

STATE OF NEW MEXICO
COUNTY OF DONA ANA
THIRD JUDICIAL DISTRICT COURT

MARIO MOCCIA,

Plaintiff,

v.

No. _____

BOARD OF REGENTS OF
NEW MEXICO STATE UNIVERSITY,
HEATHER CHAVEZ, in her capacity
as a Records Custodian for New Mexico
State University, and ISAIAH HERRERA,
in his capacity as a Records Custodian
for New Mexico State University,

Defendants.

COMPLAINT

1. This complaint arises from the unlawful, politically motivated firing of Plaintiff Mario Moccia. Plaintiff Moccia, who is an alumnus of New Mexico State University, served as the Athletic Director of New Mexico State University until January 2, 2025. During that time, Plaintiff Moccia was protected from these types of politically motivated actions by a for-cause termination provision in his employment contract. But the University refused to follow that provision, terminating him for no legitimate reason and refusing to pay him for the remaining years of his contract. Plaintiff Moccia now brings this action to recover damages for that unlawful termination.

Parties

2. Plaintiff Moccia is an individual that resides in Dona Ana County, New Mexico. On January 2, 2025, Plaintiff Moccia's employment as the Athletic Director for New Mexico State University was wrongfully terminated.

3. Defendant Board of Regents of New Mexico State University is the governing body of New Mexico State University, a public, agricultural university located in Dona Ana County, New Mexico.

4. Defendant Heather Chavez is an employee of New Mexico State University and acted as a custodian of records in this case. On August 20, 2025, Defendant Chavez unlawfully redacted records that were required to be disclosed without redaction by the Inspection of Public Records Act.

5. Defendant Isaiah Herrera is an employee of New Mexico State University and acted as a custodian of records in this case. On August 20, 2025, Defendant Herrera unlawfully withheld records that were required to be disclosed by the Inspection of Public Records Act.

Jurisdiction and Venue

6. This action is brought according to this Court's original jurisdiction enumerated under Article IV, Section 13 of the New Mexico Constitution, for breach of contract according to NMSA 1978, § 37-1-23, which waives immunity for governmental entity for suits alleging breach of a written contract, and NMSA 1978, § 14-2-12, which authorizes actions to enforce the Inspection of Public Records Act.

7. Venue is proper in the Third Judicial District Court because Defendant Board of Regents of New Mexico State University is a government entity located within the confines the district. NMSA 1978, § 38-3-1(A). Venue is further proper in the Third Judicial District Court because the transactions at dispute—a breach of a written contract and the denial of a request for the disclosure of public records—occurred in Dona Ana County, New Mexico.

Factual Background

8. Plaintiff Mario Moccia attended New Mexico State University from 1987 through 1989, during which time he was an All-American baseball player for the New Mexico State Aggies.

9. From 1989 through 1990, Plaintiff Moccia played professional baseball in the Detroit Tigers system.

10. Plaintiff Moccia then moved to Albuquerque, New Mexico for his graduate education.

11. In 1993, Plaintiff Moccia received a master's degree in Athletic Administration from the University of New Mexico.

12. From 1993 through 1997, Plaintiff Moccia worked as an Assistant Director of Marketing and then Director of Sales for the Athletics Department at the University of New Mexico.

13. From 1997 through 1998, Plaintiff Moccia worked as an Associate Athletic Director for Southwest Texas State University, which is now known as Texas State University.

14. In 1998, Plaintiff Moccia was inducted into the Aggie Hall of Fame.
15. From 1998 through 2006, Plaintiff Moccia worked in the Athletic Department at the University of Missouri, ending his tenure there as the Senior Associate Athletic Director.
16. From 2006 through 2014, Plaintiff Moccia was the Athletic Director for Southern Illinois University, Carbondale.
17. In 2014, Plaintiff Moccia was hired by President Garrey Carruthers to be the Athletic Director of his alma mater, New Mexico State University. He began that position in January 2015.
18. In that role, Plaintiff Moccia was responsible for overseeing six men's and ten women's teams in NCAA sanctioned sports.
19. In that role, Plaintiff Moccia was also responsible for managing the staff of the Athletic Department, managing the activities of that department, and the hiring, supervision, and firing of coaches for each of the 16 teams.
20. Plaintiff Moccia's work as Athletic Director was an unquestioned success.
21. When Plaintiff Moccia took on this position, Aggie Athletics competed in the Western Athletic Conference.
22. In 2023, Plaintiff Moccia transitioned Aggie Athletics from the Western Athletic Conference to Conference USA, a transition that grew Aggie Athletics in prominence and success.

23. Under Plaintiff Moccia's leadership, the Aggie baseball team became a national success, winning the Western Athletic Conference title and appearing in the NCAA tournament in 2018 and 2022.

24. Under Plaintiff Moccia's leadership, the Aggie men's basketball team became a national success, winning conference championships in 2015, 2016, 2017, 2018, 2019, 2020, and 2022. The basketball team also made appearances in the NCAA Tournament, commonly known as "March Madness," in 2017, 2018, 2019, and 2022, with the team beating perennial powerhouse UConn to advance to the NCAA Tournament second round for the first time since 1970.

