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DATE: October 7, 2014

**TO:** Director, Oregon Dept of Admin. Services  
State Services Division  
Risk Management  
To fax no. 1-503-373-7337

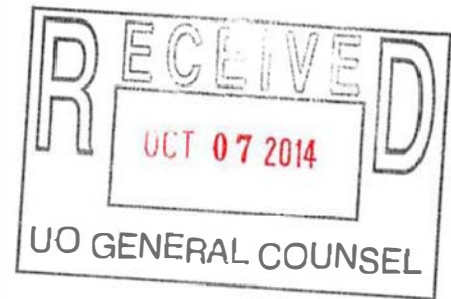
Douglas YS Park  
University of Oregon  
To fax no. 541-346-6110

**FROM:** Marianne Dugan

**RE:** Austin v. University of Oregon

Number of pages including this cover page: 5

**Comments:**



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Douglas YS Park, Assistant General Counsel  
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1226 University of Oregon  
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and via fax to 541-346-6110  
and via email to [dougpark@uoregon.edu](mailto:dougpark@uoregon.edu)

RE: Notice of Claim of Brandon Austin

Dear ODAS and Mr. Park:

I have been reviewing potential civil claims on behalf of Brandon Austin. In compliance with ORS 30.275, formal notice is hereby given that claims for damages on his behalf will be made against University of Oregon and its departments, officers, employees, and/or agents, resulting from the University's April 10, 2014, "emergency" suspension of Mr. Austin; April 30, 2014, second "emergency" suspension upon reading the police reports; and June 17, 2014, final University hearing and issuance of suspension for up to ten years.

The state law claims against the University and its departments, officers, employees, and/or agents, arise out of negligence, negligent hiring, negligent supervision, breach of contract, defamation, intentional infliction of emotional distress, racial discrimination, and vicarious liability for those wrongs.

The federal law claims against University and its departments, officers, employees, and/or agents, arise out of the violation of my client's civil rights under 42 U.S.C. 1981 and 1983, the First, Fifth, and Fourteenth Amendments to the U.S. Constitution, and Monell v. Dept. of Social Services and Adickes v. Kress, due to deprivation of due process, deprivation of the right to freedom of association, deprivation of the right to freedom of speech, deprivation of the right to refuse to testify against oneself, racial discrimination, deliberate indifference to my clients' rights; and policies, customs, or practices that allowed such violations to occur.

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So far as is known to the claimant, the time, place, and circumstances giving rise to the claim are as follows.

On March 9, 2014, Brandon Austin was at a basketball player party with his friends and teammates [Redacted] and [Redacted]. [Redacted] approached Brandon Austin and [Redacted], "twerked" for them, and followed them into a bathroom where they had sexual contact. They left the bathroom and rejoined the party. She returned a second time to the bathroom with all three of the men and more sexual contact ensued.

They left the bathroom and shortly after that the party broke up. Outside on the street there was mingling of guests as folks figured out who was riding home with whom. [Redacted] wanted to leave with the boys. Her friends told her not to go with them, stating "you know how you get" and "they only want to use you for sex." She insisted on going with them. At their apartment she changed into some of their clothes and they had group sex. At one point, she teared up and the boys immediately quit. [Redacted] comforted her, she fell asleep in his lap on the couch and then spent the night in his bed with him. She had sex with him the next morning, went home and texted him "thanks for getting me home" (he had called her a cab).

She reported her conduct to her roommate, who was aghast at the story. At that point, [Redacted] [Redacted] realized her conduct wasn't universally admired.

Suddenly her story changed to rape -- she stated was dragged into the bathroom twice and assaulted, she was wrestled into the car and forced to drink alcohol; taken to the player's home and repeatedly raped. Later, she reluctantly admitted to police that she had slept over and had sex the next morning.

Police investigated. The prosecutor (Patty Perlow) declined to prosecute, due to inconsistencies in [Redacted] story. Police reports reveal interviews with [Redacted] own friends and witnesses at the party stating that she went with the boys voluntarily and never expressed any concern or emotional upset at the party. She was seen dancing suggestively with them by her roommate. She was not drinking and did not appear drunk.

