

**IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

TESS HERMAN,)	CASE NO: 2:19-cv-00201
Plaintiff,)	JUDGE MICHAEL H. WATSON
v.)	ANSWER AND CROSS-CLAIM OF
OHIO UNIVERSITY, et al.,)	DEFENDANT, YUSUF
Defendants.)	KALYANGO, Ph.D
		TRIAL BY JURY DEMANDED

Now comes the defendant, Yusuf Kalyango, Ph.D., and for his answer to the plaintiff's complaint herewith avers:

FIRST DEFENSE

1. The plaintiff has failed to state a claim upon which relief can be granted.

SECOND DEFENSE

2. Defendant Kalyango denies the allegations set forth in the plaintiff's two paragraph preamble under the heading "Complaint."
3. Defendant Kalyango admits the allegations contained in paragraphs 2, 3, 4, 6, 92, and 106.
4. Defendant Kalyango admits that the plaintiff is a female and may reside in the State of Ohio and that she is a student in graduate studies at Ohio University but further answering, states that he is without information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 1 of the complaint.
5. Defendant Kalyango admits that he is an employee of an educational institution but further answering, denies the remaining allegations contained in paragraph 5 of the complaint.
6. Defendant Kalyango admits that he met the plaintiff in February, 2017 but further answering, denies the remaining allegations contained in paragraphs 10 and 11 of the plaintiff's complaint.

7. Defendant Kalyango admits that he had planned meetings with the plaintiff from time to time but further answering, denies the remaining allegations contained in paragraph 15 of the complaint.

8. Defendant Kalyango admits that he communicated through text messaging with the plaintiff and the plaintiff reciprocated in a similar fashion but further answering, denies the remaining allegations contained in paragraphs 16, 17, and 36 of the plaintiff's complaint.

9. Defendant Kalyango admits that he communicated with the plaintiff through email but further answering, denies the remaining allegations contained in paragraphs 19, 26, 27, and 59 of the complaint.

10. Defendant Kalyango states that the trip to Rwanda was funded by Ohio University but further answering, denies the remaining allegations contained in paragraph 29 of the plaintiff's complaint.

11. Defendant Kalyango admits that he had responsibility for programs at Ohio University, including the Institute for International Journalism, Young African Leaders Institute (hereinafter "YALI") and the study of the United States Institute on Journalism and Media (hereinafter "SUSI") but further answering, denies the remaining allegations contained in paragraph 62 of the plaintiff's complaint.

12. Defendant Kalyango admits that the U.S. Department of Education Office for Civil Rights may provide guidelines but further answering, denies the remaining allegations contained in paragraph 94 of the complaint, including sub-parts, a through e.

13. Defendant Kalyango admits that the Fourteenth Amendment to the United States Constitution provides protection for all citizens but further answering, denies the remaining allegations contained in paragraphs 151, 162 and 174 of the complaint.

14. Defendant Kalyango admits that he had an evaluative role over the plaintiff particularly with respect to her work product but further answering, denies the remaining allegations contained in paragraph 155 of the complaint.

15. Defendant Kalyango states that he is without information or knowledge sufficient to form a belief as to the truth of the allegations contained in paragraphs 39, 40, 41, and 58 of the plaintiff's complaint and therefore, demands strict proof at the time of trial and all claims of this kind are denied.

16. Defendant Kalyango denies the allegations contained in paragraphs 7, 8, 9, 12, 13, 14, 18, 20, 21, 22, 23, 24, 25, 28, 30, 31, 32, 33, 34, 35, 37, 38, 40, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54,

55, 56, 57, 60, 61, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80,81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 93, 95, 96, 97, 98, 99 (including all sub-parts, a - c), 100, 101, 102, 103, 104, 105, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129 (including all sub-parts, a - g), 130, 131, 132, 133, 134 (including sub-parts a - f), 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 152, 153, 154,156, 157, 158, 159, 160, 161, 163, 164, 165, 166 (including all sub-parts, a - c), 167, 168, 169, 170, 171, 172, 173, 175, 176, 177, 178, 179 (including all sub-parts a - g), 180, and 181 of the plaintiff's complaint.

17. Defendant Kalyango denies every allegation in the complaint not admitted to be true.

THIRD DEFENSE

18. The plaintiff has failed to join necessary parties pursuant to Fed. R. Civ. P. 19, including other entities or parties responsible for the plaintiff's claimed damages, if any.

FOURTH DEFENSE

19. The damages of which the plaintiff complains were caused in whole or in part, by the plaintiff's own conduct, misconduct, failure to complain and utilize policies available at Ohio University or other action which proximately caused all of the plaintiff's alleged damages.

FIFTH DEFENSE

20. The allegations in the plaintiff's complaint are barred under principles of qualified immunity and good faith.

SIXTH DEFENSE

21. The plaintiff's complaint and allegations were not presented in good faith, not authorized, and in breach of Ohio University policy, thus barring all claims in the complaint.

SEVENTH DEFENSE

22. The allegations in the plaintiff's complaint are barred under principles of estoppel, waiver, consent, and laches.

EIGHTH DEFENSE

23. The plaintiff failed to utilize policies and procedures provided to her at Ohio University, thus barring all claims in the complaint.

NINTH DEFENSE

24. The plaintiff's claimed damages were caused by the conduct of Ohio University, its employees or agents, thus barring all claims against this answering defendant.

TENTH DEFENSE

25. All action of defendant Kalyango were non-discriminatory, non-retaliatory, and based upon good faith analysis and evaluation of the plaintiff's performance.

ELEVENTH DEFENSE

26. At all times material, the plaintiff failed to minimize or mitigate her damages.

TWELFTH DEFENSE

27. The plaintiff voluntarily resigned her position without justification or any retaliatory discriminatory animus by Dr. Kalyango, thus negating all claims of economic loss or damages.

THIRTEENTH DEFENSE

28. The plaintiff's actions toward the defendant were retaliatory and based on a discriminatory animus, thus barring all claims in the complaint.