25. Under Plaintiff Moccia's leadership, the Aggie women's basketball team became a national success, winning conference championships and appearing in the NCAA tournament in 2015, 2016, 2017, and 2019.

26. Under Plaintiff Moccia's leadership, the Aggie football team became a national presence, winning bowl games in 2017 and 2022. In 2023, the program earned a win over a Southeastern Conference (SEC) school, played in the Conference USA Championship game, and appeared in back-to-back bowl games for the first time since 1960.

27. Under Plaintiff Moccia's leadership, Aggie student athletes thrived academically, with many of the University's teams obtaining NCAA honors for athletic achievement, and Aggie student athletes earning a 3.0 cumulative grade point average for every semester Plaintiff Moccia served as Athletic Director.

28. Under Plaintiff Moccia's leadership, Aggie student athletes performed thousands of hours per year of community service.

29. When Plaintiff Moccia was hired as the Athletic Director, Aggie Athletics faced a significant budget deficit.

30. Plaintiff Moccia reduced that budget deficit every year until the COVID-19 pandemic, which financially affected all University departments, but especially athletics.

31. Under Plaintiff Moccia's leadership, Aggie Athletics raised millions of dollars.

32. Under Plaintiff Moccia's leadership, the Aggie Athletic Club's general fund increased from \$168,000 in fiscal year 2015 to \$941,000 in fiscal year 2024.

33. Under Plaintiff Moccia's leadership, Aggie Athletics navigated the COVID-19 pandemic, finding ways for many of its teams to safely practice, grow, and compete.

34. In 2022, under Plaintiff Moccia's leadership, the Pan American Center, home to the Aggie basketball teams, underwent a successful renovation.

35. In 2024, under Plaintiff Moccia's leadership, a \$15.75 million renovation of Aggie Memorial Stadium, the home of the Aggie football team, began. That renovation added a new training center, an academic center, a new locker room, and multiple sports health facilities.

36. In the ten years Plaintiff Moccia served as the Athletic Director of Aggie Athletics, he met or exceeded all expectations in employee evaluations, which

were conducted by four heads of New Mexico State University—Garrey Carruthers, John Floros, Dan Arvizu, and Jay Gogue.

37. In the ten years Plaintiff Moccia served as the Athletic Director of Aggie Athletics, he received multiple university and community awards.

38. In the ten years Plaintiff Moccia served as the Athletic Director of Aggie Athletics, his contract was renewed twice because of his outstanding service.

39. In the ten years Plaintiff Moccia served as the Athletic Director of Aggie Athletics, his exemplary work resulted in multiple programs seeking to hire Plaintiff Moccia away from NMSU.

40. Plaintiff Moccia, however, stayed with his alma mater because it was a university and a community that he loved and where he had chosen to raise his family.

41. Plaintiff Moccia was also a leader in professional organizations. For example, Plaintiff Moccia served as the President of the Minority Opportunities Athletic Association—a professional association that seeks to foster inclusion and diversity, and advocates for more leadership and administrative positions for minorities in athletics—from 2015 through 2017. In 2019, following his service as President, Plaintiff Moccia received the distinguished service award from the Minority Opportunities Athletic Association.

2022-2023 Men's Basketball Hazing Allegations

42. On December 31, 2022, Paul Grindstaff informed Deputy Athletic Director Chet Savage that his son Peyton, a student manager for the men's basketball team, was being "messed with" in the locker room.

43. Plaintiff Moccia was immediately informed of Savage's conversation with Paul Grindstaff and discussed with his staff the need to inform the Office of Institutional Equity as soon as possible.

44. At the time of the conversation, the University was closed for the holiday season so the conversation could not be reported that day. But Plaintiff Moccia also determined that Peyton Grindstaff was safe and away from campus because of the holidays.

45. Plaintiff Moccia then had Deputy Athletic Director Savage report this information to the Office of Institutional Equity—the NMSU office responsible for investigation allegations of student misconduct—on January 2, 2023, when the University reopened.

46. In compliance with written University policy, Plaintiff Moccia and the Athletic Department took no further action as the Office of Institutional Equity, per University policy, was solely responsible for responding to the complaint once it was communicated.

47. In fact, Plaintiff Moccia and the Athletic Department were expressly prohibited by University policy from taking any further action.

48. Unbeknownst to Plaintiff Moccia, the Office of Institutional Equity reached out to Peyton Grindstaff only once and never followed up when Peyton did not respond.

49. Also unbeknownst to Plaintiff Moccia, the Office of Institutional Equity, which was chronically understaffed and underfunded, took no action to determine the validity of the complaint.

50. That the Office of Institutional Equity was chronically understaffed and underfunded was confirmed through depositions with members of the Board of Regents and the leaders of the University.

51. On Thursday evening of February 9, 2023, at around 9 or 10 p.m., Plaintiff Moccia received a phone call from William Benjamin, a former NMSU basketball player whose son, Deuce, was a member of the NMSU men's basketball team.

52. During that call, William Benjamin told Plaintiff Moccia that "they're f***ing with my kid." Benjamin did not provide Plaintiff Moccia with any additional information.

53. On that same phone call, William Benjamin asked to meet with Plaintiff Moccia and Greg Heiar, the then coach of the men's basketball team.

