

6-18-2010

Sadid v. Idaho State University Clerk's Record v. 1 Dckt. 37563

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LAW CLERK

Vol 1 of 4

**SEE AUGMENTATION
RECORD**

Vol 1 of 3

**IN THE
SUPREME COURT
OF THE
STATE OF IDAHO**

HABIB SADID, an individual,

Plaintiff-Appellant, vs.

Idaho State University, Robert Wharton, Jack
Kunze, Michael Jay Lineberry, Manoochehr

Aoghi, Richard Jacobsen, Gary Olson, Authur

Vailas and John/Jane Does I Through X, whose

True identities are presently unknown

Defendants - Respondents

Hon. David C. Nye District Judge

Appealed from the District Court of the Sixth
Judicial District of the State of Idaho, in and for

Bannock County.

Ronaldo A. Coulter
Robert G. Tefiteller

Attorney at Law

Attorney X For Appellant X

John A. Bailey, Jr.

Racine, Olson, Nye Budge & Bailey, Chartered

Attorney X For Respondent X

Filed this FILED - COPY day of _____
2008

JUN 18 2010

Clerk

Deputy

Supreme Court of Idaho
Established 1890

37563

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK

HABIB SADID, an individual,)
)
 Plaintiff/Appellant,) Supreme Court No. 37563-2010
)
 v.)
)
 IDAHO STATE UNIVERSITY,)
 ROBERT WHARTON, JACK)
 KUNZE, MICHAEL JAY)
 LINEBERRY, MANOOOCHEHR)
 AOGHI, RICHARD JACOBSEN, GARY)
 OLSON, AUTHUR VAILAS and)
 JOHN/JANE DOES I through X, whose)
 True identities are presently unknown,)
)
 Defendants/Respondents,)
)
 _____)

CLERK'S RECORD

Appeal from the District Court of the Sixth Judicial District of the State of
Idaho, in and for the County of Bannock.

Before **HONORABLE David C. Nye**, District Judge.

For Appellant: Ronaldo A. Coulter
Robert G. Teffeteller
Camacho, Mendoza, Coulter Law
Group, PLLC

**776 E. Riverside Dr.
Suite 200
Eagle, Idaho 83616**

Idaho Supreme Court
P.O. Box 83720
Boise, Idaho 83720

For Respondent:

John A. Bailey, Jr.
Racine, Olson, Nye, Budge & Bailey, Chartered
P.O. Box 1391
Pocatello, Idaho 83204-1391

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REPLY MEMORANDUM RE: DEFENDANTS’ MOTION FOR SUMMARY JUDGMENT, filed 10-30-09264

VOLUME I

VOLUME II

VOLUME III

Habib Sadid vs. Idaho State University, Michael Jay Lineberry

Date	Code	User	Judge
9/29/2008	LOCT	ELLA	SUPREME COURT APPEAL; Clerk's Vault.
	NCOC	ELLA	New Case Filed-Other Claims
	COMP	ELLA	Complaint Filed
	SMIS	ELLA	Summons Issued
		ELLA	Filing: A - Civil Complaint for more than \$1,000.00 Paid by: Johnson & Monteleone Receipt number: 0036267 Dated: 9/29/2008 Amount: \$88.00 (Check) For:
10/6/2008	ATTR	CAMILLE	Plaintiff: Sadid, Habib Attorney Retained Sam Johnson
10/31/2008	AFFD	CAMILLE	Affidavit of service - srvd on Arthur Vailas on 10-16-08
	AFFD	CAMILLE	Affidavit of service - srvd on Michael Lineberry on 10-20-08
	AFFD	CAMILLE	Affidavit of service - srvd on Brian Kane on 10-6-08
11/6/2008	NOAP	CAMILLE	Notice of Special Appearance ; aty John Bailey for Defs
	ATTR	CAMILLE	Defendant: Idaho State University Attorney Retained John A Bailey Jr
	ATTR	CAMILLE	Defendant: Lineberry, Michael Jay Attorney Retained John A Bailey Jr
11/24/2008	HRSC	CAMILLE	Hearing Scheduled (Jury Trial 09/15/2009 09:00 AM)
11/25/2008	NOTC	CAMILLE	Notice of intent to Take Default; aty Sam Johnson for plntf
11/26/2008	MOTN	CAMILLE	Motion to dismiss; aty John Bailey for defs
	MEMO	CAMILLE	Memorandum of Law in support of Motion to Dismiss; aty John Bailey for defs
12/3/2008	NOTC	CAMILLE	Notice of hearing; set for 12-15-08 at 1:30 pm: aty John Bailey for defs
12/5/2008	HRSC	CAMILLE	Hearing Scheduled (Motion 12/15/2008 01:30 PM)
12/8/2008	AFFD	CAMILLE	Affidavit of Service - srvd on Miren Artiach on 12-3-08
	MEMO	CAMILLE	Memorandum in Opposition to Defs Motion to Dismiss; aty Sam Johnson for plntf
1/13/2009	NOTC	CAMILLE	Notice of service - Plaintiffs First Set of Interrog and Req for Porduction of Documents to Def; aty Sam Johnson for plnt
1/26/2009		CAMILLE	Notice of Service of Defs First set of Interrog and REq for Production of Documents to Plaintiff; aty John Bailey, jr.
2/10/2009	NOTC	DCANO	Notice of Intent to Take Default; Sam Johnson, Atty for Plnts.

Habib Sadid vs. Idaho State University, Michael Jay Lineberry

Date	Code	User		Judge
2/12/2009		MARLEA	Filing: 17 - All Other Cases Paid by: Racine, olson nye budge Receipt number: 0005678 Dated: 2/12/2009 Amount: \$58.00 (Check) For: Lineberry, Michael Jay (defendant)	Peter D. McDermott
	ANSW	DCANO	Answer and Demand for Jury Trial; John A. Bailey, Jr. Atty for Dfdts.	Peter D. McDermott
3/5/2009	NOTC	CAMILLE	Notice of service of Defs Responses to Plaintiffs First set of Interrog and Requests for Production of Documents: aty John Bailey for Def.	Peter D. McDermott
3/25/2009	MOTN	CAMILLE	Motion to Compel Discovery; aty John Bailey for defs	Peter D. McDermott
	AFFD	CAMILLE	Affidavit of John Bailey, Jr. in Support of Motin to Compel Discovery; aty John Bailey for defs	Peter D. McDermott
	NOTC	CAMILLE	Notice of hearing; set for 4-13-09 @ 1:30 pm: aty John Bailey	Peter D. McDermott
4/1/2009		CAMILLE	Notice of Service - Plntfs Objections, Answers and RResponses to Defs First Set of Interrog and Req.	Peter D. McDermott
4/30/2009		CAMILLE	Notice of Depo of Habib Sadid on 6-2-09 @ 9am: aty John Bailey for defs	Peter D. McDermott
5/1/2009		CAMILLE	notice of service - Plntfs Objections and First Supplemental Rewponses to Defs First set of Req for Productio nof documents; aty Sam Johnson for plntf	Peter D. McDermott
5/6/2009		CAMILLE	Notice of Depo of Dr. Richard Jacobsen ; on 6-3-09 @ 9am: aty Sam Johnson for plntf	Peter D. McDermott
5/8/2009		CAMILLE	Notice of service - Plntfs Objections and Second Supplemental Responses to Defs First set of Req for Production of Documents; aty Sam Johnson for plntf	Peter D. McDermott
6/2/2009		CAMILLE	Notice of Service of Defs Supplemental Responses to Plaintiffs First set of Interrog and REquests for Production of documents; aty John Bailey for defs	Peter D. McDermott
6/4/2009		CAMILLE	Notice of Service - Plntfs Objections and Second Supplemental Answers to Defs First set of Interrog and Third Supplemental Responses to Defs First set of Req for Production of documents; aty Sam Johnson for plntf	Peter D. McDermott
6/8/2009		CAMILLE	Second Motion to Compel Discovery; aty John Bailey for defs	Peter D. McDermott
		CAMILLE	Affidavit of John Bailey , jr. in Support of Second Motion to Compel Discovery; aty John Bailey for defs	Peter D. McDermott
		CAMILLE	Notice of hearing; set for 6-22-09 @ 1:30 pm: aty John Bailey for def.	Peter D. McDermott
6/9/2009	HRSC	CAMILLE	Hearing Scheduled (Motion 06/22/2009 01:30 PM)	Peter D. McDermott

Habib Sadid vs. Idaho State University, Michael Jay Lineberry

Date	Code	User	Judge
6/22/2009		CAMILLE	Minute entry and order; Defs Second Motion to Compel Discovery is GRANTED: Plntf shall provide all documents requested no later than 6-26-09: J Mcdermott 6-22-09
6/23/2009		CAMILLE	Notice of Continued Deposition of Harib Sadid on 6-30-09 @ 9am: aty John Bailey for def
6/25/2009		CAMILLE	Notice of service - Plaintiffs Objections and Third Supplemental Answers to Defendants First set of Interrog and fourth Supplemental Responses to Defs First set of Req for Production of Documents: aty Sam Johnson for plntf
7/8/2009		CAMILLE	Second Notice of continued Depo of Habib Sadid on 7-17-09 @ 9am: aty John Bailey for Defs
7/16/2009		CAMILLE	Objection to Defs Request for Production of documents contained in defs second notice of continued depo of Habib Sadid; aty Sam Johnson for plntf
		CAMILLE	Notice of service - Plntfs Objection and fifth supplemental Responses to Defs first set of requests for productio of documents; aty Sam Johnson for plntf
7/22/2009		CAMILLE	Notice of service - Plntfs Objections and Sixth Supplemental Responses to Defs First set of Req. for Production of documents; aty Sam Johnson for plntf
7/29/2009	NOTC	AMANDA	Notice of Service; PA Johnson -- dfdt atty served Plt'f objections and seventh supplemental responses to dfdt's first set of requests for production of documents
8/4/2009		CINDYBF	Notice of Deposition of Dr. Subbaram Naidu- set 8-19-09 at 1:30 at office of John Bailey- by PA Johnson.
		CINDYBF	Notice of Deposition of Dr. Jay Kunze- at office of John Baily 8-19-09 at 9:00 a.m.- by PA Johnson.
8/5/2009		CAMILLE	Motion to Vacate and Reset Trial; aty Sam Johnson for plntf
		CAMILLE	Order Vacating and Resetting Jury Trial; J Mcdermott 8-5-09
8/11/2009		CAMILLE	Notice of service - Plntfs Second set of Requests for Production of Documents to Def: aty Sam Johnson for plntf
8/27/2009	MOTN	AMYW	Motion to Amend Complaint; /s/ Sam Johnson, atty for Plaintiff
	NOTC	AMYW	Notice of Hearing; /s/ Sam Johnson, atty for Plaintiff
8/31/2009	ORDR	AMYW	Administrative Order of Reference reassigning matter to Judge Nye; /s/ J McDermott
9/9/2009		CAMILLE	Amended Notice of Hearing; set for 10-5-09 @ 9:30 am: aty Sam Johnson for plntf

Habib Sadid vs. Idaho State University, Michael Jay Lineberry

Date	Code	User		Judge
9/9/2009	HRSC	CAMILLE	Hearing Scheduled (Motion 10/05/2009 09:30 AM)	David C Nye
9/14/2009		CAMILLE	Motion for Summary Judgment; aty John Bailey for def	David C Nye
		CAMILLE	Memorandum in support of Motion for Summary Judgment; aty John Bailey for def	David C Nye
		CAMILLE	Affidavit of John Bailey Jr. in support of Motion for Summary Judgment; aty John Bailey for def	David C Nye
9/28/2009		CAMILLE	Plaintiffs Motin for Additional time to oppose summary Judgment pursuant to rule 56	David C Nye
		CAMILLE	Affidavit of Sam Johnson in Support of Plntfs Motion for Additional time to oppose summary Judgment pursuant to rule 56	David C Nye
		CAMILLE	Memorandum in Opposition to plntfs Motin to amend Complaint; aty John Bailey for defs	David C Nye
9/29/2009		CAMILLE	Notice of hearing on Plntfs motin for Additional time to oppose summary judgment pursuant to rule; set for 10-13-09 @ 10am: aty Sam Johnson for plntf	David C Nye
9/30/2009		CAMILLE	Reply Memorandum in support of Motin to Amend Complaint; aty Sam Johnson for plntf	David C Nye
10/2/2009	HRSC	CAMILLE	Hearing Scheduled (Motion for Summary Judgment 10/13/2009 10:00 AM)	David C Nye
		CAMILLE	Affidafit of John Bailey Jr. in Opposition to Plntfs Motion for Additional time : aty JOhn Bailey for defs	David C Nye
		CAMILLE	Memorandum in Opposition to Plntfs Motion for Additional time ; aty John Bailey	David C Nye
10/5/2009	DCHH	AMYW	Hearing result for Motion held on 10/05/2009 09:30 AM: District Court Hearing Held Court Reporter: Stephanie Morse Number of Transcript Pages for this hearing estimated: Less than 100 pages.	David C Nye
	CONT	AMYW	Hearing result for Motion for Summary Judgment held on 10/13/2009 10:00 AM: Continued	David C Nye
		CAMILLE	Minute Entry and Order; on Plntfs motion to Amend the Complaint, the court will allow the Amended Complaint and will deem Defs Motion for Summary Judgment; Court will send its regular scheduling order for a new Trial schedule in this matter; J Nye 10-26-09	David C Nye
10/7/2009		CAMILLE	Amended Notice of Hering; set for 11-2-09 @ 10:00 am: aty John Bailey for defs	David C Nye
10/15/2009		CAMILLE	First Amended Complaint and Demand for Jury Trial; aty Sam Johnson for plntf	David C Nye
		CAMILLE	Plntfs Notice of Unavailable Dates; aty Sam Johnson:	David C Nye

Habib Sadid vs. Idaho State University, Michael Jay Lineberry

Date	Code	User		Judge
10/22/2009		CAMILLE	Defs Notice of Unavailable Dates; aty John Bailey for def	David C Nye
10/23/2009		CAMILLE	Notice of depo of Dr. Jay Kunze on 10-27-09 @ 1pm: aty Sam Johnson for plntf	David C Nye
		CAMILLE	Notice of depo of Michael Jay Lineberry on 10-28-09 @ 10am: aty Sam Johnson for plntf	David C Nye
10/30/2009		CAMILLE	Affidavit of Plntf in Oppositjion to Defs Motion for Summary Judgment; aty Sam Johnson for plntf	David C Nye
		CAMILLE	Plaintiffs Memorandum in Opposition to Defs Motion for Summary Judgment; aty Sam Johnson for plntf	David C Nye
		CAMILLE	Reply Affidavit of John Bailey Jr. Re: Defs Motion for Summary Judgment; aty John Bailey for def	David C Nye
		CAMILLE	Affidavit of counsel in Opposition to Defs Motion for Summary Judgment; aty John Bailey for def	David C Nye
		CAMILLE	Motion to Strike Affidavit of Habib Sadid; aty John Bailey	David C Nye
		CAMILLE	Memorandum in Support of Motin to strike Affidavit of Habib Sadid; aty John Bailey	David C Nye
	MOTN	DCANO	Motion To Shorten Time; John A. Bailey, Jr. Atty for Defendants	David C Nye
11/2/2009	MEOR	AMYW	Minute Entry and Order; parties appeared and court heard oral argument on MSJ, court took matter under advisement and will issue a decision in 30 days; /s/ J Nye, 11-2-09	David C Nye
12/7/2009	MEOR	AMYW	Minute Entry and Order; decision on MSJ will not be issued timely by 12/2 and will issued on or before 12/18; /s/ J Nye, 12-7-09	David C Nye
12/18/2009		CAMILLE	Decision on Motion fo rSummary Judgment; Plntfs counsel will have three days to file any objection proposed Judgment; J Nye 12-18-09	David C Nye
12/22/2009	DPWO	CAMILLE	Judgment, Plaintiffs complaint be dismissed w/prej: J 12-22-09	David C Nye
	CSTS	CAMILLE	Case Status Changed: Closed	David C Nye
12/24/2009		CAMILLE	Plaintiffs Motion for Reconsideration; aty Sam Johnson for plntf	David C Nye
		CAMILLE	Affidavit of Plntf in support of Motion for Reconsideration; aty Sam Johnson	David C Nye
12/30/2009		CAMILLE	Reply Memorandum Re: Defs Motion for Summary Judgmetn; aty John Bailey	David C Nye
		CAMILLE	Defendants Memorandum in support of Motion for Attorney Fees and Costs; aty John Bailey for def	David C Nye
		CAMILLE	Affidavit of John Bailey Jr. in support of Defs Motion for fees and Costs; aty John Bailey for def	David C Nye
		CAMILLE	Defendants Motion for Attorney Fees and Costs; aty JohnBailey for def	David C Nye

Habib Sadid vs. Idaho State University, Michael Jay Lineberry

Date	Code	User	Judge
12/30/2009		CAMILLE	Notice of hearing; RE: Defs Motion for Fees and Costs; set for 1-19-2010 @ 11am: aty John Bailey
1/4/2010	HRSC	CAMILLE	Hearing Scheduled (Hearing Scheduled 01/19/2010 09:00 AM)
	CSTS	CAMILLE	Case Status Changed: Closed pending clerk action
1/5/2010		CAMILLE	Memorandum in support of Plntfs Motin for Reconsideration; aty Sam Johnson for plntf
		CAMILLE	Notice of hearing; set for Motion for Reconsideration; on 1-19-2010 @ 11am: aty Sam Johnson
1/7/2010		CAMILLE	Plaintiffs Motion to Disallow Defs Request for Attys Fees and Costs; aty SamJohnson for plntf
1/11/2010		CAMILLE	Memorandum in Opposition to Defs Request for Attorney Fees and Costs; aty Sam Johnson for plnt
		CAMILLE	Defs Memorandum in Opposition to Plntfs Motion for Reconsideration RE: Decision on Motion for Summary Judgment; aty Joh Bailey for def
1/12/2010		CAMILLE	Affidavit of John Bailey Jr. in opposition to Plntfs Motion for Reconsideration; aty John Bailey for defs
1/14/2010	CONT	AMYW	Continued (Hearing Scheduled 01/19/2010 11:00 AM)
1/15/2010		CAMILLE	Plaintiffs Reply Memorandum in support of Motinfor Reconsideration; aty Sam Johnson for plntf
1/25/2010		CAMILLE	Minute Entry & Order; plntfs motion to reconsider taken under advisement: J Nye 1-25-2010
2/24/2010		CAMILLE	Decision on Motion for Reconsideration; (Court Denying the Plntfs Motion for Reconsideration) J Nye 2-24-2010
	CSTS	CAMILLE	Case Status Changed: closed
3/31/2010	APSC	DCANO	Appealed To The Supreme Court
	NOTC	DCANO	Notice of Appeal; John C. Lynn, Atty for Appellant.
	NOTC	DCANO	Notice of Association of Counsel; John C. Lynn Atty for Plaintiff. John C. Lynn gives notice to the Court and Counsel that he is associating with Same Johnson as Attorneys of record for the Plaintiff.
	ATTR	DCANO	Plaintiff: Sadid, Habib Attorney Retained John C Lynn

Habib Sadid vs. Idaho State University, Michael Jay Lineberry

Date	Code	User	Judge
3/31/2010		DCANO	Filing: L4 - Appeal, Civil appeal or cross-appeal to Supreme Court Paid by: John C. Lynn Receipt number: 0012117 Dated: 4/1/2010 Amount: \$101.00 (Check) For: Sadid, Habib (plaintiff)
4/1/2010	MISC	DCANO	Received \$101.00 check # 5020 for Filing Fee and Supreme Court Fee and \$100.00 Check 5019 for deposit for Clerk's Record on 3-31-10. 1
4/2/2010	MISC	DCANO	CLERK'S CERTIFICATE OF APPEAL MAILED TO COUNSEL, Same Johnson and John Lynn for Appellant and John A. Bailey for Respondent AND SUPREME COURT ON 4-2-10.
4/8/2010	MISC	DCANO	IDAHO SUPREME COURT; Notice of Appeal received in SC on 4-5-10. Docket Number 37563-2010. Clerk's Record and Reporter's Transcript due in Sc on 7-12-10. (6-7-10 5 weeks prior)
	MISC	DCANO	IDAHO SUPREME COURT; Clerk's Certificated received in SC on 4-5-10.
4/20/2010		DCANO	Filing: L4 - Appeal, Civil appeal or cross-appeal to Supreme Court Paid by: Racine, Olson, Nye Receipt number: 0014545 Dated: 4/20/2010 Amount: \$101.00 (Check) For: Idaho State University (defendant) and Lineberry, Michael Jay (defendant)
	MISC	DCANO	\$101.00 FOR Cross Appeal check # 56482 paid on 4-20-10.
	MISC	DCANO	NOTICE OF CROSS APPEAL; John A. Bailey, Atty for Defendants/ Respondents.
	MISC	DCANO	CLERK'S CERTIFICATE OF CROSS APEAL; Signed and Mailed to Counsel and SC on 4-20-10.
	MISC	DCANO	NOTICE OF AMENDED CROSS APPEAL: John A. Bailey, Jr. Atty for Defendants. (requesting additional documents for Clerk's Record)
	MISC	DCANO	Received \$100.00 check # 56509 for down on Clerk's Record from Racine, Olson, Nye. (Cross Appeal)
4/23/2010	MISC	DCANO	IDAHO SUPREME COURT; Letter from Dorothy to John Bailey regarding request for Transcripts.
4/26/2010	MISC	DCANO	AMENDED NOTICE OF APPEAL; John C. Lynn, Atty. for Appellant. (requesting documents for Clerk's Record).
	MISC	DCANO	IDAHO SUPREME COURT; Notice of Cross Appeal received in SC on 4-22-10.
4/27/2010	MISC	DCANO	AMENDED CLERK'S CERTIFICATE OF APPEAL; Signed and Mailed to SC and Counsel on 4-27-10.

Date: 4/29/2010

Sixth Judicial District Court - Bannock County

User: DCANO

Time: 09:52 AM

ROA Report

Page 8 of 8

Case: CV-2008-0003942-OC Current Judge: David C Nye

Habib Sadid vs. Idaho State University, etal.

Habib Sadid vs. Idaho State University, Michael Jay Lineberry

Date	Code	User	Judge
4/27/2010	MISC	DCANO	AMENDED CLERK'S CERTIFICATE OF CROSS APPEAL; Signed and Mailed to SC and Counsel on 4-27-10. David C Nye
4/29/2010	MISC	DCANO	CLERK'S RECORD received in Court Records on 4-29-10. David C Nye

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Sam Johnson
JOHNSON & MONTELEONE, L.L.P.
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Boise, Idaho 83702
Telephone: (208) 331-2100
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sam@treasurevalleylawyers.com
Idaho State Bar No. 4777

Attorneys for Plaintiff

PETER D. McDERMOTT

ORIGINAL

**IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT FOR THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK**

<p>HABIB SADID, an individual,</p> <p style="text-align: center;">Plaintiff,</p> <p>v.</p> <p>IDAHO STATE UNIVERSITY, MICHAEL JAY LINEBERRY, and JOHN/JANE DOES I through X, whose true identities are presently unknown,</p> <p style="text-align: center;">Defendants.</p>	<p>Case No. <i>CN 2008-3942-00</i></p> <p>COMPLAINT AND DEMAND FOR JURY TRIAL</p>
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COMES NOW Plaintiff, Habib Sadid, by and through his attorney of record, Sam Johnson, of the law firm of Johnson & Monteleone, L.L.P., and for causes of action against the above-named Defendants complains and alleges as follows:

PARTIES, JURISDICTION AND VENUE

1. Plaintiff, Habib Sadid, Ph.D., PE, is now, and at all relevant times herein was a Tenured Faculty member and Full Professor with the College of Engineering at Idaho

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State University, located in the city of Pocatello, Idaho. Professor Sadid currently resides in Pocatello, Bannock County, Idaho.

2. Defendant Idaho State University (hereinafter "ISU"), is now, and at all relevant times herein was, a "body politic and corporate, with its own seal and having power to sue and be sued in its own name" (*See* Idaho Code § 33-3003) and is now and at all relevant times herein "was established in the city of Pocatello, Idaho, an institution of higher education to be designated and known as the Idaho State University, consisting of such colleges, schools or departments as may from time to time be authorized by the state board of education." *See* Idaho Code § 33-3001.

3. Defendant Michael Lineberry, is now, and at all relevant times herein was acting pursuant to custom and policy derived from the official capacity delegated to him by ISU, and is being sued in both his individual and representative capacities.

4. John/Jane Does I through X, Defendants ("the Doe Defendants"), are individuals or entities, political, corporate, or otherwise, whose true identities are unknown at the present time, but who engaged in the activities and conduct set forth herein. Alternatively, John/Jane Does I through X are entities or individuals who are now, or at the material and operative times were, the agents, employees, independent contractors, subdivisions, franchisees, wholly-owned subsidiaries, or divisions of Defendants herein, or are entities or individuals acting on behalf of, or in concert with, the individual Defendant(s) named herein.

5. The amount in controversy is greater than the sum of \$10,000.00, and this claim therefore exceeds the jurisdictional limits of the magistrate's division and thereby satisfies the monetary prerequisites of the district court.

FACTUAL ALLEGATIONS

6. Professor Sadid has been a Tenured Faculty member and Associate Professor in the Department of Civil Engineering at ISU since 1994, and has been a Full Professor at ISU since 1999.

7. In his capacity as a Faculty Member and Full Professor of ISU, Professor Sadid has openly and publicly expressed his views embracing matters of public concern relating to ISU, and its standing in the academic and local community.

8. In 2001, Professor Sadid published a letter to his fellow faculty members and ISU administrators criticizing ISU's decision to merge the College of Technology with the College of Engineering. ISU ultimately withdrew the merger plan by secretly tabling the issue for the time being.

9. In 2003, Professor Sadid spoke publicly against ISU's renewed plan, designed in secret, to again merge the College of Engineering with the College of Technology. A true and correct copy of the newspaper publication is appended hereto as Exhibit "A" and by this reference hereby incorporated herein. Professor Sadid has spoken openly and publicly on other matters relating to ISU and of importance to the academic and local community as well. *Id.*

10. Starting in 2001 and for the next five (5) years thereafter, ISU acting through the then-Dean of Engineering, Dr. Jay Kunze, failed or refused to conduct annual performance evaluations of Professor Sadid's work and these retaliatory practices caused Professor Sadid to suffer economic losses due to a lack of otherwise normal and customary salary increases and growth and advancement opportunities.

11. Thereafter, in August 2006, the ISU faculty by unanimous vote selected Professor Sadid as the Chair of the Department of Civil Engineering which selection was approved and ratified by the Dean of Engineering, Dr. Richard Jacobsen. Nonetheless, ISU acting through its Provost, Robert Wharton, overrode the selection of Professor Sadid and instead demanded a national search be conducted by a committee chaired by two non-engineering faculty, who were hand selected by Provost Wharton. These retaliatory measures culminated in ISU's selection and appointment of an associate professor from Dayton, Ohio, to Chair of the Department of Engineering, effective July 2007. The new appointee was clearly not as qualified as Professor Sadid.

12. ISU would not have decided to hire the associate professor from Ohio instead of Professor Sadid, unless ISU was motivated to retaliate against Professor Sadid for his use of protected speech.

13. ISU has likewise retaliated against Professor Sadid by increasing his salary at the lowest of percentages in spite of him performing at the highest levels of academic excellence.

14. On or about August 1, 2008, ISU once again retaliated against Professor Sadid. This retaliation took the form of an e-mail published by ISU administrator, Defendant Lineberry, where Defendant Lineberry accused Professor Sadid of throwing a "tirade" and referred to him as a "nut-case" who "cannot help himself". A true and correct copy of the above referenced e-mail is appended hereto as Exhibit "B" and by this reference hereby incorporated herein.

15. Defendants, through their concerted actions, systematically, and by design, pattern, and practice have continually retaliated against Professor Sadid for speaking

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openly on matters of public concern and by doing so have impaired and violated Professor Sadid's rights to freedom of speech guaranteed under the First Amendment to the United States Constitution, and Article 1, Sections 9 and 10 of the Constitution of the state of Idaho. The incidents of retaliation have continued to the present day.

16. The above-referenced retaliatory actions likewise stand in direct violation of Professor Sadid's tenured contract of employment with ISU and the laws of the state of Idaho, the Rules and Governing Policies and Procedures of the State Board of Education, and all policies and procedures of ISU and any of its departments or offices expressly incorporated therein.

17. As a direct and proximate result of ISU's breach of the employment contract and its violations of Professor Sadid's constitutional rights, Professor Sadid has suffered direct and consequential losses and damages in amounts to be determined at trial. The losses and damages comprise both economic and non-economic harms, including impairment of reputation, personal humiliation, and injury to his mental and physical health and well being. The losses and damages are prospective in nature and will likely continue for the foreseeable future.

18. ISU would not have retaliated against Professor Sadid but for the fact Professor Sadid chose to exercise his right to engage in protected speech.

19. As a direct and proximate result of the acts and omissions of Defendants, Professor Sadid has been required to retain the services of Johnson & Monteleone, L.L.P., in connection with the prosecution of this action and requests an award of attorney fees and costs incurred in the prosecution and maintenance of the instant action.

**COUNT ONE – DEPRIVATION OF CONSTITUTIONAL RIGHTS
UNDER COLOR OF STATE LAW**

20. Plaintiff incorporates herein by reference all of the foregoing and following allegations of the Complaint.

21. By retaliating against Professor Sadid in the manner and under the circumstances heretofore set forth in this Complaint, Defendants have impaired and violated Professor Sadid's rights to freedom of speech guaranteed under the First Amendment to the United States Constitution, and Article 1, Sections 9 and 10 of the Constitution of the State of Idaho. These violations entitle Professor Sadid to relief under Title 42, Section 1983 of the United States Code.

22. As a direct and proximate result of the violations of Professor Sadid's constitutional rights, Professor Sadid has suffered direct and consequential losses and damages in amounts to be determined at trial.

**COUNT TWO – BREACH OF EMPLOYMENT CONTRACT AND THE
COVENANT OF GOOD FAITH AND FAIR DEALING IMPLIED
THEREIN**

23. Plaintiff incorporates herein by reference all of the foregoing and following allegations of the Complaint.

24. A valid and binding contract of employment was formed and entered into by and between Plaintiff and Defendant ISU.

25. Defendant ISU materially breached the contract of employment and the covenant of good faith and fair dealing implied therein.

26. As a direct and proximate result of the breach of the employment contract and the covenant of good faith and fair dealing implied therein, Plaintiff has suffered direct and consequential losses and damages in amounts to be determined at trial.

COUNT THREE – DEFAMATION OF CHARACTER

27. Plaintiff incorporates herein by reference all of the foregoing and following allegations of the Complaint.

28. Defendants' retaliatory and slanderous affronts perpetrated against and published of and concerning Professor Sadid have defamed his character and good standing in the community.

29. As a result of these libelous and defaming statements, Professor Sadid's reputation in the community, and his professional, financial, and dignitary interests have been harmed.

30. Professor Sadid is therefore entitled to recover damages in amounts to be proven at trial.

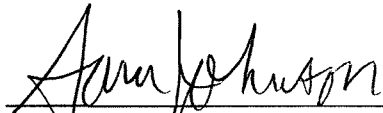
PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays judgment against Defendants as follows:

1. For Plaintiff's special and general damages in amounts which may be proven at trial but which amounts exceed the jurisdictional threshold of this Court;
2. For Plaintiff's reasonable costs and attorney fees incurred herein; and
3. For such other and further relief as this Court deems just and equitable in the premises.

DATED: This 25 day of September, 2008.

JOHNSON & MONTELEONE, L.L.P.



Sam Johnson
Attorneys for Plaintiff

DEMAND FOR JURY TRIAL

Pursuant to I.R.C.P. 38(b), Plaintiff hereby demands a trial by jury on any and all issues properly triable by jury in this action.

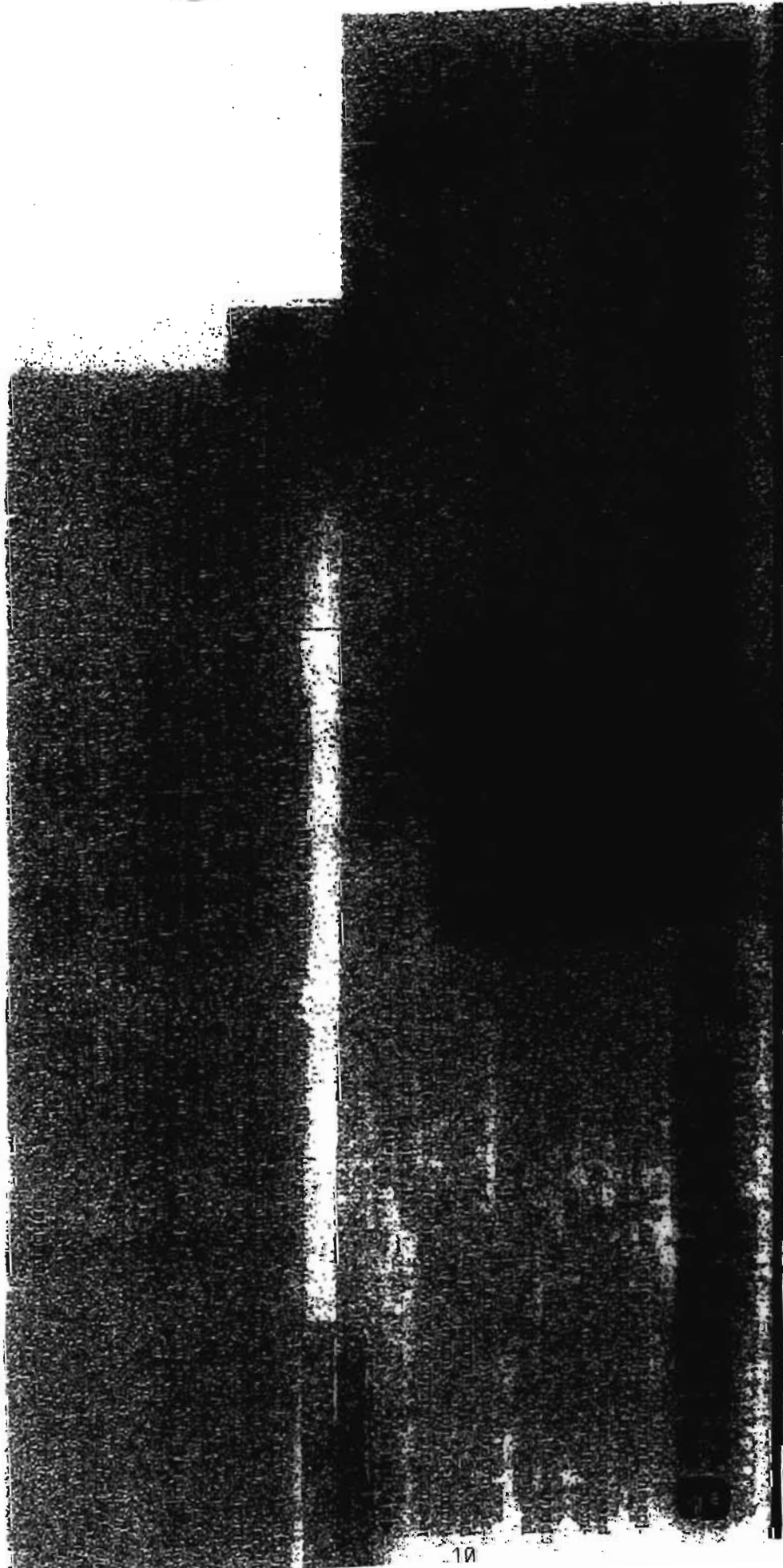
DATED: This 25 day of September, 2008.