The University began investigating, but immediately made public statements against the boys, and issued emergency suspensions on April 10. The University then reinstated the boys; but then did a second emergency suspension April 30 after reading the police report.

The University eventually reinstated [Redacted] and [Redacted] but not Brandon Austin.

The University denied Mr. Austin's requests (through his lawyer) for:

- a. contested case hearing
- b. issuance of subpoenas

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- c. names and contact info of witnesses the UO interviewed and relied upon**
- d. copies of the Title IX investigator's report - (his attorneys were told they could view the document blacked out but could not have a copy nor review an un-redacted copy).**


**June 17, 2014, the University had the final hearing and issued a suspension of Mr. Austin for up to ten years.**

**Legal Issues**

- 1. Denial of due process in UO administrative hearing**
  - a. Panel hearing option (which Mr. Austin requested):**
    - i. UO refused to issue subpoenas, and indicates that it never allows subpoenas for these hearings**
    - ii. UO refused to allow depositions**
    - iii. UO refused to reveal names/contact information of its witnesses**
    - iv. The Title IX report was blacked out and Mr. Austin's attorneys were not allowed to take it from the room with them**
    - v. Mr. Austin was required to conduct his own cross-examination. His attorney was not allowed to ask questions, and the questions had to be pre-approved by the University**
  - b. Administrative hearing option**
    - i. No subpoenas**
    - ii. No names/contact of witnesses**
    - iii. Title IX report blacked out in places and not given a copy.**

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c. **Denial of request for Contested Case hearing**

The options provided by the University do not comport with the OAPA.

2. **Denial of the presumption of innocence**

- a. The University president gave a speech to the media condemning the conduct of the three players, despite the fact the investigation was still underway, and no charges had been filed (nor were they ever filed).
- b. The University (via Professor Freyd) led marches demanding the expulsion of the students prior to adjudication.

3. **Punishment for exercising civil rights**

When the University read the police reports and saw that Mr. Austin had asserted his Miranda rights through his counsel, they immediately placed him on emergency suspension for that reason. Sources indicate that this is the routine practice of the University.

The other two, who had not asserted their Miranda rights, were allowed to remain at the University. Mr. Austin's criminal attorney was told by Sandy Weintraub that Mr. Austin was treated differently "because he refused to talk."

4. **Misconduct by the Title IX investigator**

The Title IX investigator issued findings of fact upholding the allegations, which completely ignored the eyewitnesses (**Redacted** friends and the cab driver) who contradicted the complainant.

Brandon Austin has been damaged by these actions. Correspondence concerning this claim may be sent to me.

Very truly yours,

  
Marahne Dugan

cc: client; Laura Fine Moro

**VERALRUD & FOWLER**

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William F. Frye  
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October 8, 2014

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Douglas YS Park, Asst. General Counsel  
University of Oregon  
219 Johnson Hall  
1226 University of Oregon  
Eugene, OR 97403  
and via fax to 541-346-6110  
and via e-mail to dougpark@uoregon.edu

Re: Notice of Claims by Dominic Artis vs. University of Oregon and  
Various Administrative Officials

Dear ODAS and Mr. Park:

In compliance with ORS 30.275, notice is hereby given of claims for damages on behalf of Dominic Artis against the University of Oregon and its departments, officers, employees and/or agents resulting in a course of conduct on the part of the aforementioned parties beginning April 10, 2014, with the University's "emergency suspension" and ending on or about June 17, 2014, at which time the University issued a suspension following University Student Conduct Code hearing.

State law claims against the University and its departments, officers, employees and/or agents arise out of breach of contract, slander, defamation and intentional infliction of emotional distress on the part of the aforementioned and/or the University's vicarious liability for those wrongful actions.

