IN THE COURT OF COMMON PLEAS
SUMMIT COUNTY, OHIO

MARCUS WATTLEY
c/o The Pattakos Law Firm LLC
101 Ghent Road
Fairlawn, Ohio 44333

FRANK MCLEOD
c/o The Pattakos Law Firm LLC
101 Ghent Road
Fairlawn, Ohio 44333

ZACHARY SWEAT
c/o The Pattakos Law Firm LLC
101 Ghent Road
Fairlawn, Ohio 44333

ROMERO HARRIS
c/o The Pattakos Law Firm LLC
101 Ghent Road
Fairlawn, Ohio 44333

CADE BRODIE
c/o The Pattakos Law Firm LLC
101 Ghent Road
Fairlawn, Ohio 44333

TYLER THATCHER
c/o The Pattakos Law Firm LLC
101 Ghent Road
Fairlawn, Ohio 44333

Plaintiffs,

v.

LIBERTY MUTUAL INSURANCE COMPANY
c/o Corporation Service Company
3366 Riverside Drive, Suite 103
Upper Arlington, OH 43221

Case No.: _____

Judge: _____

Complaint with Jury Demand

KATHRYN PERRICO 7744 Hill Court Northfield, OH 44067 JEFFERY TALBERT *in his individual capacity* Canton City School District 305 McKinley Avenue NW Canton, Ohio 44702 Defendants.	

I. Introduction

1. This case arises from a collusive "sham" settlement that was specifically engineered by Defendants Jeffrey Talbert and his attorney, Kathryn Perrico, to harm Plaintiffs' legal rights under a policy of insurance issued by Defendant Liberty Mutual Insurance Company ("Liberty"). By this lawsuit, Plaintiffs seek to hold accountable not only those parties that orchestrated the sham settlement but also the insurance company that wrongly allowed the settlement to proceed, which was contrary both to Plaintiffs' rights under the policy and Liberty's duty of good faith.

2. Plaintiffs are former coaches for the Canton McKinley High School football program (hereinafter, the "Coaches"). As described in further detail below, the Coaches commenced a defamation lawsuit in 2021 against various parties who participated in spreading a false narrative that caused the Coaches to suffer significant reputational and economic harm and the loss of their employment (the "Defamation Lawsuit"). Among those responsible was Defendant Talbert, who is the Superintendent of the Canton City School District (the "School District"). The School District had an insurance policy from Liberty, and pursuant to that policy, Liberty undertook to defend Talbert against the Coaches' defamation claims. Defendant Kathryn Perrico was retained by Liberty as Talbert's attorney in the Defamation Lawsuit.

3. While the case was pending, one of the other defendants in the Defamation Lawsuit filed a civil-rights lawsuit against the Coaches, Talbert, and the School District in federal court (the "Federal Lawsuit"). As a result, Liberty now had to provide a defense to the Coaches in the Federal Lawsuit under the same policy of insurance that was covering Talbert in the Defamation Lawsuit. Liberty also undertook to defend Talbert and the School District in the Federal Lawsuit and allowed Perrico to act as Talbert's attorney in both suits.

4. Given that these lawsuits involved overlapping parties who each had conflicting interests, the potential for conflicts of interest and collusion was foreseeable and almost certainly inevitable. And because the same attorney (Perrico) was allowed to represent Talbert and the School District in both lawsuits, Liberty allowed Perrico to manipulate the circumstances and craft a collusive settlement arrangement that was intended to benefit one of Liberty's insureds (Talbert and the School District) while simultaneously harming a co-insured under the same insurance policy (the Coaches).

5. Specifically, Perrico and Talbert recognized that Talbert's exposure to liability in the Defamation Lawsuit was directly correlated to the outcome of the Federal Lawsuit. Indeed, the Defamation Lawsuit requires showing that the Coaches did not engage in the very conduct that was alleged in the Federal Lawsuit. And because Talbert is a defendant in both cases, it would be to the School District's (and Liberty's) advantage to settle one suit in a manner that would significantly reduce their exposure in the other. And that is precisely what Talbert and Perrico conspired to do. Thus, instead of litigating and disposing of the baseless Federal Lawsuit for a nominal amount, Perrico recommended that Liberty settle the Federal Lawsuit for $125,000 (which was nearly double the plaintiffs' pending demand of $71,500) just to undermine the Coaches' claims and avoid a potentially higher judgment in the Defamation Lawsuit.

6. Moreover, when it came time to finalize the proposed "sham" settlement, Perrico drafted a

settlement agreement that purported to bind not only Talbert and the School District but also the Coaches themselves. However, the Coaches ***never*** authorized Perrico to settle any claims on their behalf. It also did not occur to Liberty to even notify the Coaches of this settlement agreement, let alone seek their consent (which is required by the insurance policy) even though Liberty had provided the Coaches with separate legal counsel under the policy for said claims. Instead, Liberty relied entirely on Perrico's representations and recommendations without doing any independent assessment of its own.

7. At all times, Liberty was on notice of the sharp conflict of interest described above, and as detailed further below, this conflict plainly threatened the legal and contractual interests of one of its own insureds, the Coaches. At best, Liberty allowed the "sham" settlement to occur; at worst, it was complicit in the scheme for its own financial benefit. Either way, such circumstances give rise to a bad-faith claim and breach-of-contract claim against Liberty And because Talbert and Perrico maliciously engineered the scheme in order to intentionally harm the Coaches' legal interests, they are similarly liable for tortiously interfering with the Coaches' contractual rights under their insurance policy.

II. Parties

8. Plaintiffs Wattley and Brodie are residents of Summit County.

9. Plaintiffs McLeod, Sweat, Harris, and Thatcher are residents of Stark County.

10. Defendant Liberty Mutual Insurance Company is a corporation authorized to do business in Ohio.

11. Defendant Kathryn Perrico is a resident of Summit County and is an attorney representing Jeffrey Talbert and the Canton City School District in various lawsuits related to this matter.

12. Defendant Jeffery Talbert is a Stark County resident and the Superintendent of the Canton City School District.

III. Jurisdiction and Venue

13. This Court has jurisdiction over all claims under R.C. 2305.01.

14. Defendant Perrico resides in Summit County, Ohio.

15. Plaintiffs Wattley and Brodie reside in Summit County, Ohio, wherein they were parties to the insurance contract at issue at all relevant times.

16. Venue is proper in this Court under Civ.R.3(C)(1), (2), and (3).

IV. Facts

A. Two lawsuits involving identical parties with conflicting interests are filed, which involve a sharp dispute over the same set of facts and in which parties on both sides of the dispute, in both cases, are covered by the same insurance policy from Liberty Mutual.

17. On May 24, 2021, the Coaches implemented a disciplinary exercise whereby they asked an underperforming student athlete, Khalil Walker, to relax and enjoy a pepperoni pizza while watching his teammates perform exercises. In response to Khalil's increasingly self-destructive behavior, which was jeopardizing his future prospects as a scholar and athlete, the Coaches sought to help Khalil appreciate how one player's selfish behavior can affect his teammates—a valuable lesson both on and off the field. Khalil understood the well-intended purpose of the exercise, and following the incident, Khalil hugged his coaches, thanked them for not giving up on him, and was even one of the first players to show up for practice the following day, where he apologized to his teammates and demonstrated a renewed sense of commitment and positive attitude.

18. Instead of receiving praise for turning things around for a troubled student, these caring coaches were instead defamed and smeared by various bad actors as "child abusers" who intentionally violated Khalil's professed religious beliefs. This false narrative quickly spread through local, national, and international media, which resulted in permanent damage to the Coaches' sterling reputations and the loss of their employment. This defamatory message was further amplified by the School District and its Superintendent, Talbert, who undertook a sham investigation that ignored

critical evidence showing that the Coaches did not know of Khalil's religious beliefs and thus could not have intentionally violated them. The Coaches were thus being smeared in the international press as anti-Semites, and Talbert made no effort to correct the record on this harmful narrative.

19. In order to protect their good names and hold those who spread the false narrative against them accountable, Plaintiffs sought to prove in a court of law that they never intentionally violated Khalil's religious beliefs. On July 12, 2021, Plaintiffs filed a defamation lawsuit against *inter alia* Talbert as well as Khalil, Khalil's father Kenneth Walker, and Khalil's attorney, Edward Gilbert, who publicly spread the false accusation that the Coaches knew of Khalil's religion and intentionally made him eat pork to harm him by violating his religious beliefs.[1]

20. When the Defamation Lawsuit was filed, the School District was insured through a policy issued by Liberty (the "Policy"). A true and accurate copy of the relevant portions of the Policy is attached hereto as **Exhibit 1**.[2]

21. In response to the Defamation Lawsuit and in accordance with the Policy, Liberty undertook to defend Talbert against the Coaches' claims. Liberty retained Defendant Perrico to represent Talbert in the Defamation Lawsuit.

22. On December 29, 2021, Edward Gilbert, on behalf of his clients Khalil and Kenny Walker (the "Walkers"), filed a civil-rights lawsuit in the U.S. District Court for the Northern District of Ohio (Case No. 21-cv-02423) against the Coaches, Talbert, and the School District based on the

[1] The Defamation Lawsuit was voluntarily dismissed under Civ.R. 41(A) on January 18, 2023, and was re-filed on May 24, 2023, and is still pending in the Stark County Court of Common Pleas as Case No. 2023CV00931.

[2] Pursuant to Civ.R. 10(D), Plaintiffs state that the entire Policy, as previously provided to Plaintiffs by the School District, consists of 887 pages, the inclusion of which would make this Complaint unnecessarily large and unwieldy. Only the relevant portion of the Policy is directly attached to this Complaint. A copy of the full Policy may be accessed through the following link: https://thepattakoslawfirmlcc.box.com/s/vb8o9pgfxr23mf5s8601sqeu6fxv5fgu

aforementioned disciplinary exercise on May 24, 2021. The Federal Lawsuit alleged that the Coaches were fully aware of Khalil's religious beliefs and intentionally violated them.

23. In response to the Federal Lawsuit, Liberty also undertook to defend Talbert and the School District under the same Policy. Liberty allowed Perrico to continue representing Talbert in both lawsuits.

24. The Coaches were also entitled to coverage as insured persons under the School District's Policy from Liberty. Thus, Liberty also undertook the Coaches' defense in the Federal Lawsuit, and Liberty engaged Attorney Markus Apelis to defend them.

