

**STATE OF NORTH CAROLINA
WAKE COUNTY**

**IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION**

File No. _____

ROMAN CAPLE)
)
 Plaintiff,)
)
 Vs.)
)
 SAINT AUGUSTINE’S COLLEGE; and)
 DIANNE BOARDLEY SUBER,)
 President of Saint Augustine’s College, in)
 her official and individual capacities,)
)
 Defendants.)

COMPLAINT

PARTIES

1. Plaintiff Roman Caple is a resident of Wake County, North Carolina.
2. Defendant Saint Augustine’s College is a domestic non-profit corporation located in Wake County, North Carolina.
3. Defendant Dianne Boardley Suber, President of Saint Augustine’s College, is a resident of Wake County, North Carolina.

FACTUAL ALLEGATIONS

4. On April 16, 2011, a tornado hit Raleigh, North Carolina, and cut off electrical power on the campus of Saint Augustine’s College.
5. As a result of the storm, Saint Augustine’s College was temporarily closed.

6. On April 18, 2011, Saint Augustine's College announced via Facebook.com ("Facebook"), a popular social media website, that it would reopen, although some students were still without power.
7. Following complaints from students regarding the school's decision to reopen so soon, Saint Augustine's College announced via Facebook a town hall meeting with Progress Energy, the area utility company, and students which was to take place on April 19, 2011.
8. The purpose of the town hall meeting was to address student concerns regarding the recovery effort and the institution's decision to reopen notwithstanding the fact that several students were still without power.
9. In response, on April 18th, Plaintiff, who was then a senior at Saint Augustine's College, posted a message on Saint Augustine's Facebook page, encouraging fellow students to bring any necessary documentation to the meeting and to anticipate Saint Augustine's response.
10. Specifically, Plaintiff wrote: "Here it go!!! Students come correct, be prepared, and have supporting documents to back up your arguments bcuz SAC will come hard!!!!That is all"
11. The Saint Augustine's Facebook page is administered by the Office of Campus Communications and is utilized to communicate with the entire student body and with college constituents.
12. On April 27, 2011, Dr. Eric W. Jackson, then Vice President for Student Development and Services at Saint Augustine's College, sent Plaintiff a letter informing Plaintiff that

Plaintiff would not be allowed to participate in commencement activities for 2011 because of what Administration characterized as Plaintiff's "negative social media exchange."

13. In the letter dated April 27, 2011, Vice President Jackson went on to admonish Plaintiff for not "protecting the reputation of the college".
14. In Vice President Jackson's letter, dated April 27, 2011, Plaintiff was further informed that he would have to pick up his cap, gown, and degree at 9:00 am from the Hunter Building, Suite 206-B on Monday, May 2, 2011, the day after commencement.
15. President Suber ordered the content of the letter, dated April 27, 2011, that Vice President Jackson sent to Plaintiff.
16. Dr. Connie Allen (Provost of Saint Augustine's College), Mr. Leon Scott (Executive Vice President of Saint Augustine's College), Mr. Marc Newman (Vice President for Institutional Development at Saint Augustine's College), Ms. Crystal Williams (Registrar of Saint Augustine's College), Ms. Doris Bolluck (Dean of Student and Residential Life at Saint Augustine's College) and Mr. George Boykin III (Chief of Campus Police at Saint Augustine's College) were copied on the April 27, 2011 letter from Vice President Jackson.
17. Moreover, President Suber specifically ordered that Plaintiff's name was not to be called during the commencement ceremony.

18. After learning of the disciplinary taken against him, Plaintiff attempted to speak with President Suber, but President Suber refused to see Plaintiff and instead referred Plaintiff to Vice President Jackson.
19. On April 28, 2011, Mr. Caple returned to campus, this time accompanied by his mother.
20. Once on campus, Plaintiff and his mother went to speak with Vice President Jackson regarding the disciplinary action taken against Plaintiff.
21. After being informed from Vice President Jackson that the decision was final and out of his hands, Plaintiff explained that at the very least, he should be allowed to have his cap and gown, for which he had already paid. In requesting to receive his regalia, Plaintiff explained to Vice President Jackson that many of his family and friends were coming in from out of town and that they were planning a private celebration at his home.
22. Plaintiff further explained that he needed his cap and gown because as a part of the celebration, he and his family had planned on taking pictures with him (Plaintiff) wearing his regalia.
23. A few moments later, Ms. Small, who works in the campus bookstore, came to Vice President Jackson's Office and informed Plaintiff that his regalia was actually in Dr. Scott's Office, and that if he wanted his regalia prior to May 2, 2011, he would have to go see Dr. Scott.
24. Shortly thereafter, Plaintiff went to see Dr. Scott's office, where he was met by Dr. Scott and Campus Police Chief George Boykin III.