JOHNSON & MONTELEONE, L.L.P.

A handwritten signature in cursive script that reads "Sam Johnson". The signature is written over a horizontal line.

Sam Johnson
Attorneys for Plaintiff

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ISU professor plans internal vote of confidence

Sadid attempts to gauge faculty support for the university's administrators

By **Tanna Barry**
Journal Writer

POCATELLO — Engineering professor Habib Sadid has taken it on himself to conduct a vote of confidence to gauge faculty support for Idaho State University President Richard Bowen and Academic Vice President Jonathan Lawson. The measure was initiated by Sadid last month when he mailed faculty members a survey to determine if manipulation of faculty in making decisions behind closed doors was a problem. Sadid's vote will be taken March 25 from 8 a.m. to 8 p.m. at the Student Union

Building by the information desk.

"This is just to measure what kind of support the faculty has in this administration," Sadid said. "If they have support, that's great. If not, they should know about it."

He originally wanted the Faculty Senate to vote, but it was turned down on Feb. 24. Faculty Senate vice chairman Doug Nilson said the issue could be discussed again at the next scheduled meeting March 24 because of new information.

Professors Ken Bosworth and Sadid and associate lecturer Mary Hoffe, in the College of Engineering conducted an informal

VOTE OF CONFIDENCE

■ **When:** March 25 from 8 a.m. to 8 p.m.

■ **Where:** Student Union Building by the information desk

poll that showed 172 of 244 respondents said there should be a vote of confidence/no confidence in Lawson.

The university has 538 full-time and 59 part-time faculty as of Oct. 15, so about 40 percent of faculty responded to the poll.

Although Nilson said a legitimate vote of confidence would have to go through Faculty Senate, Sadid said he will conduct his own vote regardless.

"It's healthy for the organization to

■ **Why:** The vote is to determine if ISU faculty have confidence in President Richard Bowen and Academic Vice President Jonathan Lawson.

■ **Who:** Engineering professor Habib Sadid is hosting the vote.

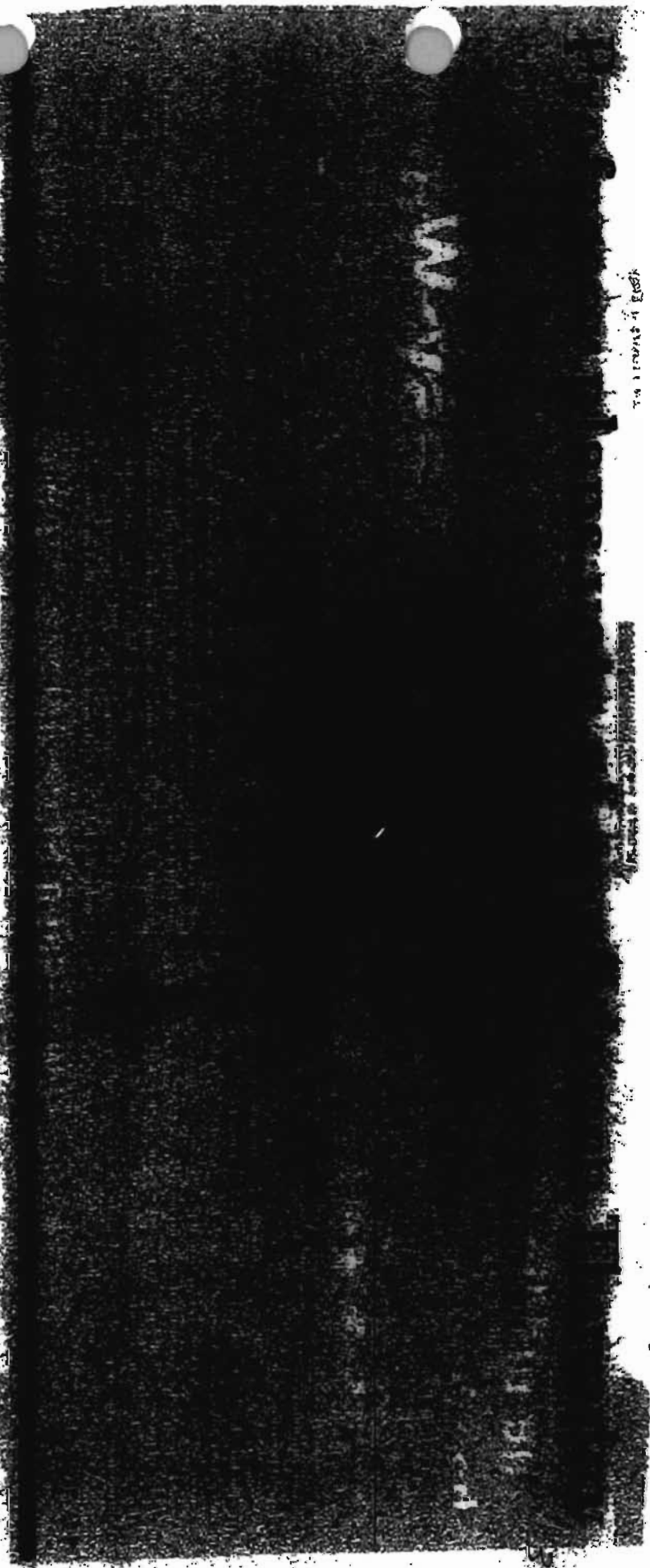
measure what kind of support they have," Sadid said. "In fact, the administration should ask for this vote, not me."

"They should constantly evaluate the kind of support they have."

Neither Bowen nor Lawson could be reached for comment Friday.

Tanna Barry covers health care, ISU and serves as the Web editor for The Journal. She can be reached at 232-4157 ext. 241 or by e-mail at tbarry@journalid.com.

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What's ISU need to do to improve research?

Former Idaho State University President Richard Bowen departed ISU after 20 years of "service," in disgrace. In his place, he left a legacy of anger and distrust. He valued unquestioning loyalty above all else in choosing his inner circle and this legacy continues to take a toll on ISU today.

During ISU's past, we have witnessed numerous programs established without funding or faculty sufficient to deliver quality education much less to create effective research programs.

ISU has a history of financial woes and secrecy resulting in the starvation of many existing programs.

The accuracy of ISU's enrollment figures are questioned, even by those who work at the university. The ISU faculty was strained with exceptionally heavy teaching loads. During all

few administrative voices raised questioning the wisdom of spreading meager resources too thin, and these voices were quickly silenced.

Bowen built his empire by appointing "yes men" to criti-

cal positions; he ran roughshod over faculty; and blacklisted or retaliated against those who questioned his actions and misuse of power. Perhaps a performance review of Bowen's administrative reign can best be described by the 10 recommendations for ISU cited by the Northwest Accreditation Commission. Bowen pushed his agenda, alienated faculty and destroyed morale on campus.

When Dr. Arthur Vailas assumed the office of the president, he was entrusted to rectify problems inherited from the past administration. President Vailas appears to be a sincere and humble man, armed with a sound vision for the institution.

Unfortunately, President Vailas is surrounded by a circle of administrators from the Bowen era who are protecting their own interests at the expense of the university.

It is probable that Dr. Vailas is unaware of what damage



COMMENTARY

those loyal to Bowen are doing behind the scenes at ISU. For example, does the president know why ISU's enrollment has declined? Does he know why a temporary registrar has been hired to replace a former registrar?

President Vailas' vision of improving

research capabilities at ISU, while offering quality education, is well supported by the ISU faculty, but attracting research funds is a very competitive pursuit. It requires that faculty be given the necessary time to prepare quality proposals and that the university has in place well-equipped and functional facilities. The ISU faculty is already fully loaded, on average working 60 hours a week, teaching 6 to 8 courses per year, conducting research in their respective fields of expertise, and providing services to the university and community. Now, faculty are additionally expected to raise funds, recruit students and attract research funds. In contrast, faculty in real research

universities normally teach 2 to 3 courses per year, have well equipped laboratories, and enjoy the benefit of having "in-house" fundraisers.

The coordination of teaching and research assignments is the responsibility of the offices of academic affairs and research. Unfortunately, these two offices have failed to develop strategies designed to shift the focus of ISU to research while simultaneously maintaining and building on its teaching capabilities. Universities are not corporate entities like Microsoft or Google. In an educational facility, education should be the predominant focus and cannot be sacrificed for research. The faculty at ISU are already overworked and underpaid. If the administration wishes to promote research, it will be necessary to invest money in release time for proposal writing and improved laboratories. A 3- to 5-year investment program will certainly have a significant impact on improving the research capabilities, bringing prosperity and recognition to ISU.

The faculty constitutes the "wheels" of the university and

without professors the institution cannot operate. Faculty members are well-educated and dedicated individuals who have the benefit of the students, the university, and community foremost in their minds, and deserve the highest level of respect from the administration.

Unfortunately, the ISU Office of Academic Affairs has been unable to unify faculty and administration.

Faculty members are not included in the decision-making process.

It appears the distance between the administration and faculty is widening and morale among faculty continues to be dangerously low.

Blacklisting and retaliation against faculty in the past has created an era of mistrust between faculty and the administration.

Many ISU administrators are working to protect each other at the expense of the university.

ISU does not have the necessary policies to prevent administrators from abusing their power by retaliating against whistleblowers.

If the administration's vi-

sion is to improve the research capabilities of the university will need to develop strategies provide the resources necessary for faculty to develop research programs. The administration must also demonstrate its confidence in the faculty by involving that faculty in the decision-making process. Finally, the administration must demonstrate respect for the faculty by punishing administrators who abuse their authority.

Habib Sadid has been a professor of engineering at Idaho State University for 20 years. He has received numerous awards including Distinguished Master Teacher, Distinguished Public Service, and Excellence in Engineering Education / Idaho professional engineer.



IDAHO STATE JOURNAL

ISU professor files complaints

BY CASEY SANTEE
csantee@journalnet.com

POCATELLO — An Idaho State University professor filed complaints with the Equal Employment Opportunity Commission and the American Civil Liberties Union last month claiming he is the victim of "retaliation and discrimination and harassment" by campus administrators.

Habib Sadid

Habib Sadid, a longtime ISU Department of Engineering faculty member, sent the EEOC and ACLU a 97-page compendium of documents, which include e-mail correspondence with ISU President Arthur Vailas and other administrators.

In a cover letter to his complaints, Sadid specifically mentions ISU Provost Robert Wharton and former College of Engineering Dean Jay Kunze as those who committed the harassment.

"I have to spend 30 to 40 percent of my time fighting to survive," Sadid said during an interview Thursday. "I don't sleep at night. It has been damaging to my health and career."

Wharton and Vailas declined to comment about Sadid's claims. Kunze said he hadn't heard about the complaints and also declined to comment.

ISU spokeswoman Libby Howe said it is a personnel matter not open for public discourse.

"We don't respond to personnel issues in a public forum," Howe said. "We believe in following due process procedures in personnel issues. Since we have not seen the (complaints), and we do not know the nature of his claims, it would

be inappropriate to respond."

Among Sadid's claims are that Kunze did not give him an annual faculty performance evaluation for a period of six years.

He also said he was denied the position of Department of Civil Engineering chairman after the faculty unanimously voted for him. He said current College of Engineering Dean Richard Jacobson approved the faculty's nomination, but Wharton thwarted the confirmation citing a need for a nationwide search for the job.

Sadid also said that on two occasions ISU officials claimed they didn't receive a letter nominating him for a public service award, and when he contacted them about it, they said it must have been lost in the mail.

Sadid said he has tried to go through the university's grievance process to resolve the problems, but the administra-

tion dismissed his claims citing a statute of limitations.

"Every complaint I've had about Kunze or Wharton has been ignored or sandbagged," Sadid said.

Complaints to the EEOC and ACLU can be dismissed, settled by mediation or resolved via lawsuits. Sadid said he doesn't plan to file a lawsuit against ISU, but he wants the university to form an ethics committee to investigate faculty complaints.

"These (issues) aren't a matter of law, they are a matter of ethics," Sadid said.

Sadid has been designated a Master Teacher on numerous occasions during his 20-year tenure at ISU. He received the university's Distinguished Teacher Award in 2002 and the Public Service Award this year. In 2005, Sadid won the Idaho Excellence in Engineering Educator Award.

Mayhem conviction draws 14-year sentence

BY JIMMY HANCOCK
jhancock@journalnet.com

POCATELLO — Sixth District Judge Peter D. McDermott gave a Gate City man the maximum sentence of 14 years in prison Monday for his felony mayhem conviction.

James M. Rodriguez, 29, was arrested last December after an altercation with another man and charged with aggravated battery

indefinite. With the time he has already served in Bannock County Jail, Rodriguez will be eligible for parole late in 2011.

According to a court filing, police arrived at Rodriguez' residence in the 400 block of Industrial Lane in Pocatello late in the evening of Dec. 16, where they determined there had been an altercation between Rodriguez and another man.

The victim had a tear in each cheek starting at the corner of the mouth where the line

told the defendant. "I'm not buying that."

Bannock County Deputy Prosecutor Ken Webster told McDermott that Rodriguez didn't take responsibility for his actions in the presentencing investigation report and he wasn't taking responsibility during the sentencing either.

"You can't rehabilitate someone who won't take responsibility for his actions," Webster said. "I have never asked for punishment

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'Crisis of confidence'

Tue, Sept. 20, 2005

ISU faculty group voices no confidence in president

By Dan Boyd
Journal Writer

POCATELLO — Taking a bold step, the Faculty Senate of Idaho State University officially voiced its lack of confidence in three top university administrators Monday, including ISU President Richard Bowen.

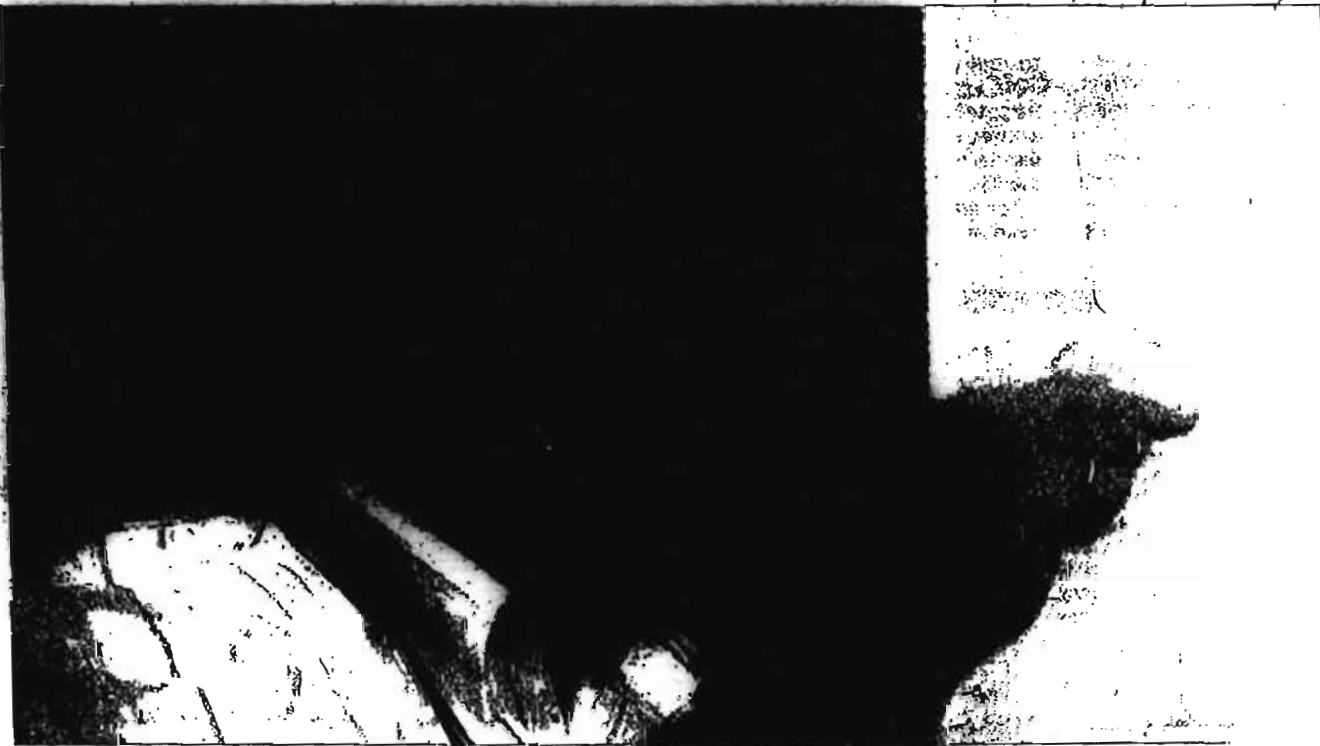
Calling the proceedings sad but necessary, Faculty Senate Chairwoman Kay Christensen said the decision hinged on more than just the controversial administrative pay raises that have angered many on campus.

"This was a wrenching thing for a lot of faculty members," she said.

The votes effectively pull the faculty governing body's support from Bowen, Financial Vice President Ken Prolo and Budget Officer Leo Herrman.

While the decision doesn't carry any tangible repercussions, it calls on all faculty members to vote on the issue in two weeks and puts ISU's veteran president into a precarious position as he weighs his response.

The controversy began when news surfaced ISU administrators had received more than \$350,000 in salary



Habib Sadid, professor of the College of Engineering, makes a point at the Idaho State University Faculty Senate meeting Monday afternoon about his dealings with school administrators.

Photo by [unclear]

raises, some as large as 28 percent, in order to put pay levels more in line with national averages and assist in recruiting new administrators.

Officials say administrators were actually paid less than other campus groups according to national data, but

many students and faculty members objected to the secretive nature of the decision, with some complaining they had been misled by ISU budget officers to believe the school had little money to fund salary raises.

"It's not so much about numbers,

it's about honesty," said an ISU senior and the vice president, who claimed a spreadsheet showing it posefully hid certain information.

Professors, many of

See ISU

ISU faculty

►Continued from A1
most recent episode is just one example of an ongoing trend of disrespecting faculty, continued.

"I am ashamed as a distinguished teacher at this school of this administration," said engineering professor Habib Sadid. "If they want to fire me, that's fine. I don't give a damn."

But while the issue of administrative pay raises has created schisms on campus, faculty senators acknowledged Monday's vote of no confidence represented an act of no return.

"We are picking a fight because a bully has been bullying

us for many years," said biology professor David Delehanty. "This university could be so much better with an enthusiastic faculty."

"We are throwing away a treasure chest right now."

Due to the serious nature of the subject, Monday's meeting lasted for three-and-a-half hours and faculty members voted on each separate administrator separately.

Citing legacies characterized by a lack of budget transparency, the Faculty Senate unanimously denounced Prolo and Herfman, both of whom received raises of more than \$20,000.

Both have previously declined to comment on the matter.

As for Bowen, the final tally was 17-2, with three members abstaining.

Former Faculty Senate Chair Peter Vik, who said he wasn't aware of the magnitude of the administrative salary raises until recently, called the vote "enormous" and admitted he's not sure what to expect in the upcoming weeks.

"It's like the genie's out of the bottle," he said. "I don't know if we can put it in."

"I hope (Bowen) chooses to respond in a way that seeks to bridge the gulf that's developed between administrators and faculty."

Bowen, who recently returned from an extended business trip, met with ASISU leaders Monday night and is set to address the media today.

Dan Boyd covers politics, higher education and natural resource issues for the Journal. He can be reached at 239-3168 or by e-mail at dboyd@journalnet.com.

Valuing freedom of speech

ISU prof says it's important to speak out

BY JOHN O'CONNELL
joconnell@journalnet.com

POCATELLO — Few professors at Idaho State University have earned more acclaim than Habib Sadid.

And few people in the community have been more vocal in their criticisms about the university's leadership than the tenured civil engineering professor.

Sadid moved to the United States from Iran in 1978, before the fall of the Shah.

Since arriving here, he's offered his opinions unfiltered, and he's come to believe Americans are fearful of retaliation for voicing their opinions and have become too reluctant to use their free speech.

"I thought the United States would be better, but here people are afraid of even talking. I'm really worried that the U.S. is heading in that direction," Sadid said. "The Constitution will support you. You just have to know how to use it. Unfortunately, we are stuck with a group of 'yes men' (in leadership positions). They will lie through their teeth just to protect their position."

Sadid believes the story of an engineer who spoke at ISU in the late 1980s is illustrative of a larger problem in America.

Convinced there was a fundamental flaw with a shuttle part called the O-rings, the engineer urged NASA to cancel the ill-fated 1986 flight of space shuttle Challenger.

Sadid said the engineer was fired for voicing his opinion.

Sadid, a longtime critic of former ISU President Richard Bowen, believes ISU still has great room for improvement and plans to skip the upcoming



JOE BLANK/IDAHO STATE JOURNAL

Habib Sadid is a civil engineering professor at Idaho State University in Pocatello. He is the subject of the Journal's Faces of Idaho feature this week.

FACE OF IDAHO

HABIB SADID

- ISU civil engineering professor.
- Moved to the U.S. from Iran in 1978.
- Doing research on road building.

"(The university) come(s) out and say(s) we want to improve research, and they don't say how they're going to help you develop the research," Sadid said. "We haven't given (the faculty) the means to do this."

Sadid's many honors at ISU

include becoming a Distinguished Master Teacher in 2002, Influential Teacher of the Year in the College of Engineering on six occasions, recipient of the 2007 Public Service Award, and winner of the 2005 Idaho Excellence in Engineering Educator Award from the Idaho Society of Professional Engineers.

He's in the midst of what he believes will be a defining research project to change the way the nation builds roads.

He recently received a \$185,000 grant from the Idaho Transportation Department for his work.

With the cost of petroleum-based asphalt rising, Sadid believes the nation should shift to building streets and other infrastructure with concrete, which requires much less maintenance.

Too often, however, Sadid said a chemical process called alkali silica reaction breaks

down concrete prematurely.

His notes Interstate 84 in the Mountain Home area, for example, was built with concrete in the early 1990s and was intended to last 40 years. The \$100 million project is already falling apart, he said.

Sadid aims to find a way to slow or stop that deterioration.

"I'm going to look at almost every possible solution and come up with the best, most cost-effective solution to the problem. I'm going to put my heart and mind on that, and I believe I will find it," Sadid said. "I believe in the future there will be no asphalt on the street. It's going to be all concrete everywhere. We won't have this asphalt forever."

Away from work, Sadid is an avid cook who loves to entertain large groups.

Sadid and his new wife, Kim, plan to celebrate Halloween with 130 friends during their annual costume party.

From: Michael Lineberry <mjl@isu.edu>
Subject: NE 402/502
Date: August 1, 2008 8:18:15 AM MDT
To: John S Bennion <jbennion@isu.edu>
Cc: gimmel@isu.edu

John: I was disappointed to learn of Sadid's trade yesterday with the Dean, regarding the employ of Josh Peterson to help out in teaching 402/502. My disappointment is not with Sadid, who is a nut-case and cannot help himself. Clearly he has no standing in this matter, yet he was privy to details that had to come from one of a very small number of people. It is well known that you were not in favor of this arrangement, and that within the NE circle including the Dean, you were the only one not in favor. But if you had a problem with it, it should have been taken up with us, not with outsiders who have no standing and no understanding of the course involved, the individuals, or the arrangements.

(I don't want to be falsely accusatory, and hopefully there is another explanation for this set of events.

There is nothing unusual in the arrangement with Peterson. He will be under close supervision, from both myself and from Professor Gunnerson from UI, who in fact will deliver the bulk of the lectures. That Ph.D. grad students, with an M.S. degree already attained, would deliver lectures to seniors and first-year graduate students is hardly a new concept. At my graduate institution, a second-year course on theory of functions of a complex variable was given entirely by a senior Ph.D. graduate student. It was one of the best courses I ever had. That institution of course was the California Institute of Technology. If it was OK at Caltech, shouldn't it be OK at ISU?

I remind you that other people who hold M.S. degrees are teaching courses in the COE. In fact, the sitting chair of the ME Department holds only the M.S. degree. Further, as you well know, as a graduate course NE 502 is aimed pretty low, for entering grad students with little or no background in nuclear.

Not only do I believe that Josh will do fine under the planned arrangements, but I think he might well be someone who we want to nurture and court as a future faculty member, when his Ph.D. studies at the University of Texas are complete. This is a way to further the bond with ISU and simultaneously get a look at his potential for instruction. It's a "win" for everybody. I'm puzzled why anyone from within the ISU NE circle might have a problem with this solution. Absent Mary Lou for one or possibly two years, if we don't play in this, the result may be to cede the course to UI. None of us want to see that.

John, did you have a role in this? If so, what was your thinking?

Michael

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BANNOCK COUNTY
CLERK OF THE COURT
2008 NOV 24 PM 12: 32

BY [Signature]
DISTRICT CLERK

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT
IN AND FOR THE STATE OF IDAHO, COUNTY OF BANNOCK

HABIB SADID, an individual,)
)
 Plaintiff,)
)
 vs.)
)
 IDAHO STATE UNIVERSITY,)
 MICHAEL JAY LINEBERRY, and)
 JOHN/JANE DOES I through X, whose)
 true identities are presently unknown,)
)
 Defendants.)
)

CASE NO. CV2008-3942-OC

ORDER

NOW, THEREFORE, IT IS HEREWITH ORDERED this matter is set for Jury Trial commencing **Tuesday, September 15, 2009, at 9:00 A.M.**, District Courtroom No. 300, Bannock County Courthouse.

IT IS ORDERED that all discovery shall be completed by respective counsel, no later than twenty (20) days prior to the date set for trial.

IT IS FURTHER ORDERED that the Court will not entertain any pre-trial motions of any nature, type or description, within twenty (20) days of the date set for trial.

IT IS FURTHER ORDERED that proposed jury instructions shall be submitted to the Court no later than ten (10) days prior to the trial date.

S

IT IS FURTHER ORDERED Counsel shall also submit, if counsel desire, a pretrial brief to the court, no later than ten (10) days prior to the trial.

IT IS FURTHER ORDERED that counsel in each case shall mail to respective counsel, a witness list containing the names and addresses of all individuals, who will be called as witnesses during the trial and, an Exhibit List with the identity of each exhibit counsel will offer at trial. The original of same shall be filed with the Court. Said pretrial witness and exhibit lists shall be mailed by counsel no later than thirty (30) days prior to the trial date. In the event counsel calls a witness to testify or attempts to enter an exhibit at the trial not on the pretrial witness or exhibit lists, said witness will not be allowed to testify and said exhibit will not be admitted. The foregoing will be strictly enforced by the Court. (An exception to the foregoing is a bona fide rebuttal witness.)

IT IS FURTHER ORDERED plaintiff's counsel shall, where no appearance by a defendant has been made, apply for a default judgment, take appropriate action to serve the defendant/defendants, or dismiss the Complaint and/or advise Defendant of the Trial Date.

Counsel and the parties are encouraged to resolve their dispute via mediation.

IT IS SO ORDERED.

DATED this 21st day of November, 2008.


PETER D. McDERMOTT
District Judge

Copies to:
Sam Johnson
John A. Bailey, Jr.

Case No. CV2008-3942-OC
Order
Page 2 of 2

S

ORIGINAL

John A. Bailey, Jr. (ISB No. 2619)
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& BAILEY, CHARTERED
P.O. Box 1391
Pocatello, Idaho 83204-1391
Telephone: (208) 232-6101
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BANNOCK COUNTY
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2008 FEB 12 AM 10:33
BY [Signature]
DEPUTY CLERK

Attorney for Defendants

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO IN AND FOR THE COUNTY OF BANNOCK

HABIB SADID, an individual,)
)
Plaintiff,)
)
vs.)
)
IDAHO STATE UNIVERSITY,)
MICHAEL JAY LINEBERRY, and)
JOHN/JANE DOES I THROUGH X,)
whose true identifies are presently)
unknown,)
)
Defendants.)
_____)

Case No. CV 2008-3942-OC
ANSWER AND DEMAND FOR JURY TRIAL

COME NOW, the Defendants, Idaho State University and MICHAEL JAY LINEBERRY, by and through counsel of record, John A. Bailey of the firm of Racine, Olson, Nye, Budge & Bailey, Chartered, and for their Answer to the Complaint of the Plaintiff herein admit, deny, and allege as follows:

FIRST DEFENSE

All allegations of the Complaint not specifically admitted herein are denied.

SECOND DEFENSE

1. Defendants admit the allegations of paragraphs 1 through 3 of the Complaint, except

that any statements made by Dr. Lineberry which are alleged to be defamatory represent the opinions and judgments of Dr. Lineberry, and the specific contents thereof were not directed by any policy or custom of Idaho State University, the Department of Engineering or the State of Idaho.

2. Paragraph 4 of the Complaint does not appear to allege facts which require a response from the Defendants. To the extent a response is required, Defendants deny the same.

3. In response to paragraph 5 of the Complaint, the Defendants have no knowledge of the amount in controversy in this matter, and therefore deny the same.

4. Defendants admit the allegations of paragraphs 6 and 7 of the Complaint.

5. Defendants are without sufficient information about the allegations of paragraph 8 of the Complaint to either admit or deny the same.

6. In response to paragraph 9 of the Complaint, Defendants deny the existence of a plan to merge the College of Engineering with the College of Technology, and deny that it was designed in secret. Defendants admit the other allegations of paragraph 9.

7. Defendants deny the allegations of paragraphs 10, 11, 12, and 13 of the Complaint.

8. In response to the allegations of paragraph 14 of the Complaint, Defendants admit that the email appended to the Complaint as Exhibit B was sent from Defendant Lineberry to John Bennion, and that said email speaks for itself. Defendants deny all other allegations of paragraph 14.

9. Defendants deny the allegations of paragraphs 15 through 19 of the Complaint.

10. In response to the allegations of paragraph 20 of the Complaint, Defendants restate their responses to paragraphs 1 through 19.

11. Defendant deny the allegations of paragraphs 21 and 22 of the Complaint.

ANSWER AND DEMAND FOR JURY TRIAL - 2

12. In response to paragraph 23 of the Complaint, Defendants restate their answers to paragraphs 1 through 22 of the Complaint.

13. Defendants admit the allegations of paragraph 24 of the Complaint.

14. Defendants deny the allegations of paragraphs 25 and 26 of the Complaint.

15. In response to paragraph 27 of the Complaint, Defendants restate their answers to paragraphs 1 through 27.

16. Defendants deny the allegations of paragraphs 28, 29 and 30 of the Complaint.

FIRST AFFIRMATIVE DEFENSE

Plaintiff failed to file a Notice of Tort Claim as required by the Idaho Tort Claims Act, Idaho Code § 6-901 et seq.

SECOND AFFIRMATIVE DEFENSE

The Plaintiff's cause of action under 42 U.S.C. Section 1983 is barred by the applicable statutes of limitations, including Idaho Code §5-219.

THIRD AFFIRMATIVE DEFENSE

The Plaintiff's claims are barred by the doctrine of laches.

FOURTH AFFIRMATIVE DEFENSE

The Defendants are immune from liability pursuant to Idaho Code § 6-904.

DEMAND FOR JURY TRIAL

Defendants demand a trial by jury as to all matters so triable.

ATTORNEYS FEES


Defendants have been required to obtain the services of the law firm of Racine, Olson, Nye, Budge & Bailey, Chartered, and are entitled to an award of reasonable attorneys fee for the

services thereof pursuant to Idaho Code §§ 12-120 and 12-121.

WHEREFORE, Defendants pray this Court dismiss the claims of the Plaintiff and award Defendants their reasonable costs and attorneys fees incurred herein, and award such other and further relief to the Defendants as maybe just an proper.

DATED this 11th day of February, 2009.

RACINE, OLSON, NYE, BUDGE
& BAILEY, CHARTERED

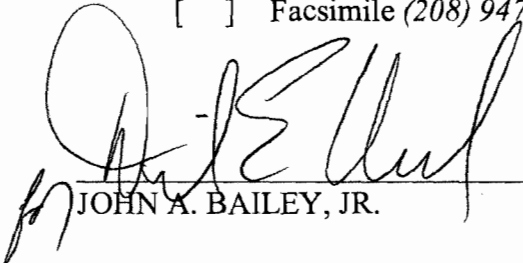
By: 
JOHN A. BAILEY, JR.

CERTIFICATE OF SERVICE

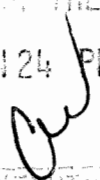
I HEREBY CERTIFY that on the 11th day of February, 2009, I served a true and correct copy of the above and foregoing document to the following person(s) as follows:

Sam Johnson
JOHNSON & MONTELEONE, L.L.P.
405 South Eighth Street, Suite 250
Boise, Idaho 83702

- U. S. Mail
- Postage Prepaid
- Hand Delivery
- Overnight Mail
- Facsimile (208) 947-2424


JOHN A. BAILEY, JR.

3

BANNOCK COUNTY
CLERK OF THE COURT
2009 JUN 24 PM 3:36
BY: 
DEPUTY CLERK

**IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT
IN AND FOR THE STATE OF IDAHO, COUNTY OF BANNOCK**

HABIB SADID, an individual,)	
)	CASE NO. CV2008-3942-OC
Plaintiff,)	
)	
vs.)	MINUTE ENTRY AND ORDER
)	
IDAHO STATE UNIVERSITY,)	
MICHAEL JAY LINEBERRY, and)	
JOHN/JANE DOES I through X, whose)	
true identities are presently unknown,)	
)	
Defendants.)	

The above entitled matter came before the Court this 22nd day of June, 2009, pursuant to Defendant's Second Motion to Compel Discovery. Thomas J. Lloyd appeared telephonically for Sam Johnson of the Firm Johnson & Monteleone, LLP, on behalf of Plaintiff. John A. Bailey, Jr., of the Firm Racine, Olson, Nye, Budge & Bailey, Chtd., appeared telephonically on behalf of Defendant.

The Court received oral argument of respective counsel.

NOW, THEREFORE, IT IS HEREWITH ORDERED Defendant's Second Motion to Compel Discovery is GRANTED.

IT IS FURTHER ORDERED Plaintiff shall provide all documents requested no later than Friday, June 26, 2009

IT IS SO ORDERED.

DATED this 22nd day of June, 2009.



PETER D. McDERMOTT

District Judge

Copies to:

Sam Johnson

John A. Bailey, Jr.

Case No. CV2008-3942-OC

Order

Page 2 of 2

FILED
BANNOCK COUNTY
CLERK OF THE COURT
09 AUG 27 PM 4:46
BY dlw
DEPUTY

Sam Johnson
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Boise, Idaho 83702
Telephone: (208) 331-2100
Facsimile: (208) 947-2424
sam@treasurevalleylawyers.com
Idaho State Bar No. 4777

Attorneys for Plaintiff

**IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT FOR THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK**

<p>HABIB SADID, an individual, Plaintiff, v. IDAHO STATE UNIVERSITY, MICHAEL JAY LINEBERRY, and JOHN/JANE DOES I through X, whose true identities are presently unknown, Defendants.</p>	<p>Case No. CV 2008-39420C MOTION TO AMEND COMPLAINT</p>
--	---

COMES NOW, Plaintiff Habib Sadid, by and through his attorney of record, Sam Johnson of the law firm Johnson & Monteleone, L.L.P., and hereby moves this court pursuant to Rules 7(b)(1) and 15(a) of the Idaho Rules of Civil Procedure for the following relief:

RELIEF SOUGHT

1. Plaintiff seeks leave of court to file his First Amended Complaint and Demand for Jury Trial pursuant to Rule 15(a) of the Idaho Rules of Civil

Procedure. Rule 15(a) provides such leave shall be "freely given" when justice so requires. *(A true and correct copy of the proposed Amended Complaint (excluding exhibits referenced therein) is appended hereto as Exhibit "A").*

GROUND FOR RELIEF

THIS MOTION is made and based upon Plaintiff's legal need to identify and include additional party Defendants and to include additional factual allegations based upon the discovery that has ensued to date and based upon recent developments in Plaintiff's ongoing employment relationship with Defendant Idaho State University.