54. Coach Heiar was traveling at the time with the team, but Plaintiff Moccia nevertheless offered to meet with William Benjamin the next day, on Friday, February 10th or on Sunday, February 12th once Coach Heiar returned.

55. Plaintiff Moccia also had Braun Cartwright, a Deputy Athletic Director, report the phone call to the Office of Institutional Equity, which Cartwright did on February 10, 2023.

56. Before Plaintiff Moccia could meet with William Benjamin, William and Deuce went to the NMSU police on February 10, 2023, and reported that Deuce had been hazed and sexually assaulted in the locker room.

57. The NMSU police notified Chancellor Dan Arvizu of these allegations.

58. Chancellor Dan Arvizu immediately notified Plaintiff Moccia of the police report and allegations.

59. That notification was the first time any person had told Plaintiff Moccia that there were allegations of hazing and sexual assault within the men's basketball team.

60. At the direction of Chancellor Dan Arvizu, Plaintiff Moccia then worked with Athletic Department staff to cancel the men's basketball team's upcoming game in California and to make arrangements to return the team to Las Cruces.

61. On February 12, 2023, after the team returned to Las Cruces, Chancellor Dan Arvizu cancelled the remainder of the season.

62. On February 14, 2023, Plaintiff Moccia terminated the employment of Greg Heiar, the coach of the basketball team.

63. New Mexico State University then began investigations into the allegations.

64. These investigations included two investigations by outside law firms.

65. The University first retained a national law firm, Greenberg Traurig, to review the University's anti-hazing policy and make recommendations for hazing prevention measures.

66. Greenberg Traurig interviewed 11 witnesses, including the University's General Counsel, Dean of Students, Deputy Director of the Office of Institutional Equity, and Plaintiff Moccia.

67. Greenberg Traurig made some general recommendations regarding additional training for all students and employees.

68. Greenberg Traurig did not single out the Athletic Department or find any wrongdoing within the Athletic Department.

69. A second investigation was then conducted by Lightfoot, Franklin and White, LLC, an Alabama-based law firm that bills itself as "a go-to firm for colleges and universities seeking counsel . . . in matters involving NCAA compliance, campus investigations and related legal issues," with clients from the American Athletic Conference, the Atlantic Coast Conference (ACC), Conference USA, Big Ten Conference, Big 12 Conference, Mountain West Conference Pac-12 Conference, and Southeastern Conference (SEC).

70. That investigation found that Plaintiff Moccia did not know of any allegations of hazing or sexual assault prior to being notified of the Benjamins' report to NMSU police by Chancellor Arvizu, and that Plaintiff Moccia followed

University policy and took all appropriate actions following the communications the Athletic Department had with Paul Grindstaff and William Benjamin.

71. This conclusion was made after interviewing more than 80 witnesses, including Athletic Department staff and Aggie athletes and coaches from all sports.

72. Lightfoot, Franklin and White, LLC prepared a report following this investigation.

73. That report stated: “Student-athletes overwhelmingly reported a positive experience at the University. None reported having raised a meaningful concern with their treatment or well-being that was not institutionally addressed in some way.”

74. That report also stated: “Lightfoot’s investigation of potential misconduct included, but was not limited to, sexual misconduct, hazing/bullying, gambling, alcohol and drug abuse/culture, discrimination, and the prevalence and/or possession of firearms. Generally, Lightfoot concludes that the well documents men’s basketball misconduct during the 2022-2023 season was limited to that program, was a significant departure from the norm for student-athletes and coaches at the University, and is not indicative of a systemic issue within the Athletics Department.”

75. That report also stated: “Lightfoot identified no previous unreported issues of sexual misconduct within the Department. Issues that were previously reported appear to have been resolved in accordance with University policy and

procedure and, based on the information Lightfoot reviewed, do not indicate a systemic issue.”

76. That report also stated: “No witness identified any previously unreported conduct that arises to the level or reportable hazing or bullying. Concerning an instance of hazing that had been previously reported, Lightfoot concluded that Department staff took timely and appropriate steps to address the issue and report it to appropriate University personnel.”

77. That report also stated: “The Athletics Department appears to take a proactive approach to addressing potential misconduct.”

78. That report also stated: “Lightfoot found no evidence of Department staff failing to report potential misconduct to an appropriate on-campus office.”

79. That report also stated: “Student-athletes overwhelmingly reported a positive experience at the University.”

80. New Mexico State University also conducted an internal investigation carried out by the Office of Institutional Equity.

81. The Office of Institutional Equity is the only department at the University permitted to investigate allegations that implicate Title IX or the University’s anti-discrimination policies.

82. That investigation interviewed more than 40 witnesses, including every member of the men’s basketball team, every coach, every team manager, and several members of the Athletic Department staff.

83. That investigation confirmed that Plaintiff Moccia had no knowledge of the allegations of hazing or sexual assault prior to being informed by Chancellor Arvizu of William and Deuce Benjamin's report to the NMSU police.

84. That investigation also confirmed that Plaintiff Moccia followed University policy after learning of the conversation with Paul Grindstaff and after his telephone call with William Benjamin.