WHEREFORE, having fully answered, defendant Kalyango demands that the plaintiff's complaint be dismissed, with costs assessed against the plaintiff, including costs and attorney fees.

CROSS-CLAIM

Now comes the defendant/cross-claimant Yusuf Kalyango, Ph.D., and incorporates by reference his answer and denial of the plaintiff's allegations, now sets forth his cross-claim against defendant Ohio University, and herewith avers:

1. Yusuf Kalyango, Ph. D. (hereinafter “Dr. Kalyango”), is a resident of the State of Ohio and is presently employed as a full professor and director of the Institute for International Journalism in the E. W. Scripps School of Journalism at Ohio University.

2. Ohio University is a public university operating in the State of Ohio with its principle place of business located at Athens, Ohio.

3. On January 20, 2019, plaintiff Tess Herman filed suit in the United States District Court for the Southern District of Ohio, Eastern Division, against Dr. Kalyango and Ohio University alleging, among other things, violations of her rights under Title IX of the education amendments of 1972, 20 USC §§1681 *et seq.* and 42 USC §1983.

4. Defendant Dr. Kalyango has answered the complaint, denied the allegations set forth therein, and is herein asserting a cross-claim against defendant Ohio University.

YUSUF KALYANGO, Ph.D.

5. Yusuf Kalyango earned a Ph.D. in journalism from University of Missouri - Columbia in 2008 specializing in political communication and comparative public opinion research. Dr. Kalyango also has a Masters Degree in journalism with an emphasis on media management from the University of Missouri - Columbia, 2004. Dr. Kalyango also is a Fulbright specialist from 2015 to 2020 and an Alumni Fellow of the World Press Institute at Macalester College, Minnesota, from 2001. Dr. Kalyango is an author, scholar, and well-respected professor, educator and professional. Dr. Kalyango hosts professionals and academics for Ohio University, and travels internationally for the benefit of students at every level and Ohio University in his efforts to educate and teach Ohio University students about global media, diversity, foreign correspondence, among other specializations.

6. Dr. Kalyango joined the faculty of Ohio University in the fall of 2008, teaching broadcast news, advanced research and international journalism, foreign correspondence, media and conflicts, specialized journalism in travel abroad programs and graduate courses. Dr. Kalyango is a graduate research advisor and consultant at various universities in central and southern Asia and Africa. Dr. Kalyango also

supervises doctoral (Ph.D.) dissertation work for Ohio University's students and students at other universities in central Asia, south Asia and Africa.

7. Dr. Kalyango is the author and editor of three scholarly books, African Media and Democratization, Why Discourse Matters, and Global Journalism Practice and New Media Performance. Dr. Kalyango is the editor of a scholarly peer reviewed mass communication journal, The International Communication Research Journal, a publication of the International Communication Division of the Association for Education in Journalism and Mass Communication. Dr. Kalyango is on the Executive Board of the International Communication Division of the Association of Education in Journalism and Mass Communication, and member of the American Political Science Assoc., African Studies Assoc., Worlds Journalism Education Congress, Internal Studies Association, and International Assoc. for Media and Communication Research.

8. Some of Dr. Kalyango's initiatives for Ohio University's Institute for International Journalism include administering annual journalism study abroad programs, two major U.S. Department of State funded annual renewable grants called *Study of the U.S. Institute (SUSI)* for eighteen journalism and media scholars from around the world, and the Mandella Washington Fellows YALI Connect Camps. Dr. Kalyango organizes and assists international partners in establishing annual international media workshops for journalists and communications specialists, as well as coordinates and organizes international research conferences. Dr. Kalyango also coordinates other international cooperative programs with various media advocacy institutions, as part of his teaching, mentoring and scholarship with defendant Ohio University. He is a recipient of several national and international top research awards and excellence in teaching awards, including the recent finalist for the 2018 Ohio University's prestigious Presidential Teacher Award.

THE PLAINTIFF

9. Dr. Kalyango met the plaintiff in February of 2017, while she was a graduate student in the School of Journalism at Ohio University.

10. Shortly thereafter, the plaintiff inquired about potentially working with the YALI Connect Camp project, as she had learned from a former student-worker (program assistant) that Dr. Kalyango was looking for an assistant to handle preparatory and some logistical work both in Ohio and abroad for the 2017 summer trip to Pretoria, South Africa. The plaintiff pursued Dr. Kalyango in this endeavor. The plaintiff asked many questions inquiring about the position, was interviewed, considered for the position and ultimately Dr. Kalyango, through collaboration with others affiliated with the program, hired the plaintiff in mid-March of 2017. Without question, despite the allegations in the plaintiff's complaint, the plaintiff has benefitted greatly from her work and affiliation with Dr. Kalyango and her work with YALI Connect Camps, activities which certainly appear on her curriculum vitae.

11. Throughout the course of the spring of 2017, Dr. Kalyango worked with a group of graduate students, including the plaintiff, for purposes of coordinating the U.S. Department of State funded projects YALI Connect Camps and SUSI matters that were to take place in the U.S., in Pretoria, South Africa, and in the town of Butare and the city of Kigali, Rwanda in June through August of 2017. In each of these meetings, there were numerous individuals present, regardless of whether the meetings were conducted over a meal, coffee, or simply in conference rooms at Ohio University.

12. In addition to the itinerary for the YALI Connect Camps presentations to take place in Pretoria, South Africa, a second set of itineraries also included the U.S. Department of State's follow-on YALI alumni engagement work (including the environmental journalism workshops for YALI alum) in Butare, Rwanda, as well as the Institute of International Journalism's international exchange work in the cities of Kigali and Kabgayi at the ICK University in Rwanda. , a side trip funded by Dr. Kalyango was also proposed involving several days in Rwanda. These were already proposed and planned prior to departing Athens, Ohio. Although Dr. Kalyango had originally planned to have one of his children join him for the Rwanda part of the trip, ultimately his son's plans changed and an opening occurred which was filled by the plaintiff for one touristy activity, the Gorilla Trekking activity, which she gladly sought. the plaintiff presented at the environmental journalism conference in Butare, Rwanda, while Dr. Kalyango had multiple

engagements over the course of five days in the town of Kabgayi and city of Kigali, Rwanda. The plaintiff started preparing for her Rwanda part of the trip as early as the first week of May, 2017 with two Skype meetings and a conference call with the hosts in Butare, Rwanda..