Federal law claims against the University and its departments, officers, employees and/or agents arise out of a violation of Mr. Artis' civil rights under 42 USC §1981 and

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§1983, the First, Fifth and Fourteenth Amendments to the U.S. Constitution, including deprivation of due process, deprivation of the right to freedom of association, deliberate indifference to Mr. Artis' civil and constitutional rights and all policies, customs and practices that allowed such violations to occur.

Insofar as the claimant is aware, the time, place and circumstances giving rise to the claims are as follows:

On or about March 9, 2014, Mr. Artis attended a party with other friends and fellow Oregon Duck basketball teammates. At the party Mr. Artis engaged in consensual sexual activities with REDACTED as did other attendees at the party. Further sexual contact between Mr. Artis and REDACTED occurred later in the evening and in the early morning hours of the following day at Mr. Artis' apartment. Those acts were consensual as well.

In the days following, REDACTED characterized what had been patently consensual sexual contact as sexual assault and caused her complaint to be submitted to law enforcement and eventually to the University of Oregon, including the above-referenced officials.

A subsequent police investigation led to a conclusion by the Lane County District Attorney's office that there was insufficient evidence to prosecute the case.

The police investigation generated police reports that underscored the consensual nature of the activities. Those reports were made known to the University and its above-referenced employees and agents.

University officials, including the then University of Oregon President, made public statements both implicitly and explicitly declaiming Mr. Artis as a sexual assaulter, a rapist and a criminal, thus slandering and defaming Mr. Artis.

During the course of the investigation, although the emergency suspension of the University was lifted with respect to Mr. Artis pending a University Student Conduct Code hearing, he was (1) first suspended from the basketball team, then (2) dismissed from the basketball team, and then (3) notified that his scholarship was terminated. These actions on the part of the University and the above-referenced officials were without cause and in violation of Mr. Artis' civil and contractual rights.

The University then asserted violation of the University Student Conduct Code, claiming non-consensual sexual contact as a violation of that code.

In the run-up to the University Student Conduct Code hearing, the University denied Mr. Artis' requests for:

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a. A contested case hearing in accordance with the Oregon Administrative Procedures Act because Mr. Artis contended that the procedures set forth in the Student Conduct Code were deficient and denied him due process of law.

b. The issuance of subpoenas for witnesses who would provide evidence and testimony supporting Mr. Artis' contention that he had committed no violation of law or Student Conduct Code and that REDACTED's credibility was at issue.

c. Names and contact information of witnesses who the University of Oregon interviewed and relied upon in bringing the Student Conduct Code violation claim against Mr. Artis.

d. Copies of the University's Title IX investigator's report (Mr. Artis' counsel was allowed to view but not have the document, with significant parts blacked out and unavailable to Mr. Artis or his counsel).

#### Student Conduct Code Hearing

The University Student Conduct Code hearings process at the time offered Mr. Artis a choice of hearing by a panel (the panel consisting of University of Oregon personnel, student representatives and administrators chosen by the University) or an administrative hearing in front of the Dean of Student Conduct who would be the sole decider. The University coerced Mr. Artis into waiving his panel hearing by threatening expulsion as a remedy if he sought the panel hearing and promising to remove expulsion as an option if he had his case decided by the Dean of Student Conduct, a hearing which did not allow for cross-examination of witnesses or determination by an arguably less partial fact finder.

The administrative process that the University set up for Student Conduct Code violation hearings was constitutionally deficient and denied Mr. Artis due process. The University ignored its own rules with respect to its ability to issue subpoenas (Mr. Artis had no power to issue said subpoenas as the Student Conduct Code then read), and the University intentionally or recklessly frustrated Mr. Artis' ability to present evidence and to defend against the fallacious allegations.

On June 17, 2014, the University conducted the final administrative hearing with all the deficiencies, violations and deprivations of rights set forth above and issued a suspension to Mr. Artis for up to ten years, effectively and for all intents and purposes expelling him from the University anyway.

The Dean of Student Conduct, aided by University counsel, were either explicitly or implicitly directed by superiors within the University to make a finding that Mr. Artis had



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violated the Student Conduct Code or, in the alternative, were so influenced by the statements and comments of their superiors, including the President of the University, that a fair and impartial decision-making process could never have occurred and did not.