85. In sum, each investigation came to the same conclusion: Plaintiff Moccia did not know about any allegation of hazing, sexual harassment, or sexual assault, and Plaintiff Moccia took immediate action that complied with university policy once he became aware of the men's basketball hazing.

86. Since these investigations, several former men's basketball players and a student manager filed lawsuits against the University.

87. Attorneys in these lawsuits have conducted more than 30 depositions of witnesses from the Athletic Department, coaches, University leadership, and the plaintiffs.

88. Not a single witness in any of the depositions testified that Plaintiff Moccia knew about any hazing or sexual assault within the men's basketball team or that Plaintiff Moccia violated any University policy.

Plaintiff Moccia's and the University's Response to the Hazing Allegations

89. Following disclosure of the hazing, Plaintiff Moccia worked with University leadership to identify and implement many changes to ensure that such hazing never happened again.

90. The changes included a list of action items approved by Interim President Jay Gougue, who compiled the list in consultation with Secretary Stephanie Rodriguez, the Secretary of New Mexico's Department of Higher Education.

91. Interim President Jay Gogue then created a Hazing Prevention Task Force that included staff members from the Athletic Department.

92. Plaintiff Moccia worked with University leadership and the Hazing Prevention Task Force to have the Athletic Department carry out tasks compiled by President Gogue and Secretary Rodriguez.

93. In July 2023, Plaintiff Moccia had the Athletic staff attend training with the Interdisciplinary Institute for Hazing Prevention.

94. Plaintiff Moccia helped arrange workshops for all student-athletes, coaches, administrators, and staff with Speaker Kim Novak, a national expert in student-focused risk management, student organization conduct, hazing prevention, and campus safety.

95. Plaintiff Moccia held individual student meetings to build a stronger anti-hazing, "if you see something say something" culture at NMSU.

96. Plaintiff Moccia helped develop and display charts informing Aggie athletes of how to report allegations of misconduct.

97. Plaintiff Moccia worked to establish new procedures to improve communication between Aggie athletics and the Dean of Students to ensure timely response to allegations of misconduct.

98. Plaintiff Moccia helped put in place a policy that required University administrators and compliance personnel to travel with Aggie teams to ensure proper supervision of student athletes.

99. Plaintiff Moccia helped put in place a policy that any athlete with a history of misconduct that wished to transfer to NMSU had to agree to a student behavior plan approved by the Dean of Students, their coach, and Aggie athletics prior to becoming eligible to play.

100. Plaintiff Moccia helped create a policy that any student athlete leaving NMSU would undergo an exit interview with the Dean of Students to identify why the student was leaving the program.

101. New Mexico State University also joined the International Stop Hazing Consortium.

102. These efforts were widely viewed as a success inside of the University.

Plaintiff Moccia's 2023 Contract Extension

103. On July 1, 2023, Defendant Board of Regents of New Mexico State of University and Plaintiff Moccia entered into a new employment agreement.

104. That agreement extended Plaintiff Moccia's employment as Athletic Direction from July 1, 2023 through July 30, 2028.

105. The agreement also guaranteed Plaintiff Moccia the following annual compensation, which included yearly raises:

<u>AS OF:</u>	<u>AMOUNT:</u>
July 1, 2023	\$351,800
July 1, 2024	\$371,800
July 1, 2025	\$391,800
July 1, 2026	\$400,000
July 1, 2027	\$425,000

106. The agreement included various types of incentive compensation that would be due to Plaintiff Moccia should certain academic, athletic, or revenue benchmarks be met.

107. The agreement also stated that Defendant Board of Regents was required to pay Plaintiff Moccia for any earned incentive compensation remaining salary, and benefits should he be terminated before the expiration of the contract:

5.1 Termination Generally. This Agreement terminates upon the Expiration Date as set forth in the Defined Key Terms, or earlier under any applicable circumstance set forth below. Unless the Agreement explicitly states otherwise, NMSU's obligation upon any termination of this Agreement before the expiration of the Term (or before the expiration of any signed written extension of this Agreement), is limited to the payment of salary, benefits, any earned Supplemental Incentive Compensation, as set forth in Schedule A, and any Additional

108. The only exception to this requirement was if Plaintiff Moccia was terminated for cause.

109. Termination for cause was specifically defined by the agreement as “the occurrence of any one or more” of 15 specified incidents or events.

110. The first such event was defined at Section 5.3.1 of the agreement:

5.3.1. Director's neglect or inattention to the duties set forth in this Agreement or abandonment of job duties for a period of at least three days without reasonable justification or approved leave of absence, or Director's refusal, unwillingness or inability to perform those duties in good faith after reasonably specific written notice has been given to Director by the Chancellor, and Director has continued that neglect, inattention, refusal, unwillingness or inability during a later period specified in the notice by NMSU;

111. The second such event was defined at Section 5.3.2 of the agreement:

5.3.2. Director's material, significant or repetitive violation or breach of this Agreement, or the Rules;

112. The third such event was defined at Section 5.3.3 of the agreement:

5.3.3. Director's conviction of a crime (excluding any minor traffic offense);

113. The fourth such event was defined at Section 5.3.4 of the agreement:

5.3.4. Director's fraud or dishonesty in the performance of Director's duties or responsibilities under this Agreement;

114. The fifth such event was defined at Section 5.3.5 of the agreement:

5.3.5. Director's actions or inactions that permit, encourage or condone any fraudulent or dishonest act by any person in any matter relating to the Athletics Program or compliance with the Rules, provided that Director had actual prior knowledge of that fraudulent or dishonest act or reasonably should have known about the fraudulent or dishonest act;