13. Because of the plaintiff's role in assisting in the YALI Connect Camps and the trip to South Africa and Rwanda, the plaintiff had access to and knowledge of the itinerary for all YALI Connect Camps participants, including Dr. Kalyango.

14. The itinerary for the Institute of International Journalism's follow-on presentations and engagements in Butare as well as Kigali, Rwanda was confirmed before May 28, 2017, the date the plaintiff claims she was confused about the Rwanda itinerary and her role for the visit to that country. The itinerary required Dr. Kalyango to fly from Pretoria, South Africa, to Kigali, Rwanda, on June 19 through 24, 2017. Plaintiff stayed at the Lake Kivu Resort, one of the few hotels for foreign visitors in Butare, Rwanda. Dr. Kalyango was scheduled to be a the Institute Catholique de Kabgayi Rwanda (ICK) go give a presentation plus related Institute for International Journalism meetings and a visit to the President's Office of the Republic of Rwanda in Kigali between June 19 to June 24, 2017, and thus was booked to stay, and did stay, in the Radisson Blu Hotel in Kigali during that time.

15. The location of Dr. Kalyango's meetings in June of 2017 in the Kigali region is approximately a six hour drive from where plaintiff was staying at the Kivu Lake Resort in Butare, Rwanda.

16. During the initial study and work conducted in Pretoria, South Africa, the Plaintiff stayed in the same hotel as Dr. Kalyango for three weeks while administering and implementing the YALI Connect Camps and as his usual practice for the past ten years of administering these international programs, Dr. Kalyango stayed on a different/top floor of the same hotel in Pretoria, while the Plaintiff along with other participants plus one female professor from Ohio University were staying on different floors at all times. This was before the Institute's follow-on work in the two cities in Rwanda for six days where the Plaintiff and Dr. Kalyango stayed at different hotels and in different cities.

17. Plaintiff alleges that Dr. Kalyango proposed that she stay in his room for one of the nights during the Rwanda trip at Lake Kivu in June of 2017; the plaintiff alleges that the proposal was based on necessity because of a shortage of available accommodations. Further, and importantly, the plaintiff does

not claim in any written format that Dr. Kalyango expressed any sexual interest in the plaintiff; the plaintiff claims that Dr. Kalyango advised her during his alleged discussion of necessity that he would do his best to “stay out of her way” as opposed to any suggestion or inference of romantic intent. Nonetheless, Dr. Kalyango vehemently denies such a conversation regarding sharing a room for a single night ever occurred.

18. As referenced above, Dr. Kalyango’s travel plans and itinerary were already well established by late May, 2017. The hectic travel schedule required him to be located six hours away at a separate hotel in Kigali on June 20 through 21, 2017, the time the plaintiff claims Dr. Kalyango had proposed - out of necessity - they share a room in Butare, Rwanda, at the Lake Kivu Resort. The plaintiff failed to complain or document any inappropriate conduct by Dr. Kalyango while in South Africa or Rwanda, yet, without question, the plaintiff engaged in aggressive, angry, and unprofessional conduct, much to the embarrassment of the two Ohio University professors who traveled with her. The plaintiff was not sanctioned for her unprofessional conduct by Dr. Kalyango despite its intensity and unprofessional nature. During the course of the flawed investigation conducted by Ohio University, the plaintiff’s unprofessional conduct and immature anger issues were never considered, including the fact that no disciplinary action, criticism, or even reprimand were taken against her by Dr. Kalyango.

19. While working in South Africa before the Rwanda trip, the plaintiff was required, as part of her role in the YALI Connect Camp project, to prepare a comprehensive financial report accounting for all of the receipts and expenditures she was responsible for executing for the program in Pretoria, South Africa.

20. Typically, the many in-flight hours required for return travel from South Africa to the United States are utilized to inventory and reconcile expense documents so that the report can be promptly finalized upon return to the United States. Dr. Kalyango has always routinely followed this practice with other former program assistant in the same position as the plaintiff with respect to his trips abroad for the YALI Connect Camps.

21. The plaintiff asked Dr. Kalyango to change her seat assignment for the return flight from South Africa so that she was not seated near Dr. Kalyango or in a position to go over the expense reports during the course of the return flight. Dr. Kalyango obliged and changed her seat upon request.

22. Following the return to the United States, the plaintiff ultimately submitted a report to Dr. Kalyango itemizing, inventorying and reconciling the receipts and expenditures for the trip.

23. Rather than consulting with Dr. Kalyango and reviewing the report with him to ensure that she had performed the task properly, the plaintiff left a bag of receipts and the report with another graduate student to deliver to Dr. Kalyango while she went home to Connecticut.

24. Dr. Kalyango reviewed the report, found it to be grossly inadequate and rife with errors. In his role as her supervisor for YALI and her teaching advisor, Dr. Kalyango tried to communicate in person with the plaintiff, only to find that she had left town and was unavailable.

25. Dr. Kalyango was required to spend over forty hours reviewing and correcting the financial expense report based on plaintiff's mistakes before completing the expense report in a manner that was satisfactory to those to whom he was accountable for the YALI Connect Camp program and the various funding agencies supporting that program.

26. On July 5, 2017, Dr. Kalyango sent an email advising the plaintiff of how the expense report should have been prepared and explaining the problems in the report she had prepared so that she could learn from her errors and do a better job in the future.