Substantial and compelling evidence of the consensual nature of Mr. Artis' sexual contact with REDACTED was willfully ignored.

A similar contention that evidence was ignored in the arrival of the finding of culpability on Mr. Artis' part was also evident in the Title IX investigative report issuing findings of fact upholding the allegation which completely ignored substantial contradictory evidence that supported the consensual nature of Mr. Artis' sexual contact with Ms. REDACTED and contained ample evidence questioning her credibility and contradicting her subsequent assertions that the encounter had not been consensual.

Mr. Artis has been severely damaged by the University's conduct as referenced above. Prior to his suspension from the University of Oregon basketball team and subsequent removal and withdrawal of scholarship, Mr. Artis had been, in all respects, compliant with his agreement with the University regarding his efforts as a basketball player to support the scholarship. He was subjected to ridicule and hostility as a result of the University's slanderous and defamatory remarks as referenced above. His educational plans and ability to continue his career as a collegiate basketball player have been all but terminated. He has suffered financial loss, as well as great humiliation, embarrassment and vilification in the public eye. The damage to his reputation as a result of the University's outrageous actions is immeasurable.

Correspondence concerning this claim may be sent care of this office.

Sincerely,

*/s/ Greg Veralrud*

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GV:tlk

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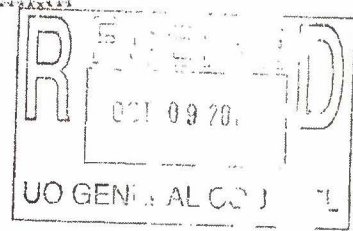
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**FACSIMILE TRANSMITTAL**

DATE: October 9, 2014

NUMBER OF PAGES: 6  
(Including Transmittal page)

TO:  
Douglas YS Park, Asst. General Counsel  
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219 Johnson Hall  
1226 University of Oregon  
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and via fax to 541-346-6110  
and via e-mail to dougpark@uoregon.edu



Attention: Douglas YS Park, Asst. General Counsel

Facsimile No. (541) 346-6110

PERSON TO CONTACT IN CASE OF SENDING/RECIIVING PROBLEMS:

NAME: Shaun S. McCrea

MESSAGE: Notice of Tort Claim by Damyean Dotson vs. University of Oregon  
and Various Administrative Officials

Thanks

Shaun S. McCrea

PERSON TO CONTACT IN CASE OF RECEIVING PROBLEMS: Shaun or Kelsie

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October 9, 2014

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University of Oregon  
219 Johnson Hall  
1226 University of Oregon  
Eugene, OR 97403  
and via fax to 541-346-6110  
and via e-mail to dougpark@uoregon.edu

Re: Notice of Tort Claim by Damyean Dotson vs. University of Oregon and  
Various Administrative Officials

Dear ODAS and Mr. Park,

In compliance with ORS 30.275, notice is hereby given of claims for damages on behalf of Damyean Dotson against the University of Oregon and its departments, officers, employees and/or agents resulting in a course of conduct on the part of the aforementioned parties beginning April 10, 2014, with the University's "emergency suspension" and ending on or about June 17, 2014, at which time the University issued a suspension following University Student Conduct Code hearing.

State law claims against the University and its departments, officers, employees and/or agents arise out of breach of contract, slander, defamation and intentional infliction of

Notice of Tort Claim  
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Page 1

emotional distress on the part of the aforementioned and/or the University's vicarious liability for those wrongful actions.

Federal law claims against the University and its departments, officers, employees and/or agents arise out of a violation of Mr. Dotson's civil rights under 42 USC § 1981 and § 1983, the First, Fifth and Fourteenth Amendments to the U.S. Constitution, including deprivation of due process, deprivation of the right to freedom of association, deliberate indifference to Mr. Dotson's civil and constitutional rights and all policies, customs and practices that allowed such violations to occur.