25. The Defamation Lawsuit and the Federal Lawsuit are based on the exact same highly publicized series of events and involve identical parties. The allegations in these suits are sharply contested, diametrically opposed, and mutually exclusive such that only one side's position could be meritorious, while the other side's must necessarily be baseless and frivolous. More specifically, the Walkers either had a good-faith basis to allege that the Coaches intended to cause harm to Khalil by forcing him to eat pork (a pepperoni pizza) with intent to violate the player's alleged religious beliefs, or they did not. If the Walkers did not have a good faith basis for making these extremely inflammatory and facially absurd allegations against these coaches, the widespread publication of those allegations by the Walkers and their attorney Ed Gilbert, including in the New York Times, Washington Post, and ESPN.com, was necessarily defamatory.

B Liberty Mutual was on notice of its conflicted position in these lawsuits and the Coaches' intent to control their defense of the Federal Lawsuit, including to waive coverage, in order to protect the Coaches' interests asserted in their defamation suit.

26. Shortly after the Federal Lawsuit was filed, the Coaches specifically notified Liberty in writing of their willingness to waive coverage, and that they would "spare no expense" in defending the claims asserted in the sham Federal Lawsuit rather than agree to any settlement of those meritless claims. Thus, Liberty was on notice of its conflicted position in these lawsuits. The

Coaches maintained from the outset—including by statements published in the local newspapers and on the record in the defamation case, as well as in direct communications with Liberty-retained attorneys—that Gilbert and the Walkers only filed the Federal Lawsuit in bad faith, as a defensive maneuver against the Coaches' Defamation Lawsuit.

27. Markus Apelis, who was assigned by Liberty to defend the Coaches in the Federal Lawsuit, communicated to Gilbert and Liberty-retained counsel for the district, Perrico, that he "see[s] global resolution of all claims to be the only possible avenue toward any resolution, and that resolution piecemeal did not seem like a feasible way of ensuring that everyone's interests are protected." Apelis also acknowledged the Coaches' interest in "control[ling] the resolution of" the Federal Lawsuit. Indeed, the portion of the Policy under which the Coaches were covered—School Leaders Errors and Omissions Liability Coverage—provided that Liberty can only settle claims against an insured with the insured's consent. *See* **Exhibit A.**

28. On December 31, 2021, undersigned counsel for the Coaches specifically notified Mr. Apelis that it would be "extremely damaging to the coaches' interests" if Liberty would pay any sum, even a nuisance-value settlement, to resolve" the Federal Lawsuit, and that if it ever became Liberty's intention to do so, the Coaches "would reject any coverage under the policy" and assume responsibility for the defense of those claims. Additionally, undersigned counsel wrote a letter to Ms. Perrico confirming the Coaches' position as to the sham nature of the Federal Lawsuit, and that the Coaches would "spare no expense in defending against it." See letter attached as **Exhibit 2**. These communications to Liberty-appointed counsel were reported back directly to Liberty, or should have been.

C. The sham nature of the Federal Lawsuit was immediately and conclusively confirmed by the evidence discovered in the Defamation Lawsuit, as well as by the orders entered by both courts in the respective lawsuits.

29. The Coaches' beliefs as to the sham nature of the Federal Lawsuit were immediately and

conclusively verified by the evidence discovered in the Defamation Lawsuit, as well as by the court orders entered in the two respective lawsuits. Most significantly, Khalil Walker, the alleged victim of the shocking act of anti-Semitic abuse alleged in the local, national, and global press and in the Federal Lawsuit unequivocally admitted at his deposition that the Coaches did not even know about his alleged religious beliefs, and would have had no reason to know about them. Khalil also admitted at his deposition that he understood the lesson the Coaches were trying to teach him by asking him to relax and eat pizza while his teammates worked; that he was not harmed by this exercise; that he knew that the Coaches cared about his well-being and did not hate him; that he knew that the Coaches did not intend to violate his religious beliefs; that he had promised to "straighten things out" with School District officials because he didn't believe that the Coaches should be disciplined over the incident; and that he not only participated in a team-sponsored pork-rib-eating contest in the summer of 2019, but won the contest.

30. Based on this evidence, the trial court in the Defamation Lawsuit ruled that the Coaches' claims against the Walkers and their attorney, Gilbert, presented issues of triable fact as to whether their highly publicized accusations against the Coaches lacked a good-faith basis and were intended to extort a settlement out of the School District, or, in other words, intended to support a sham legal claim that turned into a sham lawsuit six months after the Coaches had filed their Defamation Lawsuit.

31. By contrast, the Walkers' claims against the Coaches in the Federal Lawsuit were dismissed on the pleadings, and the only claim the federal court allowed to proceed past the pleadings stage was a *Monell* claim that had no basis in law or fact and was conclusively proven meritless based on the same evidence that warranted denial of the Walkers' and Gilbert's motion for summary

judgment in the defamation case.[3]

32. Khalil's admissions at his deposition in the Defamation Lawsuit—among other voluminous evidence— left no doubt that the claims in the Federal Lawsuit were utterly meritless, and, indeed, a sham, as the Coaches had alleged from the start. The sham nature of these claims were further confirmed by the federal court in granting the Coaches' motion for judgment on the pleadings, wherein the court held that the Walkers "have failed to meet even the modest notice pleading standard applicable to their claims," and failed to "assert any facts that would support" a finding that the coaches had engaged in "a premeditated, calculated effort ... to embarrass and traumatize" Khalil Walker.

33. The foregoing developments in both lawsuits were reported to Liberty by Liberty-appointed attorneys, or should have been.

D. In disregard of its conflicted position, as well as the law and facts at issue in this matter, Liberty allowed Perrico to secretly orchestrate a sham settlement of the Walkers' lawsuit—whereby the Walkers were paid $125,000 on their baseless claims (nearly double their $71,500 demand), to which Liberty and Perrico bound the Coaches without the Coaches' consent or approval—that was intended to and did in fact damage the Coaches' position against Talbert in the defamation suit.

34. Despite the extraordinarily sharp and consequential conflict between Liberty and its insureds in this matter, and despite the developments in the respective lawsuits affirming the meritorious nature of the Coaches' position vis-à-vis the Walkers, Liberty permitted the School District to secretly agree to pay the Walkers a settlement of $125,000 to resolve their baseless civil rights claims, based solely on the recommendation of a conflicted attorney, Perrico. Liberty did not obtain the

[3] In particular, it is hornbook civil-rights law both that no *Monell* claim can proceed under 42 U.S.C. § 1983 without an underlying violation, and that there can be no claim of a constitutional violation under this statute without proof that the violation was intentional. *See*, *e.g.*, *Robertson v. Lucas*, 753 F.3d 606, 622 (6th Cir. 2014) ("There can be no liability under *Monell* without an underlying constitutional violation."); *Ahlers v. Schebil*, 188 F.3d 365, 373 (6th Cir.1999) ("A successful § 1983 claimant must establish that the defendant acted knowingly or intentionally to violate his or her constitutional rights, such that mere negligence or recklessness is insufficient.").

Coaches' consent for or approval of this settlement, and did not even provide them with notice of the impending settlement before it was reached. This $125,000 payment to which the School District agreed as of June 22, 2023, was nearly double the Walkers' most recent written demand of $71,500, which they had submitted just two months prior, on April 10, 2023 to settle the Federal Lawsuit. *See* **Exhibit 3**.

35. Moreover, Liberty permitted Perrico and the School District to bind the Coaches to the settlement agreement without giving the Coaches any say in the matter. A true and accurate copy of the signed settlement agreement is attached hereto as **Exhibit 4**.

36. Additionally, Liberty also permitted attorney Perrico to represent Talbert and the School District in the Federal Lawsuit despite her own conflicted position in the Coaches' defamation suit, wherein the Coaches took specific issue with her advice and actions on behalf of Talbert and the School District. Not only did Perrico's conflicted actions in orchestrating the settlement to the Walkers benefit Talbert and the School District to the direct detriment of the Coaches in the Defamation Lawsuit, they also benefited Perrico personally, vindicating her advice and actions that were at issue in the Defamation Lawsuit, and benefiting her personal interest in her business relationship with the School District's board members and superintendent. Perrico knew that the School District's payment of a six-figure settlement of the Walker's claims would, in the public's eye, vindicate her clients' decision to fire the Coaches based on Walker's allegations that the Coaches intentionally harmed him. She also knew that the payment of such a sizable settlement by the School District on these claims would substantially harm the Coaches' efforts to prove their claims in the defamation suit, including because a jury would, all else equal, be substantially less likely to believe that a lawsuit resulting in a six-figure settlement was a sham.

37. Perrico was in fact so eager to vindicate her interests with this settlement that she signed a "stipulated motion for dismissal with prejudice" on behalf of "all Defendants" in the Walkers'

federal suit, misrepresenting to the court that the Coaches agreed to the settlement, despite that she did not represent the Coaches nor could have due to the conflicts of interest that required Liberty to appoint separate counsel to the coaches in the federal suit. A true and accurate copy of the stipulated motion is attached hereto as **Exhibit 5**. The Coaches, and even Mr. Apelis, the Coaches' Liberty-appointed counsel, were not aware of the settlement agreement or dismissal of the Federal Lawsuit until it was made public on the court's docket in the federal case on June 26, 2023.

38. Although the settlement agreement facially purports to also resolve a separate lawsuit for "hazing" in violation of R.C. 2903.31 (the "Hazing Lawsuit"), the circumstances and suspicious timing surrounding this meritless action only strengthens the inference that Perrico and the School District entered a collusive settlement with Gilbert and the Walkers not for any legitimate reason, but rather to further harm the Coaches' reputations and interests in the Defamation Lawsuit.

39. The Hazing Lawsuit was filed in the Stark County Court of Common Pleas (2023CV00915) on May 23, 2023, which was (A) approximately one month after the Coaches learned that Gilbert's most recent demand to settle the Federal Lawsuit was $71,500 (a fact that Gilbert disclosed in an April 13, 2023 status conference that was taken on the record in the Federal Lawsuit), (B) less than two weeks before the scheduled June 6, 2023 mediation in the Federal Lawsuit, and (C) less than 1 month before the $125,000 settlement was finalized on June 22, 2023. As of the date the settlement was reached, the answer date to the Hazing Lawsuit had not yet even passed, and the Coaches' attorneys were in the process of drafting a Rule 12 motion for dismissal that would have disposed of all claims against all defendants in the Hazing Lawsuit. As with the Federal Lawsuit, Perrico agreed to settle the Hazing Lawsuit on the Coaches' behalf without any authority to act on the Coaches' behalf, and despite a clear conflict of interest that barred her from acting on the Coaches' behalf.

