

1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF TEXAS  
3 HOUSTON DIVISION

4 \* \* \* \* \*

5 JONATHAN CHAN and KARLA FORD, )  
6 Plaintiffs, )  
7 v. )  
8 BOARD OF REGENTS OF TEXAS SOUTHERN )  
9 UNIVERSITY dba Texas Southern )  
10 University Thurgood Marshall )  
11 School of Law; SHELLEY SMITH, )  
12 individually and as Professor of Law, Thurgood )  
13 Marshall School of Law; DOES I-XX, inclusive, )  
14 Defendants. )

**COMPLAINT  
(Jury Demanded)**

14 COME NOW, Plaintiffs, JONATHAN CHAN and KARLA FORD (hereinafter referred to  
15 as "Plaintiffs"), by and through their attorney of record, JASON J. BACH, ESQ. of THE BACH  
16 LAW GROUP, PLLC, and hereby complain and allege against the above-named Defendants, and  
17 each of them, based upon knowledge, information and a reasonable belief derived therefrom, as  
18 follows:

19 **INTRODUCTION**

20 This is a Complaint for Damages and injunctive relief brought by students of Texas Southern  
21 University Thurgood Marshall School of Law. The claims, against the University and faculty of this  
22 public university, are based upon 42 U.S.C. Section 1983 and the Fifth, and Fourteenth Amendment  
23 of the United States Constitution, alleging infringement of Plaintiffs' right to substantive and  
24 procedural due process. Plaintiffs also rely on the University's School of Law Student Rules and  
25 Regulations and alleges a pendent breach of contract claim. Plaintiffs have also asserted a claim  
26 against University Defendant for negligent hiring, training, and supervision, and all Defendants for  
27 intentional and negligent infliction of emotional distress, defamation, slander, libel, and injunctive  
28 and declaratory relief.

**PARTIES & JURISDICTION**

1  
2           1.       This Court has jurisdiction over the claims set forth in this action pursuant to 28  
3 U.S.C. Section 1331 (federal question) and 28 U.S.C. Section 1343 (civil rights).

4           2.       Supplemental jurisdiction over Plaintiffs’ pendent state law claims is invoked  
5 pursuant to 28 U.S.C. Section 1367, as the claim arises out of the same transaction and occurrence  
6 as Plaintiffs’ federal claim.

7           3.       Venue is proper in the Southern District of Texas pursuant to 28 U.S.C. 1391(b) in  
8 that the claims arose in this district, and Plaintiffs and Defendants are located in this district.

9           4.       Costs, expert witness fees, and attorney’s fees are sought pursuant to 42 U.S.C.  
10 Section 1988.

11          5.       Plaintiff, JONATHAN CHAN, is currently a resident of the State of Texas, and at all  
12 relevant times, was a student at Texas Southern University.

13          6.       Plaintiff, KARLA FORD, is currently a resident of the State of Texas, and at all  
14 relevant times, was a student at Texas Southern University.

15          7.       Defendant, BOARD OF REGENTS OF TEXAS SOUTHERN UNIVERSITY  
16 (hereinafter referred to as “TSU”), operates TSU, a public educational institution of higher learning,  
17 located in Houston, Harris County Texas.

18          8.       Defendant SHELLEY SMITH, at all times relevant was a visiting Professor of Law  
19 in the Thurgood Marshall School of Law at TSU. She is named in this case both individually and  
20 in her official capacity as Professor of Law in the Thurgood Marshall School of Law at TSU.

21          9.       That the true names or capacities, whether individual, corporate, associate or  
22 otherwise, of Defendants DOES I through XX are unknown to Plaintiffs, who therefore, sue said  
23 Defendants by such fictitious names.

24          10.       Plaintiffs are informed and believe and thereon allege that each of the Defendants  
25 designated herein as DOES are responsible in some manner for the events and happenings referred  
26 to in this action and proximately caused damages to Plaintiffs as herein alleged, and that Plaintiffs  
27 will ask leave of this Court to amend this Complaint, to insert the true names and capacities of said  
28 Defendants, and when the same have been ascertained to join such Defendants in this action.

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1 where points were taken away on the examination.

2 20. That despite Plaintiffs' requests for copies of their examinations, model answers, and  
3 an explanation for the basis on which their grades were based, the University refused to provide the  
4 requested information.

5 21. Instead, the University terminated professor Smith in order to prevent Plaintiffs from  
6 gathering the necessary information to appeal their grades through the University's grade change  
7 process.