115. The sixth such event was defined at Section 5.3.6 of the agreement:

5.3.6. Director's failure to respond accurately and fully, within a reasonable time, to any reasonable request or inquiry by NMSU, NCAA, the Conference or other governing body having supervision over the Program, relating to the performance of Director's duties while serving as Director for NMSU, or relating to the performance of Director's duties during any prior employment at any other institution of higher learning;

116. The seventh such event was defined at Section 5.3.7 of the agreement:

5.3.7. Director's failure to manage the Athletics Program and its staff and team members in a manner that reflects the academic values of NMSU as set forth in this Agreement, if that failure continues after NMSU has notified Director of the failure and provided a reasonable opportunity to correct that failure;

117. The eighth such event was defined at Section 5.3.8 of the agreement:

5.3.8. Director's counseling or instructing of any person to avoid or refuse to respond accurately and fully, within a reasonable time, to any reasonable request, inquiry or investigation – concerning a matter relevant to the Program or an athletics program at any other institution of higher learning –that is made by NMSU, NCAA, the

Conference or other governing body having supervision over the Program, or as required by law, the Rules;

118. The ninth such event was defined at section 5.3.9 of the agreement:

- 5.3.9. Director's knowing involvement in or with gambling on any intercollegiate or professional athletics contest including:
- a. soliciting, placing or accepting a bet;
 - b. actively permitting, condoning or encouraging any illegal gambling, bookmaking or illegal betting by others who are under Director's direction or control (whether through a bookmaker, a parlay card, a pool or any other method of organized gambling); or
 - c. consorting or associating with, or furnishing information or data relating in any manner to any sport to any individual known by Director to be, or whom he/she should reasonably know to be, a gambler, better or bookmaker, or an agent of any such person;

119. The tenth such event was defined at section 5.3.10 of the agreement:

- 5.3.10. Director's use or consumption of alcoholic beverages, drugs, controlled substances, steroids or other chemicals in such degree and for such appreciable period as to impair significantly or materially Director's ability to perform Director's duties under this Agreement; or failure by Director to fully cooperate in the enforcement and implementation of any drug testing program established by NMSU for student athletes;

120. The eleventh such event was defined at section 5.3.11 of the agreement:

- 5.3.11. Director's intentional sale, use or possession of any narcotics, drugs, controlled substances, steroids or other chemicals, the sale, use or possession of which is prohibited by law or the Rules or Director's actively permitting, encouraging or condoning any other person in the sale, use or possession, of any narcotics, drugs, controlled substances, steroids or other chemicals, the sale, use or possession of which is prohibited by law or the Rules;

121. The twelfth such event was defined at section 5.3.12 of the agreement:

- 5.3.12. Director's failure to report promptly to the Chancellor any known or suspected violation of the Rules by coaches, staff, students or other persons under the direct control or supervision of Director;

122. The thirteenth such event was defined at section 5.3.13 of the agreement:

5.3.13. Director's failure to obtain prior approval for outside activities, or to report accurately all sources and amounts of income and benefits, as required under this Agreement or the Rules;

123. The fourteenth such event was defined at section 5.3.14 of the agreement:

5.3.14. Director's active participation or involvement in any act, situation, or occurrence that, in the Chancellor's reasonable judgment, brings Director into public disrepute, contempt, scandal or ridicule, including Director's engagement in conduct offending prevailing social mores and values and/or reflecting unfavorably upon NMSU's reputation and overall primary mission and objectives (that conduct including but not limited to: public intoxication, driving while under the influence of drugs or alcohol, sexual harassment or assault, any sexual act or relationship with an NMSU student or staff subordinate, acts of dishonesty, misrepresentation, fraud or violence, irrespective of whether those acts rise to a level warranting criminal prosecution by the relevant authorities); or

124. The fifteenth, and final, such event was defined at section 5.3.15 of the agreement:

5.3.15. a finding that the Director seriously or intentionally violated the Rules, or Director's active approval or support or complicity in any serious or intentional violation of the Rules by any Program staff or student athletes.

125. By identifying the 15 ways that Plaintiff Moccia could be terminated for cause, Defendant Board of Regents agreed that any action that was not one of those 15 specified actions could not serve as cause to terminate Plaintiff Moccia.

Valerio Ferme Appointed President of NMSU

126. On September 19, 2024, Valerio Ferme was selected to be the next President of NMSU.

127. Ferme was brought in as a University employee, with title of President-Designate, in November of 2024 and became the President of NMSU on January 2, 2025.

128. During this time, Ferme did not take reasonable efforts to become aware of the background, response, and other relevant materials related to the men's basketball hazing incident.

129. For example, Ferme did not fully review and analyze the Greenberg Traurig, Lightfoot, or NMSU Office of Institutional Equity investigation reports.

130. If Ferme had fully reviewed those investigation reports, Ferme would have been aware that Plaintiff Moccia responded immediately and appropriately to the hazing and sexual assault allegations arising out of the men's basketball team.