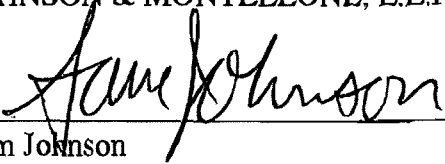
THIS MOTION is made and based upon the pleadings and records in this action, together with the legal memorandum, other authorities, and affidavits which may hereafter be filed.

ORAL ARGUMENT AND BRIEFING

Plaintiff does desire to present oral argument on the motion pursuant to Rule 7(b)(3)(C); Plaintiff further reserves the right to file a reply brief in accordance with Rule 7(b)(3)(E) of the Idaho Rules of Civil Procedure in the event the motion is opposed by the Defendants.

DATED: This 27 day of August, 2009.

JOHNSON & MONTELEONE, L.L.P.



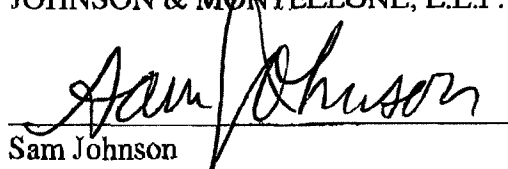
Sam Johnson
Attorneys for Plaintiff

CERTIFICATE OF MAILING, DELIVERY, OR FACSIMILE TRANSMISSION

I CERTIFY that on August 27, 2009, I caused a true and correct copy of the foregoing document to be:

<input type="checkbox"/> mailed <input type="checkbox"/> hand delivered <input type="checkbox"/> CM/ECF Electronic Filing <input checked="" type="checkbox"/> transmitted fax machine to: (208) 232-6109	John A. Bailey, Jr. Racine Olson Nye Budge & Bailey, Chtd. 201 E. Center P. O. Box 1391 Pocatello, ID 83204-1391
--	--

JOHNSON & MONTELEONE, L.L.P.



Sam Johnson
Attorney for Plaintiff

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sam@treasurevalleylawyers.com
Idaho State Bar No. 4777

Attorneys for Plaintiff

**IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT FOR THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK**

HABIB SADID, an individual,	Case No. CV 2008-39420C
Plaintiff,	FIRST AMENDED COMPLAINT AND DEMAND FOR JURY TRIAL
v.	
IDAHO STATE UNIVERSITY, ROBERT WHARTON, JAY KUNZE, MICHAEL JAY LINEBERRY, MANOOCHHEHR ZOGHI, RICHARD JACOBSEN, GARY OLSON, AUTHUR VAILAS and JOHN/JANE DOES I through X, whose true identities are presently unknown,	
Defendants.	

COMES NOW Plaintiff, Habib Sadid, by and through his attorney of record, Sam Johnson, of the law firm of Johnson & Monteleone, L.L.P., and for causes of action against the above-named Defendants complains and alleges as follows:

Exhibit "A"

PARTIES, JURISDICTION AND VENUE

1. Plaintiff, Habib Sadid, Ph.D., PE, is now, and at all relevant times herein was a Tenured Faculty member and Full Professor with the College of Engineering at Idaho State University, located in the city of Pocatello, Idaho. Professor Sadid currently resides in Pocatello, Bannock County, Idaho.
2. Defendant Idaho State University (hereinafter "ISU"), is now, and at all relevant times herein was, a "body politic and corporate, with its own seal and having power to sue and be sued in its own name" (*See Idaho Code § 33-3003*) and is now and at all relevant times herein "was established in the city of Pocatello, Idaho, an institution of higher education to be designated and known as the Idaho State University, consisting of such colleges, schools or departments as may from time to time be authorized by the state board of education." *See Idaho Code § 33-3001.*
3. Defendant Robert Wharton, at relevant times herein, held the position of Provost and Vice President for Academic Affairs for ISU, and while in his official capacity acted under color of law, regulation, custom or policy in a manner which caused Plaintiff to suffer from the deprivation of rights, privileges, or immunities secured to Plaintiff by the United States Constitution and the Constitution of the State of Idaho, and is being sued in his individual and representative capacities.
4. Defendant Jay Kunze, at relevant times herein, held the position of Dean for the College of Engineering for ISU, and while in his official capacity acted under color of law, regulation, custom or policy in a manner which caused Plaintiff to suffer from the deprivation of rights, privileges, or immunities secured to Plaintiff by the United States

Constitution and the Constitution of the State of Idaho, and is being sued in his individual and representative capacities.

5. Defendant Michael Lineberry, is now, and at all relevant times herein was acting pursuant to custom and policy derived from the official capacity delegated to him by ISU, and is being sued in both his individual and representative capacities.

6. Defendant Manoochehr Zoghi, at relevant times herein, has held and does currently hold the position of Chair of Department of Civil and Environmental Engineering for ISU, and while in his official capacity acted under color of law, regulation, custom or policy in a manner which caused Plaintiff to suffer from the deprivation of rights, privileges, or immunities secured to Plaintiff by the United States Constitution and the Constitution of the State of Idaho, and is being sued in his individual and representative capacities.

7. Defendant Richard Jacobsen, at relevant times herein, has held and does currently hold the position of Dean for the College of Engineering for ISU, and while in his official capacity acted under color of law, regulation, custom or policy in a manner which caused Plaintiff to suffer from the deprivation of rights, privileges, or immunities secured to Plaintiff by the United States Constitution and the Constitution of the State of Idaho, and is being sued in his individual and representative capacities.

8. Defendant Gary Olson, at relevant times herein, has held and does currently hold the position of Provost and Vice President for Academic Affairs for ISU, and while in his official capacity acted under color of law, regulation, custom or policy in a manner which caused Plaintiff to suffer from the deprivation of rights, privileges, or immunities secured

to Plaintiff by the United States Constitution and the Constitution of the State of Idaho, and is being sued in his individual and representative capacities.

9. Defendant Arthur Vailas, at relevant times herein, has held and does currently hold the position of President for ISU, and while in his official capacity acted under color of law, regulation, custom or policy in a manner which caused Plaintiff to suffer from the deprivation of rights, privileges, or immunities secured to Plaintiff by the United States Constitution and the Constitution of the State of Idaho, and is being sued in his individual and representative capacities.

10. John/Jane Does I through X, Defendants ("the Doe Defendants"), are individuals or entities, political, corporate, or otherwise, whose true identities are unknown at the present time, but who engaged in the activities and conduct set forth herein. Alternatively, John/Jane Does I through X are entities or individuals who are now, or at the material and operative times were, the agents, employees, independent contractors, subdivisions, franchisees, wholly-owned subsidiaries, or divisions of Defendants herein, or are entities or individuals acting on behalf of, or in concert with, the individual Defendant(s) named herein.

11. The amount in controversy is greater than the sum of \$10,000.00, and this claim therefore exceeds the jurisdictional limits of the magistrate's division and thereby satisfies the monetary prerequisites of the district court.

FACTUAL ALLEGATIONS

12. Professor Sadid has been a Tenured Faculty member and Associate Professor in the Department of Civil Engineering at ISU since 1994, and has been a Full Professor at

ISU since 1999; and, as such, Professor Sadid enjoys a property interest in his employment with ISU.

13. In his capacity as a Faculty Member and Full Professor of ISU, Professor Sadid has, from time to time, openly and publicly expressed his views embracing matters of public concern relating to ISU, and its standing in the academic and local community; these expressions constitute "protected speech".

14. In 2001, for instance, Professor Sadid published a letter to his fellow faculty members and ISU administrators criticizing ISU's decision to merge the College of Technology with the College of Engineering. ISU ultimately withdrew the merger plan by secretly tabling the issue for the time being.

15. In 2003, Professor Sadid spoke publicly against ISU's renewed plan, designed in secret, to again merge the College of Engineering with the College of Technology. (A true and correct copy of the newspaper publication is appended hereto as Exhibit "A" and by this reference hereby incorporated herein). Professor Sadid has spoken openly and publicly on other matters and on other occasions relating to ISU and of importance to the academic and local community, some of such publications were likewise published in the newspaper (*see Exhibit "A"*), while others were published internally at ISU.

16. Starting in 2001 and for the next five (5) years thereafter, ISU acting through the then-Dean of Engineering, Defendant Jay Kunze, failed or refused to conduct annual performance evaluations of Professor Sadid's work and these retaliatory practices caused Professor Sadid to suffer economic losses due to a lack of otherwise normal and customary salary increases and growth and advancement opportunities.

17. Thereafter, in August 2006, the ISU faculty by unanimous vote selected Professor Sadid as the Chair of the Department of Civil Engineering which selection was approved and ratified by the new Dean of Engineering, Defendant Jacobsen. Nonetheless, ISU acting through its Provost, Defendant Wharton, overrode the selection of Professor Sadid and instead demanded a national search be conducted by a committee chaired by two non-engineering faculty, who were hand selected by Provost Defendant Wharton. These retaliatory measures culminated in Defendant ISU's selection and appointment of an associate professor from Dayton, Ohio, to Chair of the Department of Engineering, effective July 2007. The new appointee was clearly not as qualified as Professor Sadid.

18. Defendants would not have decided to hire the associate professor from Ohio instead of Professor Sadid, unless motivated to retaliate against Professor Sadid for his use of protected speech.

19. Defendants have likewise retaliated against Professor Sadid by increasing his salary at the lowest of percentages in spite of him performing at the highest levels of academic excellence.

20. On or about August 1, 2008, ISU once again retaliated against Professor Sadid. This retaliation took the form of an e-mail published by ISU administrator, Defendant Lineberry, where Defendant Lineberry accused Professor Sadid of throwing a "tirade" and referred to him as a "nut-case" who "cannot help himself". (A true and correct copy of the above referenced e-mail is appended hereto as Exhibit "B" and by this reference hereby incorporated herein).

21. On September 29, 2008, Professor Sadid petitioned the courts for redress of his grievances and asserted his right to trial by jury by initiating this lawsuit.

22. Since filing suit on September 29, 2008, the Defendants have continued to retaliate against Professor Sadid not only for exercising his rights to freedom of speech, but have likewise retaliated against Professor Sadid for petitioning the court for redress of grievances and for asserting his right to trial by jury.

23. On or about, April 6, 2009, for example, Defendant Chair Zoghi sent a letter to Professor Sadid falsely accusing him of, *inter alia*, confronting an administrative assistant in an "accusatory" manner in an effort to tarnish the exemplary record Professor Sadid has created for himself at ISU. (A true and correct copy of the above referenced letter is appended hereto as Exhibit "C" and by this reference hereby incorporated herein).

24. Thereafter, on or about May 6, 2009, Defendant Dean Jacobsen placed Professor Sadid on notice of his intent to have Professor Sadid dismissed from ISU based upon outlandish accusations not supported by real facts. (A true and correct copy of the above referenced notice is appended hereto as Exhibit "D" and by this reference hereby incorporated herein). The outlandish nature of Defendant Dean Jacobsen's accusations are demonstrated most positively by the contrasting performance evaluations signed by Defendant Dean Jacobsen and Defendant Chair Zoghi, praising Professor Sadid for his laudatory efforts as an outstanding and leading professor at ISU. (A true and correct copy of the above referenced performance evaluations are appended hereto as Exhibit "E" and by this reference hereby incorporated herein).

25. Thereafter, on or about July 2, 2009, Defendant Provost Olson issued Professor Sadid a "formal letter of reprimand" over alleged "transgressions of ISU's purchasing policies." The alleged transgressions claimed by Defendant Provost Olson, even if true,

simply did not warrant the level of disciplinary action taken against Professor Sadid. (A true and correct copy of the above referenced reprimand is appended hereto as Exhibit "F" and by this reference hereby incorporated herein).

26. Next, on August 4, 2009, Defendant President Vailas, notified Professor Sadid of Defendant Dean Jacobsen's recommendation that Professor Sadid's employment with ISU be terminated for "adequate cause" and Defendant Professor Vailas has now restricted Professor Sadid's access to the ISU campus and has placed him on administrative leave. (A true and correct copy of the above referenced notification is appended hereto as Exhibit "G" and by this reference hereby incorporated herein).

27. Defendants, through their concerted actions, systematically, and by design, pattern, and practice have continually retaliated against Professor Sadid for speaking openly on matters of public concern and by doing so have impaired and violated Professor Sadid's rights to freedom of speech guaranteed under the First Amendment to the United States Constitution, and Article 1, Sections 9 and 10 of the Constitution of the state of Idaho. The incidents of retaliation have continued to the present day.

28. Defendants have now placed Professor Sadid's employment based property interest in jeopardy without due process by alleging arbitrary, capricious and pretextual grounds for termination in violation of the Fifth and Fourteenth Amendments to the United States Constitution and Article I, Section 13 of the Constitution of the State of Idaho.

29. The above-referenced retaliatory actions likewise stand in direct violation of Professor Sadid's tenured contract of employment with ISU and the laws of the state of Idaho, the Rules and Governing Policies and Procedures of the State Board of Education,

and all policies and procedures of ISU and any of its departments or offices expressly incorporated therein.

30. As a direct and proximate result of the breach of the employment contract and the violations of Professor Sadid's constitutional rights, Professor Sadid has suffered direct and consequential losses and damages in amounts to be determined at trial. The losses and damages comprise both economic and non-economic harms, including impairment of reputation, personal humiliation, and injury to his mental and physical health and well being. The losses and damages are prospective in nature and will likely continue for the foreseeable future.

31. Defendants would not have retaliated against Professor Sadid but for the fact Professor Sadid chose to exercise his right to engage in protected speech.

32. A written Notice of Tort Claim has been filed in compliance with the Idaho Tort Claims Act, with the Secretary of State for the State of Idaho pursuant to Idaho Code § 6-905, and § 6-907.

33. As a direct and proximate result of the acts and omissions of Defendants, Professor Sadid has been required to retain the services of Johnson & Monteleone, L.L.P., in connection with the prosecution of this action and requests an award of attorney fees and costs incurred in the prosecution and maintenance of the instant action.

COUNT ONE - DEPRIVATION OF CONSTITUTIONAL RIGHTS
UNDER COLOR OF LAW

34. Plaintiff incorporates herein by reference all of the foregoing and following allegations of the Complaint.

35. By retaliating against Professor Sadid in the manner and under the circumstances heretofore set forth in this Complaint, Defendants have impaired and violated Professor

5

Sadid's rights to freedom of speech guaranteed under the First Amendment to the United States Constitution, and Article 1, Sections 9 and 10 of the Constitution of the State of Idaho and his property rights under the Fifth and Fourteenth Amendments to the United States Constitution and Article I, section 13 of the Constitution of the State of Idaho. These violations entitle Professor Sadid to relief under Title 42, Section 1983 of the United States Code, and under the Idaho Constitutional provisions cited above.

36. As a direct and proximate result of the violations of Professor Sadid's constitutional rights, Professor Sadid has suffered direct and consequential losses and damages in amounts to be determined at trial.

COUNT TWO - BREACH OF EMPLOYMENT CONTRACT AND THE COVENANT OF GOOD FAITH AND FAIR DEALING IMPLIED THEREIN

37. Plaintiff incorporates herein by reference all of the foregoing and following allegations of the Complaint.

38. A valid and binding contract of employment was formed and entered into by and between Plaintiff and Defendant ISU.

39. Defendant ISU materially breached the contract of employment and the covenant of good faith and fair dealing implied therein.

40. As a direct and proximate result of the breach of the employment contract and the covenant of good faith and fair dealing implied therein, Plaintiff has suffered direct and consequential losses and damages in amounts to be determined at trial.

COUNT THREE - DEFAMATION OF CHARACTER

41. Plaintiff incorporates herein by reference all of the foregoing and following allegations of the Complaint.

42. Defendants ISU's and Lineberry's retaliatory and slanderous affronts perpetrated against and published of and concerning Professor Sadid, with actual malice, have defamed his character and good standing in the community.

43. As a result of these libelous and defaming statements, Professor Sadid's reputation in the community, and his professional, financial, and dignitary interests have been harmed.

44. Professor Sadid is therefore entitled to recover damages in amounts to be proven at trial.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays judgment against Defendants as follows:

1. For Plaintiff's special and general damages in amounts which may be proven at trial;
2. For injunctive relief directing the reinstatement of Plaintiff to the position of Chair of the College of Civil Engineering or to such higher position as this Court deems just and equitable in the premises;
3. For Plaintiff's reasonable costs and attorney fees incurred herein; and
4. For such other and further relief as this Court deems just and equitable in the premises.

DATED: This _____ day of September, 2008.

JOHNSON & MONTELEONE, L.L.P.

Sam Johnson
Attorneys for Plaintiff

1 200 1010/310 1 002

DEMAND FOR JURY TRIAL

Pursuant to I.R.C.P. 38(b), Plaintiff hereby demands a trial by jury on any and all issues properly triable by jury in this action.

DATED: This _____ day of September, 2008.

JOHNSON & MONTELEONE, L.L.P.

Sam Johnson
Attorneys for Plaintiff

ORIGINAL

John A. Bailey, Jr. (ISB No. 2619)
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& BAILEY, CHARTERED
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Pocatello, Idaho 83204-1391
Telephone: (208) 232-6101
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SEP 14 11:43
DEPUTY CLERK

Attorney for Defendants

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE

STATE OF IDAHO IN AND FOR THE COUNTY OF BANNOCK

HABIB SADID, an individual,)
)
Plaintiff,)
)
vs.)
)
IDAHO STATE UNIVERSITY,)
MICHAEL JAY LINEBERRY, and)
JOHN/JANE DOES I THROUGH X,)
whose true identifies are presently)
unknown,)
)
Defendants.)
_____)

Case No. CV 2008-3942-OC

**MOTION FOR SUMMARY
JUDGMENT PURSUANT TO
I.R.C.P. 56 (c)**

COME NOW, the Defendants, Idaho State University and Michael Jay Lineberry, by and through counsel, and move the Court for an Order granting summary judgment on Plaintiff's claims pursuant to I.R.C.P. 56 (c). This Motion is supported by Defendants' Memorandum in Support of Motion for Summary Judgment and the Affidavit of Counsel filed herewith.

DATED this 11 day of September, 2009.

RACINE, OLSON, NYE, BUDGE
& BAILEY, CHARTERED

By: John A. Bailey
JOHN A. BAILEY, JR.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 11 day of September, 2009, I served a true and correct copy of the above and foregoing document to the following person(s) as follows:

Sam Johnson
JOHNSON & MONTELEONE, L.L.P.
405 South Eighth Street, Suite 250
Boise, Idaho 83702

- U. S. Mail
Postage Prepaid
- Hand Delivery
- Overnight Mail
- Facsimile (208) 947-2424



JOHN A. BAILEY, JR.

ORIGINAL

John A. Bailey, Jr. (ISB No. 2619)
RACINE, OLSON, NYE, BUDGE
& BAILEY, CHARTERED
P.O. Box 1391
Pocatello, Idaho 83204-1391
Telephone: (208) 232-6101
Fax: (208) 232-6109

CLERK OF DISTRICT COURT
RECORDED IN 2009-04
DEPUTY CLERK

Attorney for Defendants

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_____)

Case No. CV 2008-3942-OC

**AFFIDAVIT OF JOHN A. BAILEY, JR.
IN SUPPORT OF MOTION FOR
SUMMARY JUDGMENT**

STATE OF IDAHO)
: ss
County of Bannock)

JOHN A. BAILEY, JR., having been duly sworn, deposes and states as follows:

1. That I am an attorney for the Defendants, Idaho State University and Michael Jay Lineberry, and I have personal knowledge of the facts stated herein.
2. Attached hereto as Exhibit "1" are true and correct copies of deposition excerpts from the oral depositions of Plaintiff taken on June 2, 2009 and July 17, 2009.

3. Attached hereto as Exhibit "2" is a true and correct copy of a memo directed to Dr. Richard Jacobsen dated August 18, 2006.
4. Attached hereto as Exhibit "3" is a true and correct copy of an email communication between Dr. Robert Wharton and Dr. Richard Jacobsen between August 22nd and August 24th, 2006.
5. Attached hereto as Exhibit "4" is a true and correct copy of ISU's College of Engineering's Annual Reports on Salaries between 1991-2008.
6. Attached hereto as Exhibit "5" are true and correct copies of excerpts from the ISU Faculty Staff Handbook.
7. Attached hereto as Exhibit "6" is a true and correct copy of the Plaintiff's performance evaluation for school year 2000 which he signed on July 9, 2001.
8. Attached hereto as Exhibit "7" is a true and correct copy of the Plaintiff's EEOC charge against ISU.
9. Attached hereto as Exhibit "8" is a true and correct copy of the April 25, 2008 "right to sue" letter sent to the Plaintiff by the Idaho Human Rights Commission.
10. Attached hereto as Exhibit "9" is a true and correct copy of the Plaintiff's December 2, 2008 Notice of Tort Claim.
11. Attached hereto as Exhibit "10" is a true and correct copy of EEOC Director, A. Luis Lucero, Jr.'s, October 22, 2007 letter to the Plaintiff confirming that his discrimination/retaliation charge against ISU was withdrawn in accordance with his request.

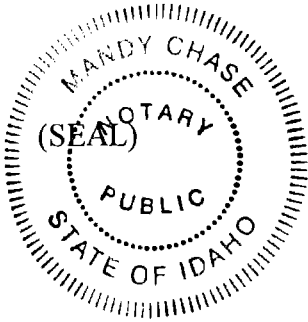
FURTHER SAITH YOUR AFFIANT NAUGHT.

DATED this 11 day of September, 2009

RACINE, OLSON, NYE, BUDGE
& BAILEY, CHARTERED

By: *John A. Bailey*
JOHN A. BAILEY, JR.

SUBSCRIBED AND SWORN TO before me this 11 day of September, 2009.



Mandy Chase
NOTARY PUBLIC FOR IDAHO
Residing at: *Route 110, ID*
My Commission Expires: *5.8.2012*

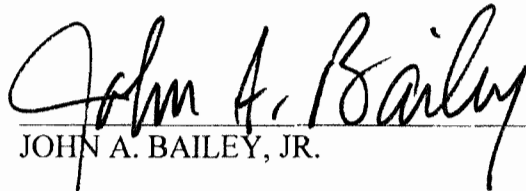
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CERTIFICATE OF SERVICE

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JOHN A. BAILEY, JR.

S

Exhibit 1

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DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK

HABIB SADID, an individual,)

Plaintiff,)

vs.) Case No. CV 2008-3942-OC

IDAHO STATE UNIVERSITY,)

MICHAEL JAY LINEBERRY, and)

JOHN/JANE DOES I THROUGH X,)

whose true identities are)

presently unknown,)

Defendants.)

_____)

VOLUME I

ORAL DEPOSITION OF HABIB SADID

Taken on June 2, 2009

REPORTED BY:

PAUL D. BUCHANAN, RPR, RMR,

CSR No. 7, and Notary Public

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1 lectures but they wouldn't be responsible for the whole
2 class during the whole semester.

3 A. Correct.

4 Q. Is that correct?

5 A. Correct.

6 Q. That's when you were an undergrad.

7 A. Yes.

8 Q. Now, any other employment while you were in
9 school other than the research assistantships or the
10 teaching assistantships?

11 A. No.

12 Q. After leaving WSU can you tell me what your
13 employment history was?

14 A. Before I finished my Ph.D., I got a teaching
15 job here at ISU. And I came here while I was teaching, I
16 finished my dissertation, defended in 1988. Then I
17 stayed one more year. Then I left.

18 I went to Seattle and worked for Boeing for
19 almost two years. And I didn't like that job and I quit.
20 I went to WSU. While I was teaching a couple of -- 60
21 percent, I was teaching two courses. I took the organic
22 chemistry course in there.

23 Then my former dean, late Dr. Charylulu, who
24 was like a father figure for me, he came and he said I
25 was a good teacher, I should come back. So I applied for

1 a position that they had open and I got the job. And
2 this was 1991, and I have been teaching since then.

3 Q. During the time that you were teaching at ISU
4 and at WSU, did you have any part-time employment or any
5 consulting type employment?

6 A. Not at WSU, I didn't have any consulting.
7 When I was teaching here, I have had two or three
8 consulting, engineering consulting here in town.

9 Q. Other than the litigation related?

10 A. Yes, other than litigation related.

11 Q. First let's talk about those. Let me back up
12 even a step further, if I may. Do you have an outside
13 consulting business?

14 A. Yes, on the side I do consulting, I am a
15 licensed engineer, and I don't have a name for a business
16 or advertisement, if somebody asks me to look at a case,
17 I do, and give the report or if it's a design or whatever
18 I do.

19 Q. And you are anticipating very well my line of
20 inquiry. You don't have a specific name or a separate
21 business name that's up and running.

22 A. No.

23 Q. You haven't gotten a different tax
24 identification number for the business?

25 A. No. I do pay tax on my earnings.

1 relationship with ISU?

2 A. Since I was employed with ISU.

3 Q. From the very beginning.

4 A. Yes.

5 Q. So you are familiar with this contract?

6 A. Yes.

7 Q. Back to where I started on this thing, and I
8 now understand how I was getting you confused because you
9 have an annual contract, but other than the annual
10 contracts do you refer or do you intend to refer to any
11 other documents to establish the terms of your agreement
12 between ISU and yourself for your employment at ISU?

13 MR. JOHNSON: I object to the form.

14 A. Again, it's not clear what you are asking
15 exactly.

16 Q. Tell me what it is that's confusing to you.

17 A. I mean documents related to my contract with
18 ISU or documents like we have documents for evaluation,
19 annual evaluations? And those are a part of our
20 contracts.

21 Q. How is it that you believe they are a part of
22 your contract, the evaluations?

23 A. I assume every employer evaluates job
24 performance of his or her employees, and Idaho State
25 University Faculty and Staff Handbook says administrators

1 must evaluate faculties' job performance annually. And
2 they are in the record.

3 Q. Other than the evaluations, do you intend to
4 refer to any other documents that set forth the terms of
5 the employment relationship between you and ISU other
6 than the evaluations and these contracts that we have
7 here?

8 A. Yes. Recently I received three letters. One
9 was dated April 6, mailed by certified mail to my house
10 on April 13; another one was given by Dr. Jacobsen on
11 April 15, and I received a notice of contemplated action
12 from Dr. Jacobsen for dismissal. I don't recall the date
13 on that. It may have been May -- I can't recall the date
14 on that exactly, sometime in May, early May or mid May.
15 I can't recall the date exactly on that. But also, yes,
16 I am planning to present those, I mean my counsel has
17 copies of those.

18 Q. My question, though, is a little bit
19 different, and I want you to help me understand. Now,
20 those documents don't set forth any of the terms of your
21 employment relationship; correct, the reprimand letter or
22 the notice of intended action?

23 A. Well, they do lead -- they do have an effect
24 on my contract in the future.

25 Q. I understand that. Let's do it this way.

1 here and that is over the course of the years represented
2 by Exhibits 2 and 3, were there any material changes in
3 the terms of these written documents?

4 A. Not that I am aware of.

5 Q. Now, you did have salary changes over those
6 years; correct?

7 A. Yes.

8 Q. And in fact every year during the term
9 represented by Exhibits 2 and 3, you had an increase in
10 salary every year; correct?

11 A. Some years --

12 MR. JOHNSON: I object to the form, I don't
13 think that accurately reflects the exhibit.

14 Q. You can explain that to me.

15 A. Some years we didn't have any raise.

16 Q. And that would have been during academic year
17 2001 to 2002, 2002 to 2003, and 2003 to 2004, your salary
18 remained the same?

19 A. Correct.

20 Q. It never did go down; correct?

21 A. No.

22 Q. That's not correct?

23 A. It did not go down.

24 Q. That was my fault because it's an awkward
25 question, I just wanted to make sure that we are

1 communicating. And it either then, to more accurately
2 state my earlier question, during the term of years
3 represented by Exhibit 2 and 3, your salary either stayed
4 the same or it increased every year; correct?

5 A. Correct.

6 Q. Were there any significant changes during that
7 same time frame in your responsibilities or duties?

8 A. No.

9 Q. Did you receive any change in status or
10 promotion during that time frame?

11 A. This is from 1999?

12 Q. Yes, sir, to the present.

13 A. To the present. No, at that time I was full
14 professor, no, I was not.

15 Q. You were tenured when?

16 A. I was tenured in 1993.

17 Q. 1993.

18 A. Yes.

19 Q. And you had a semester sabbatical in the fall
20 of 2002?

21 A. Correct.

22 Q. I did have one, and I am not sure if I had
23 both of them in there, because I was confused by this, in
24 2005-2006 academic year you had two contracts that year.
25 Do you recall that?

1 look at those and make sure that I am correct, but in
2 your complaint you allege that Idaho State University
3 breached its contract with you; is that correct?

4 A. Correct.

5 Q. Specifically tell me what terms of the
6 contract you contend were breached by ISU or any of the
7 defendants or all of the defendants in your complaint
8 here.

9 A. I was not evaluated for 2001, 2002, 2003, and
10 2004; 2005 I was not allowed to respond to the
11 evaluation. That's it.

12 Q. Any other conduct on the part of the
13 defendants that you believe was a breach of your
14 employment contract with ISU?

15 MR. JOHNSON: I object to the form.

16 A. There might be, I don't know.

17 Q. What do you contend?

18 A. Well, there is breach of contract for not
19 evaluating me for four years as required by the faculty
20 and staff handbook at ISU, for 2001, 2002, 2003, and
21 2004. In 2005 Dr. Jay Kunze was forced or asked, I
22 should say, he was asked by the administration to get
23 signature to evaluate me. So those files, those
24 evaluations for 2001, 2002, 2003, 2004 were not in my
25 file. On April 15, 2005, I asked Dr. Kunze in the

1 presence of Dr. Dante Cantrill, the ombudsman then, to
2 give my evaluations to me. He did not have.

3 In February or March of 2006 I asked for my
4 personnel file from Linda Kearn, the administrative
5 assistant then, for my personnel file. And I made copies
6 of all of my files, stuff in my file. There was no
7 evaluations for 2001, 2002, 2003, and 2004.

8 Then Dr. Wharton had asked Dr. Kunze to get
9 those signatures for those evaluations. I believe Dr.
10 Kunze falsified those documents. There are
11 contradictions in there. Also in those documents Dr. Jay
12 Kunze says these documents were not communicated to Dr.
13 Sadid because of his political involvement on campus.
14 And while he admits that they were not served to me, then
15 in the questions that they asked how did he respond to
16 the last year's evaluation, he said defensively.

17 So those are -- and indeed he gave me 2002,
18 2003, and 2004, he forgot to make for 2001. Because in
19 one of the e-mails I told him that these are three years,
20 he just made it for those three years.

21 Then in 2004-2005 evaluation Dr. Kunze
22 evaluated me and left a copy in my mailbox for signature.
23 I sent him two e-mails asking for a digital copy of my
24 evaluation for my input. I did not receive that.

25 Then apparently Dr. Kunze had told Dr. Wharton

1 that he refused to sign. This discussion came up in an
2 August meeting with Dr. Wharton and Dr. Jacobsen and Dr.
3 Barbara Adamcik, that he said you didn't sign it. Then I
4 sent those e-mails to Dr. Wharton with a copy that I was
5 not allowed to respond, and I attached those two e-mails
6 to Dr. Wharton and I never heard any word from them.

7 Q. Anything else that you contend breaches your
8 contract?

9 MR. JOHNSON: I object to the form.

10 MR. BAILEY: What's the objection, counsel?

11 MR. JOHNSON: Calls for a legal conclusion.

12 MR. BAILEY: No.

13 Q. I asked, so we are clear, any other conduct
14 that you contend breached your contract other than the
15 explanation you have already given me on the evaluation,
16 which we will examine further, but any other conduct.

17 A. Yes, this year's contract.

18 MR. JOHNSON: I still want to object to the
19 form, lack of foundation that this witness is qualified
20 to determine what conduct would give rise to breach. Go
21 ahead and answer.

22 A. This year's contract, I was not communicated
23 about the form of evaluation. Then when I was evaluated
24 on Dr. Zoghi, my chair, signed the evaluation on April 7,
25 I got it in my mailbox on April 8. I had five days to

1 look at those and make sure that I am correct, but in
2 your complaint you allege that Idaho State University
3 breached its contract with you; is that correct?

4 A. Correct.

5 Q. Specifically tell me what terms of the
6 contract you contend were breached by ISU or any of the
7 defendants or all of the defendants in your complaint
8 here.

9 A. I was not evaluated for 2001, 2002, 2003, and
10 2004; 2005 I was not allowed to respond to the
11 evaluation. That's it.

12 Q. Any other conduct on the part of the
13 defendants that you believe was a breach of your
14 employment contract with ISU?

15 MR. JOHNSON: I object to the form.

16 A. There might be, I don't know.

17 Q. What do you contend?

18 A. Well, there is breach of contract for not
19 evaluating me for four years as required by the faculty
20 and staff handbook at ISU, for 2001, 2002, 2003, and
21 2004. In 2005 Dr. Jay Kunze was forced or asked, I
22 should say, he was asked by the administration to get
23 signature to evaluate me. So those files, those
24 evaluations for 2001, 2002, 2003, 2004 were not in my
25 file. On April 15, 2005, I asked Dr. Kunze in the

1 Q. What specific rule or governing policy or
2 procedure of the State Board of Education are you relying
3 upon to support your claim that Idaho State University
4 breached their contract with you?

5 A. Again, every rule and policy that relates to
6 my contract with the State of Idaho and referred in this
7 document, I rely upon.

8 Q. Which specific one or ones?

9 MR. JOHNSON: Asked and answered.

10 A. All of them.

11 Q. So what you are telling me is, then, you are
12 relying upon all of the rules and the governing policies
13 and procedures of the State Board of Education to support
14 your claim that ISU breached their contract with you?

15 A. Yes, anything related to this, yes.

16 Q. That's my question to you, then, sir, which
17 ones are related in your view?

18 A. I don't recall details but any laws,
19 procedures which relates to my contract with ISU and
20 State of Idaho I would rely upon.

21 Q. So as you sit here today you can't answer my
22 question as to specifically which provisions you are
23 relying upon --

24 A. I cannot.

25 Q. -- which provisions you are relying upon to

1 them?

2 A. He didn't have them. He did not have the
3 evaluations.

4 Q. Is that what he told you?

5 A. Yes. He just did not provide.

6 Q. Go ahead, go on with your explanation. I
7 didn't mean to interrupt you completely there.

8 A. Yes, he did not provide the evaluation when we
9 asked. Then on another occasion I asked Dr. Jay Kunze
10 about my evaluations. He got mad and he said, Do you
11 want me to evaluate you? Okay, I will. The exact
12 wording, you can put it in the quote. He got mad and he
13 said, If you want me to evaluate you, okay, I will.

14 Q. That was when?

15 A. That was several times throughout those years.
16 I always asked where is my evaluation? He said, If you
17 want me to evaluate you, I will, but he never did until
18 Dr. Wharton pushed him to get those or asked him to get
19 those.