25. Mr. Scott refused to let Plaintiff have his regalia until May 2, 2011, the day after commencement.

26. Mr. Scott, in the presence of Chief Boykin, stated to Plaintiff,

Roman, I'm not Dr. Jackson. And you don't run this campus. You can't just go around saying whatever you want to say. You will get your cap and gown exactly when that letter says you can get it, on May 2nd. And if you so much as think about disrupting any of the commencement activities, I will have you arrested.

27. Plaintiff left immediately.

28. As a result of the punishment against him, Plaintiff did not walk at graduation or participate in other official activities.

29. In accordance with President Suber's directive, Plaintiff's name was not called during the commencement ceremony.

30. Further, because administrators at Defendant Saint Augustine's College refused to allow Plaintiff to take possession of his cap and gown until the Monday after commencement, Plaintiff was not able to take pictures wearing his regalia at the private celebration that his family and friends had planned for him at his home, which was to take place on the weekend of commencement.

31. When Plaintiff returned to campus on May 2, 2011, the Monday after commencement, to pick up his cap and gown as directed in the April 27, 2011 letter from Vice President Jackson, campus police stopped Plaintiff in his vehicle by the security booth located at the entrance leading to the Administration Building.

32. The Officer at the booth knocked on Plaintiff's driver's side window, motioned for Plaintiff to roll down his window and then handed Plaintiff his regalia and degree.
33. After handing plaintiff his regalia and degree, the officer had Plaintiff sign that he (Plaintiff) had in fact received it.
34. The officer then instructed Plaintiff to turn his vehicle around and to leave because Administration did not want him on campus.
35. Disturbed, confused, and fearing further retaliation or discipline, particularly from Chief Boykin, Plaintiff left campus.
36. After the local media reported on the defendant's extreme and outrageous treatment of Plaintiff, Defendant Saint Augustine's College, issued a press release, dated April 29, 2011, claiming that the action was taken because Plaintiff was "inciting" and attempting to create "chaos".
37. In the press release, dated April 29, 2011, Defendant Saint Augustine's College, went on to state that Plaintiff's post to Facebook, "left the administration with no other choice other than to exclude him [Plaintiff] from the actual commencement exercise."
38. Like all graduating college students, Plaintiff was proud of his impending graduation and looked forward to celebrating the obtainment of his degree.
39. Plaintiff was especially excited because he was a first-generation college graduate in his family.

40. Prior to his punishment, Plaintiff had sent out commencement announcements to his family and friends and had paid for travel and hotel accommodations for members of his family who were to attend commencement.

41. Plaintiff had also made plans to celebrate with his fellow graduates later that evening.

42. As a result of the punishment he endured for his Facebook post, Plaintiff was forced to contact each of his family members and friends at the last minute to inform them that he would not be participating in commencement.

43. Because of the emotional harm Plaintiff suffered as a result of his punishment, Plaintiff is undergoing therapy.

BREACH OF CONTRACT

44. Plaintiff chose to attend Saint Augustine's College because of certain promises and representations made by Defendant Saint Augustine's College in its *Student Handbook* and its *Student Rights and Responsibilities* documents.

45. But for the promises that Defendant Saint Augustine's College made in its *Student Handbook* and *Student Rights and Responsibilities*, Plaintiff would not have enrolled at Saint Augustine's College.

46. The *Student Handbook* and *Student Rights and Responsibilities* establish a contract between the Defendant and Plaintiff. The *Student Handbook* states:

[The] Student Handbook and other materials are part of the contract the student has with the College...