40. This Hazing Lawsuit was in fact based on the exact same events that gave rise to the Federal Lawsuit, which was nearly entirely dismissed on the pleadings. Thus, the claims in the Hazing

Lawsuit were already barred by collateral estoppel. Furthermore, Talbert has admitted under oath that the Hazing Lawsuit had no bearing on his approval of the $125,000 settlement, and he was independently told by investigating police officers that the version of the statute that was in force at the time of the alleged "hazing" was inapplicable.

41. There is no plausible reason for why the settlement amount jumped up by nearly $50,000 between April 13 and June 22, 2023. To the contrary, it is apparent that the Hazing Lawsuit was slapped together by Gilbert and the Walkers, in collusion with Perrico and Talbert, as a pretext to try to justify the unreasonable settlement that was intended to damage the Coaches' reputations and their interests in the Defamation Lawsuit. It may in fact be inferred from the facts as alleged herein, and is likely to be further confirmed by discovery of phone records, text messages, and other documents, that Perrico and/or Talbert specifically suggested to Gilbert that he file the Hazing Lawsuit to increase the damage to the Coaches. Regardless, only collusion can explain why the School District rushed to settle a claim for nearly double what was demanded before the Coaches could even file a Rule 12 motion to dismiss, which would have exposed the fundamental meritlessness of the Walkers' Hazing Lawsuit.

E. A Liberty Mutual representative has confirmed under oath that Liberty gave no consideration whatsoever to the Coaches' interests or the conflicts of interest at issue in this matter, had no reasonable basis for approving the sham settlement to the Walkers, and was unduly influenced by Perrico in authorizing the settlement.

42. On May 1, 2024, senior claims specialist for Liberty, Kari Finnegan, testified in the Coaches' Defamation Lawsuit about Liberty's approval of the settlement with the Walkers, pursuant to a subpoena served by the Coaches on Liberty and Liberty's designation of Finnegan as its authorized representative under Civ.R. 30(B)(5).

43. Finnegan confirmed that she was the adjuster assigned to the file, and that she was the Liberty representative who authorized the insurer's final approval of the settlement.

44. Finnegan's testimony was unequivocal that, in authorizing the settlement, Liberty gave no

consideration whatsoever either to the Coaches' interests in the Defamation Lawsuit, or to the conflicts of interest between the Coaches and the School District. Finnegan also unequivocally testified that she gave no consideration to any real or potential conflicts of interest pertaining to Ms. Perrico's representation as counsel retained by Liberty to defend the district in the Federal Lawsuit, let alone provide informed consent to such conflicts. Finnegan testified that she would have relied on Perrico to advise her of any such conflicts, and that Perrico failed to so advise her.

45. Additionally, Finnegan confirmed that she gave no consideration whatsoever to the evidence discovered in the Defamation Lawsuit, or the extent to which that evidence would impact the Walkers' claims in the Federal Lawsuit.

46. Finnegan could not articulate any reasonable basis for authorizing such an expensive settlement of such meritless claims, and when pressed to do so—including by reference to the law and facts conclusively barring relief to the Walkers—could only respond that she relied on Perrico's advice in authorizing the settlement. Finnegan's testimony confirms that she made no meaningful independent assessment of the advice she received from the district's conflicted attorney that the Walkers' claims merited payment of a six-figure sum.

V. Claims

Count One
Bad Faith
(against Defendant Liberty Mutual)

47. Plaintiff realleges all of the above paragraphs as though fully rewritten herein.

48. The duty of good faith is implicit in every insurance contract. Liberty Mutual owes Plaintiffs a duty of good faith and fair dealing under the Policy.

49. Liberty Mutual's duty includes an affirmative duty to act in good faith in handling Plaintiffs' claims and taking care to avoid participating in and otherwise authorizing collusive settlements that are intended harm the interests of an insured.

50. Liberty Mutual breached its duty of good faith and fair dealing to Plaintiffs when it participated in and otherwise authorized a collusive settlement agreement engineered by the School District and its conflicted agents that Liberty Mutual knew or should have known was specifically intended to harm Plaintiffs interests.

51. Liberty Mutual's conduct described above was arbitrary and capricious; was malicious, reckless, wanton and gross; and demonstrated a conscious disregard for Plaintiffs' rights under the Policy. As a direct and proximate result of Liberty Mutual's breach of its duty of good faith under the Policy, Plaintiffs have suffered damage to their personal and professional reputations and have suffered economic damages in excess of $25,000, in an amount to be determined at trial.

Count Two
Breach of Contract
(against Defendant Liberty Mutual)

52. Plaintiffs reallege all of the above paragraphs as though fully rewritten herein.

53. The Policy constitutes a contract between Plaintiffs and Liberty Mutual.

54. Plaintiffs have fulfilled all of their contractual obligations under the Policy.

55. Pursuant to the Policy, Liberty Mutual undertook to defend Plaintiffs against legal claims brought against them in the Federal Lawsuit and the Hazing Lawsuit.

56. The Policy provides that Liberty Mutual can only settle claims against Plaintiffs with Plaintiffs' consent.

57. Liberty Mutual breached its contract with Plaintiffs by authorizing and paying for the settlement of claims against Plaintiffs in the Federal Lawsuit and the Hazing Lawsuit without notifying Plaintiffs or seeking their consent to the settlement.

58. Additionally, Liberty independently breached its duty of good faith and fair dealing by authorizing the collusive settlement, which was unreasonable and intended to harm the insured Coaches.

59. As a direct and proximate result of Liberty Mutual's breaches of the Policy, Plaintiffs have suffered damage to their personal and professional reputations and have suffered economic damages in excess of $25,000, in an amount to be determined at trial

Count Three
Tortious Interference with Contract
(against Defendants Perrico and Talbert)

60. Plaintiffs reallege all of the above paragraphs as though fully rewritten herein.

61. Plaintiffs assert this Count Three against Defendants Perrico and Talbert in their individual capacities.

62. At all times relevant, Perrico was acting on her own behalf and to further her own personal interests, and also as an agent of the Canton City School District, and also as an agent of Liberty Mutual, who retained her as counsel in the Defamation Lawsuit, the Federal Lawsuit, and the Hazing Lawsuit.

63. The Policy establishes a contract between Plaintiffs and Liberty Mutual, which gives Plaintiffs various contractual rights thereunder.

64. Defendants Perrico and Talbert were aware of Plaintiffs' contractual rights as insureds under the Policy.

65. Perrico and Talbert, without any privilege or justification, intentionally interfered with Plaintiffs' contractual rights under the Policy by engineering a collusive settlement agreement intended to harm Plaintiffs' interests and inducing Liberty Mutual to authorize said collusive settlement agreement. In so doing, Defendants Perrico and Talbert intentionally procured Liberty's breach of its duty of good faith to Plaintiffs under the Policy, and intentionally concealed from Liberty Mutual the conflicts of interest that were inherent in their involvement in these Lawsuits.

66. Perrico and Talbert, without any privilege or justification, intentionally interfered with Plaintiffs' contractual rights under the Policy by inducing Liberty Mutual to settle claims against

Plaintiffs without Plaintiffs' knowledge or consent, contrary to Plaintiffs' rights under the Policy. In so doing, Defendants Perrico and Talbert intentionally procured Liberty's breach of the Policy.

67. As a direct and proximate result of Perrico's and Talbert's tortious interference with Plaintiffs' contractual rights under the Policy, Plaintiffs have suffered damage to their personal and professional reputations and have suffered economic damages in excess of $25,000, in an amount to be determined at trial.

VI. Prayer for Relief

Wherefore, Plaintiffs demand judgment against the Defendants in an amount in excess of twenty-five thousand dollars, including compensatory damages, statutory damages, punitive and exemplary damages, attorneys' fees, costs, expenses and any other relief to which the Plaintiffs may each be entitled or that the Court finds is appropriate or equitable.

VII. Jury Demand

Plaintiff demands a trial by jury on all claims raised within this Complaint.

Respectfully submitted,

/s/ Peter Pattakos

Peter Pattakos (0082884)
Zoran Balac (0100501)
Gregory Gipson (0089340)
Maryam Assar (0104229)
THE PATTAKOS LAW FIRM LLC
101 Ghent Road, Fairlawn, Ohio 44333
P: 330.836.8533/F: 330.836.8536
peter@pattakoslaw.com
zbalac@pattakoslaw.com
ggipson@pattakoslaw.com
massar@pattakoslaw.com

Attorneys for Plaintiffs

Request for Service

To the Clerk of Courts:

Please issue the Summons and Complaint and serve this Complaint to the Defendants at the addresses listed below, making return according to law.

LIBERTY MUTUAL INSURANCE COMPANY
c/o Corporation Service Company
3366 Riverside Drive, Suite 103
Upper Arlington, OH 43221

KATHRYN PERRICO
7744 Hill Ct.
Northfield, OH 44067

JEFFERY TALBERT
Canton City School District
305 McKinley Avenue NW
Canton, Ohio 44702

SCHOOL LEADERS ERRORS AND OMISSIONS LIABILITY COVERAGE FORM

THIS IS CLAIMS MADE INSURANCE. EXCEPT AS OTHERWISE PROVIDED THIS INSURANCE APPLIES ONLY TO CLAIMS MADE AGAINST THE INSURED DURING THE POLICY PERIOD.
PLEASE READ THE ENTIRE FORM CAREFULLY.

Various provisions in this form restrict coverage. Read the entire form carefully to determine rights, duties and what is and what is not covered.

Throughout this form the words "we", "us" and "our" refer to the Company providing this insurance.

The words "you" and "your" refer to the Named Insured shown in the Declarations, and any other person or organization qualifying as a Named Insured under this policy.

The word "insured" means any person or organization qualifying as such under SECTION II - WHO IS AN INSURED.

Other words and phrases that appear in quotation marks have special meaning. Refer to SECTION VI - DEFINITIONS.

SECTION I - COVERAGE

A. Insuring Agreement

1. We will pay those sums that the insured becomes legally obligated to pay because of "loss" arising from a "wrongful act" to which this insurance applies.

2. The amount we will pay for "loss" under paragraph **1.** above is limited as described in **SECTION III - LIMIT OF INSURANCE AND DEDUCTIBLE**.