131. Prior to taking office on January 2, 2025, Ferme had a single conversation with Plaintiff Moccia.

132. That conversation lasted approximately 20 minutes.

133. The hazing and sexual assault incidents from the men's basketball team were never discussed in that conversation.

134. Ferme did, however, ask Plaintiff Moccia multiple times why he was still the Athletic Director of NMSU, and asked Plaintiff Moccia why he had not left to take a better job at another university.

135. Plaintiff Moccia told Ferme that he had stayed with NMSU, even though he was approached by other programs, because he was an alumnus, he loved

the University and the community, and that he wanted to raise his family in Las Cruces.

136. Ferme also failed to review the actions taken by the University following the men's basketball hazing incidents.

137. If Ferme had done so, Ferme would have discovered that Interim President Jay Gogue prepared a list of actions for the University and Athletics to take in response to the incidents that was made in consultation with Stephanie Rodriguez from the State Department of Higher Education.

138. Ferme would have also discovered that all but one of the items on that list had been completed prior to Ferme being hired.

139. And Ferme would have discovered that Plaintiff Moccia successfully carried out every action item for the Athletics Department.

Defendant Board of Regents of New Mexico State University's Breach of Contract with Plaintiff Moccia

140. On January 2, 2025, approximately one hour after taking office, Ferme terminated Plaintiff Moccia's contract with Defendant Board of Regents of New Mexico State University.

141. Ferme took this action even though he failed to make any reasonable efforts to become aware of the background, response, and other relevant materials related to the men's basketball hazing incident.

142. When terminating Plaintiff Moccia, Defendant Board of Regents of New Mexico State University identified four contractual events it believed to allow termination of the contract with cause:

Termination for
Cause

5.3.1	Director's neglect or inattention to the duties set forth in this Agreement.
5.3.2	"Director's material, significant or repetitive violation or breach of this Agreement, or the Rules."
5.3.12	Director's failure to report promptly any known or suspected violation of the Rules by coaches, staff, students or others under the direct supervision of the Director.
5.3.15	A finding that the Director "seriously or intentionally" violated the Rules.

143. But the termination notice did not identify how Plaintiff Moccia allegedly violated these provisions and why he was being terminated with cause.

144. The termination notice did not identify how Plaintiff Moccia neglected or was inattentive to his duties under the agreement.

145. The termination notice did not identify how Plaintiff Moccia materially, significantly, or repetitively violated any portion of the agreement or the University's rules.

146. The termination notice failed to do so because Plaintiff Moccia complied with every portion of his employment agreement and every University rule.

147. The termination notice did not identify how Plaintiff Moccia failed to report promptly any known or suspected violation of the University's rules by coaches, staff, students, or others under his direct supervision.

148. The termination notice failed to do so because, as found by every investigation, Plaintiff Moccia immediately reported or took action when notified of any potential violation of the University's rules.

149. The termination notice failed to identify how Plaintiff Moccia seriously or intentionally violated any University rule.

150. The termination notice failed to do so because Plaintiff Moccia never seriously or intentionally violated any University rule.

151. Plaintiff Moccia therefore was not terminated for cause.

152. Plaintiff Moccia could not have been terminated for cause because Ferme did nothing to investigate or make sure that the statements made in the termination letter were correct.

153. Ferme instead relied primarily on a politically motivated and factually flawed report from the New Mexico Department of Justice.

154. That report was facially invalid and therefore was not a proper basis to terminate Plaintiff Moccia.

155. Similarly, Ferme made multiple public statements which confirm that Plaintiff Moccia was not terminated for cause.

156. Those statements claimed that Plaintiff Moccia was terminated because Ferme believed that Plaintiff Moccia did not live up to Ferme's standards of leadership.

157. Plaintiff Moccia could not live up to some vague standard imposed by a supervisor that started employment less than one hour before terminating him.

158. Even so, living up to Ferme's unknown and vague standard of leadership was not a term of Plaintiff Moccia's contract with Defendant Board of Regents of New Mexico State University.

159. Ferme also testified in a deposition that he looked “at the concept of leadership,” when determining to terminate Plaintiff Moccia.

160. Plaintiff Moccia could not live up to some vague “concept of leadership” imposed by a supervisor that started employment less than one hour before terminating him.

161. The “concept of leadership” is also not a contract term or defined event for terminating Plaintiff Moccia for cause.

162. Ferme also testified in a deposition that Plaintiff Moccia was terminated because employees of Defendant Board of Regents of New Mexico State University should be “the best possible version” of themselves.

163. Plaintiff Moccia could not live up to some vague goal of being “the best possible version” of oneself within one hour of the supervisor that defined this standard had taken place.

164. Nor could Plaintiff Moccia live up to some vague goal of being “the best possible version” of oneself when the supervisor imposing the standard had one, 20-minute conversation with Plaintiff Moccia that only asked Plaintiff Moccia why he had not taken a better job in the previous 10 years.

165. Even so, being “the best possible version” of oneself is not a contract term or defined event for terminating Plaintiff Moccia for cause.