20 Q. Anything else that you believe shows that the
21 evaluations were not done?

22 A. I asked for my personnel file and it was not
23 there. Then I made copies of those. Also in the spring
24 of 2006 Dr. Kunze wrote me a letter with three attached
25 copies of my evaluations for 2002, 2003, and 2004. In

1 campus politics he is asking. He had even worse than
2 that statement, I don't recall exactly what it was. But
3 I discussed with him and he changed it to this
4 (indicating). So he really started damaging my record
5 from here (indicating) and moved on.

6 Q. And what you are referring to, and let me set
7 up my question this way so I make sure we are
8 understanding one another and that the record is clear,
9 you are looking at the last sentence of Paragraph 19 on
10 the last page of Exhibit No. 6 and it says, quote, He is
11 also decisive in his actions, but is cautioned to be a
12 bit more circumspect on issues involving campus politics,
13 end quote. Is that the sentence you are referring to?

14 A. Especially Dr. Sadid is very active in
15 university politics and service.

16 Q. He is astute and introspective and then it
17 goes on and finishes with the sentence I just read.

18 A. Yes.

19 Q. Now, my question to you is related to a
20 comment you just made, that he began to injure you or
21 damage you right with that comment.

22 A. Correct.

23 Q. Explain that to me and tell me as specifically
24 as you can how you were damaged by this comment by Dr.
25 Kunze.

1 A. This is my job performance. Now, this is
2 supposed to evaluate me for teaching, research, and
3 service. I don't know why Dr. Kunze writes politics,
4 university politics, but he is cautioned (indicating),
5 these are -- I mean why should I be cautioned for
6 participating in university politics and why should it be
7 reflected in my job performance evaluation. That's my
8 response.

9 Q. So what damage did you suffer? Help me
10 understand that. Was it that it hurt your feelings, was
11 it that it hurt you professionally in your career,
12 how were you damaged, explain that to me.

13 A. These adds up, these evaluations adds up and
14 the fact every chair or dean that was evaluating you,
15 normally they have to go by the faculty and staff
16 handbook, faculty evaluations. They have to go back five
17 years and look at your performance so every time they go
18 and see this. So these are little indications that
19 eventually these or some other reprimand, letters that I
20 have been receiving recently, they are damaging my
21 career. So this does damage starting, I mean why am I
22 being questioned for my political activity on campus in
23 my job performance.

24 May I add one more line to that?

25 Q. You certainly can.

1 A. So what does Dr. Kunze -- if he did not have
2 the intention to injure me careerwise, why did he mention
3 that here? I believe that's what he started injuring my
4 career or damaging my career.

5 Q. And you believe that his intent with that
6 statement was to damage your career.

7 A. Absolutely.

8 Q. And what's the basis for your belief that that
9 was his intent?

10 A. One, I wrote those two letters not opposing
11 but asking the administration to form a committee to
12 study the case of combining colleges without just jumping
13 in and doing the job, combining. So Dr. Kunze was
14 basically, because I wrote those and the upper
15 administration, well, we are unhappy with those letters
16 and Dr. Kunze was, of course, serving them.

17 Q. Now, if I understand correctly, you were at a
18 later date in 2005 -- and, forgive me, you may have given
19 us the time exactly, I just don't recall it, but you were
20 given a complete set of evaluations, including 2003,
21 2004, 2005; is that correct?

22 A. No.

23 Q. Help me understand where I am incorrect.

24 A. I was given evaluations for 2002, 2003, 2004.
25 There was none for 2001.

1 thought you were continuing and I was nodding go ahead.

2 Would you rephrase that question and I respond?

3 MR. BAILEY: Paul, could you read the question

4 back.

5 (Record read.)

6 A. Yes.

7 Q. Now, explain to me how you contend you were
8 damaged by the fact that you were not provided copies of
9 the evaluations for 2001 through 2004 by Dean Kunze.

10 A. My job performance was not recorded anywhere
11 for the administration to use for the purposes of raises
12 or, I don't know, promotion, whatever -- I mean those job
13 performances are done not only to tell me what I am doing
14 wrong, what I am doing right, so I can correct myself.
15 Also those evaluations are to correct the system and they
16 were not done.

17 So that damaged my career by not getting -- I
18 mean for that three years there wasn't any raises to
19 affect me, but my job performance evaluations for those
20 years, there is nothing in there.

21 Q. So it didn't affect your raises during those
22 years, is what you are telling me?

23 A. Up to 2004, yes.

24 Q. You are not contending in this lawsuit that
25 your raises were adversely affected by not having those

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DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK

HABIB SADID, an individual,)
Plaintiff,)
vs.) Case No. CV 2008-3942-OC
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MICHAEL JAY LINEBERRY, and)
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Defendants.)
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VOLUME III
ORAL DEPOSITION OF HABIB SADID
Taken on July 17, 2009

REPORTED BY:
PAUL D. BUCHANAN, RPR, RMR,
CSR No. 7, and Notary Public

1 Q. Did you have any communications with Mr. Mauk
2 after this letter?

3 A. No.

4 Q. But, in any event, at that time, at the time
5 you sent this June 14, 2004, letter, you had been in
6 communication with the EEOC; is that correct?

7 A. Yes.

8 Q. And you were in communication with them
9 because you were anticipating filing a complaint with the
10 EEOC; correct?

11 A. Correct.

12 Q. Or possibly a lawsuit; correct?

13 A. Correct.

14 Q. So at that time, June 14, 2004, you felt that
15 you had a basis upon which to sue the university or to
16 file a complaint with the EEOC; is that correct?

17 A. Yes.

18 Q. And you felt that at that point in time your
19 career had been damaged and you had been embarrassed and
20 all those things we talked about a few moments ago;
21 correct?

22 A. Yes.

23 Q. And at that time you believed that your rights
24 had been violated; is that correct, that's why you were
25 going to the EEOC, you believed your constitutional

1 rights had been violated?

2 A. This was one of the cases. There were other
3 cases in that time, but I cannot be evaluated for four
4 years then so that was another reason. So I thought
5 there was retaliation going on.

6 Q. Irrespective of the reason, what I want to
7 understand is what your thought process was as of June of
8 2004.

9 A. All right.

10 Q. We are going to talk about the reason, we will
11 talk about all of that stuff, I promise you, but I would
12 like a clear record on what your thought process was, and
13 that is, if I understand what you are telling me, and
14 correct me if I am wrong, that as of June of 2004 you
15 believed that your constitutional rights had been
16 slighted and that's why you were going to the EEOC with a
17 potential complaint; is that correct?

18 A. Correct.

19 MR. JOHNSON: I am going to object to the form
20 of the question.

21 Q. So the truth is at the time you sent this
22 letter of June 14 you really did not have a professional
23 relationship with Robert Mauk, civil rights attorney.

24 A. No.

25 Q. And you just listed him there to sort of --

1 Q. Yes.

2 A. I don't know.

3 Q. Or control of the operation of the institute.

4 A. I don't know. I knew about hiring process but
5 that was it. I don't know anything about their
6 documents, what their role is, what their mission is.

7 Q. What do you understand his job to be, Dr.
8 Lineberry's job?

9 A. He is director of the institute.

10 Q. What does that mean, what do you understand
11 his job description or his duties --

12 A. I haven't seen his job description. He is
13 director of the institute, he will run the institute.

14 Q. Beyond that you don't know any details as to
15 what his job entails?

16 A. No.

17 Q. Does he hold any official position within the
18 administration at ISU, to your knowledge?

19 A. To my knowledge, yes.

20 Q. And what is that position?

21 A. That is he an administrator to the office of
22 research as the director of an institute belonging to
23 Idaho State University.

24 Q. How is it that you understand that, what's the
25 basis for that conclusion?

1 A. The basis for that conclusion is we have an
2 institute, we have more than one; in the institute they
3 have directors, those are officially directors, they are
4 officially working for the university.

5 Q. So it's an assumption on your part.

6 A. No, it's not assumption, they are
7 administrators.

8 Q. And, again, what's the basis for your
9 conclusion that they are administrators?

10 A. Because they are administering a unit, part of
11 the university.

12 Q. Except I understood you to say a minute ago
13 you don't know if they are a part of the university or
14 not a part of the university.

15 A. No, they are a part of the College of
16 Engineering or not; they are part of the university.

17 Q. I see, that's how you draw the distinction,
18 okay. He is not the dean of any college in the
19 university, Lineberry?

20 A. No.

21 Q. Lineberry is not a department chair?

22 A. No.

23 Q. He is not a vice president or administrator
24 for the university level; correct?

25 A. No.

1 Q. That's not correct or that is correct?

2 A. He is not administrator at the university
3 level.

4 Q. And holds no position of authority with the
5 College of Engineering, as you understand it; is that
6 correct?

7 A. He claims he does.

8 Q. What does he claim?

9 A. Well, he used to come to our meetings before
10 Dr. Jacobsen came over, in fact I have an e-mail to Dr.
11 Jay Kunze, he used to sit next to him, he used to dictate
12 what to be done. In fact I wrote a letter to all faculty
13 with a copy to Jay Kunze, with a copy to all faculty that
14 I feel like we have two deans. He was claiming like he
15 has authority, he comes here, he makes decision and of
16 course since he is a good friend of the president,
17 President Vailas, they go fishing together, so President
18 Vailas has been supporting him, that's what he has his
19 power to try to claim independent for his entity and so
20 on.

21 Q. So do you contend that Dr. Lineberry has
22 authority to speak for ISU?

23 A. He may not have but he feels he does.

24 Q. Well, what is your contention, what is your
25 understanding of the facts?

1 A. He is talking for the university.

2 Q. What is the basis for your belief that he has
3 authority to talk for ISU?

4 A. He does not have authority, I said, but he
5 does talk.

6 Q. I see. In your view he does not have
7 authority to speak for ISU.

8 A. Yes.

9 Q. What is your professional relationship with
10 Dr. Lineberry?

11 A. I have no professional relationship with Dr.
12 Lineberry.

13 Q. He is not your supervisor?

14 A. No.

15 Q. He doesn't make or control your work
16 assignments?

17 A. No.

18 Q. He doesn't direct your day-to-day activities?

19 A. No.

20 Q. He doesn't determine your salary or your
21 compensation with the university?

22 A. No.

23 Q. Now, what part of this statement set forth in
24 Exhibit No. 16 do you consider to be defamatory?

25 A. He calls me Sadid who is a nut case and cannot

1 Q. Well, you learned of this statement, then,
2 from Dr. Bennion.

3 A. Correct.

4 Q. And he gave you a copy of it.

5 A. No, he did not give me, he showed me a copy.
6 He did not give me a copy.

7 Q. How did you obtain a copy of it?

8 A. George Imel gave me a copy.

9 Q. Dr. Imel gave you a copy of it.

10 A. Yes.

11 Q. When did he give you a copy of it?

12 A. I sent an e-mail to Dr. Naidu that I need a
13 copy of this, and George brought it to me.

14 Q. And it is my understanding that you had some
15 sort of an anxiety attack over this?

16 A. Correct.

17 Q. And that's the one that we have the emergency
18 room note about?

19 A. Correct.

20 Q. Are you claiming you don't know Josh Peterson?

21 A. I do not know Josh Peterson, even as of today.

22 Q. Never knew of him?

23 A. Never knew of him, absolutely.

24 Q. Now, do you know whether or not Dr. Lineberry
25 gave this letter or a copy of this letter to anyone else

1 other than Dr. Bennion and Dr. Imel?

2 A. I don't know.

3 Q. So as you sit here today you don't have any
4 evidence that he produced a copy of this to anyone else?

5 A. I don't know.

6 Q. That's what I am saying, you don't have any
7 evidence; correct?

8 A. No, I don't.

9 Q. Thank you. When did you obtain the copy that
10 you got from Dr. Imel?

11 A. When I got it?

12 Q. Yes, when.

13 A. I believe it was the same day or a day after.

14 Q. Now, did you discuss this statement with Dr.
15 Bennion or your concern about this statement?

16 A. He noticed that I had anxiety attack and I was
17 not in good health that moment. And we talked a little
18 bit about it, but nothing --

19 Q. What was the conversation you had with Dr.
20 Bennion about this?

21 A. I said that's wrong statement; when I read
22 that, I was not really -- I called Naidu, because he had
23 talked to George and George says, oh, I don't know, Dr.
24 Naidu or whatever, and I called Dr. Naidu and he totally
25 denied that he had anything, and he admitted that he may

1 have made mistake; I talked to him about another student
2 about use of TAs and funded projects, and I don't know,
3 he mixed up or whatever he did. Then he came to my
4 office and that's when he took me. I didn't talk to Dr.
5 Bennion too long, but he showed me that. I told him that
6 this letter was inappropriate to write senior faculty in
7 that language, if you read the rest of it.

8 Q. Anything else in your conversation with Dr.
9 Bennion either that day or at any subsequent time?

10 A. No, I haven't.

11 Q. What did Dr. Bennion say?

12 A. I haven't talked to him about this, I don't
13 know.

14 Q. He didn't say anything the day you took
15 offense?

16 A. No, he just said just calm down, just calm
17 down, he was trying to calm me down.

18 Q. Did you have any conversations with George
19 Imel about this letter?

20 A. No.

21 Q. Not at any time?

22 A. Not any time.

23 Q. Do you know whether either of these
24 individuals, Dr. Imel or Dr. Bennion, believed the
25 defamatory language, what you claim to be the defamatory

1 language from Dr. Lineberry?

2 A. I believe Dr. Bennion did, that's why he
3 showed me. But I don't know what Dr. George Imel's
4 position is.

5 Q. Do you understand that Dr. Bennion believes
6 that you are a nut case that can't help himself?

7 A. He does not believe that.

8 Q. He does not believe that?

9 A. No.

10 Q. So Dr. Bennion did not believe the statement
11 in Exhibit No. 16.

12 A. I have never been told in my 51 years that I
13 was a nut case.

14 Q. That doesn't really answer my question, so
15 let's try this again. So it's your understanding from
16 Dr. Bennion that he doesn't believe the defamatory
17 statement in Exhibit No. 16 about you.

18 A. Correct.

19 Q. And is it your understanding that Dr. Imel
20 does not believe the defamatory statement in Exhibit
21 No. 16 about you?

22 A. It's not my understanding, I don't know, I
23 haven't talked to him.

24 Q. You don't have any idea there.

25 A. No.

1 Q. So would it be correct to say that as far as
2 you know this e-mail did not adversely affect Bennion's
3 opinion of you?

4 A. I don't believe so.

5 Q. And I probably asked the question in a
6 cumbersome fashion given your answer. Let's make sure we
7 are communicating. Do I understand you to be testifying
8 that you don't believe Dr. Bennion, that Dr. Bennion's
9 opinion of you was adversely affected by this e-mail; is
10 that correct?

11 A. Probably not.

12 Q. That's what you understand, though.

13 A. Yes.

14 Q. The facts as of today as you are sitting here
15 today is --

16 A. I don't believe his opinion about me was
17 changed because of this letter.

18 Q. Do you believe that Dr. Imel's opinion of you
19 has changed by virtue of this Exhibit No. 16?

20 A. I just answered I don't know.

21 Q. Is it your opinion or your position that
22 college professors like Dr. Lineberry are entitled to
23 freely express their opinions and views?

24 A. If that's true.

25 Q. Is it your opinion or your position that

1 college professors like Dr. Lineberry are not entitled to
2 freely express their views and opinions unless they are
3 100 percent true or 100 percent verifiable?

4 A. If his statement was true, he can express his
5 view. But I am not a nut case, no one has ever told me I
6 am a nut case. That is the first time I am hearing it.
7 So that's not opinion, that is slandering, that is
8 defamation of character.

9 Q. Do you know of anyone who has come to you and
10 said they saw this or heard about this statement in
11 Exhibit No. 16 and it has adversely affected their
12 opinion of you?

13 A. I haven't talked to anybody about this.

14 Q. I am not sure that answers my question. Do
15 you know of anyone or has anyone come to you and told you
16 or that you heard about them saying they have seen this
17 e-mail and it has adversely affected their opinion of
18 you?

19 A. No.

20 Q. Now, you have published this statement to
21 others, have you not?

22 A. What statement?

23 Q. This Exhibit No. 16, you have provided copies
24 of that to other people; correct?

25 A. I did to upper administration.

Exhibit 2

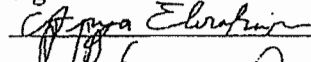
Department of Civil and Environmental Engineering
College of Engineering, Idaho State University


Date: 18 August 2006
To: Dr. Richard R. Jacobsen
Dean, College of Engineering
From: Faculty of the Dept. of Civil and Environmental Engineering (CEE)
Subject: Selection and Recommendation of Chair of the Dept. of CEE

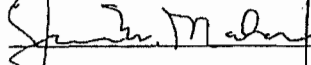
Regarding the above subject, the faculty of the Dept. of CEE held meetings on 15 & 18 August 2006 and decided the following:

1. During the faculty meeting on 15 August '06 (attended by all CEE faculty except Dr. Jim Mahar), the Dean brought to the attention of the CEE faculty the guidelines from Faculty/Staff Hand book (Appendix B) regarding Chairs of Academic Departments and asked the faculty to decide on selecting the Chair of the CEE Dept. either internally or externally since there is a vacant faculty position (please recall that the vacant position must be filled to satisfy ABET accreditation requirements for the CEE Department). The faculty voted unanimously that the Chair be selected internally. Accordingly, the Interim Chair first asked the faculty if there are any members who would serve as the Chair. All faculty members except Dr. Habib Sadid declined to serve as the Chair. Dr. Sadid is the senior most faculty member and a tenured professor in the department. The Interim Chair then asked Dr. Sadid to provide to all CEE faculty his C.V. and statements concerning the chair position (material enclosed).
2. During the faculty meeting on 18 August '06 (attended by all CEE faculty), the discussion continued on the selection of the CEE Chair. The faculty wanted to make sure that the Chair is also directly responsible for all ABET activities (preparing self study reports, coordinating assessment activities, etc.) in addition to other responsibilities indicated in the Duties of Chairs approved by the entire faculty of the College of Engineering. Furthermore, a good working relationship between the CEE Chair, and the College/University Administration was discussed. Dr. Sadid agreed to these responsibilities and expectations. Dr. Sadid was excused from the meeting during the voting process. After further discussion, the entire CEE faculty selected Dr. Sadid unanimously by a written confidential vote as the Chair of CEE Dept. and voted that Dr. Sadid's name be submitted to the Dean of Engineering for his recommendation to the Administration.

Signed


 Arya Ebrahimpour, Professor

 Solomon Leung, Professor

 Jim Mahar, Senior Lecturer

 Subbaram Naidu, Associate Dean – Interim Chair of CEE

 Chikashi Sato, Associate Professor

 Bruce Savage, Assistant Professor

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Exhibit 3

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Dr. Richard Jacobsen

From: Dr. Richard Jacobsen [jacorich@isu.edu]
Sent: Thursday, August 24, 2006, 7:00 PM
To: Robert Wharton
Subject: Re: FYI

FYI Made the announcement about the national search today at CEE faculty meeting, all faculty present. Lots of discussion about reasons, requirements in other departments, other positions filled on campus without searches, fairness, etc. Discussed two options with HS—Acting as a candidate during search or not acting. First response was that he will contact the faculty senate chair; the rules were followed and the decision should stand. He stated that he will neither act during the search nor be a candidate. (Dr. Naidu immediately resigned as acting chair—not sure yet why, but he finished conducting the meeting.) Will keep you posted.

Good news on NE faculty hires!

--- Original Message ---

From: Robert Wharton
To: 'Richard Jacobsen'
Cc: 'Connie M. Tillotson' ; 'David Miller'
Sent: Tuesday, August 22, 2006 5:35 PM
Subject: Department Chairs

Jake: Unless you can convince me of need to do otherwise, I would like to conduct national searches for Department Chair positions in the College of Engineering. Internal candidates are certainly eligible to apply for these positions. Thanks. Bob

Robert A. Wharton, Ph.D.
Vice President for Academic Affairs
Idaho State University
Administration 250 – Box 8063
Pocatello, ID 83209-8063
Phone: 208-282-2362
Fax: 208-282-4487
rwharton@isu.edu

Exhibit 4

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Idaho State University

College of Engineering Faculty Salaries 1991 – 2008

From: The Idaho State University Annual Reports

	1991-92	1992-93	Raise	% Raise
Sadid, Habib		41,496.00	0.00	0.000%
Wabrek, Richard	56,700.80	57,096.00	395.20	0.697%
Naidu, Sub.		52,374.40		0.000%
Stuffle, Roy	46,009.60	46,321.60	312.00	0.678%

	1992-93	1993-94	Raise	% Raise
Sadid, Habib	41,496.00	42,328.00	832.00	2.005%
Wabrek, Richard	57,096.00	58,240.00	1,144.00	2.004%
Naidu, Sub.	52,374.40	53,435.20	1,060.80	2.025%
Stuffle, Roy	46,321.60	47,257.60	936.00	2.021%

	1993-94	1994-95	Raise	% Raise
Sadid, Habib	42,328.00	46,550.40	4,222.40	9.975%
Wabrek, Richard	58,240.00	59,883.20	1,643.20	2.821%
Naidu, Sub.	53,435.20	57,428.80	3,993.60	7.474%
Stuffle, Roy	47,257.60	51,979.20	4,721.60	9.991%

	1994-95	1995-96	Raise	% Raise
Bennion, John		46,217.60	0.00	0.000%
Sadid, Habib	46,550.40	50,294.40	3,744.00	8.043%
Wabrek, Richard	59,883.20	58,302.40	-1,580.80	-2.640% No More Adm.
Sato, Chikashi		52,499.20	0.00	0.000%
Naidu, Sub.	57,428.80	61,339.20	3,910.40	6.809%
Stuffle, Roy	51,979.20	57,408.00	5,428.80	10.444%

	1995-96	1996-97	Raise	% Raise
Bennion, John	46,217.60	47,444.80	1,227.20	2.655%
Sadid, Habib	50,294.40	53,144.00	2,849.60	5.666%
Wabrek, Richard	58,302.40	60,569.60	2,267.20	3.889%
Sato, Chikashi	52,499.20	53,539.20	1,040.00	1.981%
Leung, Solomon,		47,736.00	0.00	0.000%
Naidu, Sub	61,339.20	66,019.20	4,680.00	7.630%
Stuffle, Roy	57,408.00	61,701.12	4,293.12	7.478%
Hart, Kenyon		46,134.40	0.00	0.000%

	1996-97	1997-98	Raise	% Raise
Bennion, John	47,444.80	47,444.80	0.00	0.000%
Sadid, Habib	53,144.00	53,144.00	0.00	0.000%
Wabrek, Richard	60,569.60	60,569.60	0.00	0.000%
Sato, Chikashi	53,539.20	53,539.20	0.00	0.000%
Leung, Solomon,	47,736.00	47,736.00	0.00	0.000%
Naidu, Sub	66,019.20	66,019.20	0.00	0.000%
Stuffle, Jean	61,701.12	61,701.12	0.00	0.000%
Hart, Kenyon	46,134.40	46,134.40	0.00	0.000%

	1997-98	1998-99	Raise	% Raise
Bennion, John	47,444.80	52,395.20	4,950.40	10.434%
Sadid, Habib	53,144.00	59,300.80	6,156.80	11.585%
Wabrek, Richard	60,569.60	62,712.00	2,142.40	3.537%
Sato, Chikashi	53,539.20	58,156.80	4,617.60	8.625%
Leung, Solomon,	47,736.00	54,371.20	6,635.20	13.900%
Naidu, Sub	66,019.20	74,443.20	8,424.00	12.760%
Stuffle, Jean	61,701.12	69,095.52	7,394.40	11.984%
Hart, Kenyon	46,134.40	50,544.00	4,409.60	9.558%

	1998-99	1999-2000	Raise	% Raise
Bennion, John	52,395.20	54,745.60	2,350.40	4.486%
Hofle, Mary	0.00	37,804.00	0.00	0.000%
Sadid, Habib	59,300.80	61,755.20	2,454.40	4.139%
Wabrek, Richard	62,712.00	64,646.40	1,934.40	3.085%
Sato, Chikashi	58,156.80	60,008.00	1,851.20	3.183%
Leung, Solomon,	54,371.20	55,848.00	1,476.80	2.716%
Naidu, Sub	74,443.20	77,396.80	2,953.60	3.968%
Stuffle, Jean	69,095.52	71,791.20	2,695.68	3.901%
Hart, Kenyon	50,544.00	51,355.20	811.20	1.605%

	1999-2000	2000-01	Raise	% Raise
Bennion, John	54,745.60	59,966.40	5,220.80	9.536%
Hofle, Mary	37,804.00	39,832.00	2,028.00	5.365%
Sadid, Habib	61,755.20	67,121.60	5,366.40	8.690%
Wabrek, Richard	64,646.40	66,726.40	2,080.00	3.218%
Sato, Chikashi	60,008.00	62,150.40	2,142.40	3.570%
Leung, Solomon,	55,848.00	57,491.20	1,643.20	2.942%
Naidu, Sub	77,396.80	82,368.00	4,971.20	6.423%
Stuffle, Jean	71,791.20	75,011.04	3,219.84	4.485%
Hart, Kenyon	51,355.20	52,499.20	1,144.00	2.228%

	2000-01	2001-02	Raise	% Raise
Bennion, John	59,966.40	63,502.40	3,536.00	5.897%
Hofle, Mary	39,832.00	42,577.60	2,745.60	6.893%
Sadid, Habib	67,121.60	72,113.60	4,992.00	7.437%
Kantabutra, Vitit	55,078.40	59,945.60	4,867.20	8.837%
Wabrek, Richard	66,726.40	69,305.60	2,579.20	3.865%
Ellis, Mike	61,422.40	65,603.20	4,180.80	6.807%
Sato, Chikashi	62,150.40	66,476.80	4,326.40	6.961%
Leung, Solomon,	57,491.20	59,446.40	1,955.20	3.401%
Naidu, Sub	82,368.00	87,647.04	5,279.04	6.409%
Stuffle, Jean	75,011.04	79,971.84	4,960.80	6.613%
Hart, Kenyon	52,499.20	54,288.00	1,788.80	3.407%

	2001-02	2002-03	Raise	% Raise
Bosworth, Ken	64,001.60	64,001.60	0.00	0.000%
Bennion, John	63,502.40	63,502.40	0.00	0.000%
Ebrahimpour, Arya	64,043.20	64,043.20	0.00	0.000%
Hofle, Mary	42,577.60	42,577.60	0.00	0.000%
Sadid, Habib	72,113.60	72,113.60	0.00	0.000%
Kantabutra, Vitit	59,945.60	59,945.60	0.00	0.000%
Wabrek, Richard	69,305.60	69,305.60	0.00	0.000%
Ellis, Mike	65,603.20	65,603.20	0.00	0.000%
Sato, Chikashi	66,476.80	66,476.80	0.00	0.000%
Leung, Solomon,	59,446.40	59,446.40	0.00	0.000%
Naidu, Sub	87,647.04	87,647.04	0.00	0.000%
Stuffle, Jean	79,971.84	79,971.84	0.00	0.000%
Hart, Kenyon	54,288.00	62,712.00	8,424.00	15.517%

	2002-03	2003-04	Raise	% Raise
Bosworth, Ken	64,001.60	64,001.60	0.00	0.000%
Bennion, John	63,502.40	63,502.40	0.00	0.000%
Ebrahimpour, Arya	64,043.20	64,043.20	0.00	0.000%
Hofle, Mary	42,577.60	42,577.60	0.00	0.000%
Sadid, Habib	72,113.60	72,113.60	0.00	0.000%
Kantabutra, Vitit	59,945.60	59,945.60	0.00	0.000%
Wabrek, Richard	69,305.60	69,305.60	0.00	0.000%
Ellis, Mike	65,603.20	65,603.20	0.00	0.000%
Sato, Chikashi	66,476.80	66,476.80	0.00	0.000%
Schoen, Marco	62,504.00	62,504.00	0.00	0.000%
Leung, Solomon,	59,446.40	59,446.40	0.00	0.000%
Williams, Brian	56,014.40	56,014.40	0.00	0.000%
Naidu, Sub	97,385.60	97,385.60	0.00	0.000%
Stuffle, Jean	78,857.60	78,857.60	0.00	0.000%
Hart, Kenyon	62,712.00	62,712.00	0.00	0.000%

	2003-04	2004-05	Raise	% Raise
Bosworth, Ken	64,001.60	65,353.60	1,352.00	2.112%
Bennion, John	63,502.40	64,979.20	1,476.80	2.326%
Ebrahimpour, Arya	64,043.20	65,665.60	1,622.40	2.533%
Hofle, Mary	42,577.60	43,785.60	1,208.00	2.837%
Sadid, Habib	72,113.60	73,569.60	1,456.00	2.019%
Kantabutra, Vitit	59,945.60	61,152.00	1,206.40	2.012%
Wabrek, Richard	69,305.60	70,408.00	1,102.40	1.591%
Ellis, Mike	65,603.20	67,225.60	1,622.40	2.473%
Sato, Chikashi	66,476.80	67,808.00	1,331.20	2.003%
Schoen, Marco	62,504.00	64,209.60	1,705.60	2.729%
Leung, Solomon,	59,446.40	60,632.00	1,185.60	1.994%
Williams, Brian	56,014.40	57,699.20	1,684.80	3.008%
Naidu, Sub	87,385.60	89,762.40	2,376.80	2.720%
Stuffle, Jean	78,857.60	81,937.44	3,079.84	3.906%
Hart, Kenyon	62,712.00	63,960.00	1,248.00	1.990%

	2004-05	2005-06	Raise	% Raise
Bosworth, Ken	65,353.60	66,726.40	1,372.80	2.101%
Bennion, John	64,979.20	66,164.80	1,185.60	1.825%
Ebrahimpour, Arya	65,665.60	67,288.00	1,622.40	2.471%
Hofle, Mary	43,785.60	49,670.40	5,884.80	13.440%
Sadid, Habib	73,569.60	75,025.60	1,456.00	1.979%
Tarefder, Rafi		56,992.00	0.00	0.000%
Kantabutra, Vitit	61,152.00	62,400.00	1,248.00	2.041%
Wabrek, Richard	70,408.00	71,489.60	1,081.60	1.536%
Ellis, Mike	67,225.60	68,619.20	1,393.60	2.073%
Sato, Chikashi	67,808.00	69,201.60	1,393.60	2.055%
Schoen, Marco	64,209.60	65,977.60	1,768.00	2.753%
Leung, Solomon,	60,632.00	61,568.00	936.00	1.544%
Stout, Larry	64,646.40	66,227.20	1,580.80	2.445%
Tappan, Dan		57,012.80	0.00	0.000%
Chiu, Steve		57,012.80	0.00	0.000%
Williams, Brian	57,699.20	59,280.00	1,580.80	2.740%
Perez, Alba		57,283.20	0.00	0.000%
Mahar, James	83,844.80	85,404.80	1,560.00	1.861%
Naidu, Sub	89,762.40	91,709.28	1,946.88	2.169%
Stuffle, Jean	81,937.44	83,753.28	1,815.84	2.216%
Hart, Kenyon	63,960.00	64,875.20	915.20	1.431%

	2005-06	2006-07	Raise	% Raise
Bosworth, Ken	66,726.40	76,710.40	9,984.00	14.963%
Bennion, John	66,164.80	67,662.40	1,497.60	2.263%
Ebrahimpour, Arya	67,288.00	74,713.60	7,425.60	11.036%
Hofle, Mary	49,670.40	51,875.20	2,204.80	4.439%
Sadid, Habib	75,025.60	78,832.00	3,806.40	5.073%
Tarefder, Rafi	56,992.00		0.00	0.000%
Kantabutra, Vitit	62,400.00	67,017.60	4,617.60	7.400%
Wabrek, Richard	71,489.60	73,486.40	1,996.80	2.793%
Ellis, Mike	68,619.20	70,616.00	1,996.80	2.910%
Sato, Chikashi	69,201.60	71,593.60	2,392.00	3.457%
Schoen, Marco	65,977.60	68,889.60	2,912.00	4.414%
Leung, Solomon,	61,568.00	67,579.20	6,011.20	9.764%
Stout, Larry	66,227.20	71,780.80	5,553.60	8.386%
Tappan, Dan	57,012.80	59,321.60	2,308.80	4.050%
Chiu, Steve	57,012.80	59,321.60	2,308.80	4.050%
Williams, Brian	59,280.00	66,102.40	6,822.40	11.509%
Perez, Alba	57,283.20	59,488.00	2,204.80	3.849%
Mahar, James	85,404.80	87,900.80	2,496.00	2.923%
Naidu, Sub	91,709.28	94,854.24	3,144.96	3.429%
Stuffle, Jean	83,753.28	88,508.16	4,754.88	5.677%
Hart, Kenyon	64,875.20	65,686.40	811.20	1.250%

	2006-2007	2007-2008	Raise	% Raise
Lundeen, Richard		52,520.00	0.00	0.000%
Gansauge, Todd	51,230.40	52,249.60	1,019.20	1.989%
Hart, Kenyon	65,686.40	67,662.40	1,976.00	3.008%
Naidu, Sub	94,854.24	100,956.96	6,102.72	6.434%
Mousavinegad, Hos.		120,016.00	0.00	0.000%
Zoghi, Manoochehr		120,016.00	0.00	0.000%
Bosworth, Ken	76,710.40	89,689.60	12,979.20	16.920%
Bennion, John	67,662.40	72,072.00	4,409.60	6.517%
Ellis, Mike	70,616.00	74,256.00	3,640.00	5.155%
Hofle, Mary	51,875.20	61,505.60	9,630.40	18.565%
Sadid, Habib	78,832.00	83,657.60	4,825.60	6.121%
Ebrahimpour, Arya	74,713.60	79,227.20	4,513.60	6.041%
Stuffle, Jean	88,508.16	91,561.60	3,053.44	3.450%
Leung, Solomon	67,579.20	69,617.60	2,038.40	3.016%
Kantabutra, Vitit	67,017.60	69,784.00	2,766.40	4.128%
Wabrek, Richard	73,486.40	76,502.40	3,016.00	4.104%
Williams, Brian	66,102.40	70,657.60	4,555.20	6.891%
Sato, Chikashi	71,593.60	76,003.20	4,409.60	6.159%
Schoen, Marco	68,889.60	73,840.00	4,950.40	7.186%
Chiu, Steve	59,321.60	63,377.60	4,056.00	6.837%
Tappan, Dan	59,321.60	63,377.60	4,056.00	6.837%
Savage, Bruce		67,808.00	0.00	0.000%
Perez, Alba	59,488.00	63,232.00	3,744.00	6.294%
Dunzik-Gougar, Mary		95,160.00	0.00	0.000%
Mahar, James	87,900.80	92,060.80	4,160.00	4.733%

	2007-2008	2008-2009	Raise	% Raise
Lundeen, Richard	52,520.00	57,636.80	5,116.80	9.743%
Gansauge, Todd	52,249.60		0.00	0.000%
Hart, Kenyon	67,662.40	68,348.80	686.40	1.014%
Naidu, Sub	100,956.96	113,614.40	12,657.44	12.537%
Mousavinegad, Hos.	120,016.00	123,614.40	3,598.40	2.998%
Zoghi, Manoochehr	120,016.00	124,654.40	4,638.40	3.865%
Bosworth, Ken	89,689.60	92,393.60	2,704.00	3.015%
Bennion, John	72,072.00	74,235.20	2,163.20	3.001%
Ellis, Mike	74,256.00	76,460.80	2,204.80	2.969%
Hofle, Mary	61,505.60	63,336.00	1,830.40	2.976%
Sadid, Habib	83,657.60	86,923.20	3,265.60	3.904%
Ebrahimpour, Arya	79,227.20	82,305.60	3,078.40	3.886%
Stuffle, Jean	91,561.60	92,497.60	936.00	1.022%
Leung, Solomon	69,617.60	70,324.80	707.20	1.016%
Kantabutra, Vitit	69,784.00	70,491.20	707.20	1.013%
Wabrek, Richard	76,502.40	77,272.00	769.60	1.006%
Williams, Brian	70,657.60	72,758.40	2,100.80	2.973%
Sato, Chikashi	76,003.20	87,880.00	11,876.80	15.627%
Schoen, Marco	73,840.00	81,203.20	7,363.20	9.972%
Chiu, Steve	63,377.60	65,270.40	1,892.80	2.987%
Tappan, Dan	63,377.60	65,270.40	1,892.80	2.987%
Savage, Bruce	67,808.00	69,825.60	2,017.60	2.975%
Perez, Alba	63,232.00	65,665.60	2,433.60	3.849%
Dunzik-Gougar, Mary	95,160.00		0.00	0.000%
Mahar, James	92,060.80	94,827.20	2,766.40	3.005%

Exhibit 5

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Part 4. Personnel Policies

Section II. Appointment

B. Categories of Employees (Updated 5/02)

1. Classified Employees

“Classified Employee” is any person appointed to or holding a position at Idaho State University whose position is subject to the provisions of the merit examination, selection, retention, promotion, and dismissal requirements of the Idaho Division of Human Resources and Personnel Commission as provided under Title 67, Chapter 53, Idaho Code.