27. At no time prior to this July 5, 2017 email from Dr. Kalyango containing his communication of the incomplete expense report she had turned in, did the plaintiff ever make any specific report to University officials of any concern regarding any violation of Title IX whatsoever. In the July 5, 2017 email, Dr. Kalyango did not terminate the plaintiff from the YALI Connect Camp program nor indicate in his communication that the plaintiff's employment with that program was in jeopardy.

28. In fact, according to the plaintiff's own drafting of the evaluations, the participants' reviews of the plaintiff's participation in South Africa/Rwanda trip were glowing and entirely positive. The plaintiff also indicated that her experience in South Africa and Rwanda was extremely beneficial to her education and development at every level. The plaintiff did not register a single complaint to anyone after her return to Athens in June, 2017 and in early July regarding any aspect of the experience in South Africa or Rwanda until she received the July 5, 2017 email from Dr. Kalyango which was critical of her work on the financial accounting.

29. On July 10, 2017, after learning from Ohio University Human Resource personnel that a student who resigns from a position or school based on alleged professor impropriety establishes a threshold violation of University policy, the plaintiff unilaterally resigned from her position as program assistant for

the YALI and SUSI programs, for the sole purpose of harming Dr. Kalyango and not based on any good faith allegation of harm or discrimination. All of this objective information was provided to Ohio University within weeks of the complaint being presented in July, 2017.

THE INVESTIGATION

30. On July 6, 2017, the day after the plaintiff received the email of criticism from Dr. Kalyango, she presented a complaint to the then Executive Director and Title IX Coordinator for the University Equity and Civil Rights Compliance Panel. At that point, defendant Ohio University initiated an investigation which was assigned to G. Antonio Anaya, a lawyer employed by the University (hereinafter the ‘investigator’).

31. The investigator began an investigation in July of 2017 which lasted through August 24 of 2018, when a “memorandum of findings” was issued, a time frame completely contrary to University policy as well as state and federal law. No aspect of the investigation was based on any standard set by the University, nor was the investigation prompt or remedial as mandated by statute and federal law. Further, the report release date and the disciplinary action taken against Dr. Kalyango were timed to coincide with the last day before the Autumn 2018 semester began, subjecting Dr. Kalyango, and his students, to significant distress and his pending follow-on international activities going into abrupt disruption; plus, the late release of that report further subjected Dr. Kalyango to the retroactive application of university policies that went into effect in the Autumn 2018, all of the aforementioned demonstrating retaliatory intent.

32. During the entire year within which the investigation unfolded, Dr. Kalyango continued with his teaching and other responsibilities at Ohio University, verifying that the plaintiff was under no true threat of harm, was not harmed through any of the alleged activities forming the basis of the bad faith complaint, and the underlying facts of the alleged complaint were benign. The alleged conduct was so insubstantial that even if the allegations were deemed true, the remedial action necessary would have been counseling, education and similar corrective measures. A proper investigation and oversight would have never resulted in an effort to terminate or de-tenure any professor under these facts.

33. Although it is not completely clear how the investigation required more than one year to complete when all of the operative facts were revealed within weeks of the initial complaint, what is clear

is that Ohio University did not follow EEOC or the United States Supreme Court's directives to conduct prompt and remedial action with respect to any investigation of alleged misconduct under Title IX.

34. As demonstrated by the August, 2018, report of the investigator, the investigation consisted almost exclusively of the plaintiff's subjective statements solely from her perspective. There was virtually no corroboration of any of the plaintiff's claims from any independent, objective source. Moreover, Dr. Kalyango was never provided an opportunity to directly question the plaintiff or to have her cross-examined by a representative of Dr. Kalyango.

35. The protracted nature of the investigation and the flawed conclusions reached, along with the improper recommendations made by the biased investigator who was employed and paid by the employer who is responsible to conduct fair and objective investigations for the protection of both the complaining student and the involved educator, indicate the investigator was not qualified or objective.

36. The investigator was an employee of Ohio University, therefore he was not an unbiased or objective fact finder.

37. As will be detailed below, Dr. Kalyango's rights to due process as guaranteed by the Fourteenth Amendment of the United States Constitution were blatantly disregarded, violated and rendered completely meaningless by the flawed investigation conducted by the Ohio University.

38. As a direct and proximate result of the Ohio University's violation of Dr. Kalyango's constitutional rights under the Fourteenth Amendment to the United States Constitution, Dr. Kalyango's reputation has been destroyed, he has been deprived of significant benefits associated with his position at Ohio University, and he has been suspended from his active teaching position.

39. Ohio University has initiated a de-tenuring process following the issuance of the investigation report in August of 2018.

40. As will be detailed below, the de-tenuring process initiated by Ohio University is a process which allows for no cross-examination of witnesses, no ability on the part of Dr. Kalyango to confront those accusing him, and no mechanism for appropriate analysis of evidence by advocates on Dr. Kalyango's behalf. Further, when the efforts to strip a professor of tenure for the purpose of termination are based on a flawed, biased, and are intentionally delayed process, the entire process must be deemed void *ab initio*. Among the inherent problems with the investigation and conclusions reached by the investigator are that

Ohio University has reached its conclusions based upon retaliatory motives, all of which violate Dr. Kalyango's state and federal rights.

AFFIRMATIVE CLAIMS

41. Dr. Kalyango is a public employee who has an interest in continued employment as a result of his tenure.

42. Dr. Kalyango's tenure at Ohio University is a protected property interest for the purposes of 42 USC §1983, supporting a legitimate claim of entitlement to that employment.

43. The due process clause set forth in the Fourteenth Amendment to the United States Constitution provides that certain substantive rights cannot be deprived except pursuant to constitutionally adequate procedures.

44. An essential principle of due process is that deprivation of life, liberty or property must be proceeded by notice and an opportunity for a hearing appropriate to the nature of the case. In addition, Dr. Kalyango is to be free from retaliation in any form as a participant in the investigation, even if the investigation involves his alleged improper conduct.