3. No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under Section **I.B. Defense and Defense Expense**.

4. This insurance applies only to "wrongful acts" that are committed:

a. Anywhere in the world if the insured's responsibility to pay "loss" is determined in a "suit" brought on the merits in the United States of America (including its territories or possessions), Puerto Rico or Canada, or in a settlement we agree to; and

b. During the “policy period” if a “claim” is first made against any insured during the “policy period” or any Discovery Period (provided in accordance with **SECTION V – DISCOVERY PERIODS**); or

c. Prior to the “policy period” and on or after the “retroactive date”, if any, but only if:

(1) On or before the effective date of the first School Leaders Errors and Omissions Liability Coverage Part issued by us and continuously renewed and maintained by the insured:

(a) The insured did not give notice to any prior insurer of such “wrongful act”; and

(b) The insured had no knowledge of such “wrongful act” likely to give rise to a “claim” hereunder; and

(2) A “claim” is first made against any insured during the “policy period” or any Discovery Period (provided in accordance with **SECTION V – DISCOVERY PERIODS**).

5. A “claim” by a person or organization will be deemed to have been made when notice of such “claim” is received and recorded by any insured or by us, whichever comes first.

If during the “policy period” or a Discovery Period (provided in accordance with **SECTION V – DISCOVERY PERIODS**) an insured becomes aware of a “wrongful act” that could reasonably be expected to give rise to a “claim” and gives written notice to us as soon as practicable in accordance with paragraph **1.** under **Section IV.B.**

EXHIBIT 1

Duties in the Event of a Wrongful Act, Claim or Suit, then any “claim” subsequently arising from such “wrongful act” shall be considered to have been made during the “policy period” or the Discovery Period in which the “wrongful act” was first reported in writing to us.

All “claims” because of a single "wrongful act" or a series of causally connected "wrongful acts" will be deemed to have been made at the time the first of these “claims” is made against any insured.

B. Defense and Defense Expense

1. We will have the right and duty to defend the insured against any "suit" seeking:

a. “Loss" because of a “wrongful act” to which this insurance applies. But:

(1) When the Each Wrongful Act Limit or Aggregate Limit has been used up in the payment of "loss", our duty to defend ends with respect to any "suit" seeking "loss" subject to such exhausted limit; and

(2) We will have no duty to defend the insured against any "suit" seeking "loss" to which this insurance does not apply.

b. Only injunctive or other non-monetary relief because of a “wrongful act” to which this insurance applies. But:

(1) When the Aggregate Defense Expense Amount – Non-Monetary Relief is used up in the payment of “defense expenses”, our duty to defend ends with respect to any “suit” seeking injunctive or other non-monetary relief subject to such exhausted limit; and

(2) We will have no duty to defend the insured against any “suit” seeking injunctive or other non-monetary relief to which this insurance does not apply.

2. We may, at our discretion, investigate any "wrongful act".

3. We may settle any “claim” that may result from a “wrongful act”, provided we have your consent. However, our liability will be limited as described below if you refuse to consent to any settlement that we recommend and elect to contest the “claim” or continue any legal proceedings in connection with such “claim” at your own cost and without our involvement:

a. If the “claim” is seeking “loss”:

(1) Our obligation to pay “loss” under this policy shall be the lesser of the following:

(a) The amount in excess of the Deductible, if any, we would have paid for “loss” if you had consented at the time of our recommendation; or

(b) The limit of insurance; and

(2) Our obligation to pay under provision **4.a**. below shall be limited to the costs and expenses incurred with our consent up to the date of such refusal.

b. If the “claim” is seeking only injunctive or other non-monetary relief, our obligation to pay “defense expenses” under provision **4.b.** below shall be the lesser of the following:

(1) The costs and expenses incurred up to the date of such refusal; or

(2) The Aggregate Defense Expense Amount – Non-Monetary Relief.

4. We will pay:

a. With respect to any “claim” seeking “loss” against the insured that we investigate or settle, or any "suit" seeking “loss” against an insured we defend:

(1) All expenses we incur.

(2) The cost of appeal bonds and bonds to release attachments, but only for bond amounts within the applicable limit of insurance. We do not have to furnish these bonds.

(3) All reasonable expenses incurred by you or the insured at our request to assist us in the investigation or defense of the “claim” or "suit", including actual loss of earnings up to $250 per day because of time off from work.

(4) All costs taxed against the insured in the "suit".

(5) All interest on the full amount of any judgment that accrues after entry of the judgment and before we have paid, offered to pay, or deposited in court the part of the judgment that is within the limit of insurance.

These payments will not reduce the limit of insurance.

b. With respect to any “claim” seeking only injunctive or other non-monetary relief that we investigate or settle, or any “suit” seeking only injunctive or other non-monetary relief against an insured we defend:

(1) “Defense expenses”; and

(2) “Legal fees”

subject to the Aggregate Defense Expense Amount – Non-Monetary Relief described in **SECTION III – LIMITS OF INSURANCE AND DEDUCTIBLE**. However, we have no obligation to pay costs of compliance with any injunctive or non-monetary relief.

C. Exclusions

This insurance does not apply to:

1. Personal Injury Offenses

Any “claim” arising out of:

a. False arrest, detention or imprisonment;

b. Malicious prosecution;

c. The wrongful eviction from, wrongful entry into, or invasion of the right of private occupancy of a room, dwelling or premises that a person occupies by or on behalf of its owner, landlord or lessor;

d. Oral or written publication of material that slanders or libels a person or organization or disparages a person's or organization's goods, products or services; or

e. Oral or written publication of material that violates a person's right of privacy.

This exclusion does not apply to the extent of coverage provided under Section **I.D. Coverage Extension – Employment-Related Practices Liability**.

2. Bodily Injury or Property Damage

Any “claim” arising out of:

a. “Bodily injury”; or

b. Physical injury to tangible property, including all resulting loss of use of that property.

3. Intellectual Property Rights

Any “claim” arising out of piracy, misappropriation of advertising ideas or style of doing business, or infringement of copyright, trade dress, patent, service mark, service name, slogan, title, trademark or trade name.

4. Employers Liability

Any “claim” made by:

a. An "employee" of the insured for "loss" arising out of and in the course of:

(1) Employment by the insured; or

(2) Performing duties related to the conduct of the insured's business; or

b. The spouse, child, parent, brother or sister of that "employee" as a consequence of paragraph **a.** above.

This exclusion applies:

a. Whether the insured may be liable as an employer or in any other capacity; and

b. To any obligation to share damages with or repay someone else who must pay damages because of a “claim” described in paragraphs **a.** or **b.** above.

This exclusion does not apply to the extent of coverage provided under Section **I.D. Coverage Extension – Employment-Related Practices Liability**.

5. Criminal, Fraudulent, Malicious or Dishonest Acts

Any insured who commits, participates in or consents to a "wrongful act" that is criminal, fraudulent, malicious or deliberately dishonest.

6. Procuring or Maintaining Insurance

Any "wrongful act" in procuring, effecting or maintaining insurance, or with respect to amount, form, conditions or provisions of such insurance.

7. Contractual Liability

Any “claim” alleging breach of contract. However:

a. This exclusion does not apply to the extent of coverage provided under Section **I.D. Coverage Extension – Employment-Related Practices Liability**; and

b. The provisions under **Section I.B. Defense and Defense Expense** apply with respect to breach of a non-

employment-related contract, other than a construction or demolition contract, but we will have no obligation to pay any “loss” or “legal fees”.

With respect to a non-employment-related contract that we defend, any payments we make under **Section I.B.** apply only to the amount excess of a $5,000 deductible for one “wrongful act”. A single “wrongful act” or a series of causally connected “wrongful acts” will be considered one “wrongful act”. The terms of this insurance including those with respect to our right and duty to defend the insured and your duties in the event of a “wrongful act”, “claim” or “suit” apply irrespective of the application of this deductible amount. We may pay any part or all of the deductible amount and, upon notification of action taken, you shall promptly reimburse us for such part of the deductible amount that has been paid by us.

8. Illegal Profit or Advantage

Any insured who commits a “wrongful act” that gains or causes another to gain personal profit or advantage to which the insured or other person was not legally entitled.

9. Employee Retirement Income Security Act

Any “claim” arising out of any responsibilities, obligations or duties imposed upon fiduciaries by the Employee Retirement Income Security Act of 1974 or any amendments thereto.

10. Employee Benefit Plan

Any "wrongful act" related to the administration of any employee benefit plan.

11. Workers Compensation

Any “claim” arising out of any responsibilities, obligations or duties imposed upon any insured under a Workers Compensation, unemployment compensation, disability benefits, social security law or any similar law.

12. Pollution

Actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of pollutants; or for any loss, cost or expense arising out of environmental impairment statutes or regulations, or governmental or any other request, demand or order to test, monitor, clean up, remove, contain, treat, detoxify, neutralize or in any way respond to, or assess the effects of pollutants.

Pollutants mean any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed.

13. Asbestos Liability

Any “claim” arising in whole or in part out of:

a. The installation, storage, removal, disposal, handling, use or existence of, exposure to, or contact with asbestos or materials containing asbestos;

b. The cost or expense arising out of any request, demand or order that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of asbestos or materials containing asbestos; or

c. The failure to comply with the Asbestos Hazard Emergency Response Act, 15 USC 2641 et seq.

However, we will have the right and duty to defend such "suits" subject to an aggregate limit of $50,000 for the

"policy period" including any Discovery Period we provide, but we will have no obligation to pay any "loss" or "legal fees". Our duty to defend ends when this aggregate limit is exhausted by the payment of "defense expenses".

14. Lead

Any "claim" arising in whole or in part out of:

a. The installation, storage, removal, disposal, handling, use or existence of, exposure to, or contact with lead or materials containing lead; or

b. The cost or expense arising out of any request, demand or order that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of lead or materials containing lead.

15. Nuclear Liability

Any "claim" arising, directly or indirectly, from nuclear reaction, nuclear radiation or radioactive contamination, or to any act or condition incident to any of the foregoing.

16. Sexual Misconduct or Molestation

Any actual or alleged sexual misconduct or sexual molestation of any person; and any allegations relating thereto that an insured negligently employed, investigated, supervised or retained a person, or based on an alleged practice, custom or policy, including but not limited to any allegation that a person's civil rights have been violated. This exclusion does not apply to the extent of coverage provided under **Section I.D. – Employment-Related Practices Liability**.

D. Coverage Extension – Employment-Related Practices Liability

The insurance provided under this Coverage Part is extended to include "wrongful acts" that are employment-related and to which this insurance applies, subject to the following:

1. Employment-related "wrongful acts" are limited to actual or alleged:

a. "Discrimination";

b. "Workplace harassment";

c. "Wrongful termination"; or

d. "Workplace tort"

committed by the insured, or by any person for whose acts the insured is legally liable, while in the course of performing "educational institution" duties.