8 22. On September 2, 2011, several months after Plaintiffs filed their petitions for grade  
9 change, the law school's Academic Standards Committee conducted a meeting with Plaintiffs  
10 present that lasted under five minutes. At the meeting the Committee informed Plaintiffs that "the  
11 professor has emailed us and said there was no computation error or discrimination involved in the  
12 grading."

13 23. At the September 2, 2011 meeting, the University did not present any additional  
14 information or evidence or provide Plaintiffs with any of the information they requested that would  
15 show the arbitrary or discriminatory grading on the part of professor Smith.

16 24. On September 6, 2011, the Academic Standards Committee issued letters to Plaintiffs  
17 denying their petitions for a grade change. The Committee's stated basis for denial of the petitions  
18 was "insufficient evidence" to support their petitions.

19 25. The decisions made by Defendants TSU to remove Plaintiffs from the law school are  
20 arbitrary and capricious in nature, are in violation of the law school's Student Rules and Regulations,  
21 and in violation of Plaintiffs' U.S. Constitutional Rights.

22 26. As a result of Defendant TSU and Smith's arbitrary, capricious, and unlawful actions,  
23 Plaintiffs have been prevented from attending classes at TSU, thus halting and destroying their  
24 ability to attend law school or to ever enter the legal profession.

25 27. As a result of the above, Defendants, and each of them, have wrongly caused  
26 Plaintiffs to be sanctioned and removed from the University and for the above-noted sanctions to be  
27 wrongly placed on their record, all in violation of their U.S. Constitutional Rights, depriving them  
28 of the opportunity to obtain an education and further their careers, and inflicting emotional distress

1 and physical injury, all damaging them in an amount in excess of SEVENTY-FIVE THOUSAND  
2 DOLLARS (\$75,000.00).

3  
4 **FIRST CAUSE OF ACTION**

5 ***CIVIL RIGHTS VIOLATION, DUE PROCESS VIOLATION,***  
6 ***FIFTH AND FOURTEENTH AMENDMENT***  
7 ***TO THE UNITED STATES CONSTITUTION***

8 28. Paragraphs 1 through 27, inclusive are incorporated by reference.

9 29. The actions of Defendants resulted from, and were taken, pursuant to a *de facto* policy  
10 of Defendant TSU, to arbitrarily “curve out” students from the law school, which is implemented  
11 by Deans, professors, and other employees of the said Defendants, all acting under the color of law,  
12 who chose to violate Plaintiffs’ constitutional rights, without rightful authority of law, and who  
13 continue to violate Plaintiffs’ constitutional rights on an on-going basis by preventing them from  
14 returning to school, and effectively preventing them from being admitted to another institution of  
15 higher learning.

16 30. Supervisory and policy making officers and officials of said Defendants have known  
17 the existence of the *de facto* policy described above for a substantial period of time.

18 31. Despite their knowledge of the said illegal policy and practices, supervisory and  
19 policy-making officers and officials of the said Defendants have not taken steps to determine said  
20 practices, have not disciplined or otherwise properly supervised the individual employees who  
21 engaged in the said practices, have not effectively trained Deans and other employees with regard  
22 to the proper constitutional and statutory limits on the exercise of their authority, and have instead  
23 sanctioned the policy and the practices described herein and have takes steps to cover up the  
24 existence of said policy and practices.

25 32. That the above actions by Defendants have resulted in both the substantive and  
26 procedural due process denial of rights, all in violation of the Fifth and Fourteenth Amendment to  
27 the United States Constitution.

28 33. That by reason of the aforesaid actions, Defendants’ actions exhibit deliberate  
indifference to and/or reckless disregard for the constitutional rights of Plaintiffs and other similarly

1 situated students, all in violation of the Plaintiffs' constitutional rights, and as a direct and proximate  
2 result thereof, the Plaintiffs sustained severe damages in an amount in excess of SEVENTY-FIVE  
3 THOUSAND DOLLARS (\$75,000.00).

4 34. The acts, conduct and behavior of each of the Individual Defendants were performed  
5 knowingly, intentionally, oppressively, and maliciously, by reason of which Plaintiffs are entitled  
6 to punitive damages in a sum in excess of SEVENTY-FIVE THOUSAND DOLLARS (\$75,000.00).

7 35. It has been necessary for the Plaintiffs to obtain the services of an attorney to  
8 prosecute this action and Plaintiffs are entitled to an award of attorney's fees and costs of suit  
9 incurred herein.