Appointments, employment status, personnel actions, and primary employment benefits concerning classified employees are conducted in accordance with the rules and regulations established by the Idaho Division of Human Resources and Personnel Commission.

2. Nonclassified Employees

“Nonclassified Employee” is any person appointed to or holding a position at Idaho State University whose position is not subject to the provisions of Title 67, Chapter 53, Idaho Code.

a. Administrative Nonclassified Employees

“Administrative Nonclassified Employee” includes the President and other personnel in such positions at Idaho State University as may be designated by the President as administrative.

b. Institutional Faculty

“Institutional Faculty” are all employees who hold the rank of Instructor or higher academic rank at Idaho State University.

In the following sections, where ‘voting faculty’ is used in determination of who will be involved in matters of chair appointment and evaluation, the rule is as follows:

Faculty to be included in the decisions regarding appointment and evaluation of department chairs are those which usually will be full time, continuing, tenure track individuals. In some cases, individuals with less than full time appointment should be involved. These include those who regularly teach courses in the department, sit on department, University and college committees, participate in decisions regarding department affairs such as curriculum and capital purchases, advise students, and conduct research in areas of the discipline of the department; regardless of their fraction of full time appointment and of FTE generated.

c. Department Chairpersons

The intent of this section is to promote continuous faculty participation in the choice of successive appointments of the chairperson, rather than providing for automatic replacement of the individual filling that position.

Department chairs or the College of Technology equivalent should be qualified or certified to teach in at least one discipline in the department.

(1) External Appointments

Vacancies may be filled from outside the University if a new or a replacement position is to be established, and if it appears to the Administration that in the best interest of the University and the department, the vacancy be filled from outside the University. The respective dean should consult with the voting faculty of the department for their recommendations regarding whether the selection of a new chairperson should be filled internally, or not. In the case of a search outside the University the procedures to be followed are:

- (a) The dean shall appoint a selection committee which may include all voting faculty in a department, to serve as a committee of the whole to conduct the search for and selection of the department chairperson. This committee may choose to elect a subcommittee to screen applicants for the position.
- (b) The selection committee, in consultation with the appropriate dean and in cooperation with the EEO/Affirmative Action Office, will advertise the vacant position, establish an application deadline, and schedule candidate interviews.
- (c) After interviewing the various candidates, the committee will forward its selection of top candidates, along with input from the department to the dean. The list may include a rank ordering of at least two candidates in accordance with the preferences of the department. In exceptional cases, a single name may be submitted to the dean.
- (d) In the vast majority of cases, the chairperson should be a person who is mutually acceptable to the dean as well as the faculty. If the dean's recommendation is not the same as that of the selection committee, the dean may appoint a person other than the one or ones forwarded by the committee, in which event, the dean shall explain to the faculty of the department and to the Academic Vice President the reason for his/her decision.
- (e) The dean shall then forward his/her recommendation to the President and Academic Vice President for their approvals.
- (f) It is recognized that, at times, unanimity or even majority opinion will be unattainable. If so the dean's recommendation should be consistent with the best interest of department harmony and productivity, and will in any case, meet the requirements of open explanation to the faculty and Academic Vice President as set forth in (d) above.
- (g) The chairperson so appointed shall not have tenure as chairperson but shall report to

the dean or his/her designee and serve at the pleasure of the dean with approval of the President; tenure as a faculty member is a separate matter.

(2) Internal Appointments

(a) If the dean, following consultation with the voting faculty of the department wishes to recommend to the Administration the selection of a chairperson from within the department, the dean shall ask the department to submit to him/her the names of one or more acceptable candidates from inside the department, preferably from among the senior tenured faculty.

(b) Where no one internal candidate is clearly the department's choice, the dean, to the extent practicable shall recommend the appointment of a chairperson consistent with the best interests of departmental harmony and productivity. The chairperson so appointed shall not have tenure as chairperson, but shall report to the dean or his/her designee and serve at the pleasure of the dean with approval of the President; tenure as a faculty member is a separate matter.

(3) Term of Appointment

(a) In any selection, the initial term of office of the chairperson shall not exceed three (3) years.

(b) Ordinarily a chairperson receiving favorable evaluations from the dean and a majority of the voting faculty of the department may be considered for reappointment to additional terms not to exceed three (3) years each.

d. Temporary or Special Nonclassified Employees

This category includes:

(1) persons appointed to positions that are either temporary or special and who generally meet specific position requirements for:

(a) grants or contracts of specified duration; or

(b) part-time teaching or other responsibilities; and

(2) employees who are appointed to fulfill the responsibilities of permanent positions on an emergency or temporary basis.

Temporary or special nonclassified appointments do not create expectations of continued work or contract renewal. Employment beyond the contract period may not be legally presumed. Advance notice or statement of reasons of nonrenewal need not be given.

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Part 4. Personnel Policies

Section IV. Performance/Evaluation/Termination

B. Evaluation of Faculty/Tenure (Updated 9/02)

1. Annual Evaluation

Each year the chair of a department (or unit head) must submit to the Dean of the chair's college (or appropriate superior) an evaluation of each faculty member in that department (or unit). Any evaluation must include at least administrative access to all primary or raw evaluation data. This evaluation, together with the opinion of higher administrators, will be used as one (1) basis for the final recommendation relative to reappointment, nonreappointment, acquisition of tenure, or other personnel action, whichever is appropriate. The chair must communicate in writing an assessment of strengths and weaknesses to each faculty member evaluated.

Evaluation of faculty should be made in terms of the individual's potential effectiveness as a permanent member of the local academic community. The indices considered in annual faculty evaluations may vary by unit, from year to year, and by the faculty member's responsibilities and stage of career. However, the totality of any five (5) consecutive annual evaluations should be substantive by adhering to the following criteria:

- a. address each relevant major faculty responsibility (e.g., teaching, service, research);
- b. include consideration of multiple factors for each responsibility;
- c. include informed collegial input on as many responsibilities as practicable. The faculty of each department shall formulate the procedure for collegial review;
- d. and include student input as appropriate.

The annual evaluation should clearly indicate areas of excellence and areas needing development. The chair should identify and facilitate opportunities and resources for addressing those needs and rewarding excellence. At intervals not to exceed five (5) years, the chair will review the faculty member's five (5) most recent annual evaluations or other substantive reviews such as promotion and tenure and certify that a substantive review has been completed during the last five (5) years.

Any written recommendations that result from evaluation of a faculty employee will be given to the employee and a copy will be placed in the employee's personnel file.

2. Tenure

Tenure is a condition of presumed continuous employment following the expiration of a

probationary period and after meeting the appropriate criteria. After tenure has been awarded, the faculty member's service may be terminated only for adequate cause, the burden of proof resting with the institution, except in the case of retirement for age, under conditions of financial exigency as declared by the State Board of Education, in situations where extreme shifts of enrollment have eliminated the justification for a position, or where the Board has authorized elimination or substantial reduction in an academic or professional-technical program.

Tenure status is available only to eligible full-time institutional faculty members whose initial appointments have been approved by the Board. Conferral of tenure status has been limited by the Board to seventy five percent (75%) of the institutional faculty. All new faculty appointments are subject to the approval of the Board. Nontenured members of the faculty should not expect continued employment beyond the period of his or her current appointment. Any commitment to employ a nontenured member of the faculty beyond the period of his or her current appointment is wholly ineffective without prior approval of the Board.

3. Evaluation For Tenure

It is expected that the President, in granting tenure, will have sought and considered evaluations of each candidate by a committee appointed for the purpose of annual evaluations or tenure status. Such committee must consist of tenured and nontenured members of the department, if available; equitable student representation; and one or more representatives from outside the department. Each member of the committee has an equal vote on all matters. The committee must give proper credence and weight to collective student evaluations of faculty members, as evidenced by an auditing procedure approved by the President.

The recommendation of the committee will be forwarded in writing through appropriate channels, along with written recommendations of the department chairperson or unit head, dean, and appropriate vice president, to the President, who is responsible for making the final decision.

a. Acquisition of Tenure

(1) Professional-Technical faculty hired under the division of professional-technical education prior to July 1, 1993 who were granted tenure may retain tenure in accordance with these policies. Individuals hired under the Division of Professional-Technical education subsequent to July 1, 1993 are hired and employed as nontenure track faculty and will:

(a) be afforded the right to pursue promotion; and

(b) be considered and granted an employment contract in accordance with these policies and be subject to continued acceptable performance and/or the needs of the institution; and

(c) be afforded an opportunity to serve on institutional committees.

(2) Academic faculty members, after meeting certain requirements set forth in Section 4.,

may acquire tenure. Acquisition of tenure is not automatic, by default or defacto, but requires an explicit judgment, decision, and approval. A faculty member will usually be evaluated for the acquisition of tenure after at least five (5) full years of service and in no case later than during the faculty member's seventh (7th) full academic year of employment at the institution.

b. Notification

An individual eligible for tenure must be informed, by proffered written contract, of appointment or nonappointment to tenure not later than June 30th after the academic year during which the decision is made.

c. Nonappointment to Tenure

In case of nonappointment to tenure in accordance with the standards of eligibility set forth in Section 4., the faculty member must be given, in accordance with the provision for nonrenewal, a written notice that tenure was denied.

4. Standards of Eligibility for Tenure Status

a. Until the acquisition of tenure, all appointments are made for a period not to exceed one (1) year. Ordinarily, appointments are made for periods of one (1) year each before a tenure decision becomes mandatory. A faculty member will usually be evaluated for the acquisition of tenure after at least five (5) full academic years of employment and in no case later than during the faculty member's seventh (7th) full academic year of employment at the University.

b. All satisfactory service in any professorial rank may be used to fulfill the time requirement for acquiring tenure. The University must develop criteria and rules by which prior service may be evaluated for inclusion in experience necessary for acquiring tenure.

c. A maximum of two (2) years satisfactory service in the rank of instructor at the University will be allowed in partial fulfillment of the time requirement in the professorial ranks. Faculty members who hold the rank of instructor may be eligible for tenure status if provided for by the University even though they teach in fields that have established professorial ranks.

d. Tenure may be awarded prior to completion of the usual eligibility period in certain exceptional cases. Prior to attaining tenure status in such cases, the burden of proof rests with the individual.

5. Award of Tenure

The awarding of tenure to an eligible faculty member is made only by a positive action of the President. The President must give notice in writing to the faculty member of the approval or denial of tenure status. Notwithstanding any provisions in these policies to the contrary, no person will be deemed to have been awarded tenure because notice is not given or received by the times prescribed in any sections of these policies. No faculty member may construe lack of notice of denial of tenure as the awarding of tenure. If the President has not given notice to the faculty member as provided for in these policies, it is the duty of the faculty

member to make inquiry to ascertain the decision of the President.

6. Interpretations Relating to Tenure

a. Terminal Contract of Employment - If a faculty member is not awarded tenure, the President must notify the faculty member of the decision not to award tenure and may, at his or her discretion, either issue to the faculty member a contract for a terminal year of employment, or, at the sole discretion of the President, issue to the faculty member contracts of employment for successive periods of one (1) year each. Such appointment for faculty members not awarded tenure must be on an annual basis, and such temporary appointments do not vest in the faculty member any of the rights inherent in tenure and there shall be no continued expectation of employment beyond the annual appointment.

b. When authorized by the President, or his or her designee, the year in which the tenure decision is made may be the terminal year of employment.

c. Effect of lapse in service, transfer, reassignment, reorganization, and administrative responsibilities.

(1) A nontenured faculty member who has left the institution and is subsequently reappointed after a lapse of not more than three (3) years may have his or her prior service counted toward eligibility for the award of tenure. Eligibility for the award of tenure must be clarified in writing before reappointment.

A tenured faculty member who has left the University and is subsequently reappointed after a lapse of not more than three (3) years must have tenure status clarified in writing by the President or his or her designee before appointment. The faculty member may be reappointed with tenure, or may be required to serve additional years before being reviewed for tenure status.

(2) Before a nontenured faculty member holding academic rank is moved from one position in the University to another, the member must be informed in writing by the Academic Vice President, after consultation with the receiving department, as to the extent to which prior service may count toward eligibility for tenure status.

(3) No faculty member's tenure in a discipline may be adversely affected by the reorganization of the administrative structure. A faculty member's tenure is not affected by reassignment of administrative responsibilities.

(4) When a tenured faculty member is serving as department chairperson, college dean, or in some other administrative or service capacity, retention of membership, academic rank, and tenure in the subject-matter department or similar unit is maintained. Should the administrative or service responsibilities terminate, the member takes up regular duties in the discipline within which membership, academic rank, and tenure was retained.

7. Periodic Performance Review

It is the policy of the Board that at intervals not to exceed five (5) years following the award of tenure to faculty members, the performance of tenured faculty must be reviewed by members of the department or unit and the department chairperson or unit head. The review

must be conducted in terms of the tenured faculty member's continuing performance in the following general categories: (a) teaching effectiveness, (b) research or creative activities, (c) professional related services, (d) other assigned responsibilities, and (e) overall contributions to the department.

a. Procedures for Periodic Review - The University must establish procedures for the performance review of tenured faculty members at the University. Such procedures are subject to the review and approval of the Board. Each year the academic vice president or designee is responsible for designating in writing those tenured faculty members whose performance is subject to review during the year.

b. Review Standards - The University may establish its own internal review standards subject to approval by the Board. Absent such University standards, the University must use the following standards.

If during the periodic review, the performance of a tenured faculty member is questioned in writing by (a) a majority of members of the department or unit, (b) the department chairperson or unit head, (c) the appropriate dean, (d) the Vice President for Academic Affairs, or (e) the President, the Vice President for Academic Affairs must decide whether a full and complete review must be conducted in accordance with the procedures established for the initial evaluation for tenure.

If during the periodic review, the performance of a tenured faculty member is not questioned in writing as described in the preceding paragraph, members of the department or unit and the department chairperson or unit head must prepare a written review statement that the performance review has been conducted and that a full and complete review is not required.

c. Exception for Associate Professors in the Promotion Process - Generally, the promotion from the rank of associate professor to full professor is considered no earlier than the fifth (5th) full year after attaining the rank of associate professor, which is generally contemporaneous with the granting of tenure. In such cases, if review for promotion to full professor is scheduled during the fifth (5th), sixth (6th) or seventh (7th) full year after the award of tenure then the promotion review may, if it meets substantially similar criteria and goals of the periodic review, take the place of the periodic performance review described here.

d. Termination of Employment

If, following a full and complete review, a tenured faculty member's performance is judged to have been unsatisfactory or less than adequate during the period under review, the President may initiate termination of employment procedures for the faculty member. In other words, an unsatisfactory or less than adequate performance rating shall constitute adequate cause for dismissal.

8. Dismissal for Adequate Cause

Tenured faculty members may be dismissed for adequate cause as provided for in Part 4., Section IV.E.2 of the ISU Faculty/Staff Handbook and Subsection L of the Idaho State Board of Education Governing Policies and Procedures.

9. Tenure for Academic Administrators

a. "Academic administrators," for purposes of this topic, means the chief academic officers of the Office of the State Board of Education and the University and the deans and department chairs and their associates/assistants of the academic units of the University, and shall not include persons occupying other administrative positions.

b. An employee with tenure in an academic department or equivalent unit who is appointed to an academic administrator position retains tenure in that department or equivalent unit.

c. An individual hired for or promoted to an academic administrator may be considered for a tenured faculty rank in the appropriate department or equivalent unit. Such consideration is contingent upon approval by the President.

d. Upon termination of employment as an academic administrator, an employee with tenure may, at his or her option, return to employment in the department or equivalent unit in which he or she holds tenure unless such employee resigns, retires, or is terminated for adequate cause.

e. An individual hired for a nonacademic administrator position from outside the University will not be considered for tenured faculty rank in conjunction with such appointment. However, he or she may be granted an adjunct faculty appointment, upon the recommendation of the appropriate department and dean and with the approval of the provost or chief academic officer and President, if the individual will teach and otherwise contribute to that department.

f. Notwithstanding the above, each administrative employee who is granted tenure shall be reviewed in the same manner as tenured faculty.

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Part 4. Personnel Policies

Section V. Internal Grievance Procedures

D. Grievance Procedures for Institutional Faculty (Updated 5/02)

1. Preamble

The procedure described herein provides an avenue for grievance for full-time faculty members at Idaho State University. The policy satisfies two objectives: (1) to affirm a faculty member's right to be informed of and question personnel recommendations at any level and (2) to provide a mechanism for grieving a final institutional decision. If prior to filing a grievance or while a grievance proceeding is in progress, a faculty member seeks resolution of the matter in any other forum, Idaho State University shall have no further obligation to entertain or proceed with the matter pursuant to the procedures herein.

2. Introduction

The grievance procedure provided in this policy may be used by a full-time faculty member in such matters as recommendations concerning tenure and promotion, content of personnel files, issues of academic freedom, and performance evaluation leading to nonrenewal. Exceptions to this grievance procedure include: (1) reduction in force due to financial exigency and (2) dismissal for cause.

a. The following criteria define which matters are grievable under this policy.

Recommendations for deferral of tenure, deferral or denial of promotion, content of personnel files, and issues of academic freedom are grievable under the following conditions:

- (1) non-compliance with procedures prescribed by the ISU Faculty/Staff Handbook and the State Board of Education.
- (2) utilization of inadequate or incomplete academic criteria and/or inappropriate non-academic considerations.
- (3) claim of abuse of the grievant's academic rights and privileges as defined by the ISU Faculty/Staff Handbook and the State Board of Education.
- (4) claims of factual errors in a faculty member's annual evaluation.

b. Recommendations of denial of tenure (which is a recommendation of nonrenewal) and nonrenewal are not grievable within Idaho State University and are not appealable to the Idaho State Board of Education. An exception is made when the employee alleges that the institutional decision not to recommend renewal of his or her appointment has been made for

legally impermissible reasons or that written notice was not received in accordance with the dates specified by the State Board of Education.

c. The burden of proof upon any grievance rests with the grievant.

3. Informal Review

a. The intent of the grievance procedure is to resolve a grievance at the earliest moment possible. Therefore, in matters defined by Section 2.a, the affected faculty member shall be notified of the evaluation/recommendation and the reasons advanced for it at each level of the evaluation process. Within five (5) working days of receiving the evaluation/recommendation and its rationale, the affected faculty member may respond to it, in writing, to the next higher level of evaluation. The response must be limited to the grounds specified in 2.a. This and any subsequent written responses will become a part of the personnel materials considered at higher levels of evaluation.

b. Those procedures defined in 3.a, shall apply at each evaluation level, including the evaluation by the Vice President for Academic Affairs.

4. Grievance Process

a. Once the Vice President for Academic Affairs has rendered a decision (hereafter, "institutional decision"), regarding matters defined in Section 2.a, a faculty member who intends to initiate a further grievance must file a formal grievance as follows:

(1) Grieve the institutional decision by submitting a written notice of grievance to the Vice President for Academic Affairs and the Chair of the appropriate Faculty Senate within fifteen (15) working days of receipt of notice of the institutional decision.

(2) Specify which criteria defined in 2.a, form(s) the basis for the formal grievance.

(3) Include copies of all previous recommendations and the grievant's informal grievance(s).

(4) Include any additional information that the faculty member deems relevant to the formal grievance.

b. The Appeals Board will limit its inquiry to the matters and conditions defined in Section 2.a.

c. The Appeals Board will not make judgments about professional competence, but will draw conclusions on the matters and conditions in 2.a, on the basis of the submitted documentation and the record of the witnesses called.

d. Formation and Composition of the Appeals Board.

(1) Academic Faculty

(a) The Faculty Appeals Board shall consist of seven (7) members.

(b) At the first meeting of the academic year of the Faculty Senate, the Executive Committee of the Faculty Senate will appoint two (2) tenured faculty members at the rank of Associate Professor or Professor to the Appeals Board. One of these faculty members, designated by the Executive Committee, shall chair the Appeals Board.

(c) At the beginning of the academic year, the Vice President for Academic Affairs shall appoint three (3) members from the University faculty to the Appeals Board. All members of the Appeals Board must be full-time administrative or teaching faculty. The Vice President of Academic Affairs shall inform the Chair of the Appeals Board in writing of his appointees.

(d) Upon receipt of notice of grievance by the Faculty Senate, the two (2) members of the Appeals Board selected by the Faculty Senate will appoint two (2) additional members from the University faculty, including at least one (1) nontenured faculty member.

(e) The Appeals Board Chair is responsible for convening the Appeals Board within seven (7) working days after the grievance has been filed with the Vice President for Academic Affairs, providing the Appeals Board with all available factual information pertinent to the case, and seeing that the function of the Appeals Board is carried out. During the grievance hearing, the Chair shall be the presiding officer.

(f) The grievant and the Vice President for Academic Affairs shall each have the right of challenge to membership on the Appeals Board. This includes the right to challenge with cause any member on the Appeals Board and one peremptory challenge (no cause needed). Challenges shall be communicated to the Chair of the Faculty Appeals Board on or before the time of the Board's first meeting. The Appeals Board will rule on all challenges to the membership. Vacancies however created shall be filled by the original appointing authority as described above. The challenger may take recommendations regarding areas from which replacements are chosen.

(2) College of Technology Faculty

(a) The Faculty Appeals Board shall consist of seven (7) members.

(b) At the first meeting of the academic year of the College of Technology Faculty Council, the Executive Committee of the College of Technology Faculty Council will appoint two (2) faculty members to the Appeals Board. One (1) of these faculty members, designated by the Executive Committee, shall chair the Appeals Board.

(c) At the beginning of the academic year, the Vice President for Academic Affairs shall appoint three (3) members from the College of Technology faculty to the Appeals Board. All members of the Appeals Board must be full-time administrative or teaching faculty. The Vice President for Academic Affairs shall inform the Chair of the Appeals Board in writing of his appointees.

(d) Upon receipt of notice of grievance by the College of Technology Faculty Council, the two (2) members of the Appeals Board selected by the Faculty Council will appoint two (2) additional members from the College of Technology faculty.

(e) The Appeals Board Chair is responsible for convening the Appeals Board within seven (7) working days after the grievance has been filed with the Vice President for Academic Affairs, providing the Appeals Board with all available factual information pertinent to the case, and seeing that the function of the Appeals Board is carried out. During the grievance hearing, the Chair shall be the presiding officer.

(f) The grievant and the Vice President for Academic Affairs shall each have the right of challenge to membership on the Appeals Board. This includes the right to challenge with cause any member on the Appeals Board and one preemptory challenge (no cause needed). Challenges shall be communicated to the Chair of the Faculty Appeals Board on or before the time of the Board's first meeting. The Appeals Board will rule on all challenges to the membership. Vacancies however created shall be filled by the original appointing authority as described under (2)(b)-(2)(d) above. The challenger may make recommendations regarding areas from which replacements are chosen.

5. Limitations

a. No person shall be chosen to serve on the Appeals Board if he or she has received notice of layoff or nonrenewal as a result of financial exigency, has received notice of termination or nonrenewal for any other reason, or has any grievance, appeal, or litigation pending against any officer of the University. Nor shall any person be chosen who has made recommendations, offered comment, or otherwise participated in the institutional decision being grieved.

b. No member of the grievant's department may serve on the Appeals Board.

c. Any member of the Appeals Board who has any special relationship to any particular grievant or to the administration which might reasonably be said to raise a claim of conflict of interest will report that fact to the parties involved.

d. The Chair of the Appeals Board will disqualify members based upon the limitations noted above. A new member(s) will be selected by means of the methods for constituting the hearing body described in 4.d, above.

e. Appeals Board Proceedings

(1) The hearing process is not a judicial proceeding. The scope of any hearing will be limited to grievances related to 2.a.

(2) Any faculty member who has received a grievable institutional decision and desires to grieve it through this process shall file a formal grievance within fifteen (15) working days of receipt of such notice, by transmitting the grievance in writing to the Vice President for Academic Affairs and the Chair of the Faculty Senate. Copies of all correspondence and materials considered in the informal review process shall accompany the grievance. In the written grievance, the faculty member will set down the grounds from 2.a, upon which the personnel decision is being grieved.

(3) The first meeting of the Appeals Board, called by the Chair within seven (7) working days of the filing of the grievance, will be held for the purposes of familiarizing the members with the general grievance procedures and dealing with challenges, if any, to the

membership of the Faculty Appeals Board. The Appeals Board has final authority in all procedural matters, including the number and duration of the hearings, as well as the final recommendations in the case.

(4) The second meeting of the Appeals Board will be held with the grievant and the Vice President for Academic Affairs within seven (7) working days of the first meeting for the following purposes: (a) to consider the nature of the parties' expected presentations, including the number and nature of witnesses and advisors to be called; and (b) to set mutually agreeable dates for the hearing(s), including times and durations of the presentations. Both the grievant and the Vice President for Academic Affairs will have the right to summon other parties who participated in the institutional decision. The Appeals Board will communicate in writing to the parties its determinations regarding the above within five (5) working days following this meeting. The Appeals Board Chair will rule on disputed matters concerning this subsection.

(5) As a general rule, the Appeals Board shall admit rather than exclude presentations which either party desires to make, deferring decisions on the relevance and weight to be given various submissions to the Appeals Board's subsequent deliberations. The Appeals Board Chair will rule against presentations which are clearly repetitive, irrelevant or immaterial. The Appeals Board has the responsibility in each case to review all evidence presented to it. The facts on which the decision were made and the reasons for the action taken shall be discussed orally at the hearing.

f. Procedural Standards

The procedural requirements of formal adjudication shall not be required; however, the following minimal standards of procedure will be adhered to:

(1) Tape recordings will be made of each hearing session. Upon written request and payment of the cost of duplication, a grievant may obtain duplicate copies.

(2) Summary notes of the hearing will be kept by the Chair or an appointee of the Chair.

(3) The written grievance and subsequent information presented by the grievant will be made a part of the summary notes.

(4) A grievant will be afforded the opportunity to appear before the Appeals Board and discuss the issues contained in the written grievance.

(5) Witnesses may be asked to appear before the hearing body by the grievant, the Vice President for Academic Affairs, or by the Appeals Board Chair and asked to give testimony which is material and directly relevant to the decision under grievance. Those asked to appear have the responsibility to respond as though summoned by the President of the University. Each party may request the presiding officer to ask specific questions of an adverse witness, and the presiding officer shall comply if the questions posed appear to be probative, relevant, and fair. Direct questions by a party to an adverse witness shall be allowed only if they are asked without undue antagonism, and are truly questions and not argument.

(6) A grievant may have an advisor of his/her choice who may in an opening statement

before the Appeals Board present the issues contained in the written grievance filed by the grievant. Henceforth, this advisor will act only in an advisory capacity to the grievant. Other parties involved in the hearing proceedings also may have an advisor who will act only in an advisory capacity.

(7) The Appeals Board and the grievant shall be afforded access to the appropriate documentation which was used in reaching the decision under grievance.

(8) It will be the responsibility of the grievant to present appropriate information to the Appeals Board to convince it that the institutional decision cannot be supported for reasons in 2.a.

(9) Any votes taken during the grievance proceedings must be by written ballot to be kept on file for the record. The ballots will be anonymous.

(10) The Appeals Board shall have the power to establish its own procedural rules subject to the limitations imposed in f.(1)-f.(9) above.

6. Conclusion

Within five (5) working days after the conclusion of the hearing, the Appeals Board will forward to the President of the University a report of its recommendation with copies to the parties to the dispute. The President will render a decision on the grievance and, within ten (10) working days after receiving that report, will notify by Certified Mail the Faculty member and the Chair of the Appeals Board of the final decision. The President's decision may not be appealed to the State Board of Education, except when permitted by its policies and procedures.

One (1) copy of summary notes of meetings, the original tape recordings, ballots, and recommendations shall be kept in a file open to the grievant only. The file shall be located in the office of the Vice President for Academic Affairs.

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Part 4. Personnel Policies

Section V. Internal Grievance Procedures

F. EEO/Affirmative Action/Discrimination Grievance Procedure (Updated 5/02)

1. EEO/Affirmative Action Grievance Committee

The EEO/Affirmative Action Grievance Committee will review complaints of discrimination by all University employees, students or applicants for employment or admission to the University or any of its programs.

2. Grievance Procedures

a. A grievance procedure is meaningless unless the right to bring complaints before a grievance committee is securely protected before, during and after formal grievance proceedings.

b. All reasonable steps will be taken by the EEO/Affirmative Action Policy Committee, the EEO/Affirmative Action Grievance Committee, and by the University administration to ensure that no person intimidates, threatens, coerces or discriminates against any individual for the purpose of interfering with, preventing, or retaliating for the intended or actual filing of a complaint, furnishing information, or assisting or participating in any manner in an investigation, compliance review, hearing, or any other activity related to the work of the EEO/Affirmative Action Grievance Committee.

c. Any employee or student, as well as any individual, seeking employment or admission to the University or any of its programs who believes that she/he has been subjected to discriminatory practices or procedures, may informally or formally register a complaint with the EEO/Affirmative Action Officer. The formal complaint should be a written statement alleging the incident, the person, and/or office perpetrating the discriminatory act and listing witnesses, if any.

3. Action by EEO/Affirmative Action Officer

a. Informal Hearing

Upon receipt of a formal complaint, the EEO/Affirmative Action Officer will hold an informal hearing within ten (10) working days with all parties concerned in an endeavor to resolve the matter.

b. Forwarding Complaint to the EEO/Affirmative Action Grievance Committee

Should the complainant so desire, the EEO/Affirmative Action Officer will forward the formal complaint to the chairperson of the EEO/Affirmative Action Grievance Committee.

A copy of the letter and the formal complaint will be furnished to, the person or office against whom the complaint is being made.

4. Action by EEO/Affirmative Action Grievance Committee

a. Review

Within ten (10) working days of receipt of a complaint the EEO/Affirmative Action Grievance Committee will meet to review the case in order to determine, on the basis of jurisdiction, whether to proceed to a formal hearing.

b. Formal Hearing

(1) Should the committee determine to hold a formal hearing of the case, the following steps will be taken:

- (a) The chairperson will advise each party of the date, time, and place of the hearing.
- (b) The committee has the authority to request the appearance before it of any persons who may have information pertaining to the case.
- (c) The committee may request additional written statements and documents from each party.
- (d) The committee will request the names of witnesses to be brought by each party and will request the witnesses to appear at the date, time and place of the hearing.

(2) The committee will meet and hear relevant testimony and review documents related to the allegation. The objective of the hearing will be to ascertain the facts to enable the committee to make reasoned recommendations. To that end, the hearing will be conducted in an orderly fashion, allowing the parties a fair opportunity to be heard. The hearing is not a trial and formal rules of evidence will not apply. However, the chairperson may limit evidence that is not relevant or germane to the issues before the committee. Generally, the following procedures will be followed:

- (a) All parties are entitled to copies of any documents or other written statements which are submitted to the committee.
- (b) All parties are entitled to timely notice of committee hearings related to the complaint and are ensured sufficient time for preparation for such hearings.
- (c) The complainant(s) and the respondent(s) will be present during all testimony.
- (d) All parties will ordinarily present their side of the matter, but may be assisted by peer counsel (non-attorneys) of their choice. Attorneys may not represent any party during the hearing; although the hearing committee may be advised by counsel.
- (e) All parties shall have the right of confrontation of witnesses, and the right to cross-examine such witnesses.

- (f) Hearings will be recorded on tape, and all written evidence shall be marked for identification and made part of the record. If transcriptions are required by either party, the requesting party will pay the cost of the transcript.
- (g) Parties have the right to call witnesses and present any evidence they desire, subject to the decision of the committee on its relevance.
- (h) The committee shall have the right to call witnesses at its discretion.
- (i) Parties have the right to be informed in writing of the findings and recommendations of the committee.
- (j) At any time during the hearing the complainant may withdraw his/her complaint. In that event the proceedings will be terminated.

5. Findings

- a. Within ten (10) working days of the hearing the committee will meet in closed session to discuss and vote upon findings and recommended action.
- b. In open session, the committee will advise all participants of the vote and recommended action.
- c. The findings and recommendations of the committee will be made and forwarded to the President of the University for timely consideration and action through the EEO/Affirmative Action Officer.

6. Outside Agencies

Individuals, including those seeking employment at Idaho State University, may also register complaints with appropriate local, state, or federal agencies.

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Exhibit 6

5

CONFIDENTIAL

EVALUATION OF Habib Sadid DATE May 2001

BY Dr. Jay F. Kunze, Dean of the COLLEGE OF ENGINEERING

Period of Evaluation January 2000 to December 2000

TEACHING

1 List the regular teaching assignment of the above faculty member:

Semesters Spring 2000, Fall 2000

<u>Course No.</u>	<u>Title</u>	<u>Credits</u>	<u>Approx. # Students</u>
-------------------	--------------	----------------	---------------------------

Spring 2000

CE 599	Finite Element Methods	3	3
CE 462	Design of Steel Structures	3	15
CE 467	Structural Engineering Lab	1	10

Fall 2000

CE 461	Adv Structured Analysis	3	12
CE 499/599	PPE Civil (Idaho Falls)	3	4
ENGR 321	Mechanics of Materials	3	19
ME 599-03	Advanced Mechanics of Solids	3	3

2 Provide a short narrative evaluation of the teaching effectiveness of the above faculty member. If more space is required, attach another sheet.

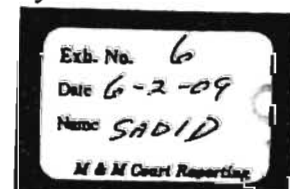
Dr. Sadid has long been recognized by the students as a most outstanding teacher. He not only has excellent teaching abilities as a lecturer and facilitator for learning, but also has a great deal of care and appreciation for all of the students. He devotes a great deal of time to prepare for every class session.

3. Check those factors (besides student evaluations) which influence this evaluation.

Informal student feedback
 Class visitation
 Faculty member's self-evaluation
 Discussion with colleagues
 Other (Explain) _____

4. List below any fairly consistent patterns of colleague feedback.

Colleagues (those who spend time talking with students) recognize Dr. Sadid's teaching skills. He is also recognized for his selfless service to student organizations and to the university.