2. The following additional Exclusions apply with respect to this coverage extension:

This insurance does not apply to:

a. Intentional Injury

Any insured who intentionally causes the injury that arises out of an employment-related "wrongful act".

Injury means:

(1) Mental anguish, humiliation, injury to reputation, emotional distress, mental injury, shock or fright; or

(2) Physical injury, sickness or disease resulting from **(1)** above;

sustained by a person. Injury includes disability or death resulting from **(1)** or **(2)** above.

b. Statutory Obligations

Any “claim” arising out of any responsibilities, obligations or duties imposed upon any insured by the:

(1) Workers Adjustment and Retraining Notification Act, Public Law 100-379 (1988); or

(2) Consolidation Omnibus Budget Reconciliation Act or 1985

And any amendments thereto or any similar provisions of federal, state or local statutory law.

c. Consequential Loss

A “claim” made by a spouse, child, parent, brother, sister or domestic partner of a current, former, or prospective “employee” as a consequence of an employment-related “wrongful act”.

d. Oral or Written Publication of Material With Knowledge of Falsity

Any “claim” arising out of any written or oral publication of material, if committed by or at the direction of the insured with knowledge of its falsity.

e. Post Retirement Insurance Plan Benefits

Any “claim” for payment of insurance plan benefits claimed by or on behalf of retired “employees”.

f. Collective Bargaining Process

Any “claim” arising out of the collective bargaining process.

g. Insurance Plan Benefits

That part of any “loss” which constitutes payment of insurance plan benefits that a claimant would have been entitled to as an “employee”, other than a retired “employee”, had the insured provided the claimant with a continuation of insurance or a commencement of employment.

h. Front Pay and Future Damages

That part of any “loss” which constitutes front pay, future damages or other future economic relief or the equivalent thereof.

However, with respect to paragraphs **g.** and **h.**, the provisions in Section **I.B. Defense and Defense Expense** apply, but we will have no obligation to pay any “loss”.

3. The following definitions are added with respect to this coverage extension:

a. "Discrimination" means:

(1) Demotion of, or failure or refusal to hire, promote or grant tenure to an “employee”;

(2) Termination of an employment relationship;

(3) Failure or refusal to hire an applicant for employment; or

(4) Any other employment practice that adversely affects the employment status of or the employment opportunities for an “employee” or applicant for employment

because of race, color, religion, creed, age, sex, gender, disability or handicap, pregnancy, sexual orientation or preference, physical appearance or national origin.

b. "Sexual harassment" means unwelcome sexual advances, requests for sexual favors or other verbal or physical conduct of a sexual nature that:

(1) Are made explicitly or implicitly a condition of employment;

(2) Are used as a basis for employment decisions; or

(3) Create a work environment that:

(a) Is intimidating, hostile or offensive, or

(b) Unreasonably interferes with work performance.

c. “Workplace harassment” means verbal or physical conduct that creates a work environment that is intimidating,
hostile or offensive or unreasonably interferes with work performance. “Workplace harassment” includes “sexual harassment”.

d. “Workplace tort” means:

(1) Oral or written publication of material that libels or slanders;

(2) Invasion of the right of privacy of;

(3) False arrest, detention or imprisonment of;

(4) Negligent hiring or evaluation of;

(5) Failure to employ or promote;

(6) Wrongful discipline of;

(7) Wrongful deprivation of the career opportunity of

A current, former or prospective “employee”; and

(8) Other torts arising from the facts underlying any “claim” of “discrimination”, “wrongful termination” or “workplace harassment”.

e. "Wrongful termination" means:

(1) Breach of an express oral or written employment contract, other than a collective bargaining agreement,

when terminating an employment relationship;

(2) Breach of an implied agreement to continue an employment relationship; or

(3) Failure to exercise duty and care when terminating an employment relationship that does not arise out of paragraph **e.(1)** or **e.(2)** above.

"Wrongful termination" includes constructive discharge.

However, paragraph **e.(1)** above does not apply if such a breach is committed by or at the direction of the insured with knowledge that it is a breach of contract.

4. For the purposes of this coverage extension only, the following is added to "suits" paragraph **K.** of Section **VI. Definitions**:

"Suit" does not include labor or grievance arbitration subject to a collective bargaining agreement, employment handbook or other employment policies or procedures of the named insured.

SECTION II - WHO IS AN INSURED

Each of the following is an insured:

A. The "educational institution", and its board of governors, board of education, school committee, board of trustees, or commission.

B. Each of the following is also an insured for acts within the scope of their duties as such:

1. Elected or appointed members of your board of governors, board of education, school committee, board of trustees, or commission;

2. Your "employees". However, except to the extent of coverage provided by **Section I.D. Coverage Extension – Employment-Related Practices Liability**, no "employee" is an insured for “claims” made:

a. By you or by a co-"employee" for "loss" arising out of and in the course of his or her employment or performing duties related to the conduct of your business;

b. By the spouse, child, parent, brother or sister of that co-"employee" as a consequence of paragraph **a.** above; or

c. For which there is any obligation to share damages with or repay someone else who must pay damages because of a “claim” described in paragraph **a.** or **b.** above;

3. Your student teachers teaching as part of their educational requirements; and

4. Your "volunteer workers".

C. With respect to the liability of insureds described above, the heirs, administrators, assigns, and legal representatives of each insured in the event of death, incapacity, or bankruptcy.

SECTION III - LIMITS OF INSURANCE AND DEDUCTIBLE

A. The Limits of Insurance shown in the Declarations for this Coverage Part and the rules below fix the most we will pay regardless of the number of:

1. Insureds;

2. "Claims" made or "suits" brought; or

3. Persons or organizations making “claims” or bringing "suits."

B. Aggregate Limit

The Aggregate Limit is the most we will pay for all "loss" arising from all "wrongful acts" to which this insurance applies and for which a “claim” is first made during the "policy period."

C. Each Wrongful Act Limit

Subject to **B.** above, the Each Wrongful Act Limit is the most we will pay for the sum of all "loss" arising out of any one "wrongful act" to which this insurance applies.

A single "wrongful act" or a series of causally connected "wrongful acts" will be considered one "wrongful act".

D. Aggregate Defense Expense Amount – Non-Monetary Relief

The Aggregate Defense Expense Amount – Non-Monetary Relief is the most we will pay for all “defense expenses” and “legal fees” arising from all “wrongful acts” to which this insurance applies for which a “claim” is first made during the “policy period” seeking only injunctive or other non-monetary relief.

E. Application Of Aggregate Limit And Aggregate Defense Expense Amount - Multi-Year Policies

If this Coverage Part is in effect for a period of more than one year, the Aggregate Limit and the Defense Expense Amount – Non-Monetary Relief apply separately to each consecutive annual period, and to any remaining period of less than 12 months starting with the beginning of the "policy period." But if the "policy period" is extended after issuance for less than 12 months, the additional period will be deemed part of the last preceding period for the purposes of determining the Aggregate Limit and the Aggregate Defense Expense Amount – Non-Monetary Relief.

F. Deductible

1. Our obligation to pay under this Coverage Part applies only to the amount of “loss” in excess of the Deductible amount, if any, shown in the Declarations for this Coverage Part, and the limits of insurance will not be reduced by the amount of such Deductible.

2. The Deductible amount applies to “loss” arising from all “claims” made because of one “wrongful act”. A single “wrongful act” or a series of causally connected “wrongful acts” will be considered one “wrongful act”.

3. The terms of this insurance including our right and duty to defend the insured against any “suit” seeking “loss” (**SECTION I.B.1.**) and your duties in the event of a “wrongful act”, “claim” or “suit” (**SECTION IV.B.**) apply irrespective of the application of the Deductible amount.

4. We may pay any part or all of the Deductible amount to effect settlement of any “claim” and, upon notification of the action taken, you shall promptly reimburse us for such part of the Deductible amount as has been paid by us.

SECTION IV - SCHOOL LEADERS ERRORS AND OMISSIONS LIABILITY CONDITIONS

We have no duty to provide insurance under this Coverage Part unless you and any involved insured have fully complied with Conditions contained in this Coverage Part.

A. Bankruptcy

Bankruptcy or insolvency of the insured or of the insured's estate will not relieve us of our obligations under this Coverage Part.

B. Duties in the Event of a Wrongful Act, Claim or Suit

1. You must see to it that we are notified as soon as practicable of any "wrongful act" which may result in a “claim”. To the extent possible, notice should include:

a. How, when and where the "wrongful act" was committed;

b. The names and addresses of any persons who may sustain damages and witnesses; and

c. The nature of harm resulting from the "wrongful act".

2. If a “claim” is received by any insured, you must:

a. Immediately record the specifics of the “claim” and the date received; and

b. Notify us promptly.

You must see to it that we receive written notice of the “claim” as soon as practicable.

3. You and any involved insured must:

a. Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the “claim”;

b. Authorize us to obtain records and other information;

c. Cooperate with us in the investigation or settlement of the “claim” or defense against the "suit"; and

d. Assist us, upon our request, in the enforcement of any right against any person or organization which may be liable to the insured because of "loss" to which this insurance may also apply.

4. No insured will, except at their own cost, voluntarily make a payment, assume any obligation, or incur any expense without our consent.

C. Legal Action Against Us

No person or organization has a right under this Coverage Part:

1. To join us as a party or otherwise bring us into a "suit" asking for damages from an insured; or

2. To sue us on this Coverage Part unless all of its terms have been fully complied with.

A person or organization may sue us to recover on an agreed settlement or on a final judgment against an insured obtained after an actual trial; but we will not be liable for "loss" amounts that are not payable under the terms of this Coverage Part or that are in excess of the applicable limit of insurance. An agreed settlement means a settlement and release of liability signed by us, the insured and the claimant or the claimant's legal representative.

D. Other Insurance

If other valid and collectible insurance is available to the insured for "loss" we cover under this Coverage Part, our obligations are limited as follows:

1. Primary Insurance

This insurance is primary except when **2.** below applies. If this insurance is primary, our obligations are not affected unless any of the other insurance is also primary. Then, we will share with all that other insurance by the method described in **3.** below.