45. The due process principle requires that some form of hearing be conducted prior to the discharge of an employee who has a constitutionally protected property interest in his employment. The pre-termination hearing need not definitively resolve the propriety of the discharge, but it should be an initial check against mistaken decisions and essentially be a determination of whether there are reasonable grounds to believe that the charges against the employee are true and support the proposed action.

46. Following review of the August 24, 2018, report from the investigator, the provost issued a letter of September 12, 2018, initiating University Professional Ethics Committee (UPEC) process. Because the report had concluded that Dr. Kalyango violated University policy 03.004 on sexual misconduct, the provost directed the UPEC to review the ECRC findings and offered Dr. Kalyango an opportunity to set forth a statement, yet no hearing was scheduled so that the allegations against Dr. Kalyango, which were now more than 13 months old, could be scrutinized through proper due process, including the right of confrontation, cross-examination and freedom from retaliation.

47. As evidenced by the underlying documents, the UPEC conducted no meaningful independent investigation whatsoever, and merely conducted conversations consecutively in one seating, one after the

other, with the accuser, the investigator and Dr. Kalyango, but meeting him in the third and final hour. The materials reviewed primarily consisted of the plaintiff's self-serving text messages, and other improper conclusions reached by the investigator.

48. The provost and the UPEC did not have the benefit of any transcript of statements of any individuals, nor a recording of any actual testimony. The UPEC three-page report contained the results of the investigation couched in language inflammatory, racially-biased, and retaliatory in nature. Before the UPEC committee was formed, Dr. Kalyango requested that the committee, which is selected by the provost and chair of the University Faculty Senate, consist of professors from diverse backgrounds, including those familiar with international studies. This request was rejected by Ohio University and the *ad hoc* committee selected was non-diverse and had limited knowledge of the true issues involving racial cultural diversity and travel to Africa.

49. The UPEC concluded without evidentiary support that the ECRC investigation provided an appropriate basis for a recommendation that the E.W. Scripps School of Journalism initiate detenuing and termination proceedings.

50. The provost issued a letter dated December 6, 2018, notifying Dr. Kalyango that he supported the UPEC conclusions, approved its recommendations, and then forwarded the report to the E.W. Scripps School of Journalism for additional consideration.

51. On December 26, 2018, Dr. Kalyango demanded that the University protect his Fourteenth Amendment rights to due process through a detailed demand letter from counsel. Ohio University did not respond to the demand.

52. With no other choice, Dr. Kalyango appealed the provost's decision to the president of Ohio University; his appeal was denied.

53. From the July 6, 2017, initial report of the plaintiff to the Title IX Department at Ohio University, through the 2017-2018 academic year and the UPEC investigation, at no time was Dr. Kalyango afforded an opportunity to directly confront or otherwise cross-examine the complainant or any of the witnesses allegedly interviewed by the investigator.

54. As a direct and proximate result of the initial investigator's findings in August, 2018, more than 13 months after the initial complaint, the Dean of Scripps College of Communication immediately

suspended Dr. Kalyango from all of his teaching responsibilities at Ohio University pending completion of the investigations or appeals, even before a University Professional Ethics Committee (UPEC) was formed, tainting the process at such a critical stage that ultimately culminated in the UPEC and the provost recommending the de-tenuring process.

RIPENESS

55. Dr. Kalyango's cross-claim against defendant Ohio University is ripe for consideration by this Court because, although he has not yet been terminated, he has suffered immediate and significant financial losses associated with the suspension of his teaching duties by the University.

56. Since August of 2018 when his suspension was prematurely made effective, Dr. Kalyango has lost the IJJ director's supplemental salary of approximately \$6,000.00.

57. Additionally, since his suspension, Dr. Kalyango has lost an additional \$28,000.00 in annual supplemental income through the grants and other projects he was able to bring into the Ohio University which he may not recover for many years due to significant damage to his reputation as a result of the unfounded allegations in the University's ECRC initial report.

58. Dr. Kalyango has already been deprived of his employment interest arising from his tenure at Ohio University, notwithstanding the fact that he has not yet been officially de-tenured or terminated. The net effect of the Ohio University's shoddy investigation, poor organization with respect to the manner in which the investigation was conducted, and basic negligence in conducting the investigation has resulted in significant and potentially irreparable damage to Dr. Kalyango's professional reputation within the Ohio University academic community and internationally with regard to the global initiatives with which Dr. Kalyango has been associated.

COUNT I **VIOLATION OF DUE PROCESS UNDER THE UNITED STATES CONSTITUTION**

59. Dr. Kalyango realleges the foregoing paragraphs as if fully rewritten.

60. At all times relevant herein, Ohio University was acting and continues to act under color of state law pursuant to 42 U.S.C. § 1983.

61. The Fourteenth Amendment to the United States Constitution provides that no state shall deprive "any person of life, liberty, or property, without due process of law."

62. The Due Process Clauses of the United States Constitution apply to higher education investigation procedures and disciplinary decisions, including sexual harassment investigations that have the potential to result in loss of reputation, employment or status.

63. Ohio University owes Dr. Kalyango a duty to comply with the United States Constitution and the liberties provided therein. This includes the rights to due process, free speech, and equal protection.

64. As a tenured professor at the Ohio University, Dr. Kalyango is entitled to procedural due process with respect to any decision to detain him or to otherwise terminate his employment.

65. Tenured public employees are entitled to oral or written notice of the charges against them, an explanation of all of the employer's evidence, and an opportunity to present the tenured professor's position.

66. As the subject of a sexual harassment investigation process, Dr. Kalyango is entitled to have adequate notice of charges affecting his reputation and livelihood under the Constitution of the United States, and to be heard in a meaningful manner in the course of the investigation. Dr. Kalyango is also entitled to be free from retaliation based on his participation in the investigation.