Count I

47. Defendant Saint Augustine's College, by and through its agents, promised and represented to Plaintiff that Plaintiff would be permitted to participate in commencement activities upon fulfilling graduation requirements.

48. The *Student Handbook* states:

Candidates for graduation are expected to participate in all commencement exercises...

49. Further, in its promotional materials to prospective students, Defendant states:

At Saint Augustine's College, the graduation ceremony is both dignified and joyful. You've completed all requirements and it is time to EXHALE! Celebrate with family and friends who have traveled from near and far to witness your success after years of rigorous study mixed, of course, with lots of laughter and good times. On this special day, all eyes will be on you and your classmates as you don well-earned academic regalia and take your place in the processional. As the orchestra acknowledges your achievement with the majestic cadence of "Pomp and Circumstance," the Saint Augustine's College family will roll out the red carpet and help you celebrate this momentous milestone in grand style!

50. Plaintiff fulfilled all requirements for graduation.

51. When Saint Augustine's College banned Plaintiff from participating in the commencement, Saint Augustine's College breached its promise to Plaintiff that he would be allowed to participate in commencement exercises upon fulfilling graduation requirements.

Count II

52. Saint Augustine's College, by and through its agents, specifically promised and represented to Plaintiff that he was guaranteed Freedom of Expression as an enrolled student. The *Student Rights and Responsibilities* states:

Every aspect of the educational process should promote the free expression of ideas. **Students are free to pass resolutions, distribute leaflets, picket, circulate petitions, discuss, and take other lawful action respecting any matter, which directly or indirectly concerns or affects them,** subject only to reasonable time, place and manner considerations. [Emphasis added.]

53. When Saint Augustine's College punished Plaintiff for expressing his views by encouraging his fellow students to bringing supporting evidence to the town hall meeting, Defendant Institution violated Plaintiff's guaranteed Freedom of Expression.

Count III

54. Saint Augustine's College, by and through its agents, specifically promised and represented to Plaintiff that he was guaranteed the "Right of Input into College Governance and Instructional Programs." The *Student Rights and Responsibilities* states:

Students shall be free individually and collectively to express their views on issues of institutional policy and on matters of interest to the student body. **Students are guaranteed the right of participation in those aspects of university governance which relate to the interests of the student body.** [Emphasis added.]

55. When Saint Augustine's College punished Plaintiff for expressing his concern that students be prepared when they went to the town hall meeting, Defendant Institution violated Plaintiff's "Right of Input into College Governance and Instructional Programs,"

as guaranteed to him in written college policy which the college itself explicitly characterizes as a “contract.”

Count IV

56. Saint Augustine’s College, by and through its agents, specifically promised and represented to Plaintiff that he was guaranteed the “Right to Freedom of the Press.” The *Student Rights and Responsibilities* states:

Students using media, such as broadcasting, film, and print, including pamphlets, handbills and circulars are guaranteed freedom from censorship. Those originating communications should be left free to exercise their own best judgment in the selection of materials. Neither a faculty member nor an administrator should exercise veto power over what may be disseminated. [Emphasis added.]

57. When Saint Augustine’s College banned Plaintiff from participating in commencement because of a comment he made using social media, Defendant violated its binding contractual guarantee that students using media are allowed Freedom from Censorship.

Count V

58. Saint Augustine’s College, by and through its agents, promised and represented to Plaintiff that he was guaranteed the right of Due Process. The *Student Rights and Responsibilities* states:

The student shall be considered innocent until proven responsible for a violation of College Standards.

59. The *Student Rights and Responsibilities* also states:

The status of a student [...] will not be altered and disciplinary sanctions will not be initiated until completion of the disciplinary process.

60. Further, the *Student Handbook* states:

All charged students have a right to a judicial hearing, before the Judicial Board to determine whether they are guilty or innocent of the charge(s) filed. Charged students also have a right to waive their right to a judicial hearing and plead responsible, by completing the “**Waiver of the Right to a Campus Hearing**” form.

61. Plaintiff never completed the “Waiver of the Right to a Campus Hearing” form, nor did he otherwise waive his Right of Due Process.