2. Excess Insurance

a. This insurance is excess over any other insurance, whether primary, excess, contingent or on any other basis:

(1) That is effective prior to the beginning of the "policy period" of this insurance and applies to "wrongful acts" on other than a claims-made basis, if:

(a) No "retroactive date" is shown; or

(b) The other insurance has a policy period which continues after the "retroactive date"; or

(2) That covers "loss" we cover under Section **I.D. Coverage Extension – Employment-Related Practices Liability**.

b. When this insurance is excess, we will have no duty to defend the insured against any "suit" if any other insurer has a duty to defend the insured against that "suit". If no other insurer defends, we will undertake to do so, but we will be entitled to the insured's rights against all those other insurers.

c. When this insurance is excess over other insurance, we will pay only our share of the amount of the "loss", if any, that exceeds the sum of:

(1) The total amount that all such other insurance would pay for the "loss" in the absence of this insurance; and

(2) The total of all deductible and self-insured amounts under all that other insurance.

d. We will share the remaining "loss", if any, with any other insurance that is not described in this paragraph 2. and was not purchased specifically to apply in excess of the Limits of Insurance for this Coverage Part.

3. Method of Sharing

a. If all of the other insurance permits contribution by equal shares, we will follow this method also. Under this approach, each insurer contributes equal amounts until it has paid its applicable limit of insurance or none of the "loss" remains, whichever comes first.

b. If any of the other insurance does not permit contribution by equal shares, we will contribute by limits. Under this method, each insurer's share is based on the ratio of its applicable limit of insurance to the total applicable limits of insurance of all insurers.

E. Premium Audit

1. We will compute all premiums for this Coverage Part in accordance with our rules and rates.

2. Premium shown in this Coverage Part as advance premium is a deposit premium only. At the close of each audit period we will compute the earned premium for that period. Audit premiums are due and payable on notice to the first Named Insured. If the sum of the advance and audit premiums paid for the "policy period" is greater than the earned premium, we will return the excess to the first Named Insured.

3. The first Named Insured must keep records of the information we need for premium computation, and send us copies at such time as we may request.

F. Representations

By accepting this policy, you agree:

1. The statements in the Declarations are accurate and complete;

2. Those statements are based upon representations you made to us; and

3. We have issued this insurance in reliance upon your representations to us.

G. Separation Of Insureds

Except with respect to the Limits of Insurance, and any rights or duties specifically assigned in this Coverage Part to the first Named Insured, this insurance applies:

1. As if each Named Insured were the only Named Insured; and

2. Separately to each insured against whom “claim” is made of "suit" is brought.

H. Transfer of Rights of Recovery Against Others To Us

If the insured has rights to recover all or part of any payment we have made under this Coverage Part, those rights are transferred to us. The insured must do nothing after loss to impair them. At our request, the insured will bring "suit" or transfer those rights to us and help us enforce them.

I. Limitation When Two Or More Coverage Parts Or Policies Apply

Insurance might be provided for the same “claim” by this Coverage Part and also by other Coverage Parts or policies issued to you by us or any of our affiliates. If this occurs, the maximum that we will pay under all such Coverage Parts or policies combined is the highest limit that applies in any one of these Coverage Parts or policies.

This provision does not apply to insurance that is purchased specifically (and which is specified in such insurance) to apply in excess of the Limits of Insurance for this Coverage Part.

J. When We Do Not Renew

If we decide not to renew this Coverage Part, we will mail or deliver to the first Named Insured shown in the Declarations written notice of the nonrenewal not less than 30 days before the expiration date.

If notice is mailed, proof of mailing will be sufficient proof of notice.

Any State amendatory endorsement changing Nonrenewal Conditions for any part of this policy to which this Coverage Part forms a part, shall also apply to this Coverage Part.

K. Common Policy Conditions

The following additional conditions apply with respect to this Coverage Part:

1. The Common Policy Conditions contained in form IL 00 17; and

2. Any applicable State amendments thereto.

SECTION V - DISCOVERY PERIODS

A. We will provide one or more Discovery Periods, as described below, if:

1. This insurance is cancelled or not renewed; or

2. We renew or replace this Coverage Part with insurance that:

a. Does not apply to "wrongful acts" on a claims-made basis; or

b. Has a retroactive date later than the date shown in the Declarations.

B. Discovery Periods do not extend the policy period or change the scope of coverage provided. Once in effect, Discovery Periods cannot be cancelled.

C. A Basic Discovery Period is automatically provided without an additional charge. This insurance applies to “claims” made during the Basic Discovery Period because of a "wrongful act" that is committed before the end of the "policy period" but not before the "retroactive date". A “claim” will be deemed to have been made in accordance with **SECTION I - COVERAGES**, paragraph **A.5.** The Basic Discovery Period starts with the end of the "policy period" and lasts for sixty (60) days.

The Basic Discovery Period does not apply to “claims” that are covered under any subsequent insurance you purchase, or that would be covered but for exhaustion of the amount of insurance applicable to such “claims”.

When the Basic Discovery Period applies, **SECTION III - LIMITS OF INSURANCE AND DEDUCTIBLE** is extended to include “claims” first made during the Basic Discovery Period however the Aggregate Limit and the Aggregate Defense Expense Amount – Non-Monetary Relief are not reinstated or increased.

D. An Extended Discovery Period is available but only by endorsement and for an additional charge. This period starts when the Basic Discovery Period described in paragraph **C.** above ends and lasts for thirty-six (36) months. You must give us written request for the endorsement within 60 days after the end of the "policy period." The Extended Discovery Period will not go into effect unless you have paid all premiums due for the policy at the time you request Extended Discovery Period coverage and you pay the additional premium promptly when due.

We will determine the additional premium in accordance with our rules and rates. In doing so, we may take into account the following:

1. The exposures insured;

2. Previous types and amounts of insurance;

3. Limits of insurance available under this Coverage Part for future payment of damages; and

4. Other related factors.

The additional premium will not exceed 200% of the annual premium for this Coverage Part.

The endorsement shall set forth the terms, not inconsistent with this Section, applicable to the Extended Discovery Period, including a provision to the effect that the insurance afforded for “claims” first made during such period is excess over any other valid and collectible insurance available under policies in force after the Extended Discovery Period starts.

If the Extended Discovery Period is in effect, we will provide a Supplemental Aggregate Limit of Insurance and a Supplemental Aggregate Defense Expense Amount – Non-Monetary Relief, but only for “claims” first made during the Extended Discovery Period. The Supplemental Aggregate Limit of Insurance and the Supplemental Aggregate Defense Expense Amount – Non-Monetary Relief will each be equal to the respective dollar amount shown in the Declarations for this Coverage Part as Aggregate Limit and Aggregate Defense Expense Amount – Non-Monetary Relief, in effect at the end of the "policy period."

SECTION VI - DEFINITIONS

A. “Bodily injury” means physical injury, sickness or disease sustained by a person. This includes mental anguish, mental injury, shock, fright or death that results from such physical injury, sickness or disease.

B. “Claim” means:

1. A written demand for monetary damages, or injunctive or other non-monetary relief; or

2. A “suit”

against an insured for a “wrongful act” to which this insurance applies.

C. “Defense expenses” means reasonable costs, charges and fees (including but not limited to attorney’s fees and experts’ fees) and expenses allocated to a specific “claim” for its investigation, settlement or defense, and the premium for appeal, attachment, or similar bonds. “Defense expenses” does not include:

1. Wages, salaries, expenses or fees of your trustees, committee members, volunteers, directors, officers, or “employees”;

2. Wages, salaries and expenses of our employees; or

3. Fees and expenses of independent adjusters we hire.

D. "Educational institution" means the educational entity shown as a Named Insured in the Declarations, as legally constituted at the beginning of the "policy period".

E. "Employee" includes a "leased worker" or a substitute teacher. "Employee" does not include a "temporary worker".

F. "Leased worker" means a person leased to you by a labor leasing firm under an agreement between you and the labor leasing firm, to perform duties related to the conduct of your business. "Leased worker" does not include a "temporary worker".

G. “Legal fees” means attorneys fees, or expenses that the insured is legally obligated to pay as a result of an adverse judgment. “Legal fees” does not include cost of compliance with any injunctive or non-monetary relief action.

H. "Loss" means monetary damages, judgments (including prejudgment interest awarded against the insured on that part of the judgment paid by us), or settlements. “Loss” does not include:

1. Tuition expenses. However, “loss” does include tuition expenses if, at the time of the “wrongful act”, you had programs and facilities that would have provided appropriate special education and related services in accordance

with the Individuals with Disabilities Education Act of 1990 and any amendments thereto.

2. Costs of compliance with any injunctive or other non-monetary relief action.

3. Any costs or expenses incurred by any insured in making changes, modifications, alterations, or improvements to facilities, equipment, policies or procedures as part of an accommodation pursuant to the Americans With Disabilities Act of 1990 or any similar provisions of federal, state of local statutes, or common law.

4. “Legal fees” when solely injunctive or other non-monetary relief is sought.

5. Punitive or exemplary damages.

6. The multiplied portion of multiple damages.

7. Fines or penalties imposed by law.

8. Matters deemed uninsurable according to the law under which this policy is construed.

If we make an offer to pay the applicable limit of insurance, we will not pay any prejudgment interest based on that period of time after the offer.

I. "Policy period" means the period stated in the Declarations of the policy of which this Coverage Part forms a part including an extension after issuance of the policy for an additional period of less than 12 months. However:

1. If this Coverage Part is issued to be effective subsequent to the effective date of such policy, the "policy period" for this Coverage Part will start with the effective date of the Coverage Part; and

2. If this Coverage Part is cancelled prior to the expiration date of such policy, the "policy period" for this Coverage Part will end with the cancellation date of the Coverage Part.

J. "Retroactive date" means the Retroactive Date shown in the Declarations for this Coverage Part.

K. "Suit" means:

1. A civil proceeding commenced by the service of a complaint or similar pleading;

2. A formal administrative or regulatory proceeding established under federal, state or local laws and commenced by the filing of a notice of charges, formal investigative order or similar document;

3. An arbitration proceeding to which the insured must submit or does submit with our consent; or

4. Any other alternative dispute resolution proceeding which the insured submits with our consent

because of a “wrongful act” to which this insurance applies.

L. "Temporary worker" means a person other than a substitute teacher who is furnished to you by another organization to substitute for a permanent "employee" on leave or to meet seasonal or short- term workload conditions.

M. "Volunteer worker" means a person who donates her or his services to you with your knowledge and consent, and who is not paid a fee, salary or other remuneration.

N. "Wrongful act" means any actual or alleged act, breach of duty, neglect, error, omission, misstatement, or misleading statement committed by the insured, or by any person for whose acts the insured is legally liable, while in the course of performing "educational institution" duties.