Habib Sadid

Faculty Activity and Evaluation, Calendar Year 2000

5. A. Give the results of analysis of formal student evaluations (overall summary of all questions on class evaluation forms)

Spring 2000

CE 462: 85 % of students felt the class was excellent
13% Above Average; 2% Average;

CE 467: 68 % of students felt the class was excellent
24% Above Average; 8% Average; 1% Needs Improvement;

CE 599: 49 % of students felt the class was excellent
21% Above Average; 31% Average;

Fall 2001

CE/ME 499/599 58% of students felt the class was excellent
31% Above Average; 9% Average; 2% Needs Improvement

ENGR 321 71% of students felt the class was excellent
26% Above Average; 2% Average,

CE 461 57% of students felt the class was excellent
28% Above Average, 13% Average, 2% Needs Improvement

5. B. Give any fairly consistent patterns of informal student feedback.

Handouts provided in class were very helpful.
Excellent teacher. Enjoyed the enthusiasm of the subject.
Instructor is always well prepared with the highest level of knowledge.

6. If the evaluation differs significantly from your previous evaluation(s) of this faculty member, please summarize the differences.

No significant difference

7. How has this faculty member responded to previous evaluations (if any?)

Appropriately

RESEARCH-CREATIVE WORK

8. Provide a bibliography of research and creative work published subsequent to the person's employment by Idaho State University. If a previous evaluation has been made, include here only those subsequent to the last evaluation.

ABET 2000, ISU experience. Paper presented in 62nd ASSE, PNW Section Conference, Bozeman, MT, April 27-29, 2000.

- 9 Present evidence of continuing reflective inquiry or other creative contributions.

Presently working on paper on the "Effect of Axial Force on Shear Strength of Concrete Bridge Columns"

- 10 In regard to research and creative work, how do you rank him in relation to the other members of your department?

Dr. Sadid has had little opportunity to get involved in conventional funded research. His teaching efforts and professional service efforts (including time advising students) keep him heavily involved, and he is among the most valuable of the faculty in these two areas. Once he is involved in a graduate program with students to assist in research, he will have a better opportunity to engage himself in funded research efforts

11. How has he responded to previous evaluations of his research and/or other creative contributions?

Appropriately

PROFESSIONALLY RELATED PUBLIC SERVICE

12. Provide specific indication of professionally-related public service that the faculty member has rendered subsequent to his employment at Idaho State University. If a previous evaluation has been made, include only those items subsequent to that evaluation.

Board member of Portneuf Green Way (PGW)

1. Meditation Garden (building) for Bannock Youth Foundation.
2. Cutoff Trail for PGW. Land Easement for PGW.
3. Plan review for Skate Park.

American Society of Engineering Education (ASEE):

1. President of Northwest Section, June 2000 to May 2001
2. Campus representative for ISU in the ASEE.

American Society of Civil Engineers - Faculty Advisor for ISU Student Chapter
Chair of the Snake River Branch

National Society of Professional Engineers/Idaho Society of Professional Engineers
- Faculty advisor for ISU student chapter

13. In this regard, how do you rank him with the other members of your faculty?
Among the more active and definitely involved to the extent one would expect of competent and professionally active faculty

AWARDS, HONORS, AND SPECIAL RECOGNITIONS

14. Specify and comment on any awards, honors, or special recognitions earned since the last evaluation

Nominated for ASEE, PNW Section Dean's Teaching Award.
Selected as Portneuf Greenway Board Member of the Year

15. If this faculty member has a specific, significant administrative assignment within the department, describe it and evaluate his performance.
He functions as the principal faculty directing the MS program in Engineering Structures and Mechanics

16. List any committee assignments.

Promotion and Tenure Committee for Dr. Sato and Dr. Wabrek.
Coordinator for ES&M Master Program
Co-coordinator, Geology Symposium
Faculty Selection Committee for CE position.
College Curriculum Committee
Graduate Program Committee.
Scholarship Committee
Scholastic Appeal's Committee
ASEE Campus Rep and PNW Section Chair.
ASCE Student Advisor
ISPE Student Advisor
Curriculum Council
Liaison to International Recruiting

17. Does this person have the generally recognized terminal degree for your field? YES (If the answer is no, please explain.)

18. Do you foresee any personal or professional factors which might limit this person's long term performance as a faculty member at Idaho State University? NO (If yes, please explain.)

TENURED FACULTY

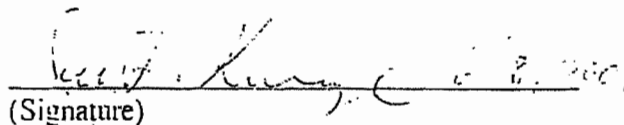
19. Performance and recommendation:

 X Satisfactory
 Unsatisfactory, initiate a full formal review

Dr. Sadid is among the most appreciated and valuable members of the College of Engineering faculty. He is highly regarded throughout the university. Not only is he competent as a teacher, but has special rapport with the students, showing understanding and appreciation of their efforts to learn engineering principles and enter the engineering profession. Dr. Sadid is very active in university politics and service. He is astute and introspective. He is also decisive in his actions, but is cautioned to be a bit more circumspect on issues involving campus politics.

20. How was the essence of this evaluation communicated to the faculty member?

By review of the written document followed by discussion of its contents and a listing and discussion of goals for the current calendar year.



(Signature)

Dr. Jay F. Kunze, Dean
College of Engineering

21. Recommendation of the Dean and Associate Dean (if applicable) to be attached in letter form.

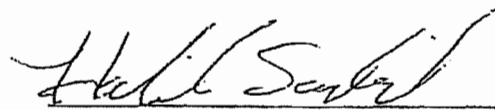
 7/9/01
(Faculty signature) Date

Exhibit 7

CHARGE OF DISCRIMINATION

This form is affected by the Privacy Act of 1974. See enclosed Privacy Act Statement and other information before completing this form.

Charge Reported To: Agency(ies) Charge No(s):

FEPA
 EEOC

DE-0907-131
551-2007-02067

Idaho Human Rights Commission

and EEOC

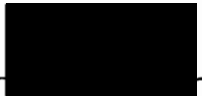
State or local Agency, if any

Name (indicate Mr., Ms., Mrs.)

Mr. Habib Sadid

Home Phone (Incl. Area Code)

(208) 233-1252



Street Address

City, State and ZIP Code

1420 Aspsen Dr, Pocatello, ID 83204

Named is the Employer, Labor Organization, Employment Agency, Apprenticeship Committee, or State or Local Government Agency That I Believe Discriminated Against Me or Others. (If more than two, list under PARTICULARS below.)

Name

IDAHO STATE UNIVERSITY

No. Employees, Members

500 or More

Phone No. (Include Area Code)

(208) 282-2517

Street Address

City, State and ZIP Code

921 S. 8th Ave, Pocatello, ID 83208

Name

No. Employees, Members

Phone No. (Include Area Code)

Street Address

City, State and ZIP Code

DISCRIMINATION BASED ON (Check appropriate box(es).)

RACE COLOR SEX RELIGION NATIONAL ORIGIN
 RETALIATION AGE DISABILITY OTHER (Specify below.)

DATE(S) DISCRIMINATION TOOK PLACE

Earliest Latest
09-01-2001 09-21-2007

CONTINUING ACTION

THE PARTICULARS ARE (If additional paper is needed, attach extra sheet(s)):

*2001 - mgom
NO retaliation
Religion
Retaliation
harassment*

I want this charge filed with both the EEOC and the State or local Agency, if any. I will advise the agencies if I change my address or phone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures.

NOTARY - When necessary for State and Local Agency Requirements

I declare under penalty of perjury that the above is true and correct.

I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.

SIGNATURE OF COMPLAINANT

SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE
(month, day, year)

Date

Charging Party Signature

U.S. Equal Employment Opportunity Commission

TO: Idaho Human Rights Commission
Owyhee Plaza
1109 Main St., Suite 400
Boise, ID 83720

Date September 17, 2007
EEOC Charge No.
551-2007-02359

RECEIVED
SEP 21 2007
IDAHO HUMAN RIGHTS
COMMISSION

FEPA Charge No.

AE-0907-131

CHARGE TRANSMITTAL

SUBJECT:

Habib Sadid
Charging Party

v.

IDAHO STATE UNIVERSITY
Respondent

Transmitted herewith is a charge of employment discrimination initially received by the:

EEOC

Name of FEPA

on

Sep 17, 2007

Date of Receipt

Pursuant to the worksharing agreement, this charge is to be initially investigated by the EEOC.

Pursuant to the worksharing agreement, this charge is to be initially investigated by the FEPA.

The worksharing agreement does not determine which agency is to initially investigate the charge.

EEOC requests a waiver

FEPA waives

No waiver requested

FEPA will investigate the charge initially

Please complete the bottom portion of this form to acknowledge the receipt of the charge and, where appropriate, to indicate whether the Agency will initially investigate the charge.

Typed Name of EEOC or FEPA Official

A. Luis Lucero, Jr.

Signature/Initials

A. Luis Lucero

Habib Sadid

v.

IDAHO STATE UNIVERSITY

Charging Party

Respondent

TO WHOM IT MAY CONCERN:

This will acknowledge receipt of the referenced charge and indicate this Agency's intention to initially investigate the charge.

This will acknowledge receipt of the referenced charge and indicate this Agency's intention not to initially investigate the charge.

This will acknowledge receipt of the referenced charge and request a waiver of initial investigation by the receiving agency.

This will acknowledge receipt of the referenced charge and indicate this Agency's intention to dismiss/close/not docket the charge for the following reasons:

Typed Name of EEOC or FEPA Official

Leslie R. Goddard

Signature/Initials

Leslie R. Goddard

TO: Seattle Field Office
909 First Avenue
Suite 400
Seattle, WA 98104

Date September 17, 2007
EEOC Charge No.
551-2007-02359
FEPA Charge No.

Inquiry Number: 551-2007-0 2359

**CHARGES OF DISCRIMINATION MUST BE FILED WITHIN 300 DAYS OF THE DATE OF HARM.
PLEASE ENTER ALL MANDATORY INFORMATION MARKED WITH ***

INFORMATION ABOUT YOU

* Your name: Habib Sadid Date: 9,12,07
* Address: 1420 Aspen Dr.
* City: Pocatello State: ID ZIP: 83204 County: USA
* Phone: Home: (208) 233-1252 Work: (208) 282-4186
Cell: () - FAX: (208) 282-4538

Best time/place to reach you during our office hours, from 8 a.m. to 4:30 p.m, M - F. at work at home Best day/time Any time except MWF 9-10 am

Date of Birth: [REDACTED] Social Security # [REDACTED]

Please Check your:

Sex: Male Female

Race: Black White American Indian or Alaskan Native
 Asian or Pacific Islander Other (specify) _____

National Origin: Mexican Hispanic East Indian
 Other (specify): Iranian

Someone who will know how to contact you if we are unable to reach you:

Name: Kim Sadid Relationship: wife

Address: 1420 Aspen Dr.

City: Pocatello State: ID ZIP: 83204 Phone: (208) 233-1252

INFORMATION ABOUT THE EMPLOYER

My charge is against a: Private Employer Labor Organization
 State or Local Government Employment Agency Other

* Employer Name: Idaho State University

* Phone: () Fax: ()

* Address: 921 S. 8th Ave.

* City: Pocatello State: ID ZIP: 83208 County: USA

Type of Business: University *Approximate Number of Employees: 600-700

Human Resources/Personnel Director: David Miller Phone: (208) 282-2517

Filed same complaint with other State/City/Federal agencies

* I have filed this same complaint with the ACLU agency on

Aug. 30, 07 (date).

I plan to file complaint with AAUP

2007 SEP 14 A 10:15
RECEIVED
SEDO-EEOC

DISCRIMINATION ALLEGATIONS

* Briefly explain the discriminatory action the employer/union took against you:

the list is quite long. In addition to what I have submitted, I have denied of job performance evaluation since 2001 (for 5 years) I have been falsely accused for unethical conduct (several occasions) I have been insulted and humiliated in front of entire college faculty. As a senior faculty, I have been denied in participating college committees such as promotion & search committees.

* Date of discriminatory action: Since 2001 + ongoing * year

DISCHARGE or LAYOFF

Last position held: _____ Rate of Pay _____

Date of hire: _____ Date of layoff or discharge: _____

Who replaced you? _____

HIRING or PROMOTION

Position you sought: _____

Date you applied: _____ Date you learned that you were not selected: _____

Who was selected? _____

DEMOTION or DISCIPLINE WAGES OR BENEFITS HARASSMENT

TERMS OR CONDITIONS OF EMPLOYMENT

OTHER: _____

* WHAT CAUSED THE EMPLOYMENT ACTION YOU DESCRIBE, YOUR:

- RACE Includes racial harassment.
- COLOR
- GENDER
- PREGNANCY
- SEXUAL HARASSMENT
- AGE If you are age 40 or over.
- DISABILITY Complete the Americans with Disabilities Act supplemental questionnaire.
- NATIONAL ORIGIN: Includes harassment based on national origin.
- RELIGION Religious harassment is a form of discrimination based on religion.
- RETALIATION - OPPOSITION: You opposed discrimination on the job because of one of the reasons described above by made internal complaint filed EEOC charge
- RETALIATION - PARTICIPATION: You participated in an internal or EEOC or other agency investigation regarding discrimination based on any of the reasons described above.

OTHER: I am a out spoken person but it shouldn't result in discrimination & harassment. I don't know if it is because I am an Iranian or I am a Moslem. I don't know

the administration accelerated its harassment as I complained about discriminations

SUPPORTING INFORMATION

Identify any others who were treated the SAME as you under similar conditions.

<u>Name</u>	<u>Race/Sex/Age</u>	<u>How treated the same</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____

Identify any others who were treated BETTER than you under similar conditions.

<u>Name</u>	<u>Race/Sex/Age</u>	<u>How treated better</u>
<u>All college faculty & the university faculty.</u>		
_____	_____	_____
_____	_____	_____

Identify WITNESSES who saw, heard, or have first-hand knowledge of the harm you experienced.

<u>Name</u>	<u>Telephone Number</u>	<u>Address</u>
<u>1. Dr. Richard Wabrek</u>	<u>(208) 282-4399</u>	_____

Witness will say: _____

<u>2. Dr. John Bennion</u>	<u>(208) 282-3351</u>	_____
----------------------------	-----------------------	-------

Witness will say: _____

<u>3. Dr. Mike Ellis</u>	<u>(208) 282-4296</u>	_____
--------------------------	-----------------------	-------

Witness will say: _____

What reason(s) were you given for the acts you consider discriminatory? Include the name(s) and title(s) of the person(s) who gave the reason(s). If you dispute the reason(s) you were given, tell us why.

The administration never replied to the complaints or they sandbagged my cases.

PLEASE ATTACH A STATEMENT OF ANY OTHER FACTS THAT YOU BELIEVE ARE IMPORTANT TO YOUR CASE. GIVE NAMES AND JOB TITLES OF PERSONS INVOLVED.

I have submitted a 97 page package

IQ: revised 4/07

OTHER INFORMATION:

CHECK TYPE OF REPRESENTATIVE: _____ lawyer _____ union _____ family member

Name: _____

Telephone: (_____) _____ Fax: (_____) _____

Address: _____

City: _____ State: _____ ZIP: _____

IMPORTANT INFORMATION

It is important that you stay in contact with this office concerning your potential charge of discrimination. This questionnaire does not necessarily constitute a minimally-sufficient charge, nor does submission of this questionnaire necessarily fulfill the statutory requirement to file a minimally-sufficient charge within 300 calendar days of the alleged discriminatory action. We recommend that persons with potential discrimination charges complete the formal charge filing process as quickly as possible to protect their statutory rights.

PRIVACY ACT STATEMENT

This form is covered by the Privacy Act of 1974, Public law 93-579. Authority for requesting and uses of the personal data are given below.

1. FORM NUMBER/TITLE DATE: SEDO FORM 1, Seattle Intake Questionnaire.
2. AUTHORITY: 42 U.S.C. subsection 2000(e)(9), 29 U.S.C. 201, 29 U.S.C. 621.
3. PRINCIPAL PURPOSES: Requests information from the charging party relevant to filing a charge of employment discrimination.
4. ROUTINE USES: Determine whether facts exist to support a charge of employment discrimination.
5. WHETHER DISCLOSURE IS MANDATORY OR VOLUNTARY, AND EFFECT ON INDIVIDUAL FOR NOT PROVIDING INFORMATION: Voluntary. Failure to provide information may affect whether the Commission can further process your claim.

DECLARATION

* Do you wish to file a charge of employment discrimination based on the information in this questionnaire? "If you answer 'Yes' to this question EEOC will notify the named employer that you have filed a Charge of Discrimination. EEOC will send that notice to the employer within 10 days after receiving your questionnaire. If you answer 'No' or 'Not Sure' to this question, EEOC will not notify the employer without additional consent from you"

Yes No Not Sure

I have read and had an opportunity to correct this Intake Questionnaire, and swear under penalty of perjury that these facts are true and correct to the best of my knowledge and belief.

I further give my consent for the EEOC, to file this questionnaire as a charge, if necessary to meet timeliness purposes, and thereby give my consent for this questionnaire to be considered as a charge of discrimination.


SIGNATURE

9/12/07
DATE

Exhibit 8

S

C. L. "Butch" Otter, Governor



Leslie R. Goddard, Director

1109 Main Street
Owyhee Plaza, Ste. 40
P. O. Box 8372
Boise, ID 83720-0041
Tel 208-334-2877
Fax 208-334-2666
TDD/TTY 208-334-475

inquiry@ihrc.idaho.gov
www2.idaho.gov/ihrc

COMMISSIONERS:
Estella Zamora, President
Hyong Pak, Vice President
Vernon Baker
Esperanza Gerhardt
Ruthie Johnson
Megan Ronk
William L. Swift
Sandra Twiggs
Andrea Wassner

IDAHO HUMAN RIGHTS COMMISSION

NOTICE OF ADMINISTRATIVE DISMISSAL AND RIGHT TO SUE

Mr. Habib Sadid
1420 Aspsen Dr
Pocatello, ID 83204

Idaho State University
921 S. 8th Ave
Pocatello, ID 83208

Thursday, April 25, 2008

Habib Sadid vs. Idaho State University
Complaint Nos.: DE-0907-131; 551-200702359

The above complaint filed with the Human Rights Commission is hereby dismissed pursuant to the Commission's Rules and Procedures for the following reason.

- Complainant has requested administrative dismissal/notice of right to sue.
- Failure of the Complainant to cooperate with the Commission in the processing of the case, including failure to answer interrogatories.
- Inability to locate Complainant.
- Investigation indicates that the case was not timely filed or is otherwise not jurisdictional.
- The Complainant has filed a suit in either state or federal court alleging the same unlawful practices.
- The facts alleged in the administrative complaint do not appear to violate the Human Rights Act.
- The Complainant has requested that the complaint be withdrawn.
- Other this case was handled by the EEOC. IHRC has been notified of EEOC's administrative closure

This dismissal terminates the Commission's handling of the above-referenced complaint. This is also Complainant's Notice of Right to Sue under the Human Rights Act. If Complainant intends to sue the Respondent(s) named in the charge, a lawsuit must be filed in district court within ninety (90) days of the date of this notice. Otherwise, Complainant's right to sue under the Human Rights Act is lost.

April 25, 2008
Date

Leslie R. Goddard by Smx
Leslie R. Goddard
Director

Exhibit 9

5

NOTICE OF TORT CLAIM

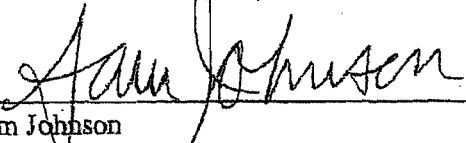
TO: Secretary of State, State of Idaho, P. O. Box 83720, Boise, Idaho 83720-0080

PLEASE TAKE NOTICE that a claim is hereby presented on behalf of Habib Sadid, Claimant, under the Idaho Tort Claims Act. Claimant has resided for the previous six (6) months and remains residing at the following address: 1420 Aspen Drive, Pocatello, Idaho 83204.

PARTICULARS OF CLAIM

The particulars of the claim are set forth in the letter attached hereto as Exhibit "A", and hereby incorporated herein.

DATED: This 2 day of December, 2008.



Sam Johnson
JOHNSON & MONTELEONE, L.L.P.
Attorneys for Habib Sadid, Claimant

JOHNSON & MONTELEONE, L.L.P.

ATTORNEYS AND COUNSELORS AT LAW

405 South Eighth Street, Suite 250

Boise, Idaho 83702

Voice: (208) 331-2100

Fax: (208) 947-2424

E-Mail via Internet: sam@treasurevalleylawyers.com

<http://www.treasurevalleylawyers.com>

August 26, 2008

VIA CERTIFIED MAIL - RRR

Mr. Arthur C. Vailas, President

Office of the President

Administration Building

921 S. 8th Ave., STOP 8310

Pocatello, ID 83209-8310

VIA CERTIFIED MAIL - RRR

Mr. Brad Hall, Esq.

University Attorney/Risk Manager

Administration Building

921 S. 8th Ave., STOP 8410

Pocatello, ID 83209-8410

VIA CERTIFIED MAIL - RRR

Mr. Milford Terrell, President

Idaho Board of Education

650 W. State Street #307

Boise, ID 83702

Re: *Idaho State University Professor Habib Sadid*

Dear Gentlemen:

This office represents Dr. Habib Sadid, Ph.D., PE, concerning claims against Idaho State University ("ISU"), and Dr. Lineberry in both his administrative and individual capacities. The remainder of this letter sets forth the gravamen of Dr. Sadid's claims.

University President, Arthur C. Vailas, Ph.D., identified slightly over a year ago, in a letter, dated August 2, 2007, a number of the achievements earned by Dr. Sadid over his twenty (20) year career at ISU, by stating:

You have been, and continue to be a very valued faculty member at ISU. Your twenty year career at ISU has been very impressive and I see no reason why you will not continue to be successful. You have been recognized numerous times for your stellar public service and cumulating with this past year's Master Public Servant Award. In addition, you have been recognized for your outstanding teaching by being designated as a Master

Exhibit A

00085

Teacher several years and winning the Distinguished Teacher Award for 2002. In 2005, you won the Idaho Excellence in Engineering Education Award. Your contributions are both valued and appreciated by not only me, but the ISU community.

(A true and correct copy of the above referenced letter is appended hereto as Exhibit "A").

The above paragraph highlights only a few of the professional honors and accolades Dr. Sadid has accrued during his tenure of complete dedication toward the enhancement of ISU's reputation as a credible institution of higher learning. *(A true and correct copy of his Curriculum Vitae is appended hereto as Exhibit "B").*

Yet, in spite of Dr. Sadid's exemplary credentials, professional awards, and accomplishments, University administrators have leveled a series of successive abuses and attacks against Dr. Sadid's character and reputation in the academic and local communities. These transgressions have persisted over a number of years right up to the present date. Recently, in stark contrast to the content of Dr. Vailas's above letter, Dr. Lineberry accused Dr. Sadid of throwing a "tirade" and of being a "nut-case" in an August 1, 2008, e-mail:

John: I was disappointed to learn of Sadid's tirade yesterday with the Dean, regarding the employment of Josh Peterson to help out in teaching 402/502. My disappointment is not with Sadid, who is a nut-case and cannot help himself. (Emphasis added).

(A true and correct copy of the above referenced email is appended hereto as Exhibit "C").

Unfortunately, these embarrassing, regrettable, and arrogant statements made by Dr. Lineberry, as opposed to the above sentiments expressed by Dr. Vailas, typify the manner in which the University has treated Dr. Sadid over the past several years. The reason for attacking rather than embracing Dr. Sadid's efforts to further the reputation of ISU is mind boggling to say the least, but the actions of several University officials have nonetheless been carried out in plain violation of Dr. Sadid's constitutional right to speak freely on matters of public concern. See 42 U.S.C. § 1983; *Pickering v. Board of Education*, 391 U.S. 563 (1968); *Branti v. Finkel*, 445 U.S. 507 (1980); *Hale v. Walsh*, 113 Idaho 759 (Ct. App. 1987). These actions likewise stand in direct violation of Dr. Sadid's professional and employment relationship with ISU. As ISU is aware, Dr. Sadid has thoughtfully and publicly voiced his opinions and concerns in the past over the direction ISU administrators have taken or have proposed to take the University. *(A true and correct copy of the publications are appended hereto as Exhibit "D").* Unfortunately, ISU administrators have systematically retaliated against Dr. Sadid when he has spoken openly on such matters.

An outline of the retaliatory actions mounted against Dr. Sadid bears recitation here. In February 2001, Dr. Sadid spoke publicly against the administrative plan to merge the College of Engineering and the School of Applied Technology. Although Dr. Sadid's actions stopped the ill-conceived merger, it did not come without cost to Dr. Sadid's career with ISU. For the next four (5) years, from 2001 through 2005, the then Dean of Engineering, Dr. Jay Kunze, failed or refused to conduct annual performance evaluations of Dr. Sadid's work. Not only did this failure to review fall in breach of Dr. Sadid's contract with ISU, but it cost him dearly in the form of salary increases and in growth and advancement opportunities.

Then, in March, 2006, the civil engineering faculty, by unanimous vote, selected Dr. Sadid as the Chair of the Department of Engineering. The Dean of Engineering, Dr. Richard Jacobson, approved and ratified the faculty's selection of Dr. Sadid. Nonetheless, ISU Provost Robert Wharton dismissed the selection of Dr. Sadid by demanding a national search be conducted by a committee lead by two non-engineering faculty, hand-picked by Wharton. While the national search was underway, Dr. Sadid was installed and performed extremely well as the "interim" chair. In this time-frame, he received the Distinguished Public Service Award, was recognized as the Most Influential Faculty of the College of Engineering, secured research monies, published papers and implemented a plan to save the program from losing its accreditation. Nevertheless, in July 2007, Dr. Wharton appointed a fifteen (15) year associate professor from Dayton, Ohio to the chair position for a term of three (3) years with tenure and a promotion to the rank of full professor. The appointee's credentials and qualifications were not even a shadow of Dr. Sadid's. At the same time, Wharton appointed at least two deans without an external search, on the grounds of faculty support. The appointment of an unqualified chairman of civil engineering represented the culmination of Dr. Wharton's efforts to deny Dr. Sadid recognition for his hard work and honors.

The ISU administration has retaliated against Dr. Sadid in other ways as well. Even though Dr. Sadid has performed at the highest levels of academic excellence on behalf of ISU, the administration has increased his pay only by the lowest of percentages. ISU officials have likewise denied receiving letters nominating Dr. Sadid for public service awards, proclaiming the nominations must have been "lost in the mail." As noted above, most recently, Dr. Lineberry accused Dr. Sadid of throwing a "tirade" and referred to him as a "nut-case" who "cannot help himself." After learning of this most recent assault on his character, Dr. Sadid suffered from an anxiety attack where he experienced an acute rise in blood pressure, trembling, disorientation, and a loss of motor skills. In fact, Associate Dean of Engineering Naidu, upon witnessing Dr. Sadid's condition, wisely rushed him (Sadid) to the hospital emergency room and, from the emergency room, notified Dean Jacobsen of the incident by phone. Dr. Sadid remains under doctor's care due to the cumulative effects of work related stress.

As I am sure you have gathered, the retaliatory and libelous affronts directed toward Dr. Sadid have caused immeasurable harm to his professional, financial, health, family and dignitary interests. Dr. Sadid has suffered a loss in salary alone in the

estimated amount of \$100,000.00 to date. These losses are prospective in nature and will continue to accrue into the future. In *Harper v. City of Los Angeles*, Nos. 06-55519, 06-55715, 2008 U.S. App. LEXIS 14892 (9th Cir. 2008), the Ninth Circuit recently addressed the scope of recovery permitted under a § 1983 action:

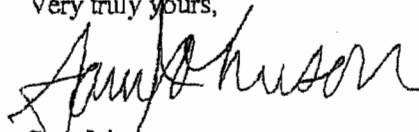
Compensable injuries under § 1983 include "impairment of reputation, personal humiliation, and mental anguish and suffering." *Memphis Cmty. Sch. Dist. v. Stachura*, 477 U.S. 299, 307, 106 S. Ct. 2537, 91 L. Ed. 2d 249 (1986); see also *Johnson v. Hale*, 13 F.3d 1351, 1353 (9th Cir. 1994) (discussing compensatory damages under 42 U.S.C. § 1982). The testimony of the plaintiff alone can substantiate a jury's award of emotional distress damages. See *Zhang*, 339 F.3d at 1040 (9th Cir. 2003); see also *Passantino v. Johnson & Johnson Consumer Prods., Inc.*, 212 F.3d 493, 513 (9th Cir. 2000).

The distress and mental anguish and negative impact to Dr. Sadid's health and well being in general have nearly paralyzed his mental and emotional state. His marriage and his physical health have been severely damaged as well. Of course, the non-economic cap in the amount of \$293,155.53 contained in Idaho Code § 6-1603 would not apply to any claim brought under 42 U.S.C § 1983.

Wherefore, it is our position that the potential exposure to liability for Dr. Sadid's damages in this case ranges from \$750,000.00 to \$1,500,000.00. However, Dr. Sadid is agreeable to resolving his claims at this early stage based upon the following terms: (1) lump sum payment in the amount of \$750,000.00, representing his special and general damages; (2) placement to a position at the level of department chair or higher; (3) issuance of a written statement of no further retaliation or harassment of any form; and (4) \$7,500.00 to reimburse Dr. Sadid for attorney fees incurred to date. This offer shall remain open until September 15, 2008.

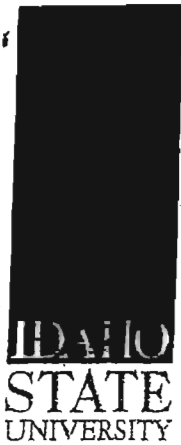
Thank you for your prompt attention to this matter.

Very truly yours,



Sam Johnson
JOHNSON & MONTELEONE, L.L.P.

SJ/cdr
cc: Client



August 2, 2007

Dr. Habib Sadid, Professor, Civil Engineering
Idaho State University
College of Engineering
Campus Stop # 8060
Pocatello, Idaho 83209

Dear Dr. Sadid:

Attached you will find the analysis and report that was requested from Mr. David Miller, Director of Human Resources. This report relates to the materials you submitted to Mr. Miller at my request on June 26, 2007. As you are aware, in the spirit of collegiality and cooperation, I consulted with Dr. John Gribas, Ombudsman, and Dr. John Masserini, Chair of Faculty Senate. I have reviewed the report and after careful consideration, I support Mr. Miller's analysis and findings. Although I have not made any ultimate conclusions based upon the materials you submitted, as stated in the report if you believe you have been discriminated or retaliated against due to your membership in a protected class, you may file a complaint with Mr. Buddy Frazier, Affirmative Action Officer, to initiate a review by the EEO/Affirmative Action Grievance Committee. If you decide to do so, please note Mr. Miller's notations pertaining to timeliness which may require action by you within one week of this letter.

Office of
the President
921 South 8th Avenue,
Stop 8310
Pocatello, Idaho
83209-8310

You have been, and continue to be a very valued faculty member at ISU. Your twenty year career at ISU has been very impressive and I see no reason why you will not continue to be successful. You have been recognized numerous times for your stellar public service and cumulating with this past year's Master Public Servant Award. In addition, you have been recognized for your outstanding teaching by being designated as a Master Teacher several years and winning the Distinguished Teacher Award for 2002. In 2005, you won the Idaho Excellence in Engineering Educator Award. Your contributions are both valued and appreciated by not only me, but the ISU community.

Many issues you have raised are from the past. I hope we can all move forward in a productive and collegial fashion. I look forward to your continued success at ISU.

Respectfully,

Arthur C. Vailas, Ph. D.
President

Enclosure

- c: Dr. Richard Jacobsen, Dean of Engineering
- Dr. John Gribas, Ombudsman
- Dr. John Masserini, Chair of Faculty Senate
- Mr. David Miller, Director of Human Resources
- Dr. Robert A. Wharton, Vice President of Academic Affairs and Provost

Phone: (208) 282-3440
Fax: (208) 282-4487

ISU Is An Equal Opportunity Employer

Exhibit A

00089

CURRICULUM VITAE

Habib Sadid, Ph.D., PE
1420 Aspen Dr.
Pocatello, ID 83204
Tel: (W) (208) 282-4186
(H) (208) 233-1252
E-mail: sadihabj@isu.edu

EDUCATION

1984-1987 Washington State University, Pullman, Washington, Ph.D. in Civil Engineering (Structures), granted May 1988.
Dissertation: "Random Vibration of Parametrically Excited Non-linear Systems"
Funded by the National Science Foundation.

1982-1984 Washington State University, Pullman, Washington, M.S. in Civil Engineering (Structures).
Thesis: "Buckling of Orthotropic Cylindrical Shells Subjected to Wind Load"

1980-1982 Washington State University, Pullman, Washington, B.S. in Civil Engineering.

1978-1979 Tacoma Community College, Tacoma, Washington

1973-1978 University of Tehran, Tehran, Iran, B.A., Political Science/Law.

PROFESSIONAL EXPERIENCE

1991-Present Idaho State University, Pocatello, Idaho

1999-Present: Professor and Coordinator for M.S. program in Engineering Structures and Mechanics (Recently split into M.S. in CE and ME);

1994-1999: Associate Professor;

1991-1994: Assistant Professor.

1989-1991 Boeing Aerospace Co., Seattle, Washington, Fatigue and Stress Analyst Engineer. Duties included:

- o Evaluation of the ELFINI Finite Element Program using ANSYS and SAMECS (a home-made finite element program at Boeing).
- o Conversion of finite element model of Boeing 747 from SAMECS to ELFINI.

Exhibit B

00090

- Full-scale fatigue testing of Boeing 747. The Boeing Company had purchased a retired Boeing 747 from a Japanese airline. Section 42 of the airplane was instrumented and tested for fatigue and compared with finite element models.
- Service as Expert Witness: A Boeing 747 belonging to the South African Airline crashed in the Indian Ocean in 1986. Prior to the crash, there was a fire on board. The South African government was suing Boeing Aerospace for structural failure of the airplane due to exposure to high heat. The wreckage of the airplane was recovered and, by identifying the exposed areas, predicting the exposed temperature, and using finite element analysis, it was proven that the airplane was structurally sound at the time of crash.
- Finite Element modeling and analysis of the Wing-Fold for Boeing 777 during the development phase.

1987-1989 Idaho State University, Pocatello, Idaho, Assistant Professor

1994-Present Private Civil/Structural Engineering Consultant

- Non-linear finite element analysis of a pressure vessel for the Simplot Company. The vessel was designed to hold ammonia at 400°F and 3200 psi pressure.
- Vibration problem in an eight-story mining building in Connecticut. It was discovered that the mass center and the stiffness center were not coincident, resulting in torsional vibration.
- Design of many small structures, retaining walls, foundations, etc
- Expert witness for several cases.

PROFESSIONAL AFFILIATIONS AND TRAINING

- American Society of Civil Engineers (ASCE)
- American Society of Engineering Education (ASEE)
- American Society of Concrete Institute (ACI)
- National Society of Professional Engineers (NSPE)
- Idaho Society of Professional Engineers (ISPE)
- Society of Experimental Mechanics (SEM)
- Sigma Xi, the Scientific Research Society
- Tau Beta Pi, the Honor Society

ABET Program Assessment Workshop, Phoenix, Arizona, January 12, 2207.

Chair, Pacific Northwest (PNW) Section of ASEE, 2004-2005 and Program Chair for Section Annual Conference.

Training Workshop, Design and Construction of Monolithic Concrete Domes, Monolithic Dome Institute, Italy, Texas, October 12-16, 2004.

President, Sigma Xi, the Scientific Research Society, 2001-2002, and 2005-2006.