67. Within the constitutional framework, Ohio University has an obligation to provide a fundamentally fair and reliable investigation process, which is both prompt and remedial when affecting Dr. Kalyango's liberty and property interests, and that fundamentally fair and reliable investigation process must meet constitutional due process requirements which include a right to representation by an attorney and a right to cross-examine all, including adverse witnesses. The investigation should also be conducted in a confidential manner so as to avoid unfair public knowledge of baseless claims and repercussions, as evidenced in this case. Ohio University did not maintain confidentiality, did not insist upon confidentiality and took no precautions to prevent disclosure of information during the course of the investigation which would be and was damaging to Dr. Kalyango even if he had been fully exonerated through a proper and prompt investigation.

68. The de-tenuring process of Ohio University provides no opportunity for cross-examination before a fact finder and provides no protection against retaliation and provides no meaningful process of confidentiality. Accordingly, as evidenced by the shoddy and protracted investigation, the essential oversight necessary was lost and therefore Ohio University permitted committees and other uninformed

participants to essentially affirm baseless findings and recommendations without the benefit of a transcript or objective analysis. Such tenuous conclusions and findings, all designed to destroy Dr. Kalyango's career, fall well below the appropriate minimal standards contemplated in the Fourteenth Amendment of the United States Constitution, as articulated by the EEOC, Sixth Circuit and United States Supreme Court.

69. The Sixth Circuit Court of Appeals has already addressed the appropriate standard for public university due process and concluded that a public university must give the accused or his agent an opportunity to cross-examine the accuser and adverse witnesses in the presence of a neutral fact finder.

70. It is clear from the procedure employed by Ohio University that there will be no compliance with the Sixth Circuit's directive before Dr. Kalyango is de-tenured and ultimately discharged.

71. As presently constituted, Ohio University's de-tenuring process will not provide Dr. Kalyango an opportunity to cross-examine his accuser and her witnesses before a neutral fact finder.

72. As presently constituted, the Ohio University de-tenuring procedure will involve reliance on the ECRC fact findings, regardless of the fact that there is no transcript reflecting actual testimony and there has been no cross-examination whatsoever in the presence of a fact finder.

73. The poor investigation, followed by the ECRC's uncritical analysis, has so tainted the outcome that Dr. Kalyango can in no way afford himself of the protections contemplated in the due process clause of the Fourteenth Amendment to the United States Constitution.

74. Through policies - many of which were changed in the middle of the investigation and applied retroactively against Dr. Kalyango - as well as the practices, and procedures of Ohio University, Dr. Kalyango has a constitutionally protected property interest in his employment by Ohio University.

75. Ohio University has failed to provide any of these procedural and substantive due process requirements to Dr. Kalyango in the course of the investigation, and will continue to fail to provide procedural and substantive due process requirements during the de-tenuring process.

76. In breach of its duties, Ohio University, through its authorized agents and employees, violated and will continue to violate Dr. Kalyango's rights to due process, free speech, and equal protection as set forth in the above allegations.

77. As a direct and proximate result of the violation by Ohio University of the due process clause of the Fourteenth Amendment to the United States Constitution, Dr. Kalyango has already been deprived

of the rights and privileges associated with his property interest and tenure, namely the loss of significant income associated with projects and academic leadership positions key to his position as a tenured Ohio University professor.

78. As a direct and proximate result of the University's violation of his constitutional rights, Dr. Kalyango has suffered and will continue to suffer economic and financial losses, including but not limited to the ancillary income of over \$35,000.00 annually he obtained from his directorships, through grants and other projects, his professional reputation as an author and presenter at various global conferences, and his position within the E.W. Scripps School of Journalism and the academic community and faculty of Ohio University.

COUNT II
DISCRIMINATION UNDER 42 U.S.C. §1981

79. Dr. Kalyango realleges the foregoing paragraphs as if fully rewritten.

80. Ohio University has intentionally discriminated against Dr. Kalyango, who is a black male, with respect to his compensation, terms, conditions and privileges of employment because of his race and national origin, in violation of 42 U.S.C. §1981, which guarantees his right to make and enforce contracts as white citizens do, and in impairment of his right to enjoy full and equal benefits of all laws and proceedings for the security of persons and property in the United States.

81. As a result of the discriminatory decisions and acts or omissions made by Ohio University and the consequent violation of 42 U.S.C. §1981, Dr. Kalyango has been damaged.

COUNT III
DISCRIMINATION PURSUANT TO ORC CHAPTER 4112

82. Dr. Kalyango realleges the foregoing paragraphs as if fully rewritten.

83. Dr. Kalyango's race and national origin is African, and he is a member of a protected class. Dr. Kalyango has a distinguished career at Ohio University and was fully qualified for his position at all relevant times as annually peer-evaluated par excellence and promoted to full rank of Professor; achieving all this as the first and still only black full professor in his academic unit .

84. As part of Ohio University's discrimination based on race, national origin and gender, Ohio University caused Dr. Kalyango to be unjustifiably placed on administrative leave with partial pay.

85. Dr. Kalyango's race, national origin and gender were factors that made a difference in Ohio University's decision to subject him to the wrongful charges of discipline and violation of policy procedures claims and administrative leave.

86. Ohio University, by and through its agents, representatives and employees, were predisposed to discriminate on the basis of race, national origin, and gender and acted in accordance with that predisposition as stated in the background facts. This predisposition is evident from other investigations of professors in protected status who were subject to similar bias and unfair treatment because of their race or national origin; like Dr. Kalyango, these professors were also retaliated against and were subjected to public access to confidential information, all of which was released directly by Ohio University or through Ohio University's acquiescence, when at all times Ohio University knew such disclosure would be damaging to Dr. Kalyango. Said discriminatory disclosures occurred almost a year before the investigation was completed and at a time when the University and its investigator were required to remain neutral and objective.

87. Ohio University's actions were intentional, willful, wanton, malicious, in conscious disregard and with reckless indifference to for Dr. Kalyango's rights and sensibilities.