10 **SECOND CAUSE OF ACTION**

11 ***BREACH OF CONTRACT***

12 36. Paragraphs 1 through 35, inclusive are incorporated by reference.

13 37. Plaintiffs has an express and implied contract with Defendants in connection with  
14 rights explicitly guaranteed by TSU pursuant to the University's Thurgood Marshall School of Law  
15 Student Rules and Regulations.

16 38. The actions of Defendants constitute a breach of the express and implied contract.

17 39. As a result of the breach committed against the Plaintiffs, they have been damaged  
18 in an amount in excess of SEVENTY-FIVE THOUSAND DOLLARS (\$75,000.00).

19 40. It has been necessary for the Plaintiffs to obtain the services of an attorney to  
20 prosecute this action, and Plaintiffs are entitled to an award of attorney's fees and costs of suit  
21 incurred herein.

22  
23 **THIRD CAUSE OF ACTION**

24 ***NEGLIGENT HIRING, TRAINING, & SUPERVISION***

25 41. Paragraphs 1 through 38, inclusive, are incorporated by reference.

26 42. At all times material and relevant herein, the Defendants had a duty to not violate the  
27 Constitutional rights of their students.

28 43. At all times relevant herein, Defendant TSU had a duty not to hire individuals with

1 a propensity towards committing unlawful acts against those who lawfully go about their business,  
2 and to adequately train and supervise their agents, officers, and employees.

3 44. At all times relevant herein, the Defendant TSU had a duty to protect the public, such  
4 as Plaintiffs, from the illegal actions of their own agents, officers, employees and others. In addition,  
5 Defendant TSU had a duty not to hire individuals with a propensity towards committing unlawful  
6 acts against the public, and to adequately train and supervise their employees.

7 45. Defendants, and each of them, breached their respective duties, and are therefore  
8 negligent and liable to the Plaintiffs, who have suffered serious economic loss, loss of reputation,  
9 loss of daily and future income, and to incur severe financial obligations in order to retain attorneys,  
10 as well as other painful injuries, deprivation of his liberty, invasion of his privacy, grievous mental  
11 suffering, all to her damage in an amount in excess of SEVENTY-FIVE THOUSAND DOLLARS  
12 (\$75,000.00).

13 46. It has been necessary for the Plaintiffs to obtain the services of an attorney to  
14 prosecute this action, and Plaintiffs are entitled to an award of attorney's fees and costs of suit  
15 incurred herein.

17 **FOURTH CAUSE OF ACTION**

18 ***INTENTIONAL AND NEGLIGENT INFLICTION OF SEVERE MENTAL DISTRESS***

19 47. Paragraphs 1 through 46, inclusive, are incorporated by reference.

20 48. As a result of Defendants' intentional and negligent conduct and omissions, Plaintiffs  
21 suffered and continue to suffer great mental and emotional harm, anguish, insecurity, self-revulsion,  
22 damage to their self-esteem, and self-worth, shame and humiliation, including but not limited to:  
23 severe and clinical depression, anxiety, loss of sleep, and change of appetite.

24 49. Plaintiffs required medical and psychological care as result of the malfeasance and  
25 nonfeasance of Defendants. This has caused Plaintiffs to incur expenses for medical care, treatment,  
26 and expenses incidental thereto. The total amount of Plaintiffs' damages cannot yet be fully  
27 ascertained, and as such we respectfully ask leave of this Court to amend Plaintiff's Complaint to  
28 insert the full amount when such have been fully ascertained.





1 attorney's fees in an amount in excess of SEVENTY-FIVE THOUSAND DOLLARS (\$75,000.00)  
2 and thus Plaintiffs are entitled to an award of attorney's fees.

3 **WHEREFORE**, Plaintiff prays that this Honorable Court: Enter judgment in Plaintiffs'  
4 favor, and against the Defendants, and each of them: (a) for compensatory damages in an amount  
5 in excess of SEVENTY-FIVE THOUSAND DOLLARS (\$75,000.00); (b) for punitive damages each  
6 in an amount in excess of SEVENTY-FIVE THOUSAND DOLLARS (\$75,000.00); (c) for  
7 injunctive and declaratory relief; and (d) together with the costs and disbursements of this action and  
8 such other attorney's fees pursuant to 42 U.S.C. §1988, and further relief as justice requires.

9 DATED this 02<sup>nd</sup> day of February, 2012.

10 **THE BACH LAW GROUP, PLLC**

11  
12 By: /s/ Jason J. Bach  
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