal citation and quotations omitted).

III. The allegations do not show that the threatened injury to Plaintiff outweighs the injury to the Defendants nor do the allegations show that the proposed injunction would not be adverse to the public interest.

A university has an interest in providing order and safety for a campus. *See Collins v. University of New Hampshire,* 664 F.3d 8, 25 (1st Cir. 2011). On the other hand, as previously discussed, Plaintiff, a non-student and non-employee of ASU does not have a constitutionally protected interest in accessing the campus. *See e.g. Moore,* No. 01-7264, 2002 U.S. App. LEXIS 19742, at *3.

Therefore, Plaintiff cannot satisfy the final two elements for a preliminary injunction. While Plaintiff notes that ASU allowed Plaintiff onto campus on two occasions to fulfill his contractual obligations [*Motion,* Doc. #2 at 23], as discussed above, those facts only serve to further demonstrate the absence of irreparable harm.

CONCLUSION

For the reasons stated herein, Plaintiff's motion for a preliminary injunction should be denied.

CYNTHIA H.COFFMAN

Attorney General

s/Patrick L. Sayas

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CERTIFICATE OF SERVICE

I certify that I served the foregoing Defendants' Response to Plaintiff's Motion for Preliminary Injunction [Doc. #2] by e-filing with the CM/ECF system maintained by the court or by depositing copies of same in the United States mail, first-class postage prepaid, at Denver, Colorado, this 2nd day of March 2016, addressed as follows:

N. Reid Neureiter
Kayla Scroggins
Wheeler Trigg O'Donnell L.L.P.
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Denver, CO 80202-5647

Mark Silverstein
Sara R. Neel
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Foundation of Colorado
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s/ Patrick Sayas

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DANIELE LEDONNE,

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PAUL GROHOWSKI, in his official capacity as Chief of Adams State Police Department, and in his individual capacity

Defendants.

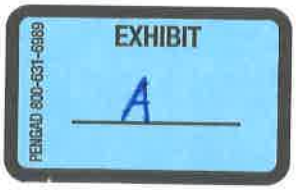
AFFIDAVIT OF KURT CARY

I, Kurt Cary, depose and state as follows under oath:

1. I am Vice President of Administration and Finance at Adams State University.

2. On November 3, 2015, I received an email response from Daniele Ledonne to my letter providing an appeal meeting.

3. On November 6, 2015, I responded to Mr. Ledonne's email with a letter. A copy of the letter that I sent to Mr. Ledonne is attached as Exhibit A-1.



FURTHER AFFIANT SAYETH NOT.

Kurt Cary

STATE OF COLORADO)
) ss.
COUNTY OF ALAMOSA)

SUBSCRIBED AND SWORN TO before me this 29 of February, 2016, by Kurt Cary

Witness my hand and official seal:

[SEAL]

TRACY ROGERS
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID 20044039063
MY COMMISSION EXPIRES OCTOBER 29, 2016

Notary Public

My commission expires: 10/29/2016

ADAMS STATE UNIVERSITY
COLORADO
Great Stories Begin Here

November 6, 2015

Mr. Daniele Ledonne
918 Ross Ave
Alamosa, CO 81101

VIA First Class Mail AND E-Mail to: danny.ledonne@gmail.com

Dear Mr. Ledonne,

I am in receipt of your November 3, 2015 e-mail response to my letter providing an appeal meeting.

My communication was clear that the intent of the meeting was to allow you an opportunity to appeal the October 14, 2015 letter issued by President McClure.

This letter was issued based on information she received regarding a pattern of behavior which caused disruption, interfered with the educational mission of the University and/or that posed a risk to the safety and security of the University community. University Administration received multiple reports of University employees feeling harassed, annoyed or alarmed by the repeated contact and communications made by you. These repeated contacts and communications were perceived as disruptive and outside the normal course of business. A number of employees also reported feeling unsafe, alarmed, and/or concerned about their personal safety. These reports described statements made by you which they perceived as threating or harassing. One report included a statement that "he will go postal if he doesn't get his way." While another described communications as "ominous."

I also want to make clear that this is not a negotiation or a mediation. This is an opportunity for you to provide information, either verbally and/or in writing, you believe relevant for me to consider.

You may bring a representative to the meeting; however, her/his role is as an observer only and will not be allowed to participate. In the event you do decide to bring legal counsel to the meeting, you must notify me at least 72 hours in advance, so we can arrange for the attendance of University counsel. The meeting will be audio recorded. You may bring your own audio recorder or I will provide you with a copy of the recording. We do not agree to a visual recording of this meeting.

I will secure a meeting room at the Kavleys Business and Tech Center for our meeting. I can be available on Wednesday November 11, 2015 or Thursday November 12, 2015 at a mutually acceptable time. Please notify me immediately of when you are able to meet.

After this meeting, I will review the information presented by you, as well as gather any additional information that I deem necessary to fully review your appeal.

I will notify you of my decision on your appeal no later than ten (10) business days from the date of our meeting.

Sincerely,

Kurt Cary
Interim Vice-President Administration and Finance

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