62. The *Student Handbook* further states that a student accused of violating the code of conduct is entitled to the following Due Process Rights :

1. Be presumed innocent until proven responsible;
2. Be present at the hearing and hear all testimony presented;
3. Be provided, prior to the hearing, with the names of witnesses whom the Judicial Administrator has asked to appear at the hearing;
4. Question witnesses in accordance with the rules;
5. Present evidence in accordance with the rules;
6. Remain silent or testify during the formal hearing;
7. The right to consult with counsel of choice;
8. A decision by the Board based solely on a preponderance of the evidence presented during the hearing.

63. Saint Augustine’s College, by and through its agents, altered Plaintiff’s status and took punitive action against him when it informed Plaintiff that he was no longer eligible to participate in the 2011 commencement activities.

64. When Saint Augustine’s College altered Plaintiff’s status and took disciplinary action against him without first allowing Plaintiff an opportunity to be heard as to whether any

action on Plaintiff's part amounted to a violation of the *Student Handbook*, Saint Augustine's College violated its own guarantees of Due Process.

INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

65. Defendants retaliated against Plaintiff for having attempted to exercise his guaranteed rights of Freedom of Expression, Freedom of the Press, Right of Input into College Governance and Instructional Programs, and Due Process.
66. The defendants' actions were malicious and were taken with the specific purpose to punish, embarrass, and humiliate Plaintiff.
67. Defendants were aware that Plaintiff was a first-generation college graduate in his family.
68. Defendants were aware that Plaintiff had sent out commencement announcements to his family.
69. Defendants were aware that Plaintiff's family and friends had made plans to travel from out of town to attend the commencement.
70. To increase Plaintiff's shock and humiliation, administrators at Saint Augustine's College intentionally waited until May 27, 2011, just days before commencement, when Plaintiff came to pick up his regalia, before informing Plaintiff that he would not be allowed to participate in commencement.
71. Notwithstanding the fact that Plaintiff had already paid for his regalia, Defendant Saint Augustine's College denied Plaintiff the right take possession until the Monday after commencement, because Defendant's knew that Plaintiff had planned to take pictures

wearing his regalia at a private celebration that his family and friends were to have for him at his home.

72. To further humiliate Plaintiff, Saint Augustine's College ordered campus police to stop Plaintiff at the security booth when he sought his regalia, and even threatened to have him arrested.

73. Dr. Suber specifically ordered that Plaintiff's name was not to be called during the commencement ceremony, even though he graduated.

74. Under the circumstances, Saint Augustine's act of retaliation, which was intended to inflict severe emotional distress on plaintiff, was extreme and outrageous.

75. As a result of Saint Augustine College having unjustly denied Plaintiff a once-in-a-lifetime experience, Plaintiff has incurred extreme mental anguish and distress.

76. Plaintiff has suffered bouts of uncontrollable crying, loss of appetite, difficulty sleeping, and loss of confidence.

77. Moreover, as a result of his grief associated with having lost the opportunity to 'walk', Plaintiff is experiencing difficulty transitioning from his role as student to the role of a professional.

78. Plaintiff is undergoing therapy.

NEGLIGENCE

79. President Dianne Boardley Suber, Dr. B. Connie Allen, Mr. Leon Scott, Mr. Marc Newman, Ms. Crystal Williams, Mrs. Doris Bullock, and Mr. George Boykin III all owed a duty to uphold Plaintiff's rights. The *Student Rights and Responsibilities* state:

It is the responsibility of the College faculty and administration to [...] uphold the rights of students and to obey the letter and the spirit of such rights.