88. Ohio University discriminated against Dr. Kalyango because of a cultural bias against his race and national origin.

89. If Dr. Kalyango had been Caucasian, of American descent or female, he would not have been treated in the manner described, which was in violation of Chapter 4112 of the Ohio Revised Code.

90. As a direct and proximate cause of Ohio University's unlawful discriminatory conduct, Dr. Kalyango has been, is being, and will continue to be deprived of income and other benefits and opportunities due to him as a tenured professor, but denied because of his race, national origin or gender, in an amount to be proven at trial.

91. As a further result of Ohio University's actions, Dr. Kalyango has suffered consequential damages including but not limited to mental anguish, physical and emotional distress, humiliation and embarrassment, loss of earning capacity, and loss of professional reputation.

COUNT IV
BREACH OF CONTRACT

92. Dr. Kalyango realleges the foregoing paragraphs as if fully rewritten.

93. Dr. Kalyango is a party to a valid and enforceable written contract of employment with Ohio University.

94. The contract was wrongfully breached by Ohio University.

95. Dr. Kalyango suffered and will continue to suffer losses and damages as a result of the breach of contract, including but not limited to loss of earnings, diminished earning capacity, lost career opportunities, loss of reputation, humiliation, embarrassment, mental and emotional anguish.

COUNT V
VIOLATION OF TITLE IX

96. Dr. Kalyango realleges the foregoing paragraphs as if fully rewritten.

97. Ohio University is a public university created by the Ohio legislature. Ohio University is an educational institution as that term is defined in 20 U.S.C. §1681. Ohio University is a recipient of federal financial assistance for its educational programs and activities.

98. Dr. Kalyango is an employee of Ohio University, and participated in educational programs or activities that were direct or indirect beneficiaries of federal financial assistance. Dr. Kalyango is protected from discrimination on the basis of his gender under 20 U.S.C. §1681 and implementing regulations, 34 C.F.R. Part 106.

99. Title IX of the Educational Amendments of 1972 (“Title IX”), 20 U.S.C. §1681 *et seq.*, and its implementing regulations, 34 C.F.R. Part 106, prohibit discrimination on the basis of gender in education programs or activities operated by recipients of federal financial assistance. Title IX provides, in pertinent part: “No person . . . 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.”

100. The regulations and guidance under Title IX require fair and impartial investigation of complaints of sexual harassment or related misconduct, and require basic due process protections for all employees that are the subject of an investigation.

101. In its investigation and determination of the allegations of the complaint by Tess Herman, Ohio University subjected Dr. Kalyango to discrimination on the basis of his gender. Specifically, Dr. Kalyango was not provided due process and fairness protections required under Ohio University policy, Title IX regulations and guidance. Ohio University extends these protections to female participants in Title IX

sexual harassment investigations. Ohio University failed to mandate confidentiality, failed to prohibit retaliatory action, failed to insist on prompt remedial action, and failed to follow normal protocols and procedures for a fair and unbiased investigation, analysis and remedial outcome.

102. Ohio University subjected Dr. Kalyango to unlawful discrimination on the basis of his gender in placing him on a rushed administrative leave before even the procedural assessments by a professional ethics committee has been conducted following the unlawful 13 month investigation, which by policy was to be completed within 90 days. Dr. Kalyango's gender was a determining factor in Ohio University's decision to recommend discipline, to adopt and permit a biased and delinquent report, and by placing Dr. Kalyango on premature administrative leave, stripping away the benefits and opportunities provided to tenured professors.

103. Ohio University's discrimination against Dr. Kalyango is in violation of Title IX, and entitles Dr. Kalyango to damages. Dr. Kalyango has suffered severe and substantial damages, including lost earnings, diminished earning capacity, lost career opportunities, litigation expenses (including attorneys' fees), loss of reputation, humiliation, embarrassment, mental and emotional anguish, and other compensatory damages.

104. Ohio University is liable to Dr. Kalyango for damages under Title IX. Additionally, Dr. Kalyango is entitled to equitable relief requiring reinstatement to his full-time duties as a tenured professor with Ohio University, and reimbursement of attorneys fees under 42 U.S.C. §1988.

105. Ohio University's conduct in treating Dr. Kalyango in disparate fashion was intentional, willful and malicious, and entitles Dr. Kalyango to an award of punitive damages.

COUNT V
REQUEST FOR INJUNCTIVE RELIEF

106. Dr. Kalyango realleges the foregoing paragraphs as if fully rewritten.

107. An individual who proves employment discrimination is entitled to a broad range of remedies, including injunctions, reinstatement, back pay, lost benefits and attorney's fees, if appropriate, under Ohio Revised Code 4112.02 *et seq.*

108. In this instance, Dr. Kalyango has a reasonable likelihood of success on the merits of the underlying claim.

109. Dr. Kalyango is an American citizen and formerly an African national who has been discriminated against by Ohio University, in violation of the United States Constitution.

110. The panel assembled by Ohio University to examine the allegations against Dr. Kalyango did not have any cultural or ethnic diversity, despite Dr. Kalyango's specific request that the panel be comprised of diverse academic representatives.

111. The allegations against Dr. Kalyango encompass communications between the plaintiff, Dr. Kalyango and others which likely involve mis-communication, misinterpretation or differences of perspective resulting from the difference between Dr. Kalyango's ethnic, cultural and racial position, in relation to the plaintiff, the investigator and others peripherally or directly involved in the alleged investigation of misconduct on the part of Dr. Kalyango.

112. Because of the total absence of prompt and remedial action by Ohio University, the negligence in conducting of the investigation, the lack of qualifications and objectivity on the part of the investigator who was an Ohio University employee, and the fact that the investigation continued for more than a year, Dr. Kalyango has been discriminated against and his reputation significantly impaired.

113. There is a likelihood that Dr. Kalyango will prevail on the merits with respect to proving his claim of discrimination against Ohio University.