PATTAKOS
LAW FIRM LLC

101 Ghent Road • Fairlawn, Ohio 44333
Phone: 330.836.8533 • Fax: 330.836.8536
www.pattakoslaw.com

December 31, 2021

By U.S. priority mail and email to kperrico@walterhav.com

Kathy Perrico
Walter Haverfield
1301 E. Ninth St., Ste. 3500
Cleveland, Ohio 44114

Re: Ed Gilbert's recently filed lawsuit on behalf of K.W. re: Canton McKinley pizza incident

Dear Kathy,

I understand that you are aware that Ed Gilbert, on Wednesday, finally filed his lawsuit in federal court on behalf of K.W. and his parents in connection with the Canton McKinley pizza incident, N.D. Ohio No. 5:21-cv-02423.

While I don't expect this will be any surprise to you, I'm writing to confirm that my clients, the wrongly terminated football coaches named as defendants in Gilbert's frivolous and defensive suit, intend to spare no expense in defending against it. As you know, given Gilbert's status as a defendant, along with K.W.'s father, in our pending defamation suit in Stark County over their false accusations, these parties had little choice but to follow through with their federal lawsuit to the extent they intend to maintain a defense in the Stark County case, where the same evidence will prove the frivolous and defamatory nature of their claims.

More specifically, and again as you are surely aware, I would like to confirm for the record that our work will confirm—indeed, already has confirmed—that there is no possible basis for your clients, the school-district defendants, to be found liable for a single penny in Gilbert's frivolous federal suit.

As you know, and as confirmed by the cases cited at pages 23–25 of our pending defamation complaint, Ohio law is clear that coaches have wide discretion in fulfilling their duties to train and discipline their players, and case after case has been thrown out of court that, unlike this one, involve real misconduct that caused substantial harm and even death to students, because the state is immune from lawsuits where the coaches were acting within their broad discretion.

Further, as you are also aware, it is beyond reasonable dispute that asking an underperforming player to rest and eat a portion of a single pizza while his teammates are working out, for a duration of approximately twenty minutes, in an effort to motivate the student with a lesson about teamwork, responsibility, and accountability, evinces no wanton or willful intent to cause or risk harm to the student and is thus well within a football coach's broad discretion under Ohio law.

Thus, as is surely also not news to you, the only possible way Gilbert's clients could collect a penny from anyone on their federal claims would be against my clients only (not yours), and only then if they could prove that my clients, (1) acting wantonly, willfully, and with intent to cause or risk harm to K.W., (2) were aware that K.W.'s claimed Hebrew-Israelite religion prohibited him from eating

EXHIBIT 2

pork; *and* (3) specifically forced him to eat pork with the specific intent to violate his religious beliefs.

Needless to say Gilbert has zero chance of proving any such element of his claims even if those claims were to survive a Rule 12 motion. As you know, we have already collected more than a dozen recorded statements of eyewitnesses, among other evidence, conclusively demonstrating to the contrary—as again is amply set forth in our pending complaint—and we will surely collect and submit mountains more of such evidence to the extent we are required to do so.

Which is all to simply confirm that a single penny paid to Gilbert and his clients on their claims would be an egregious waste of public funds, whether coming from an insurance company or otherwise, and would undoubtedly be better spent to compensate the real victims in this extraordinary mess—Marcus Wattley and the other wrongly terminated coaches on his staff. To this, we were glad to see Mr. Talbert's acknowledgment in the press yesterday that Gilbert and co.'s claims "are without merit."

I am of course glad to discuss further at your convenience, and wish you and yours the best in the new year.

Sincerely,

Peter Pattakos

cc: Sara Ravas Cooper, Esq.
Miriam Fair, Esq.
Steve Griffin, Esq.
Mike Kahlenberg, Esq.
Bartholomew Freeze, Esq.
Markus Apelis, Esq.
Charles Kozelka, Esq.
Joe Coburn, Esq.

GILBERT

Edward L. Gilbert Co., L.P.A
Attorneys & Counselors at Law

Law Offices
3070 W Market Street
Suite 100
Akron, Ohio 44333

Telephone: (330) 376-8855
Telecopier: (330) 376-8857
Email: egilbert@edwardlgilbert.com
Website: www.edwardlgilbert.com

April 10, 2023

Kathryn Perrico, Esq.
Weston Hurd, LLP
1300 E. Ninth Street, Suite 1400
Cleveland OH 44114

RE: KW (Junior) v Canton City School District Board of Education
United States District Court Case No.: 5:21-CV-02423

Dear Ms. Perrico:

Pursuant to the Joint Settlement Requirement, in the Case Management Plan. Please note the Plaintiff's written description of damages:

1. Medical and Psychological treatment	$15,000.00
2. Out of pocket travel	$1,500.00
3. Pain and Suffering	$50,000.00
4. Reimbursement cost of litigation	$5,250.00
Total adjusted demand:	$71,750.00

Please advised.

Very Truly,

EDWARD L. GILBERT CO., LPA

Edward L. Gilbert
Attorney at Law

EXHIBIT 3

DIST_ESI_PROD_001491

SETTLEMENT AGREEMENT, RELEASE AND WAIVER

The parties to this Settlement Agreement, Release and Waiver (hereafter, "Agreement") are **Khalil Walker** ("Student"), **Kenneth Walker, and Lori Cruz** (collectively, "Parents"), (Parents and Student hereafter, collectively, the "Family"), and **Jeff Talbert** ("Talbert"), and the **Canton City School District Board of Education** ("Board" or "District"), including and on behalf of all of its current and former Board members, employees and agents, in their individual and/or official capacities (collectively referred to as "Defendants"); (Parents, Student, and Defendants, collectively, are the "Parties").

RECITALS

WHEREAS, the Family filed a lawsuit in the United States District Court for the Northern District of Ohio, Eastern Division, captioned *K.W. (Junior), et al, v. Canton City School District, et al,* 5:21-CV-02423-JRA, alleging various claims against Defendants; Canton City School District, Canton City School District Board of Education, Jeffery Talbert, Marcus Wattley, Frank McLeod, Zachary Sweat, Romeo Harris, Cade Brodie, Tyler Thatcher and Joshua Grimsley ("Federal Case"). The Family also filed a lawsuit in the Stark County Court of Common Pleas, captioned *Khalil Walker, et al. v. Canton City School District Board of Education, et al*., Case No. 2023-CV-00915, raising additional claims against the Board and; Canton City School District Board of Education, Antonio Hall, Marcus Wattley, Frank McLeod, Romeo Harris, Cade Brodie and Tyler Thatcher, ("State Case") (Federal Case and State Case collectively, the "Litigation").

This document is intended to cover all Defendants in the Federal and State Case, in their Official and Individual Capacity.

WHEREAS, Defendants deny all allegations of wrongdoing asserted by the Family in the Litigation;

WHEREAS, on June 6, 2023, the Parties engaged in mediation in an effort to settle all claims that were raised or could have been raised in the Litigation;

WHEREAS, the Parties to this Agreement desire to settle all matters in controversy between them;

NOW, THEREFORE, in and for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and in consideration of the mutual promises contained herein, the Parties to this Agreement, for themselves and on behalf of their heirs, successors, assigns, agents, and employees agree as follows:

1. **Payment**. In consideration for the promises FAMILY has made in this Agreement, the Board agrees to cause payment to be made to FAMILY in the total amount of $125,000.00 (the "Settlement Payment"), allocated as follows:

(a) The DISTRICT, together with its current and former insurance carrier, Liberty Mutual Insurance Company, will cause payment to be made to "Edward L. Gilbert, Co., L.P.A., Khalil Walker, Kenneth Walker, and Lori Cruz" in the amount of $125,000.00.

EXHIBIT 4

(b) The DISTRICT will remit the Settlement Payment within fifteen (15) days after Board approval of this Agreement and full execution by all Parties.

(c) The Settlement Payment shall be delivered via Federal Express to FAMILY's attorney, Edward Gilbert, Esq., at 3070 W Market St Suite 100, Akron, OH 44333.

2. **Taxes**. Each party agrees to be responsible for their own taxes which may become due by virtue of this Agreement. FAMILY acknowledges and agrees to assume full responsibility for the payment of any federal, state and/or local taxes, including any penalties or interest which may be owed by them by virtue of their receipt, or the receipt by their attorneys, of the payment provided herein. FAMILY agrees to hold harmless, indemnify, and save Defendants from payments of any applicable federal, state, or local taxes, penalties or interest for which Defendants might become liable by virtue of FAMILY's failure to pay any taxes owed by them. FAMILY further acknowledges that they have not relied upon any advice from the Defendants and/or its attorneys as to the allocation of the Settlement Payment for tax or any other purposes, or regarding tax withholding or the ultimate taxability of the Settlement Payment, whether pursuant to federal, state or local income tax statutes or otherwise. Defendants also reserve the right to file any forms and statements as may be required by law with the Internal Revenue Service and any other state or local taxing agency or other governmental agency. Except as otherwise stated herein, FAMILY acknowledges and agrees that they are solely responsible for paying any attorneys' fees and costs that they have incurred and that neither FAMILY nor their attorneys will seek any award of attorneys' fees or costs from Defendants except to the extent set forth in Section 1 of this Agreement.

3. **Court Costs and Dismissal of Litigation / Claims**. The Parties are responsible for and will bear their respective court costs in the Federal Case and State Case, if any. The Parties further consent to the filing of the *Stipulated Motion for Dismissal With Prejudice* attached as **Exhibit A**, which shall be filed by counsel for Defendants in the Federal Case within three (3) business days of FAMILY's receipt of the Settlement Payment. The Parties further consent to the filing of the *Notice of Dismissal With Prejudice* attached as **Exhibit B**, which shall be filed by counsel for FAMILY in the State Case within three (3) business days of FAMILY's receipt of the Settlement Payment.