166. Ferme also testified in a deposition that Plaintiff Moccia was terminated because Ferme was looking to the future. In other words, Ferme

testified that he did not wish to work with Plaintiff Moccia once his employment at Defendant Board of Regents of New Mexico State University began.

167. By focusing on the future, instead of past actions, Ferme admitted that Defendant Board of Regents of New Mexico State University did not terminate Plaintiff Moccia for cause because a termination for cause could only occur *after* certain events occurred.

168. Ferme also testified in a deposition that Plaintiff Moccia was terminated because Ferme wanted to move Defendant Board of Regents of New Mexico State University's "culture to a level of excellence."

169. Plaintiff Moccia could not live up to Ferme's vague "level of excellence" in the one-hour Ferme took to terminate Plaintiff Moccia after Ferme took office.

170. Even so, elevating the University's "culture to a level of excellence" is not a contract term or defined event for terminating Plaintiff Moccia for cause.

171. Ferme also stated that he terminated Plaintiff Moccia because he did not respond quickly enough and enact sufficient corrective measures following the 2022-2023 hazing incidents.

172. This statement was pretextual.

173. Ferme made no effort to review internal documents that show that Plaintiff Moccia quickly responded, followed all University policies, and took extensive corrective action in consultation with then Interim President Jay Gogue.

174. Ferme later admitted during a deposition that he did not “know what was going on in the athletic department” prior to him becoming the President of New Mexico State University.

175. Because Ferme did not “know what was going on in the athletic department” prior to his employment, he could not have cause for terminating Plaintiff Moccia.

176. Ferme also admitted in a deposition that he did not even read Plaintiff Moccia’s contract before seeking to terminate him for cause.

177. Because Ferme did not read Plaintiff Moccia’s employment contract, he could not have cause for termination Plaintiff Moccia.

178. Ferme’s decision to terminate Plaintiff Moccia was also biased as Ferme stated he underwent hazing while part of the rowing team during his undergraduate education at Brown University.

179. Despite that event taking place decades ago, President Ferme stated in a deposition that the hazing had such a negative effect on him that he did not “want to talk about” it.

180. That event, which obviously influenced Ferme decades after it occurred, was an important factor in terminating Plaintiff Moccia.

181. That even, however, could not serve as cause to terminate Plaintiff Moccia.

182. Upon information and belief, Ferme also terminated Plaintiff Moccia because he received pressure from the administration of Governor Michelle Lujan

Grisham, including but not limited to, the Secretary of Higher Education Stephanie Rodriguez.

183. This pressure is demonstrated by a letter from Secretary of Higher Education Stephanie Rodriguez that instructed the University that Plaintiff Moccia's salary could not be paid with state funds, which had already been approved by the Legislature.

184. This pressure is also demonstrated by later emails and communications where Ferme would update the Governor's office, including the Governor's general counsel Holly Agajanian and deputy chief operating officer Caroline Buerkle, on what he termed to be the progress he was making after taking office.

185. Ferme did so by sending a spreadsheet with actions taken by the University after the hazing, when those actions were completed, and who participated in carrying them out.

186. That spreadsheet, however, was not created by Ferme.

187. The spreadsheet was created while Interim President Jay Gogue was the head of the University.

188. Every corrective measure stated in the spreadsheet, except for one, was completed prior to Ferme being chosen as the University's new President.

189. This fact did not stop Ferme from taking credit for actions taken by the Athletics Department under Plaintiff Moccia's leadership after Ferme unlawfully terminated Plaintiff Moccia's contract.

190. Upon information and belief, President Ferme also terminated Plaintiff Moccia because of political pressure he received from other sources, such as from the New Mexico Department of Justice and its flawed investigation.

191. Plaintiff Moccia's termination under these circumstances was not a termination for cause.

Plaintiff Moccia's Request to Inspect Public Records

192. On July 16, 2025, Moccia submitted a request seeking to inspect public records to Defendant Board of Regents of New Mexico State University.

193. That request included a request to inspect:

6. Any communications, whether written, by email (either NMSU or personal email), text message, or otherwise between any member of the President Valerio Ferme and/or any employee of the President's Office, and New Mexico Secretary of Higher Education Stephanie Rodriguez, and/or any employee of the New Mexico Higher Education Department, regarding Mario Moccia, the NMSU Athletics Department, the NMSU men's basketball team, Greg Heiar, Amber Burdge, William "Deuce" Benjamin, Jr., William Benjamin, Shakiru "Shak" Odunewu, Doctor Bradley, Kim Aiken Jr., and/or Deshawndre Washington. This request includes any such communications that occurred prior to Jan. 1, 2025 as President Ferme has testified in a deposition that he discussed Mario Moccia and the termination with others prior to Jan. 1, 2025.

194. On August 20, 2025, Defendant Heather Chavez provided a redacted copy of certain records responsive to this request, alleging the redactions were required by *Hall v. City of Carlsbad*, 2023-NMCA-042:

Bullet Point 6 – Documents via share folder; redactions were made pursuant to the Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g; additionally, redactions in the file labeled “BP 6 attachment November 9 email NMHED Secretary Rodriguez_Redacted” were made as permitted under *Hall v. City of Carlsbad*, 2023-NMCA-042, as a matter of opinion that constitutes personnel information regarding the employer/employee relationship and undertaken for the purpose of determining whether to take disciplinary action.