Chair, PNW Section of ASEE, 2000 – 2001.

Section Campus Representative, PNW Section of ASEE, 1993 – 1999

Campus Representative for Idaho State University, ASCE, 1991 – present.
Chair, ASCE Snake River Branch, 1999 – 2001.

ASCE Student Chapter Advisor, 1996 – 2001.

- o 1996 Initiated ASCE Student Chapter at Idaho State University.
- o 1996-2001 Participated in the regional Steel Bridge and Concrete Canoe Contests, 1997-1998, PNW Section Champion in the Steel Bridge Contest, went to the Nationals twice in 4 years.
- o 2000-2001: Hosted the PNW section of ASCE Steel Bridge and Concrete Canoe Contests.
- o 2004-2005: ASCE Student Advisor for the Steel Bridge design, construction, and contest.
- o 2006-2007: ASCE Student Advisor for the Steel Bridge design, construction, and contest.
- o

ISPE Student Chapter Advisor, 1997 – Present

- o A student organization umbrella over all other student clubs in the College. This club is in charge of organizing the Engineering Week activities including K-12 student visit and contests.

Voting Member of ACI Committee 227 (Radiation and Hazardous Waste Management), 1993 – 1997.

ABET Assessment Workshop, Phoenix, Arizona, January 2007.

COMMUNITY SERVICE AFFILIATIONS

- Board Member, Portneuf Greenway Foundation (1998 – Present)
 - o Pocatello Greenway projects including construction of trails for bicycling, running, walking, and beautification of the valley.
- President, Sigma Xi, the Scientific Research Society (2001-2002) and (2005-2006)
 - o Increased seminar attendance
 - o Planned and conducted various fund-raisers
 - o Increased community awareness by holding off-campus presentations
- Technical Support CWHOG Program, ISU (1993 – 1997)
 - o In charge of designing and remodeling CWHOG equipment for the handicapped.
- Engineer/Mentor for the Bannock Youth Foundation (1999 – Present)
 - o Design and construction of a “Meditation Garden” for the Bannock Youth Foundation. The objective was to increase self-confidence of troubled

teenagers by teaching planning, design, and construction of the meditation garden.

- Volunteer for Habitat for Humanity.
- Volunteer for MATHCOUNTS Competition.

INITIATIVES AND DEVELOPMENTS

- One of the major participants in the development of the Engineering programs and in particular the Core Engineering and the Civil Engineering programs in addition to the M.S. program in Structures and Mechanics at Idaho State University (ISU).

In 1987, when I started my career as an Assistant Professor at ISU, the College offered a General Engineering Degree and a master's degree in Nuclear Engineering. In 1990, the College changed the General Engineering degree to an Interdisciplinary Engineering Degree with emphasis in any two of the areas of Structures, Geotechnics, Control Systems, Electronic Systems, Energy Systems, Nuclear, and Mechanical Systems with a strong engineering core. In 1996, the College offered new degrees in CE, ME, and EE, and these programs were accredited by ABET in 1999. Currently, the College offers five B.S. degrees in Civil, Mechanical, Electrical, Nuclear, and Computer Science and five master's programs in Civil, Mechanical, Electrical, Environmental, and Nuclear Engineering. In addition, the College offers a Ph.D. degree in Engineering and Applied Science.

- Involved in preparing the Civil Engineering Self-Study Report for ABET, Idaho State University, 1993-4, 1999-2000 and 2005-6.
- Proposed and developed the M.S. Program in Engineering Structures & Mechanics, Idaho State University, 1998-1999. The proposal was developed in 1994, submission to the State Board of Education was not approved until 1998. In 1999, the proposal was approved, and the first student graduated in May 2001. Currently there are more than ten students in the program.
- Expanded the Structures and Geotechnics laboratory since 1993.
- Planned and built a Structural Dynamics Laboratory, 1999.
 - This state-of-the-art Structural Dynamics Laboratory has two shake tables (horizontal and vertical), donated by the Idaho National Laboratory (INL). In addition, a Laser-Scanning Vibrometer was added from the NSF funds.
- Developed a one-hour slide show on "Career for Civil Engineering Students," 2000.
- Reinstated the ASCE Snake River Branch, 1999.
- Developed Laboratory Manual for the Undergraduate Structural Engineering Lab, 1998.
- Developed a promotional brochure and a videotape of undergraduate engineering programs at ISU as part of an outreach program to recruit engineering students, 1996.
- Initiated the ASCE Student Chapter, Idaho State University, 1996.

HONORS:

- Distinguished Public Service Award (University-wide), ISU, 2006-2007.
- 2005 Idaho Excellence in Engineering Educator Award, Presented by Idaho Society of Professional Engineers, April 15, 2005.
- Outstanding PNW Section Campus Representative, ASEE, 2002-2003.
- Bannock Youth Foundation Community Award for outstanding contributions to our agency and community, March 12, 2003.
- Certificate of Appreciation, Educators who Contribute to Our Community, the Salvation Army of Pocatello, August 6, 2003.
- Master Public Servant Award (University-wide), ISU, 2005-2006, 2004-2005, 2002-2003 and 2001-2002 (the Distinguished Public Servant is selected from 5 Master Public Servants).
- Distinguished Teacher of the Year (University-wide), ISU, 2001-2002.
- Master Teacher of the Year (University-wide), ISU, academic years 2001-2002, 1998-1999, and 1997-1998 (the Distinguished Teacher is selected from 5 Master Teachers).
- Certificate of Achievement, Youth Meditation Garden, for contributions and volunteer time to the community, 2002.
- The Most Influential Professor of Engineering, ISU, (academic years), 2006-2007; 2001-2002; 1998-1999; 1997-1998; 1993-1994.
- Board Member of the Year, Portneuf Greenway Foundation, 2000.
- Outstanding Achievement Award, PNW Section of ASEE, 1997-1998.
- Outstanding Zone IV Campus Representative, ASEE, 1994-1995.
- Outstanding PNW Section Campus Representative, ASEE, 1994-1995.
- Member, Sigma Xi, the Scientific Research Society, 1997-Present.
- Member, Tau Beta Pi, 1993 - Present.
- Outstanding Teaching Assistant Award, Washington State Univ., 1985-1986.

PROFESSIONAL REGISTRATION

- Professional Engineering License, Registered in the State of Idaho since 1994.

UNIVERSITY AND COLLEGE SERVICE

Current:

- Interim Chair, Civil and Environmental Engineering
- College Curriculum Committee
- College scholarship Committee
- ASEE Campus Representative
- ISPE Student Advisor
- Honors Program Committee
- CoE Shop Committee.

Past:

- Faculty Senate (two terms)
- University Curriculum Council
- Undergraduate Research Committee
- ASCE Student Chapter Advisor
- Outstanding Public Service Award Committee
- Professional Achievement Award Committee
- ABET Preparation Committee
- International Student Liaison
- Post Tenure Review Committee
- Promotion and Tenure Committee for several faculty
- Materials and Measurement Laboratory Committee
- College of Engineering Shop Committee
- College Scholastic Committee
- Curriculum Reform Committee
- Search committee chair or member for several faculty positions

COURSES TAUGHT

Graduate Courses:

- Finite Element Methods
- Advanced Mechanics of Materials
- Advanced Structural Laboratory
- Design of Pre-stressed Concrete Structures
- Dynamics of Structures
- Clinical Kinesiology and Biomechanics (a joint course with Physical Therapy program)

Undergraduate Courses:

- Design of Steel Structures
- Design of Concrete Structures
- Design of Timber Structures
- Advanced Structural Analysis
- Mechanical Vibrations
- Mechatronics (a joint course with Electrical Engineering faculty)
- Determinate Structural Analysis
- Structural Laboratory
- Roadway Design
- Mechanics of Materials
- Engineering Mechanics (Dynamics)
- Engineering Mechanics (Statics)
- Materials and Measurements including Laboratory

- Engineering Economics
- Numerical Analysis
- Computer Programming (BASIC and FORTRAN)
- EIT Review Course
- PE Review Course for Civil Engineers

THESES DIRECTED

Niraj Ghag, "Wind Load Capacity of a Monolithic Concrete Dom Structure Using CFD and FEA," June 2007.

Maylinn Rosales, "Waste Water Treatment expansion plan for the City of Hendrickson, Nevada." April 2007.

South, Nanette, "Finite Element Modeling of Monolithic Dome Structures," 2005.

Morrison, Bridger, Experimental study of the "Effect of Material Hardness on the Performance of Fiber Reinforced Elastomeric Bearings," 2003.

Coleman, Justin L., Experimental study of "Mix Design for a Composite Base Isolation Bearing Applied to Residential Structures," 2002.

Neill, Adam T., "Effect of Shape Factor on the Seismic Performance of Elastomeric Bearings," 2002.

Brown, Timothy R., "Finite Element Study of the Effect of Shape & Size on the Performance of Crumb Rubber Base-Isolation Bearings," 2002.

Ketterling, Kasey K., Experimental study of "Hollow-Core Seismic Base Isolation Bearings Using Crumb-Rubber Composite From Recycled Tires for Residential Buildings," 2002.

Kadam, Ganesh, "Effect of Axial Load on Shear Strength of Concrete Columns," 2001.

Currently I have four masters students.

RESEARCH SPECIALTIES:

Experimental and finite element study of Base-Isolation devices using Crum and Natural rubber. Finite Element modeling, Monolithic concrete dome structures, Alkali-Silica Reaction (ACR) in concrete and mitigation techniques.

GRANT PROPOSALS

- "Risk Analysis of Concrete Pavement", Idaho Transportation Department, \$185,000. June 14, 2007 (funded).
- "Vibration Analysis and Design of Fan assembly Platform," Basic American Food Inc., Blackfoot, Idaho, \$5,500 (funded).
- "Structural Inspection and Database Design," Holiday Inn Hotel, Pocatello, Idaho, October 2006, \$1,500 (funded).
- "Seismic Protection of Residential Building using Crumb Rubber Bearings," National Science Foundation, \$355,731, Submitted January 29, 2007 (pending).
- "Elastomeric Base-Isolation Devices for Residential Buildings Using Natural and Crumb Rubber," National Science Foundation, \$365,000, submitted January 25th 2006 (not funded).
- "Computer Science, Mathematics, and Engineering Scholarships for Southeast Idaho," National Science Foundation, \$400,000, August 2004 (funded)
- "Design of Base Isolation Devices for Residential Buildings Using Scrap Tires," National Science Foundation, PI, \$260,000, November 2001 (not funded)
- "Floor Vibration Control Using Composite and Viscoelastic Materials," National Science Foundation, Co-PI, \$290,000, November 2001 (not funded)
- "Acquisition of a Broad Based Structural Dynamic Laboratory," National Science Foundation, Co-PI, \$210,000, January 2002 (funded)
- "Low-cost Earthquake Protective Systems for Residential Building," National Science Foundation, PI, \$265,000, February 2002 (recommended for funding, funds not available)
- "Retrofitting Floor Systems with Advanced Composites and Viscoelastic Materials to Mitigate Occupant-induced Vibrations," National Science Foundation, \$590,000, Co-PI, (not funded)
- "Laboratory Equipment Development," Faculty Research Grant, \$5,000, 1997 (funded)
- "Broad-Based Measurement System Design Lab," National Science Foundation, Co-PI, \$30,000, 1996 (funded)
- "Seismic Analysis of Highway Bridges Using Finite Element Methods," State Board of Education, \$34,069, 1996 (not funded)
- "Deterioration Evaluation of Concrete Highway Bridges," State Board of Education, \$33,313, 1995 (not funded)
- "Study of the Effect of Vertical Component of Seismic Forces on Structural Performance," National Science Foundation, \$67,203, 1994 (not funded)
- "Concrete and Acid Interaction at the Chemical Processing Plant," EG&G, \$39,842, 1992 (funded)
- "Non-destructive Testing of Timber Structures," State Board of Education, \$31,321, 1991 (not funded)
- "Seismic Response of Structures to Horizontal and Vertical Ground Motion," State Board of Education, \$28,949, 1989 (not funded)

PUBLICATIONS AND PRESENTATIONS

- H. Sadid, N. Ghag, "CFD and Finite Element simulation and Analysis of Dome of a Home subjected to Hurricane Forces," accepted for presentation at the SEM Annual Conference & Exposition on Experimental and Applied Mechanics, Springfield, Massachusetts, June 4-6, 2007.
- H. Sadid, N. South, "Finite Element Modeling of Monolithic Dome Structures", accepted for presentation at the SEM Annual Conference & Exposition on Experimental and Applied Mechanics, St. Louis, Missouri, June 5-7, 2006.
- H. Sadid, K.K. Ketterling, J. Coleman, "Hollow-Core Seismic Base Isolation Bearings Using Crum- Rubber Composite For Residential Construction", Proceeding of the 2005 SEM X International Congress & Exposition on Experimental & Applied Mechanics, Portland, Oregon, June 7-9, 2005.
- H. Sadid, "Is It Time to Raise the Bar for High School Graduates?", 2005 Pacific Northwest Section of ASEE, Butte, Montana April 7-9, 2005.
- Co-authors and H. Sadid, "Simulating Occupant-Induced Vibration of Wood Floors with Rotated Joists", Proceedings of the Tenth International Conference in Civil, Structural, and Environmental Engineering Computing, Rome, Italy, Aug. 30-Sept. 2, 2005.
- H. Sadid and Bridger Morrison, "Low Cost Base Isolation Devices for Residential buildings", Proceeding of the 2004 SEM X International Congress & Exposition on Experimental & Applied Mechanics, Costa Mesa, California June 7-10, 2004.
- Co-authors and H. Sadid, "Mathematic Usage in Engineering", 2004 ASEE Annual Conference and Exposition, Salt Lake City, Utah June 19-22, 2004.
- D.S. Naidu, H. Sadid, and E. Stuffle, "Measurement and Control in Mechatronics at Idaho State University," Proceedings of the 7th Mechatronics Forum International Conference. September 6-8, 2000. Atlanta, Georgia.
- L. Robinson and H. Sadid, "Using General-Purpose Finite Element Software to Model Soil Behavior," Proceeding of the 34th Symposium on Engineering Geology and Geotechnical Engineering, Logan, Utah, April 1999
- H. Sadid and Mary Hofle, "Social Aspects of College Life: Can Web-based Instruction Provide That?," ASEE, PNW Section Conference, Spokane, Washington, April 1999
- H. Sadid and Mary Hofle, "Interdisciplinary Engineering Program," ASEE, PNW Section Conference, Klamath Falls, Oregon, April 1997
- H. Sadid, "Introducing a Teamwork Project in Civil Engineering Curricula," ASEE, PNW Section Conference, Boise, Idaho, 1995
- H. Sadid, "Rate of Deterioration of Concrete Exposed to Nitric Acid," a report submitted to Winco Company, Idaho, 1993
- G. Tsias and H. Sadid, "Earthquake Response of Hysteretic Mass-Column Using Non-Gaussian Closure," Journal of Soil Dynamics and Earthquake Engineering, Vol. 10, No. (5), July 1991
- G. Tsias and H. Sadid, "Random Vibration of Hysteretic Systems," the Third International Conference on Recent Advances in Structural Dynamics, England, July 1988.

- H. Sadid and G. Tsiatas, "Non-Gaussian Closure for Bilinear Hysteretic System," ASCE, EDM,GTD,STD, Joint Specialry Conference on Probabilistic Methods, Blacksburg, Virginia, May 1988
- S. Jerath and H. Sadid, "Buckling of Composite Shells," First and Second Joint ASCE/ASME Mechanics Conference, Laramie, Wyoming, June 1985, and Albuquerque, New Mexico, June 1986
- S. Jerath and H. Sadid, "Buckling of Orthotropic Cylindrical Shells Due to Wind Load," "Journal of Engineering Mechanics, Vol. 3, No. (5), May 1985

REFERENCES

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From: Michael Lineberry <mjl@isu.edu>
Subject: NE 402/502
Date: August 1, 2008 8:18:15 AM MDT
To: John S Bennion <jbennion@isu.edu>
gimel@isu.edu

John: I was disappointed to learn of Sadk's trade yesterday with the Dean, regarding the employ of Josh Peterson to help out in teaching 402/502. My disappointment is not with Sadk, who is a rut-case and cannot help himself. Clearly he has no standing in this matter, yet he was privy to details that had to come from one of a very small number of people. It is well known that you were not in favor of this arrangement, and that within the NE circle including the Dean, you were the only one not in favor. But if you had a problem with it, it should have been taken up with us, not with outsiders who have no standing and no understanding of the course involved, the individuals, or the arrangements.

I don't want to be falsely accusatory, and hopefully there is another explanation for this set of events.

There is nothing unusual in the arrangement with Peterson. He will be under close supervision, from both myself and from Professor Gunnerson from UI, who in fact will deliver the bulk of the lectures. That Ph.D. grad students, with an M.S. degree already attained, would deliver lectures to seniors and first-year graduate students is hardly a new concept. At my graduate institution, a second-year course on theory of functions of a complex variable was given entirely by a senior Ph.D. graduate student. It was one of the best courses I ever had. That institution of course was the California Institute of Technology. If it was OK at Caltech, shouldn't it be OK at ISU?

I remind you that other people who hold M.S. degrees are teaching courses in the COE. In fact, the sitting chair of the ME Department holds only the M.S. degree. Further, as you well know, as a graduate course NE 502 is aimed pretty low, for entering grad students with little or no background in nuclear.

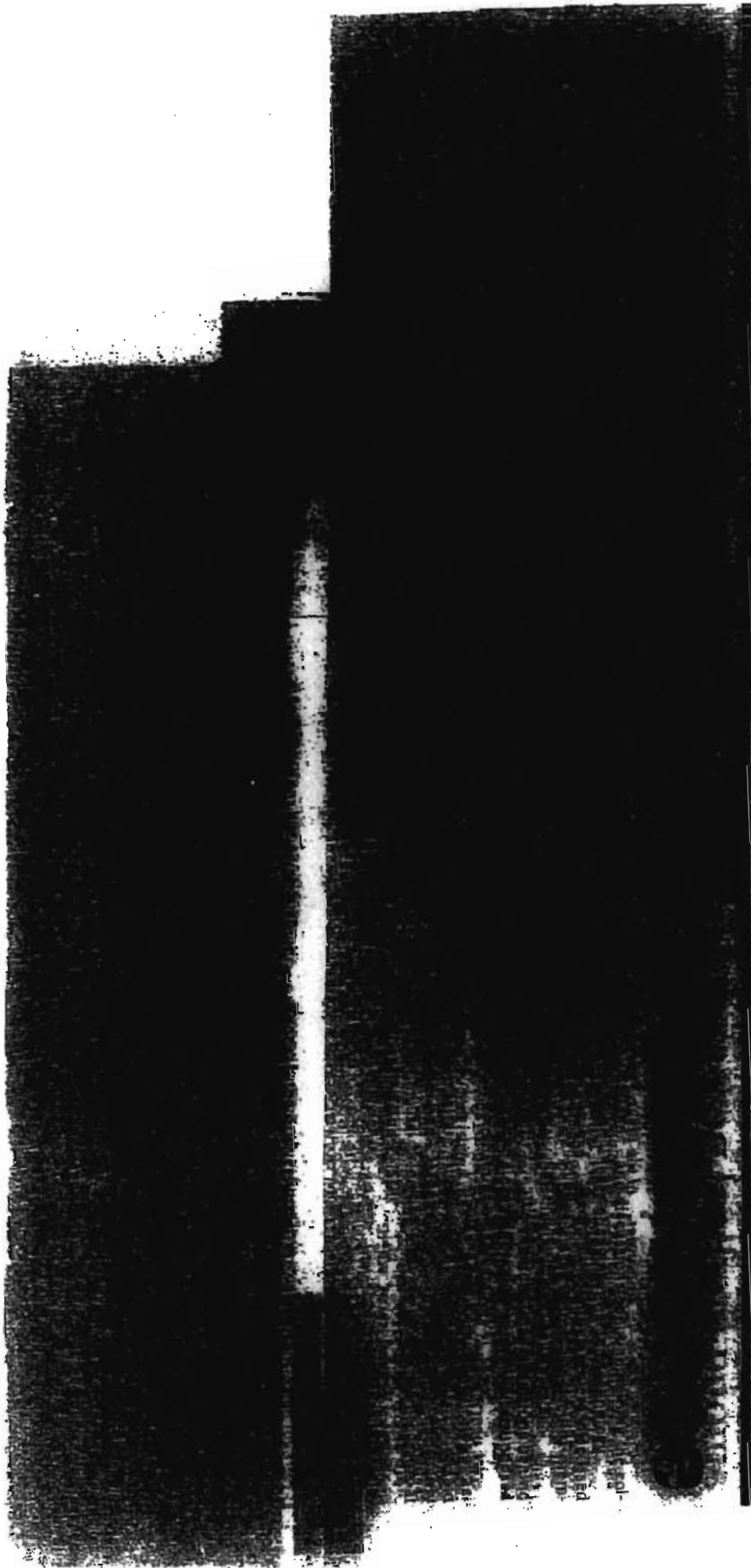
Not only do I believe that Josh will do fine under the planned arrangements, but I think he might well be someone who we want to nurture and court as a future faculty member, when his Ph.D. studies at the University of Texas are complete. This is a way to further the bond with ISU and simultaneously get a look at his potential for instruction. It's a "win" for everybody. I'm puzzled why anyone from within the ISU NE circle might have a problem with this solution. Absent Mary Lou for one or possibly two years, if we don't play in this, the result may be to cede the course to UI. None of us want to see that.

John, did you have a role in this? If so, what was your thinking?

Michael

Exhibit

00101



00103

Merger of Colleges is a symptom of deeper illness of ISU Administration 3/9/03

Habib Sadia, Ph.D., P.E.
 On Feb. 5, 2003, ISU published an article in the "Boise Post-Register" entitled "ISU Board Approves Merger Plan." In this article, I exposed the plan ISU's administration had hidden for months. The College of Engineering and the College of Technology. After this plan was brought to light, the frightened ISU administration back-pedaled quickly. They denied the existence of such a plan, then immediately posted a Web site and issued a steering committee charged with discussing the feasibility of consolidation. In the ensuing days and weeks, President Bowen, in an attempt to deflect responsibility and placate faculty, announced that he had been out of town at the time VP Lawson made the decision to pursue consolidation, that he was misunderstood by Lawson, and he was unaware of such a plan. In turn, VP Lawson attempted to cover up his role in the consolidation. However, records in my possession show that contradictory statements were made. Ultimately, this has all led to Bowen and Lawson both making contradictory statements about the merger.

In a letter dated Feb. 5, Jay Kunze (Dean of the College of Engineering) advised the College of Engineering Advisory Board of a closed-door meeting that took place in VP Lawson's office on Jan. 29. Present at the meeting were Dean Kunze, Ranayo Marsh (Dean of the College of Technology, VP Lawson, and Jennifer [redacted] of Lawson's staff). Lawson instructed the two deans of the administration to dismantle the two colleges, and the two deans were given four weeks. And he informed them that not only should the restructuring be done by the end of the semester but that it would probably do away with the college status of each. They were asked by Lawson to keep the meeting confidential; indeed, they were not even to discuss it with their associate deans! Dean Kunze divulged the meeting's contents to his advisory board, out of a sense of obligation to stakeholders, only after rumors among

students had begun to circulate. It would be unfortunate if, because of his courageous actions, Dean Kunze, were to experience the same fate as others at ISU who suddenly find themselves on the outside.

But let me say now that the issue of merger (or consolidation, or restructuring, or dismantling, or whatever other name might be given to the plan) is no longer the central issue in my mind or in the minds of many other faculty at ISU. The tax-paying public, as well, ought to be alarmed that the process by which the merger decision was made is but symptomatic of a much more serious illness that ISU's administration suffers from. At the moment the subject of merger is just the fastening nail, but the infection lies much deeper.

There are many issues and concerns among faculty, staff, students, and public regarding those things that affect the university adversely and should be addressed by the administration. Unfortunately, Bowen and Lawson have ignored addressing these issues and instead have attempted to hide behind the ISU Faculty Senate, a body which is systematically impotent and does not represent the majority of faculty at ISU.

I would like to raise several questions which, I believe, are indicative of the sickness to which I refer.

Regarding the administration's secret plan: Where is the logic in first making the decision and charging two deans to re-write their own job descriptions, then posting a Web site, forming a steering committee, and getting faculty involved—only after the plan is announced? Why will the administration not address this issue? By not coming clean publicly that there was indeed a secret plan, then by their silence they are accusing those who are witnesses and who possess hard evidence. I must ask: Is there something else that is hidden and is at risk of exposure? Why would the administration plan to give away two well-established colleges? Who would benefit from such a giveaway? Clearly, it would benefit the University of Idaho, who would imme-

diately offer engineering and technology programs in Idaho Falls. Continuing with this logic: What would ISU get in return for this favor to the UI?

ISU's administration has been working on a medical school proposal since 2001. Indeed, in late fall 2000, this administration formed a committee named the "Medical Program White Paper Study Group" to develop a proposal to phase in a medical program in the State of Idaho (perhaps in Boise). The proposal was presented to the State Board of Education in April 12, 2001, and again in August 2001. At precisely the same time, this administration launched its first surprise attack on the College of Engineering and Technology, attempting to push forward with the merger at that time. When they were rebuffed, they then tried to back force, just to name a few.

There is a clear tension between giving the medical school proposal priority over the merger. Why would Bowen and Lawson in Boise, Idaho, be so interested about the merger? Why would they investigate into the UI state's merger from state monies? Is there support of the merger? Are there additional issues that need to be answered by the administration?

Another question is: Why has the administration been so secretive? President Bowen was removed from the Foundation of the University over the merger, and he will continue to be a member of his base salary in 2006—this is in addition to his salary which is in the neighborhood of \$100K. Why is the Foundation of the University ostensibly designated for student scholarships in this way? Are donors and benefactors advised of this spending when they are asked for donations? Is this type of salary enhancement right in the face of a budget crisis that has translated to faculty and staff at ISU not receiving any salary raises for the last three years? Is there

a difference between a salary "raise" for faculty and staff and a salary "enhancement" for the president?

And speaking of budget crunch: Why did the administration cut 4.5 percent across the board at ISU to support the Accelerator Center at the cost of weakening existing programs? Wasn't a 13 percent cut from the state enough of a burden to impose on programs? And why does the administration create new programs without faculty input, without a student base, and without a feasibility study while at the same time sending termination notices to current faculty weakening existing programs?

Just last December, President Bowen increased an additional 5 percent his salary, including that first- and second-year faculty for a 50 percent return.

I have read Bowen's letter and don't know if it is a genuine attempt and commends the work of VP Lawson's integrity and President Bowen's competence. I believe, this administration needs to be cut and openly address some of the issues instead of hiding behind the Faculty Senate and ignoring main issues by focusing on the merger of the two colleges. If the administration is not willing to answer these questions, perhaps it is time for them to step down and allow a new administration to take over—one that would do the right things.

As a community member, I am appealing to the public and to our elected state officials to appoint an independent investigator to delve into whatever other "secret plans" this administration is hatching and bring to this university an administration whose platform is honesty and fairness.

Habib Sadia, Ph.D., P.E.
 Professor of Engineering
 Idaho State University

ISU professor plans informal vote of confidence

Sadid attempts to gauge faculty support for the university administration

By Tanna Barry
Journal Writer

POCAHONTO — Engineering professor Habib Sadid has taken it on himself to conduct a vote of confidence to gauge faculty support for the State University administration. President Richard Bowen and Academic Vice President Jonathan Lawson.

The poll was initiated by Sadid last month after he heard faculty members are often manipulated or making decisions behind closed doors.

Building by the information desk.

"This is just to measure what kind of support the faculty has in this administration," Sadid said. "If they have support, that's great and I'll keep my mouth shut. If not, they should know about it."

He originally wanted the Faculty Senate to vote, but he was turned down on Feb. 24. Faculty debate vice chairman Doug Nilson said the issue could be discussed again at the next scheduled meeting March 24 because of new information.

Professors Ken Bosworth and Sadid and associate lecturer Mary Hoffe in the College of Engineering conducted an informal

VOTE OF CONFIDENCE

When: March 25 from 8 a.m. to 8 p.m.

Where: Student Union Building by the information desk.

poll that showed 172 of 244 respondents said there should be a vote of confidence/no confidence in Lawson.

The university has 538 full-time and 59 part-time faculty as of Oct. 15, so about 40 percent of faculty responded to the poll.

Although Nilson said a legitimate vote of confidence would have to go through Faculty Senate, Sadid said he will conduct his own vote regardless.

"It's healthy for the organization to

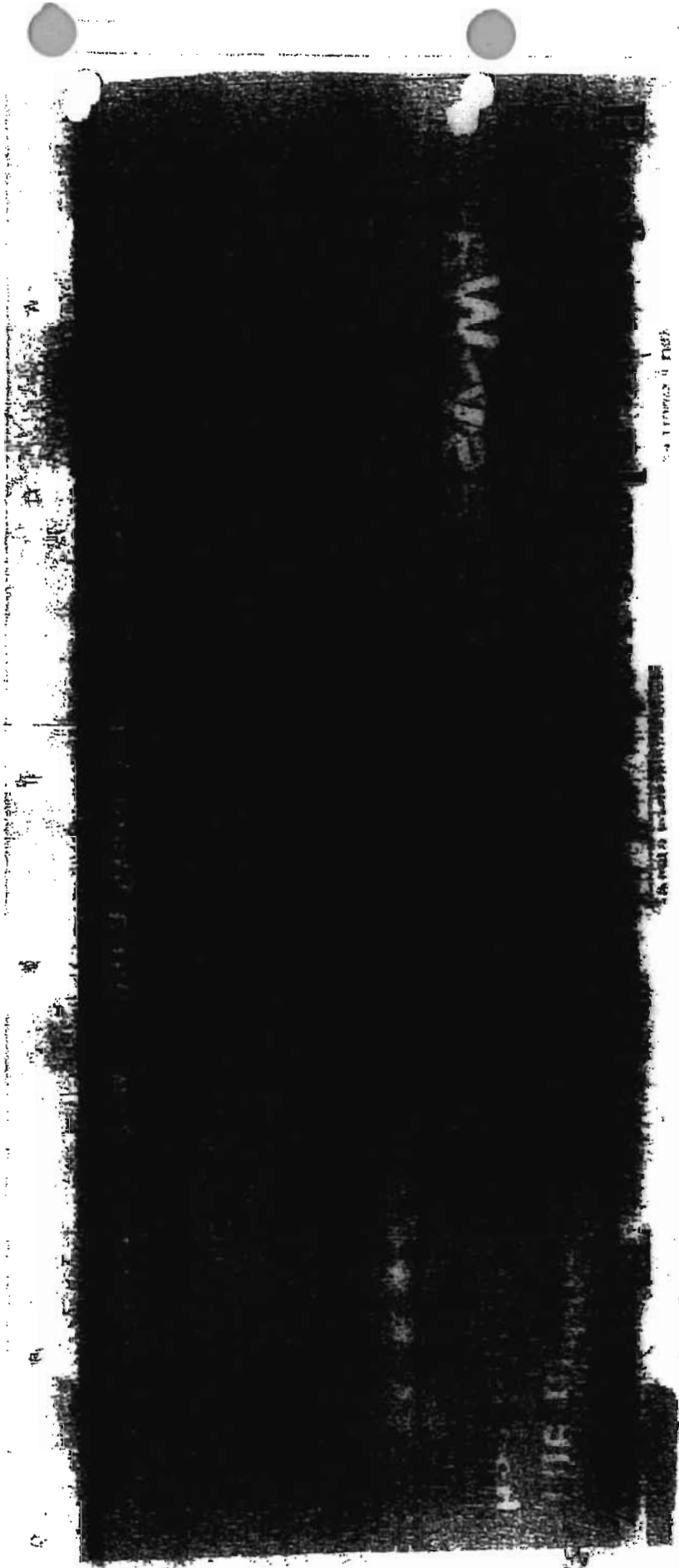
- **Why:** The vote is to determine if ISU faculty have confidence in President Richard Bowen and Academic Vice President Jonathan Lawson.
- **Who:** Engineering professor Habib Sadid is hosting the vote.

measure what kind of support they have," Sadid said. "In fact, the administration should ask for this vote, not me."

"They should constantly evaluate the kind of support they have."

Neither Bowen nor Lawson could be reached for comment Friday.

Tanna Barry covers health care, ISU and serves as the Web editor for the Journal. She can be reached at 232-4151 ext. 241 or by e-mail at tbarry@journalnews.com.



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11E

05

INSIGHT

What's ISU need to do to improve research?

Former Idaho State University President Richard Bowen departed ISU after 20 years of "service," in disgrace. In his place he left a legacy of anger and distrust.

He valued unquestioning loyalty above all else in choosing his inner circle and this legacy continues to take a toll on ISU today.

During ISU's past, we have witnessed numerous programs established without funding or faculty sufficient to deliver quality education much less to create effective research programs.

ISU has a history of financial woes and secrecy resulting in the starvation of many existing programs.

The accuracy of ISU's enrollment figures are questioned, even by those who work at the university. The ISU faculty was strained with exceptionally heavy teaching loads. During all these years, few administrative voices

were raised questioning the wisdom of spreading meager resources too thin, and these voices were quickly silenced.

Bowen built his empire by appointing "yes men" in criti-

cal positions; he ran roughshod over faculty; and blacklisted or retaliated against those who questioned his actions and misuse of power. Perhaps a performance review of Bowen's administrative reign can best

be described by the 10 recommendations for ISU cited by the Northwest Accreditation Commission. Bowen pushed his agenda, alienated faculty and destroyed morale on campus.

When Dr. Arthur Vallas assumed the office of the president, he was entrusted to rectify problems inherited from the past administration. President Vallas appears to be a sincere and humble man, armed with a sound vision for the institution.

Unfortunately, President Vallas is surrounded by a circle of administrators from the Bowen era who are protecting their own interests at the expense of the university.

It is probable that Dr. Vallas is unaware of what damage

COMMENTARY



those loyal to Bowen are doing behind the scenes at ISU. For example, does the president know why ISU's enrollment has declined? Does he know why a temporary registrar has been hired to replace a former registrar?

President Vallas' vision of improving

research capabilities at ISU, while offering quality education, is well supported by the ISU faculty, but attracting research funds is a very competitive pursuit. It requires that faculty be given the necessary time to prepare quality proposals and that the university has in place well-equipped and functional facilities. The ISU faculty is already fully loaded, on average working 60 hours a week, teaching 6 to 8 courses per year, conducting research in their respective fields of expertise, and providing services to the university and community. Now, faculty are additionally expected to raise funds, recruit students and attract research funds. In contrast, faculty in real research

universities normally reach 2 to 3 courses per year, have well equipped laboratories, and enjoy the benefit of having "in-house" fundraisers.

The coordination of teaching and research assignments is the responsibility of the offices of academic affairs and research. Unfortunately, these two offices have failed to develop strategies designed to shift the focus of ISU to research while simultaneously maintaining and building on its teaching capabilities. Universities are not corporate entities like Microsoft or Google. In an educational facility, education should be the predominant focus and cannot be sacrificed for research. The faculty at ISU are already overworked and underpaid. If the administration wishes to promote research, it will be necessary to invest money in release time for proposal writing and improved laboratories. A 3- to 5-year investment program will certainly have a significant impact on improving the research capabilities, bringing prosperity and recognition to ISU.

The faculty constitutes the "wheels" of the university and

without professors the institution cannot operate. Faculty members are well-educated and dedicated individuals who have the benefit of the students, the university, and community foremost in their minds, and deserve the highest level of respect from the administration.