80. Each of the above individuals named in paragraph 79 were negligent in carrying out their duty to uphold Plaintiff's rights as outlined in the *Student Rights and Responsibilities*.
81. Dr. Dianne Suber was negligent in that she arbitrarily and capriciously ordered that Plaintiff not be allowed to participate in commencement.
82. Had Dr. Suber thoroughly reviewed the *Student Handbook* and the *Student's Rights and Responsibilities*, she would have realized that Plaintiff had acted well within his contractual rights when he used social media to express his views regarding a matter directly affecting the student body.
83. Further, had Dr. Suber followed her own university's published procedures, she would have realized that proper procedures had not yet been followed and that Plaintiff's right of Due Process was being violated.
84. Each of the other individuals in paragraph 79 received a copy of the April 27, 2011, letter from Vice President Jackson that was sent to Plaintiff.
85. Had the individuals in paragraph 79 reviewed the *Student Handbook*, they would have all known that the action taken against Plaintiff violated his rights as outlined in the *Student Rights and Responsibilities*. Likewise, had said parties reviewed the judicial procedures outlined in the *Student Handbook*, they would have realized that the proper disciplinary procedures had not been followed and that Plaintiff's Right of Due Process was being violated.

86. All administrators involved knew or should have known that, under the circumstances, banning Plaintiff from commencement because he used social media to express his view regarding a matter directly related to the student body violated Plaintiff's Right of Freedom of Expression, Right of Input into College Governance, Right of Freedom of the Press, and Right of Due Process.
87. Having received a copy of the letter, each of the administrators in paragraph 79 was in a position to take steps to prevent the unjust punishment of Plaintiff.
88. Each of the administrators could have, but did not, take the matter to the Board of Directors.
89. All of the administrators involved, while acting in their official capacity, failed to exercise reasonable care in carrying out their duty to uphold Plaintiff's rights, i.e., they neglected their duty protect Plaintiff.
90. As all of the administrators involved were acting within the scope of their employment, Defendant Saint Augustine's College is vicariously liable for their negligence.
91. Further, President Suber is personally liable in her individual capacity for her own negligence in carrying out her duty to protect Plaintiff.

DAMAGES

92. Plaintiff incurred expenses in paying for the cap and gown that he was not permitted to use at commencement.
93. Plaintiff incurred expenses for commencement announcements that he sent out to his friends and family.

94. Plaintiff incurred travel and lodging expenses related to having made arrangements for out-of-town family members to attend the commencement.
95. Plaintiff was denied his right to participate in the ceremony.
96. Plaintiff has incurred extreme emotional distress.
97. Plaintiff has incurred therapy costs.

DEMAND FOR RELIEF

98. Wherefore, Plaintiff respectfully requests that this Court:
 - (1) Grant a declaratory judgment that Saint Augustine's College is bound by the promises and representations it makes in its *Student Handbook* and *Student Rights and Responsibilities*;
 - (2) Grant a declaratory judgment that Plaintiff's contractual rights have been violated;
 - (3) Order Saint Augustine's College to fulfill its contractual obligations by providing Plaintiff with a commencement ceremony and reception, complete with a program, distinguished speaker, orchestra, and all other customary "pomp and circumstance";and
 - (4) Grant Plaintiff compensatory and punitive damages in excess of \$10,000.00, plus interest from the date of the judgment; and
 - (5) Reasonable Attorney fees.

AGGRAVATING FACTORS WHICH WARRANT PUNITIVE DAMAGES

1. The action taken by Defendants was retaliatory.

2. Defendants stood in a special relationship to Plaintiff and led Plaintiff to believe that Plaintiff could trust Defendants to act in a manner that benefited Plaintiff.
3. Defendants knew that Plaintiff had already sent out commencement invitations to his friends and family and Defendants gained satisfaction from the fact that Plaintiff would be humiliated when he had to inform his family and friends that he would not be participating in commencement.
4. For Plaintiff's Alma Mater to ban him from commencement because of a social media post was petty, spiteful, and mean-spirited.
5. Defendant Saint Augustine's College, through its agents, intentionally denied Plaintiff the right to take possession of his Regalia until the Monday after commencement, for the specific purpose of denying Plaintiff the opportunity to celebrate privately with his friend and family during the weekend of commencement.
6. After banning Plaintiff from commencement, Defendants, for no reason other than to further insult and humiliate Plaintiff, instructed Campus Police to stop Plaintiff when he came to pick up his cap and gown.
7. Plaintiff attempted to open dialogue with Defendant Saint Augustine's College prior to filing a complaint, but Saint Augustine's College chose not to respond.

DEMAND FOR A JURY TRIAL

Plaintiff hereby demands a jury trial for all issues where a legal remedy is appropriate.