4. **Release of Claims**. This release is intended to be as comprehensive as can be conceived and the law will allow. The Parties understand that there are various federal, state, and local laws that prohibit discrimination on the basis of, among other things, age, sex, race, color, national origin, religion, and disability, and that these laws are enforced by various government agencies. FAMILY, for themselves and their heirs, personal representatives, assigns, successors, attorneys, and agents, hereby agree not to sue the Board and each and every one of its current, former, and future board members and employees, representatives, agents, attorneys, insurers, sureties, and related entities, as well as TALBERT and Antonio Hall, and all Defendants specifically (collectively referred to herein as "the released parties"), and release and forever discharge Defendants to the fullest extent permitted by law from any and all lawsuits asserting claims which they now have, or ever had, under the U.S. and/or Ohio Constitutions, Title VII of the Civil Rights Act of 1964, and any state civil rights act or discrimination act, and they further hereby release and forever discharge Defendants from any liability for any personal right of

recovery of any kind that they now have, or ever had, including the right to recover damages in their own lawsuit or in a lawsuit brought on their behalf by any federal or state governmental agency under the U.S. and/or Ohio Constitutions, Title VII of the Civil Rights Act of 1964, and any state civil rights act or discrimination act. This Agreement also includes the release of, but is not limited to, all claims arising under Section 1983 of the Civil Rights Act, 42 U.S.C. § 1983; Ohio Revised Code § 2151.421; Ohio Revised Code § 2919.22; Ohio Revised Code § 2903.15; Ohio Revised Code § 2903.31; Ohio Revised Code § 3319.41; related federal and state regulations and claims arising under any other federal, state, or local laws or regulations, or common law claims.

FAMILY, for themselves and their heirs, personal representatives, assigns, successors, attorneys, and agents, further hereby release and forever discharge the released parties from any and all other known or unknown claims, losses, damages, or causes of action that they now have, or ever had, including, but not limited to, all claims arising under the United States Constitution; claims for assault; claims for battery; claims for negligent hiring, training and/or supervision; claims for intentional and/or negligent infliction of emotional distress; claims for loss of consortium; claims for attorneys' fees and expenses; out-of-pocket expenses; emotional distress, libel and/or slander or any other legal or equitable claims for violation of any other state or local laws, or the common law, arising out of, or relating to, all claims that were raised or could have been raised in the Litigation.

This release is comprehensive and includes any claim that the FAMILY has asserted or could have asserted against all Defendants based upon acts or omissions arising out of, or relating to, all claims that were raised or could have been raised in the Litigation and or in connection with *Wattley, et. al. v. Rinaldi, et. al.*; case number 2023CV00931 pending in the Stark County Court of Common Pleas ("Wattley Litigation"), and that occurred, or that could legitimately and reasonably be alleged to have occurred, before FAMILY executes this Agreement. Nothing herein shall be construed as limiting the FAMILY from defending themselves against the claims pending or future filings in the Wattley Litigation. Likewise, nothing herein shall be construed as releasing any claims brought by any plaintiff against any defendant in the Wattley Litigation.

The FAMILY acknowledges that they might hereafter discover facts different from or in addition to those they now know or believe to be true with respect to the released claims and they expressly agree to assume the risk of possible discovery of additional or different facts, and further agrees that the Agreement shall be and remain effective in all respects regardless of such additional or different discovered facts.

5. **Interpretation**. Should any court of competent jurisdiction declare any provision of this Agreement unenforceable, all other provisions of this Agreement shall not be affected and will remain enforceable to the extent the intent of the Parties is preserved. The Parties agree that they have fully negotiated the terms of this Agreement and that its terms, provisions, and conditions shall not be interpreted or construed against either Party.

6. **No Admission of Wrongdoing**. The Parties have entered into this Agreement as a compromise to resolve disputed claims. Neither the fact of this Agreement nor any of its parts

shall be construed as an admission of wrongdoing, liability, defense, or that any fact or allegation asserted by either Party was true. The Parties expressly deny any wrongdoing.

7. **Governing Law; Jurisdiction**. This Agreement shall be governed by and shall be interpreted in accordance with the laws of the United States and the State of Ohio, without regard to its conflicts of law provisions, and the Parties hereby consent to the jurisdiction of the United States District Court for the Northern District of Ohio, Judge John R. Adams or any successor judge, to decide any dispute arising out of or related to this Agreement or the breach hereof.

8. **Effect of Agreement.** This Agreement may be pleaded as a full and complete defense to and may be used as the basis for an injunction against any action, suit, or other proceeding which is instituted, prosecuted or attempted in breach of this Agreement.

9. **Entire Agreement**. This Agreement sets forth the entire agreement and understanding between the Parties and supersedes any prior oral or written agreements or understandings between them regarding its subject matter. The Parties acknowledge that they have not relied on any promises, or agreements of any kind made to the other in connection with their respective decisions to make this Agreement, except for those set forth in this Agreement.

10. **Right to Representation**. The FAMILY acknowledges that they have had the opportunity to review this Agreement and are encouraged to consult with legal counsel prior to executing this Agreement to ascertain whether they have any potential rights or remedies which are being waived and released by her execution of this Agreement.

11. **Waiver.** The failure or delay of any Party in exercising her/its/their rights under this Agreement in any instance shall not constitute a waiver or estoppel as to such rights in that, or any other, instance. Any Party shall not be deemed to have waived any rights under this Agreement except by a writing signed by that Party.

12. **Binding Effect**. This Agreement shall inure to the benefit of and be binding upon FAMILY, Defendants, and Antonio Hall as well as to each of their predecessors, successors, assignors (whether express, implied, or by operation of law) related and affiliated entities, heirs, executors, administrators, and the former, current, and future members, employees, elected or appointed officials, representatives, attorneys, agents, insurers, sureties, and assigns of each of them.

13. **Validity**. If any provision or portion of a provision of this Agreement is declared null and void or unenforceable by a court or tribunal having jurisdiction, the validity of the remaining parts, terms, or provisions of the Agreement shall not be affected thereby and such illegal or invalid part, term, or provision shall be deemed not to be part of the Agreement.

14. **Assignment of Claim / Authority.**

FAMILY warrants and represents that they have not assigned, transferred, or conveyed any claim that they may have against the DISTRICT, TALBERT and/or Antonio Hall to any other entity or person.

FAMILY further represents and warrants that: (i) they are properly and fully authorized and empowered to enter into and execute this Agreement; (ii) they know of no contractual commitment or legal limitation of, impediment to, or prohibition against their entry into this Agreement; and (iii) the Agreement is legal, valid and binding upon them.

15. Confidentiality. The Parties agree that the terms and conditions of this Agreement and the circumstances surrounding it are to be considered confidential, and that no party to this Agreement shall disclose the terms and conditions of this document, including the payments set forth herein, to anyone, except to the extent that DISTRICT may be required to do so by law. The Parties agree to respond to inquiries about the litigation by responding only that "the dispute has been resolved to the mutual satisfaction of the parties" or words to that effect. The Parties further agree to keep the terms of this Agreement in strict confidence and FAMILY shall not cause a public records request to be made for this document.

THE PARTIES, EACH REPRESENTED BY COUNSEL, ACKNOWLEDGE THAT THEY HAVE READ THIS AGREEMENT AND FULLY UNDERSTAND ITS PROVISIONS. THEY FURTHER ACKNOWLEDGE THAT HAVE HAD THE OPPORTUNITY TO CONSULT WITH LEGAL COUNSEL OF THEIR CHOOSING AND DECLARE AND ACKNOWLEDGE THAT NO PROMISES OR AGREEMENTS NOT HEREBY EXPRESSED OR CONTAINED HEREIN HAVE BEEN MADE TO THEM, AND THAT THIS AGREEMENT CONTAINS THE ENTIRE AGREEMENT BETWEEN THE PARTIES. THE PARTIES FURTHER UNDERSTAND THAT ONCE THEY SIGN BELOW, THIS DOCUMENT WILL BECOME A LEGALLY ENFORCEABLE AGREEMENT UNDER WHICH THEY WILL BE GIVING UP RIGHTS AND CLAIMS THEY MAY HAVE, ON THE TERMS STATED IN THIS AGREEMENT. THE PARTIES AFFIRM THAT THEY ARE SIGNING THIS AGREEMENT OF THEIR OWN FREE AND VOLUNTARY WILL.

This Agreement may be executed by electronic mail, facsimile or in counterparts, each of which shall constitute an original, but all of which taken together shall constitute only one Agreement.

REMAINDER OF PAGE INTENTIONALLY BLANK

6-22-23
Date

KENNETH WALKER, *Individually, and as the parent and prior joint legal custodian of Khalil Walker*

6/22/23
Date

LORI CRUZ, *Individually as the parent and prior residual legal representative of Khalil Walker*

6/22/23
Date

Khalil Walker, *Individually*

6-26-23
Date

SCOTT RUSS, *President*
Canton City School District Board of Education
(On behalf of the Canton City School District Board of Education)

6/26/23
Date

JEFF TALBERT, *Individually and in his capacity as Superintendent of the Canton City School District Board of Education*

6/26/23
Date

ANTONIO HALL, *Individually and in his capacity as an employee of the Canton City School District Board of Education*

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

Khalil Walker, et al. Plaintiffs, v. CANTON CITY SCHOOL DISTRICT, et al. Defendants.	)	CASE NO.: 5:21-CV-02423 JUDGE JOHN R. ADAMS MAGISTRATE JUDGE CARMEN E. HENDERSON

STIPULATED MOTION FOR DISMISSAL WITH PREJUDICE

Upon agreement of the Parties and pursuant to Rule 41(a)(2) of the Federal Rules of Civil Procedure, all Plaintiffs, ("Plaintiffs"), and all Defendants, (Plaintiff and Defendant collectively, the "Parties"), hereby move the Court to enter an Order dismissing this matter and all claims in its entirety with prejudice. The Parties further agree this case is settled and request that the Court enter an Order retaining jurisdiction over the Parties' settlement of this matter to the extent applicable and necessary.

EXHIBIT 5

Respectfully submitted,

/s/ Edward Gilbert
Edward Gilbert (Reg. No. 0014544)
Email: egilbert@edwardlgilbert.com
EDWARD L. GILBERT CO., LPA
Ste. 825, One Cascade Plaza
Akron, OH 44308
(PH) 330-376-8857
(FAX) 330-376-8855

Attorney for Plaintiff,
Khalil Walker

/s/ Kathryn Perrico
Kathryn I. Perrico (Reg. No. 0076565)
Email: kperrico@westonhurd.com
Direct Dial: 440.687-3374
Sara Ravas Cooper (Reg. No. 0076543)
Email: scooper@westonhurd..com
Direct Dial: 216-687-3364
Maria Fair (Reg. No. 0087745)
Email : mfair@westonhurd.com
Direct Dial : 216-687-3366
WESTON HURD LLP
1300 E. Ninth Street, Suite 1400
Cleveland, OH 44114-1821
Phone: 216.541.6602
Fax: 216.621.8369

Attorneys for Defendant, Canton City School District Board of Education

CERTIFICATE OF SERVICE

I hereby certify that on this 26th day of June 2023 a copy of the foregoing was filed electronically. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

/s/Kathryn Perrico
One of the Attorneys for Defendant,
Canton City School District Board of Education