114. There is no adequate remedy at law which exists in order to halt the injustice that is being committed against Dr. Kalyango by Ohio University through the course of its negligently conducted investigation, its poorly administered de-tenuring proceeding, and its total absence of due process under the Ohio and United States Constitutions.

115. Dr. Kalyango has already suffered and will suffer irreparable harm if Ohio University is not enjoined from continuing with the sham and negligently conducted de-tenuring process that contains no appropriate due process or right of cross-examination.

116. Dr. Kalyango has already lost over \$35,000.00 in annual income associated with directorships and grant funded institutes and/or projects as a result of Ohio University's precipitous suspension and initiation of a poorly executed and unconstitutional de-tenuring process.

117. The harm to Dr. Kalyango's personal and professional reputation within the Ohio University community, the faculty and, more importantly, the international academic community, is extremely profound and financially devastating.

118. Dr. Kalyango requests an order from the Court enjoining Ohio University from completing the de-tenuring process as presently constructed, due to its inadequacy and its total absence of objective opportunity on the part of the fact finder to hear the cross-examination of any adverse witness, including the primary accuser of Dr. Kalyango.

119. In no way will the Court's institution of a preliminary injunction against Ohio University violate the public interest, inasmuch as the public has an interest in its academic institutions and the tenured professors employed therein having the same constitutional protections of due process as all other citizens enjoy in the United States. A preliminary injunction at this point will in no way harm the plaintiff, as she is scheduled to graduate from Ohio University. Thus, any enjoining of the de-tenuring process by the Court would not have any impact on either the public interest or the plaintiff directly.

120. The cross-claimant Dr. Kalyango requests that the Court immediately issue an order enjoining Ohio University from any further proceedings under the current de-tenuring protocol, as it is irretrievably tainted by the poor investigation conducted by the University in the absence of any objective scrutiny through cross-examination of the accuser, the witnesses or an objective and unbiased review of the evidence by an independent third party not employed and under the control of the Ohio University.

DAMAGES

121. Dr. Kalyango realleges the foregoing paragraphs as if fully rewritten.

122. As a direct and proximate cause of Ohio University's violation of Dr. Kalyango's constitutional and statutory rights he has suffered loss of income, benefits, opportunities, mental anguish, physical and emotional distress, humiliation and embarrassment, loss of earning capacity, and loss of professional reputation.

123. As a direct and proximate cause of Ohio University's violation of Dr. Kalyango's constitutional and statutory rights, Dr. Kalyango incurred, and continues to incur attorney fees and expenses.

INDEMNITY

124. Dr. Kalyango realleges the foregoing paragraphs as if fully rewritten.

125. Dr. Kalyango denies the plaintiff is entitled to any damages whatsoever and incorporates by reference his answer to the complaint; however should the plaintiff prevail and if any damages are awarded, Dr. Kalyango is entitled to indemnity from Ohio University including, but not limited to, all costs, legal fees, and expenses, as well as any judgment that may be rendered against Dr. Kalyango.

126. As an employee of Ohio University, Ohio University is obligated to indemnify Dr. Kalyango pursuant to O.R.C. § 2744.07 *et seq.*

PRAYER FOR RELIEF

WHEREFORE, Dr. Kalyango prays for judgment against Ohio University as follows:

1. Declare that Ohio University's actions in depriving Dr. Kalyango of his constitutionally protected property interest in continued employment absent a lawful, unbiased investigation by a neutral third party, and later, if appropriate, a lawful pre-termination hearing, and that the present procedure to terminate Dr. Kalyango is unlawful and violative of the rights of Dr. Kalyango under the Due Process Clause of the Fourteenth Amendment;

2. Grant preliminary and injunctive relief pursuant to Fed.R.Civ.P. 65, enjoining Ohio University from any further proceedings under the current de-tenuring protocol, reinstating Dr. Kalyango to his full-time duties as a tenured professor; and enjoining Ohio University, its representatives, officers, agents and employees from retaliating in any form or fashion against Dr. Kalyango for having filed a charge of discrimination, filing this lawsuit or for having pursued his full remedies.

3. If an investigation is warranted, that said investigation be conducted by a neutral third party unaffiliated with Ohio University and order that all activities, investigation, interviews and other action be deemed confidential and proprietary until the investigation is concluded in order to protect all participants from public scorn and harm.

4. Order Ohio University to remove all materials from Dr. Kalyango's personnel file that were placed in the file without the provision to Dr. Kalyango of due process, including the opportunity to present witnesses, cross-examine his accusers, and be assisted by legal counsel.

5. An award to Dr. Kalyango of compensatory damages for lost earnings, future earnings, and reimbursement of any lost benefits;

6. An award to Dr. Kalyango of compensatory damages sufficient to compensate him for mental anguish and emotional distress, embarrassment and humiliation, and damage to his professional reputation as a result of Ohio University's actions, in an amount in excess of \$100,000, and other damages in an amount to be determined at trial, in excess of \$100,000, as well as prejudgment and post-judgment interest.

7. An award to Dr. Kalyango of the costs and disbursements of this action, including reasonable attorney fees.

8. An award to Dr. Kalyango of such other and additional legal and/or equitable relief to which he may be entitled.

9. In the event the plaintiff is entitled to any damages against Dr. Kalyango, then Dr. Kalyango is entitled to a like amount, including costs, expenses, and attorney fees against Ohio University.

s/Gregory A. Beck

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JURY DEMAND

A trial by jury is demanded herein on all issues presented to the Court.

s/Gregory A. Beck

Gregory A. Beck (0018260)
BAKER, DUBLIKAR, BECK,
WILEY & MATHEWS

PROOF OF SERVICE

I hereby certify that on March 20, 2019, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

Michael L. Fradin
Counsel for Plaintiff

Christopher E. Hogan
Counsel for Defendant, Ohio University

Reid T. Caryer
Ohio Attorney General's Office
Education Section
Counsel for Defendant, Ohio University

s/Gregory A. Beck
Gregory A. Beck (0018260)
Counsel for Defendant, Yusuf Kalyango