Insofar as the claimant is aware, the time, place and circumstances giving rise to the claims are as follows:

On or about March 9, 2014 Mr. Dotson attended a party with other friends and fellow Oregon Duck basketball teammates. At the party Mr. Dotson engaged in consensual sexual activities with [REDACTED] as did other attendees at the party. Further consensual contact between another teammate and [REDACTED] occurred later in the evening and in the early morning hours of the following day at that teammate's apartment. Those acts were consensual as well.

In the days following, [REDACTED] characterized what had been patently consensual sexual contact as sexual assault and caused her complaint to be submitted to law enforcement and eventually to the University of Oregon, including the above-referenced officials.

A subsequent police investigation led to a conclusion by the Lane County District Attorney's office that there was insufficient evidence to prosecute the case.

The police investigation generated police reports that underscored the consensual nature of the activities. Those reports were made known to the University and its above-referenced employees and agents.

University officials, including the then University of Oregon President, made public statements both implicitly and explicitly declaiming Mr. Dotson as a sexual assaulter, a rapist and a criminal, thus slandering and defaming Mr. Dotson.

During the course of the investigation, although the emergency suspension of the University was lifted with respect to Mr. Dotson pending a University Student Conduct Code hearing, he was (1) first suspended from the basketball team, then (2) dismissed from the basketball team, and then (3) notified that his scholarship was terminated. These actions on the part of the University and the above-referenced officials were without cause and in violation of Mr. Dotson's civil and contractual rights.

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Page 2

The University then asserted violation of the University Student Conduct Code, claiming non-consensual sexual contact as a violation of that code.

In the run-up the University Student Conduct Code hearing, the University denied Mr. Dotson's requests for:

- a) a contested case hearing in accordance with the Oregon Administrative Procedures Act because Mr. Dotson contended that the procedures set forth in the Student Conduct Code were deficient and denied him due process of law.
- b) The issuance of subpoenas for witnesses who would provide evidence and testimony supporting Mr. Dotson's contention that he had committed no violation of law or Student Conduct Code and that [REDACTED]'s credibility was at issue.
- c) Names and contact information of witnesses who the University of Oregon interviewed and relied upon in bringing the Student Conduct Code violation claim against Mr. Dotson.
- d) Copies of the University's Title IX investigator's report (Mr. Dotson's counsel was allowed to view but not have the document, with significant parts blacked out and unavailable to Mr. Dotson or his counsel).

#### Student Conduct Code Hearing

The University Student Conduct Code hearings process at the time offered Mr. Dotson a choice of hearing by a panel (the panel consisting of University of Oregon personnel, student representatives and administrators chosen by the University) or and administrative hearing in front of the Dean of Student Conduct who would be the sole decider. The University coerced Mr. Dotson to waive his panel hearing by threatening expulsion as a remedy if he sought the panel hearing and promising to remove expulsion as an option if he had his case decided by the Dean of Student Conduct, a hearing which did not allow for cross-examination of witnesses or determination by an arguably less partial fact finder.

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sustention of Mr. Dotson for up to ten years, effectively and for all intents and purposes expelling him from the University anyway.

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Substantial and compelling evidence of the consensual nature of Mr. Dotson's sexual contact with REDACTED was willfully ignored.

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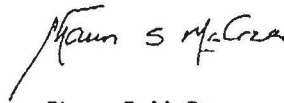
Mr. Dotson has been severely damaged by the University's conduct as referenced above. Prior to his suspension from the University of Oregon basketball team and subsequent removal and withdrawal of scholarship, Mr. Dotson had been, in all respects, compliant with his agreement with the University regarding his efforts as a basketball player to support the scholarship. He was subjected to ridicule and hostility as a result of the University's slanderous and defamatory remarks as referenced above. His educational plans and ability to continue his career as a collegiate basketball player have been all but terminated. He has suffered financial loss, as well as great humiliation, embarrassment and vilification in the public eye. The damage to his reputation as a result of the University's outrageous actions is immeasurable.

Notice of Tort Claim  
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Page 4

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Sincerely,

McCREA, P.C.



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Notice of Tort Claim  
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Page 5