195. The records that were redacted were not, however, “matters of opinion that constitutes personnel information regarding the employer/employee relationship” and were not “undertaken for the purpose of determining whether to take disciplinary action.”

196. The redaction of those records thus violated the New Mexico Inspection of Public Records Act.

197. Moccia’s request to inspect public records also sought:

12. Any communications between the NMSU Office of General Counsel and any other employee, outside attorney, contractor, and/or any other person related to the renewal/extension of Mario Moccia’s contract as the Athletics Director for NMSU. This request includes, but is not limited to, any communication detailing the negotiations related to that contract extension. If a specific communication is considered privilege or attorney work-product, then please provide a privilege log of any records that are being withheld.

198. On August 20, 2025, Defendant Isaiah Herrera denied this request and refused to turn over records responsive to this request because the responsive records were protected by the attorney-client privilege and work product doctrine.

199. Communications, however, between NMSU employees and representatives of Plaintiff Moccia that detail negotiations for his 2023 contract extension are not privileged or protected by the attorney work product doctrine.

200. The refusal to provide those responsive records thus violated the New Mexico Inspection of Public Records Act.

Count I – Breach of Contract

Against Defendant Board of Regents of New Mexico State University

201. Plaintiff Moccia incorporates by reference all the preceding paragraphs as if fully realleged herein.

202. Defendant Board of Regents of New Mexico State University entered into a written contract with Plaintiff Moccia which governed his employment as Athletic Director with New Mexico State University.

203. That contract was a valid, enforceable contract.

204. That contract included a term that Plaintiff Moccia, upon termination, was to be paid any earned incentive compensation and any future salary guaranteed by the contract.

205. Defendant Board of Regents of New Mexico State University breached the contract by contending it terminated Plaintiff Moccia for cause when there were no grounds to do so.

206. Because Defendant Board of Regents of New Mexico State University terminated Plaintiff Moccia without cause, Plaintiff Moccia was entitled to his earned incentive compensation, benefits, and \$1,402,700 of unpaid salary.

207. Defendant Board of Regents of New Mexico State University breached the contract by failing to timely pay Plaintiff Moccia his unpaid salary and benefits at the time of the termination.

208. Defendant Board of Regents of New Mexico State University separately breached the contract by failing to timely to pay Plaintiff Moccia his earned incentive compensation at the time of his termination.

209. The resulting failure of the University to make timely payments to Plaintiff Moccia of the remaining amounts due under the contract entitles Plaintiff Moccia to collect “attorneys’ fees, arbitration expenses, and court costs.”

210. Plaintiff Moccia is entitled to an award of damages caused by Defendant Board of Regents of New Mexico State University's breach of contract.

Count II – Violation of the N.M. Inspection of Public Records Act
Against Defendants Heather Chavez and Isaiah Herrera, in their capacities as records custodians for New Mexico State University

211. Plaintiff Moccia incorporates by reference all the preceding paragraphs as if fully realleged herein.

212. Defendants Chavez and Herrera operated as records custodians for New Mexico State University.

213. Defendants Chavez and Herrera have violated the Inspection of Public Records Act by failing to produce public requests requested by Moccia.

214. Defendant Chavez unlawfully redacted public records that were subject to public inspection without redaction.

215. Defendant Herrera unlawfully withheld public records that were subject to public inspection.

216. In doing so, Defendants Chavez and Herrera are attempting to keep secret matters that are subject to public inspection.

217. As a result, Moccia has suffered actual damages under NMSA 1978, § 14-2-11(C).

218. As a result, Moccia is entitled to recovery statutory penalties of \$100 per day according to NMSA 1978, § 14-2-11(C).

219. As a result, Moccia is entitled to a writ of mandamus or injunction, according to NMSA 1978, § 14-2-12(B), ordering that Defendants Chavez and Herrera immediately produce the public records for inspection by Moccia.

220. As a result, Moccia is entitled to recover attorneys' fees and costs according to NMSA 1978, § 14-2-12(D).

Prayer for Relief

Plaintiff Mario Moccia requests that the Court:

A. Determine that Defendant Board of Regents of New Mexico State University breached the written contract between it and Plaintiff Mario Moccia by failing to pay him the \$1,402,700 remaining on his contract, benefits, and earned incentive compensation that he is owed by that contract;

B. All costs of collection, including attorneys' fees, arbitration expenses (if necessary), and court costs;

C. Determine that Defendants Heather Chavez and Isaiah Herrera improperly failed to provide public records under the New Mexico Inspection of Public records Act;

D. Issue a writ of mandamus or injunction ordering Defendants Chavez and Herrera to produce the records and documents requested by Plaintiff Moccia without redactions or further delay;

E. Award statutory penalties equal to \$100 per day since the filing of the IPRA requests at issue according to NMSA 1978, § 14-2-11(C);

F. Award Plaintiff Mario Moccia compensatory damages;

G. Award Plaintiff Mario Moccia damages, costs, and reasonable attorneys' fees as required by NMSA 1978, § 14-2-12(D); and

H. Award such other relief the Court deems necessary.

Respectfully submitted,

/s/ Nicholas T. Hart

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