Unfortunately, the ISU Office of Academic Affairs has been unable to unify faculty and administration.

Faculty members are not included in the decision-making process.

It appears the distance between the administration and faculty is widening and morale among faculty continues to be dangerously low.

Blacklisting and retaliation against faculty in the past has created an era of mistrust between faculty and the administration.

Many ISU administrators are working to protect each other at the expense of the university.

ISU does not have the necessary policies to prevent administrators from abusing their power by retaliating against whistleblowers.

If the administration's vi-

sion is to improve the research capabilities of the university, it will need to develop strategies to provide the resources necessary for faculty to develop research programs. The administration must also demonstrate its confidence in the faculty by involving that faculty in the decision-making process. Finally, the administration must demonstrate its respect for the faculty by punishing administrators who abuse their authority.

Habib Sadid has been a professor of engineering at Idaho State University for 20 years. He has received numerous awards including Distinguished Master Teacher, Distinguished Public Service, and Excellence in Engineering Education from Idaho professional engineers.



LOC

ISU professor files complaints

BY CASEY SANTEE
csantee@journalnet.com

POCATELLO — An Idaho State University professor filed complaints with the Equal Employment Opportunity Commission and the American Civil Liberties Union last month claiming he is the victim of "retaliation, discrimination and harassment" by campus administrators.



Habib Sadid

Habib Sadid, a longtime ISU Department of Engineering faculty member, sent the EEOC and ACLU a 97-page compendium of documents, which include e-mail correspondence with ISU President Arthur Vailas and other administrators.

In a cover letter to his complaints, Sadid specifically mentions ISU Provost Robert Wharton and former College of Engineering Dean Jay Kunze as those who committed the harassment.

"I have to spend 30 to 40 percent of my time fighting to survive," Sadid said during an interview Thursday. "I don't sleep at night. It has been damaging to my health and career."

Wharton and Vailas declined to comment about Sadid's claims. Kunze said he hadn't heard about the complaints and also declined to comment.

ISU spokeswoman Libby Howe said it is a personnel matter not open for public discourse.

"We don't respond to personnel issues in a public forum," Howe said. "We believe in following due process procedures in personnel issues. Since we have not seen the (complaints), and we do not know the nature of his claims, it would

be inappropriate to respond."

Among Sadid's claims are that Kunze did not give him an annual faculty performance evaluation for a period of six years.

He also said he was denied the position of Department of Civil Engineering chairman after the faculty unanimously voted for him. He said current College of Engineering Dean Richard Jacobson approved the faculty's nomination, but Wharton thwarted the confirmation citing a need for a nationwide search for the job.

Sadid also said that on two occasions ISU officials claimed they didn't receive a letter nominating him for a public service award, and when he contacted them about it, they said it must have been lost in the mail.

Sadid said he has tried to go through the university's grievance process to resolve the problems, but the administra-

tion dismissed his claims citing a statute of limitations.

"Every complaint I've had about Kunze or Wharton has been ignored or sandbagged," Sadid said.

Complaints to the EEOC and ACLU can be dismissed, settled by mediation or resolved via lawsuits. Sadid said he doesn't plan to file a lawsuit against ISU, but he wants the university to form an ethics committee to investigate faculty complaints.

"These (issues) aren't a matter of law, they are a matter of ethics," Sadid said.

Sadid has been designated a Master Teacher on numerous occasions during his 20-year tenure at ISU. He received the university's Distinguished Teacher Award in 2002 and the Public Service Award this year. In 2005, Sadid won the Idaho Excellence in Engineering Educator Award.

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Mayhem conviction draws 14-year sentence

BY JIMMY HANCOCK
jhancock@journalnet.com

POCATELLO — Sixth District Judge Peter D. McDermott gave a Gate City man the maximum sentence of 14 years in prison Monday for his felony mayhem conviction.

James M. Rodriguez, 29, was arrested last December after an altercation with another man and charged with aggravated battery and mayhem, both felonies. Moments before

indeterminate. With the time he has already served in Bannock County Jail, Rodriguez will be eligible for parole late in 2011.

According to a court filing, police arrived at Rodriguez' residence in the 400 block of Industrial Lane in Pocatello late in the evening of Dec. 16., where they determined there had been an altercation between Rodriguez and another man.

The victim had a tear in each cheek starting at the corner of the mouth where the line

told the defendant. "I'm not buying that."

Bannock County Deputy Prosecutor Ken Webster told McDermott that Rodriguez didn't take responsibility for his actions in the presentencing investigation report and he wasn't taking responsibility during the sentencing either.

"You can't rehabilitate someone who won't take responsibility for his actions," Webster said. "I have never asked for punishment just for punishment's sake, but today for the

'Crisis of confidence'

Tab / Sept 20/86

ISU faculty group voices no confidence in president

By Dan Boyd
Journal Writer

POCATELLO — Taking a bold step, the Faculty Senate of Idaho State University officially voiced its lack of confidence in three top university administrators Monday, including ISU President Richard Bowen.

Calling the proceedings sad but necessary, Faculty Senate Chairwoman Kay Christensen said the decision hinged on more than just the controversial administrative pay raises that have angered many on campus.

"This was a wrenching thing for a lot of faculty members," she said.

The votes effectively pull the faculty governing body's support from Bowen, Financial Vice President Ken Prolo and Budget Officer Leo Herrman.

While the decision doesn't carry any tangible repercussions, it calls on all faculty members to vote on the issue in two weeks and puts ISU's veteran president into a precarious position as he weighs his response.

The controversy began when news surfaced ISU administrators had received more than \$350,000 in salary



Photo by f

Habib Sadid, professor of the College of Engineering, makes a point at the Idaho State University Faculty Senate meeting Monday afternoon about his dealings with school administrators.

raises, some as large as 28 percent, in order to put pay levels more in line with national averages and assist in recruiting new administrators.

Officials say administrators were actually paid less than other campus groups according to national data, but

many students and faculty members objected to the secretive nature of the decision, with some complaining they had been misled by ISU budget officers to believe the school had little money to fund salary raises.

"It's not so much about numbers,

it's about honesty," said an ISU senior and the vice president, who cla spreadsheet showing th posefully hid certain info

Professors, many of

See ISU

ISU faculty

►Continued from A1
most recent episode is just one example of an ongoing trend of disrespecting faculty, con-
curred.

"I am ashamed as a distin-
guished teacher at this school
of this administration," said en-
gineering professor Habib
Saddi. "If they want to fire me,
that's fine. I don't give a
damn."

But while the issue of ad-
ministrative pay raises has cre-
ated schisms on campus, facul-
ty senators acknowledged Mon-
day's vote of no confidence rep-
resented an act of no return.

"We are picking a fight be-
cause a bully has been bullying

us for many years," said biolo-
gy professor David Delehanty.
"This university could be so
much better with an enthusias-
tic faculty.

"We are throwing away a
treasure chest right now."

Due to the serious nature of
the subject, Monday's meeting
lasted for three-and-a-half
hours and faculty members
voted on each separate admin-
istrator separately.

Citing legacies characterized
by a lack of budget transpar-
ency, the Faculty Senate unan-
imously denounced Prolo and
Herrman, both of whom re-
ceived raises of more than
\$20,000.

Both have previously declined
to comment on the matter.

As for Bowen, the final tally
was 17-2, with three members
abstaining.

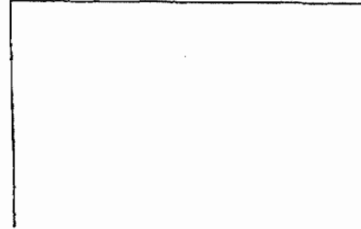
Former Faculty Senate Chair
Peter Vik, who said he wasn't
aware of the magnitude of the
administrative salary raises
until recently, called the vote
"enormous" and admitted he's
not sure what to expect in the
upcoming weeks.

"It's like the genie's out of
the bottle," he said. "I don't
know if we can put it in.

"I hope (Bowen) chooses to re-
spond in a way that seeks to bridge
the gulf that's developed between
administrators and faculty."

Bowen, who recently re-
turned from an extended busi-
ness trip, met with ASISU lead-
ers Monday night and is set to
address the media today.

*Dan Boyd covers politics, higher
education and natural resource is-
sues for the Journal. He can be
reached at 239-3168 or by e-mail at
dboyd@journalnet.com.*



Valuing freedom of speech

ISU prof says it's important to speak out

BY JOHN O'CONNELL
jocconnell@journalnet.com

POCATELLO — Few professors at Idaho State University have earned more acclaim than Habib Sadid.

And few people in the community have been more vocal in their criticisms about the university's leadership than the tenured civil engineering professor.

Sadid moved to the United States from Iran in 1978, before the fall of the Shah.

Since arriving here, he's offered his opinions unfiltered, and he's come to believe Americans are fearful of retaliation for voicing their opinions and have become too reluctant to use their free speech.

"I thought the United States would be better, but here people are afraid of even talking. I'm really worried that the U.S. is heading in that direction," Sadid said. "The Constitution will support you. You just have to know how to use it. Unfortunately, we are stuck with a group of 'yes men' (in leadership positions). They will lie through their teeth just to protect their position."

Sadid believes the story of an engineer who spoke at ISU in the late 1980s is illustrative of a larger problem in America.

Convinced there was a fundamental flaw with a shuttle part called the O-rings, the engineer urged NASA to cancel the ill-fated 1986 flight of space shuttle Challenger.

Sadid said the engineer was fired for voicing his opinion.

Sadid, a longtime critic of former ISU President Richard Bowen, believes ISU still has great room for improvement and plans to skip the upcoming investiture of new President Art Vailas, though he said he likes Vailas on a personal level.



Habib Sadid is a civil engineering professor at Idaho State University in Pocatello. He is the subject of the Journal's Faces of Idaho feature this week.

FACE OF IDAHO

HABIB SADID

- ISU civil engineering professor.
- Moved to the U.S. from Iran in 1978.
- Doing research on road building.

"(The university) come(s) out and say(s) we want to improve research, and they don't say how they're going to help you develop the research," Sadid said. "We haven't given (the faculty) the means to do this."

Sadid's many honors at ISU

include becoming a Distinguished Master Teacher in 2002, Influential Teacher of the Year in the College of Engineering on six occasions, recipient of the 2007 Public Service Award, and winner of the 2005 Idaho Excellence in Engineering Educator Award from the Idaho Society of Professional Engineers.

He's in the midst of what he believes will be a defining research project to change the way the nation builds roads.

He recently received a \$185,000 grant from the Idaho Transportation Department for his work.

With the cost of petroleum-based asphalt rising, Sadid believes the nation should shift to building streets and other infrastructure with concrete, which requires much less maintenance.

Too often, however, Sadid said a chemical process called alkali silica reaction breaks

down concrete prematurely.

He notes Interstate 84 in the Mountain Home area, for example, was built with concrete in the early 1990s and was intended to last 40 years. The \$100 million project is already falling apart, he said.

Sadid aims to find a way to slow or stop that deterioration.

"I'm going to look at almost every possible solution and come up with the best, most cost-effective solution to the problem. I'm going to put my heart and mind on that, and I believe I will find it," Sadid said. "I believe in the future there will be no asphalt on the street. It's going to be all concrete everywhere. We won't have this asphalt forever."

Away from work, Sadid is an avid cook who loves to entertain large groups.

Sadid and his new wife, Kim, plan to celebrate Halloween with 130 friends during their annual costume party.

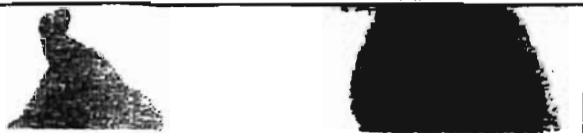


Exhibit 10



U.S. Equal Employment Opportunity Commission
Seattle Field Office

909 First Avenue
Suite 400
Seattle, WA 98104
(206) 220-6885
TTY (206) 220-6882
FAX (206) 220-6911
1-800-669-4000

Habib Sadid
EEOC No: 551-2007-02359
FEPA No:

IDAHO STATE UNIVERSITY
921 S. 8th Avenue,
Pocatello, ID 83204

Dear Sir/Madam:

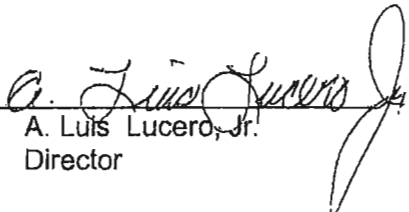
This is to inform you that the charge cited above has been withdrawn at the request of the Charging Party.

The Commission has approved this withdrawal and this terminates any further processing of this matter. Such withdrawal does not affect the processing of any other charge, including, but not limited to, a Commissioner's Charge or a charge, the allegations of which are like or related to the individual allegations settled.

On Behalf of the Commission:

OCT 22 2007

Date



A. Luis Lucero, Jr.
Director

EEOC00004

ORIGINAL

John A. Bailey, Jr. (ISB No. 2619)
RACINE, OLSON, NYE, BUDGE
& BAILEY, CHARTERED
P.O. Box 1391
Pocatello, Idaho 83204-1391
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Fax: (208) 232-6109

FILED
DISTRICT COURT
BANNOCK COUNTY
POCATELLO, IDAHO
SEP 29 2008
CLERK

Attorney for Defendants

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO IN AND FOR THE COUNTY OF BANNOCK

HABIB SADID, an individual,)
)
Plaintiff,)
)
vs.)
)
IDAHO STATE UNIVERSITY,)
MICHAEL JAY LINEBERRY, and)
JOHN/JANE DOES I THROUGH X,)
whose true identifies are presently)
unknown,)
)
Defendants.)
_____)

Case No. CV 2008-3942-OC

**MEMORANDUM IN SUPPORT
OF MOTION FOR SUMMARY
JUDGMENT PURSUANT TO
I.R.C.P. 56 (c)**

COME NOW, Defendants Idaho State University and Michael Jay Lineberry, by and through counsel, and submit the following Memorandum in Support of Defendants' Motion for Summary Judgment pursuant to I.R.C.P. 56 (c).

I.

INTRODUCTION

This case was initiated by Complaint filed by the Plaintiff, Dr. Habib Sadid, on September 29, 2008. The Plaintiff named Idaho State University (hereafter "ISU"), Dr. Michael J. Lineberry, and John Does I through X, alleging defamation, breach of contract, and 42 U.S.C. §1983 retaliation

claims. Each of the foregoing claims are premised upon the Plaintiff's contention that Defendants have systematically retaliated against him for speaking out on matters of public concern. The Plaintiff alleges that Defendants have defamed him, breached his employment contract, and violated 42 U.S.C. §1983 by retaliating against him for exercising his rights to free speech under the First Amendment of the United States Constitution, and Article 1, Sections 9 and 10 of the Constitution of the State of Idaho.

This case presents an unusual situation, in that, each of the Plaintiff's claims are so tenuous as to be susceptible to dismissal for multiple reasons. This memorandum is aimed at highlighting some of the many grounds justifying dismissal, not all available grounds, in an effort to avoid repetition of issues and with the firm belief that the grounds listed are more than adequate to dispose of the Plaintiff's claims against Defendants. As will be set forth in more detail herein, all of the Plaintiff's claims should be dismissed as a matter of law under I.R.C.P. 56(c).

The Plaintiff's 42 U.S.C. §1983 claims fail and should be dismissed on each of the following grounds: (1) they are time barred; (2) they are invalid as the Plaintiff had no constitutional protection for the subject speech; (3) they are specious as the Plaintiff has no evidence that a policy or custom of ISU caused him injury; (4) they are precluded by qualified immunity; and, (5) they are barred by laches, waiver and estoppel. Similarly, the Plaintiff's defamation claim also fails and should be dismissed because it is time barred and it is precluded by the Idaho Tort Claims Act. Finally, the Plaintiff's contract claim is similarly time barred and is also invalid as the Plaintiff has no evidence that his employment contract was breached or that he was injured by any alleged breach of the employment contract.

II.

STATEMENT OF FACTS

1. The Plaintiff's teaching career began at Idaho State University's College of Engineering in 1991. (*See* deposition excerpts of Plaintiff attached to the Affidavit of Counsel as Exhibit "1" at Vol. 1 pg. 39, ln. 24-25; pg. 40, ln. 1-2). By 1993 the Plaintiff was given full tenure and promoted to associate professor at ISU. (*See Id.* at Vol, 1. pg. 80, ln. 15-16). He was then promoted to full professor in 1999, maintaining his tenured status.

2. In his Complaint, the Plaintiff alleges that he was damaged due to speaking out publically on issues of public concern involving ISU. (*See* Complaint).

3. The first act of the Plaintiff speaking out allegedly took place in 2001 when the Plaintiff published a letter to faculty and administrators at ISU criticizing the administration for a plan to merge the College of Engineering with the College of Technology. (*See* Complaint). The idea for the merger was scrapped by the administration following a task force investigation and recommendation and did not come up again until 2003. (*See* Exhibit "A" to Complaint).

4. The second act of the Plaintiff speaking out allegedly occurred in 2003 when the Plaintiff used the local newspaper and the Idaho State Journal as the medium to voice his complaints against the potential merger. (*See* Exhibit "A" to Complaint). Through a series of articles published by the Plaintiff, he argued that the administration met in secret to develop a plan to merge the two colleges and that he felt this was deceptive not only to the university faculty and staff, but also to the tax payers. (*See Id.*) He claimed that the plan was made in "secret" and he called into question the integrity of the administration and pushed for a vote of no confidence in the administration. (*Id.*)

5. The Plaintiff contends that ISU retaliated against him for his efforts to openly talk about the merger issue in 2001 and 2003. (*See* Complaint).

6. The Plaintiff cites two specific incidences of retaliation; one occurring in 2006 when he was not appointed as Chair of the College of Engineering and the other occurring in 2008 when Dr. Lineberry wrote an e-mail that stated that the Plaintiff had thrown a “tirade” and referred to the Plaintiff as a “nut-case” who “cannot help himself”. (*See* Complaint, including Exhibit “B” thereto).

7. Although the Plaintiff was voted by ISU Civil Engineering faculty as interim Chair of the Department of Civil Engineering in August of 2006, the faculty recommended that ISU conduct an internal search for the replacement Chair and Vice President Wharton decided to conduct the national search to fill the Chair’s position in an effort to improve the reputation of the Department. (*See* memo attached as Exhibit “2” and email attached as Exhibit “3” to the Affidavit of Counsel). ISU announced its intent to conduct a national search for the Chair position on August 24, 2006. (*See* Exhibit “3” to the Affidavit of Counsel).

8. Also on August 24, 2006, the Plaintiff was offered the opportunity to act as a candidate for the Chair position and the Plaintiff declined to even seek the Chair position. (*See* Exhibit “3” to the Affidavit of Counsel). Ultimately a candidate outside ISU was given the Chair position.

9. The Plaintiff also contends that his employment contract with ISU was breached when he failed to receive annual performance evaluations. (*See* Exhibit “1” to the Affidavit of Counsel at Vol. 1, pg. 91, ln. 18-21). The Plaintiff bases this claim on the Faculty and Staff Handbook which he maintains requires that all faculty receive annual evaluations. (*See Id.* at

Vol. 1, pg. 67, ln. 23-25; pg. 68, ln. 1-2; pg. 110, ln. 11-15).

10. The Plaintiff alleges that evaluations for years 2001-2004 were never done and that his evaluation for the year of 2005 was incomplete solely because he was not allowed to respond to his evaluation. (*Id.* at Vol. 1, pg. 91, ln. 18-25; pg. 92, ln. 1-25, pg. 93, ln. 1-6). He alleges that the lack of having performance evaluations in his personnel file damaged his career as his job performance was not recorded anywhere for the purposes of the administration to use for raises or promotions. (*Id.* at Vol. 1, pg. 141, ln. 7-20).

11. While the Plaintiff claims in his deposition that his salary remained the same from 2001 until 2004, the Plaintiff admits that he actually received salary increases for 2005, 2006, 2007 and 2008. (*Id.* at Vol. 1, pg. 79, ln. 16-19; *see also* Exhibit "4" to the Affidavit of Counsel). More accurately, Exhibit 4, at Bates page 237 shows that from 2001 to 2004 none of the faculty received raises due to financial constraints, except one year, and in that year, Dr. Sadid received the second highest raise in the entire college.

12. Part 4 (Personnel Policies), Section IV (B)(7) of the ISU Faculty Staff Handbook provides as follows with respect to the interval required for tenured faculty performance evaluations:

It is the policy of the Board that at intervals not to exceed five (5) years following the award of tenure to faculty members, the performance of tenured faculty must be reviewed by members of the department or unit and the department chairperson or unit head. The review must be conducted in terms of the tenured faculty member's continuing performance in the following general categories: (a) teaching effectiveness, (b) research or creative activities, (c) professional related services, (d) other assigned responsibilities, and (e) overall contributions to the department.

13. Due to the Plaintiff's tenured faculty status as of 1999, annual performance evaluations were not required under the Plaintiff's contract, but instead, performance evaluations were required in five year intervals.

14. The Plaintiff maintains that the 2001 performance evaluation performed for the 2000 school year by Dr. Kunze, the Dean of the College of Engineering at the time, which contained the following statement: “Dr. Sadid is very active in university politics and service. He is astute and introspective. He is also decisive in his actions but is cautioned to be a bit more circumspect on issues involving campus politics”, was the beginning of his injury as it was placed in his personnel file for everyone to see and that it was done because of his speech. (Exhibit “1” at Vol. 1, pg. 134, ln. 19-25, pg. 135, ln. 1-25, pg. 136, ln. 1-16).

15. The Plaintiff had knowledge of this 2001 performance evaluation with the above quoted statement because he signed it on July 9, 2001. (See Exhibit “6” to the Affidavit of Counsel).

III.

ARGUMENT

A. The Plaintiff's 42 U.S.C. § 1983 claim is time barred.

Actions filed pursuant to 42 U.S.C. § 1983 in Idaho are subject to the two year statute of limitation for personal injury actions found in I.C. §5-219. See *Idaho State Bar v. Tway*, 128 Idaho 794, 919 P.2d 323 (Idaho, 1996); see also *Henderson v. State*, 110 Idaho 308, 715 P.2d 978 (Idaho, 1986); *Samuel v. Michaud*, 980 F. Supp. 1381 (D. Idaho 1996). Although state law controls which limitation period applies, federal law determines when a cause of action accrues. See *Samuel v. Michaud*, *supra*, at 1410. Under federal law, a cause of action accrues **the moment the plaintiff knows or has reason to know of the injury** that is the basis of the complaint. *Id.* (Emphasis added).

Based upon the Plaintiff's own complaint, the latest he believed that he was retaliated against and was injured for exercising his First Amendment right to free speech on August 24,

2006 when he was denied the Chair position and it was opened up for a national search. As the Plaintiff filed suit on September 29, 2008, he failed to file his complaint within the two year statute of limitation period and his 42 U.S.C. §1983 claims are time barred.

Significantly, deposition testimony shows that the Plaintiff knew of his injury, and believed he had been retaliated against for exercising his First Amendment right to free speech, as early as July 9, 2001 when he received and signed what he perceived to be an unfavorable evaluation performed by Dr. Kunze. (See Exhibit "1" to the Affidavit of Counsel at Vol. 1, pg. 134, ln. 19-22). The Plaintiff testified that the placement of this evaluation in his personnel file for anyone reviewing it to see was the beginning of his injury. *Id.* The Plaintiff's 42 U.S.C. §1983 accrued when he knew that he was injured by the alleged wrongful acts of the defendants and that was as early as July of 2001 when he signed the "unfavorable" performance evaluation or as late as August of 2006 when he was denied the Chair position. Under either triggering point, the Plaintiff's 42 U.S.C. §1983 claims for retaliation are time barred, and should be dismissed.

B. The Plaintiff's 42 U.S.C. §1983 claims are invalid and should also be dismissed because he has not shown unconstitutional retaliation by Defendants.

Two inquiries guide interpretation of the constitutional protections accorded public employee speech. *See Garcetti v. Ceballos*, 547 U.S. 410, 126 S.Ct. 1951, 164 L.Ed.2d 689 (2006). The first requires determining whether the employee spoke as a citizen on a matter of public concern. *Id.* If the answer is no, the employee has no First Amendment cause of action based upon the employer's reaction to the speech. *Id.*; see also *Brewster v. Bd. of Educ.*, 149 F.3d 971 (9th Cir. Cal. 1998).

In order to determine whether an employee's speech involves a matter of public concern, a reviewing court must scrutinize "the content, form and context of [the] statement". *Brewster v. Bd. of Educ.*, supra. The fact that a public employee's expression touches on an issue of public concern does not automatically entitle him to recovery. *Id.* In determining whether speech involving a matter of public concern merits constitutional protection, courts engage in a balancing test, first announced in *Pickering v. Board of Education*, 391 U.S. 563, 20 L. Ed. 2d 811, 88 S. Ct. 1731 (1968):

The question whether speech of a government employee is constitutionally protected expression necessarily entails striking "a balance between the interests of the [employee], as a citizen, in commenting on matters of public concern and the interest of the State, as an employer, in promoting the efficiency of the public services it performs through its employees".

In conducting this balancing test, courts must give government employers "wide discretion and control over the management of [their] personnel and internal affairs". *Id.*; citing *Connick, supra*, 461 U.S. at 151.

In order for a public employee's speech to be "protected" under the First Amendment within the meaning of step one of the three-step test, (1) the speech must involve a matter of public concern and (2) the employee's interest in expressing himself must outweigh the State's interest in promoting workplace efficiency and avoiding workplace disruption. *Brewster v. Bd. of Educ.*, 149 F.3d 971 (9th Cir. Cal. 1998); citing *Waters v. Churchill*, 511 U.S. 661, 668, 128 L.Ed. 2d 686, 114 S. Ct. 1878 (1994).

The United States Supreme Court recently made clear that the First Amendment does not prohibit managerial decisions based upon an employee's expressions made pursuant to official responsibilities rather than as a private citizen. *See Garcetti v. Ceballos*, 547 U.S. 410, 126 S.Ct.

1951, 164 L.Ed.2d 689 (2006).¹ In that case the Supreme Court determined that the employee's allegation of unconstitutional retaliation failed because he was not speaking as a citizen for First Amendment purposes when he spoke out as a deputy district attorney and wrote a memo criticizing an affidavit relied upon by an officer to obtain a search warrant, and recommending dismissal of the prosecution on those grounds, as the statements were made pursuant to his official duties.

The Plaintiff's allegation of unconstitutional retaliation in this case similarly fails because, even if his comments could be viewed as touching on matters of public concern, he made his statements pursuant to his official duties as a professor for ISU and not as a private citizen. All of the Plaintiff's speech on topics such as ISU's "secret" plan to merge the College of Technology with the College of Engineering and the Plaintiff's opposition thereto, or the Plaintiff's criticism of the University and his intent to hold an informal Vote of No Confidence in the administration, were made not as a citizen, but pursuant to the Plaintiff's official duties as a professor.² Therefore, the Plaintiff's claim for unconstitutional retaliation pursuant to 42 U.S.C. §1983 fails as a matter of law and should be dismissed.

C. The Plaintiff's 42 U.S.C. §1983 claims are also invalid and should be dismissed as against Defendant ISU because he has no evidence of a policy or custom of the university that caused him injury.

Under I.C. §33-3003, Defendant ISU is considered a body politic and corporate, and

¹See also *Eng v. Cooley*, 552 F.3d 1062 (9th Cir. Cal. 2009)(holding that a plaintiff bringing a First Amendment public employee retaliation claim bears the burden of showing that the speech was spoken in the capacity of a private citizen and not a public employee).

²See also *Hong v. Grant*, 516 F.Supp. 2d 1158 (C.D. Cal. 2007)(wherein the United States District Court for the Central District of California granted University and individual officials and administrators' motion for summary judgment in plaintiff professor's 42 U.S.C. §1983 action alleging he was the victim of illegal retaliation for exercising his right to free speech, finding that the professor's speech was not protected as it was made pursuant to his official duties as a faculty member and that the speech did not even involve a matter of public concern).

therefore, may only be sued in state court under 42 U.S.C. §1983 if the action that is alleged to be unconstitutional, implements or executes a policy, statement, ordinance, regulation, or decision officially adopted by its officers. *See Monell v. Dep't. of Soc. Servs.*, 436 U.S. 658, 98 S.Ct. 2018, 56 L.Ed. 2d 611 (1978). A body politic may not be sued under 42 U.S.C. §1983 for an injury inflicted solely by its employees or agents. *Id.* It is only when execution of that body politic's policy, or custom, inflicts the injury that the body politic can be found responsible under 42 U.S.C. §1983. *Id.*

The Plaintiff has articulated no official policy or custom of Defendant ISU which was implemented by its officials which caused him to suffer injury. Instead, the Plaintiff generally asserts that Defendants, "through their concerted actions, systematically, and by design, pattern and, practice, have continually retaliated against him". *See* Paragraph 15 of Complaint on file herein. More importantly, the Plaintiff has provided no evidence that Defendants' alleged retaliatory actions were somehow concerted or an official policy, regulation or custom of the University. The Plaintiff cannot cite a single policy or regulation that has caused him harm. As no such policy, regulation, or custom exists, the Plaintiff is unable to establish that some official policy or custom of Defendant ISU caused him injury, and his 42 U.S.C. §1983 claim against Defendant ISU should be dismissed.

D. The Plaintiff's 42 U.S.C. §1983 claims should be dismissed based upon laches, waiver, and estoppel because he failed to file suit within 90 days of receipt of his "right to sue" letter from the Idaho Human Rights Commission.

The Plaintiff filed a formal complaint with the Equal Employment Opportunity Commission on or about September 14, 2007, alleging that Defendant ISU had discriminated against him for his national origin and/or religion **and had retaliated against him since 2001**

MEMORANDUM IN SUPPORT OF DEFENDANTS' MOTION FOR SUMMARY JUDGMENT - 10

for being “outspoken”. *See* Exhibit “7” to the Affidavit of John A. Bailey Jr. filed herewith.

As his EEOC charge reveals, the Plaintiff was complaining of the same conduct by ISU in the EEOC charge that he is claiming in this case caused him injury due to his alleged protected speech activities. Notably, the Plaintiff withdrew his EEOC charge and received his right to sue letter from the Idaho Human Rights Commission on April 25, 2008. The Plaintiff was notified therein that if he intended to sue ISU for this conduct, he must do so within ninety (90) days from receipt of that letter or his right to sue would be lost. *See* Exhibit “8” to the Affidavit of John A. Bailey, Jr.

Not only did the Plaintiff believe that he had a basis to sue ISU when he filed his EEOC charge in September of 2007, he also testified in his deposition that he had been the subject of unconstitutional retaliation and had a basis to sue ISU over four years before he brought this lawsuit.³ As the Plaintiff clearly sat on his known rights by failing to file suit within 90 days from receipt of his right to sue letter, his 42 U.S.C. §1983 claim should be dismissed under the equitable doctrines of laches, waiver and estoppel.⁴

³*See* deposition excerpts of Plaintiff attached to the Affidavit of Counsel as Exhibit “1” at Vol. 3, pg. 257, ln. 4-25; pg. 258, ln. 1-5.

⁴Although the Idaho Human Rights Act is limited to matters that concern discrimination because of race, color, religion, sex, or national origin . . . [and] age, the Plaintiff’s inclusion of his retaliation allegations in his EEOC charge shows he believed that the retaliation was for his “protected class status”, not his free speech. The Plaintiff should not be permitted to do indirectly what he is unable to do directly; namely, maintain a suit in district court for unconstitutional retaliation for free speech where he previously took the position that the alleged retaliation was based upon his national origin and/or religion. The Plaintiff should be precluded from asserting his unconstitutional retaliation claim against defendants based upon laches, waiver and estoppel.

E. The Plaintiff's 42 U.S.C. §1983 claim against Dr. Lineberry is also barred by "qualified immunity".

A governmental official, such as a teaching institution executive of a state university, will be entitled to immunity for discretionary actions and orders in the conduct of his or her office so long as the actions or orders do not violate clearly established statutory or constitutional rights of which a reasonable person would have knowledge. *See Stock v. Funston*, 1994 U.S. App. LEXIS 712 (9th Cir. Cal. 1994); citing *Harlow v. Fitzgerald*, 457 U.S. 800, 73 L.Ed.2d 396, 102 S. Ct. 2727 (1982); *see also Oppenheimer Industries, Inc. v. Johnson Cattle Co., Inc.*, 112 Idaho 423, 732 P.2d 661 (Idaho, 1986).

As set forth above, the Plaintiff alleges defamation of character, and retaliation, by Defendant Dr. Lineberry in an email to another professor in the College of Engineering at Idaho State University. The email in question was sent on the Idaho State University email system at 8:18 a.m. on Friday, August 1, 2008, and expressly addresses matters related to operation of the ISU College of Engineering. (*See Complaint*).

The Plaintiff's Complaint acknowledges that Dr. Lineberry was acting within the course and scope of his employment, alleging that Dr. Lineberry was acting at all times "pursuant to custom and policy derived from the official capacity delegated to him by ISU, and is being sued in both his individual and representative capacities." (*See Complaint*).

Dr. Lineberry's actions were not done in violation of clear constitutional rights of which a reasonable person would have knowledge because the Plaintiff's speech was not constitutionally

protected speech.⁵ Additionally, the email was not directed to Sadid. Finally, the email is not evidence of retaliation because Dr. Lineberry held no position of authority over the Plaintiff. (See Exhibit "1" at Vol. III, pg. 349, ln. 7-25; pg. 350, ln. 1-25; pg. 351, ln. 1-25; pg. 352, ln. 1-22). As such, Defendant Dr. Lineberry's alleged retaliation for the Plaintiff speaking out on matters of public concern in violation of 42 U.S.C. §1983 is precluded by qualified immunity and the claim should be dismissed.

F. The Plaintiff's defamation claim is barred by the Idaho Tort Claims Act.

The Plaintiff's defamation claim is an action governed by the Idaho Tort Claims Act as it involves an intentional tort against a university and its employee.⁶

1. The Plaintiff's defamation claim is barred by the ITCA because he failed to file a Notice of Tort claim prior to filing suit.

In *Madsen v. Idaho Dep't. of Health and Welfare*, 116 Idaho 758, 779 P.2d 433 (Id. App. 1989), the Idaho Court of Appeals upheld the district court's dismissal of the plaintiff's suit against the Department of Health and Welfare because the action was not preceded by the filing of a notice of tort claim. The court in that case noted that the "Idaho Supreme Court has consistently interpreted the language of I.C. §6-908 that no claim or action shall be "allowed"- - to mean that compliance with the notice requirement of the Tort Claims Act is a **mandatory condition precedent** to bringing an action under the act". See *Id.* at 761, 436; citing *McQuillen v. City of Ammon*, 113 Idaho 719, 747 P.2d 741 (1987); *Overman v. Klein*, 103 Idaho 795, 654

⁵As the speech was done in performance of his official duties and not as a citizen, the Plaintiff's speech is not constitutionally protected. See *Garcetti v. Ceballos*, 547 U.S. 410, 126 S.Ct. 1951, 164 L.Ed.2d 689 (2006).

⁶See *White v. University of Idaho*, 115 Idaho 564, 768 P.2d 827 (1989).

P.2d 888 (1982); *Smith v. City of Preston*, 99 Idaho 618, 586 P.2d 1062 (1978); *Independent School Dist. of Boise v. Callister*, 97 Idaho 59, 539 P.2d 987 (1975); *Newlan v. State*, 96 Idaho 711, 535 P.2d 1348, *appeal dismissed*, 423 U.S. 993, 96 S.Ct. 419, 46 L.Ed.2d 367 (1975).

The Plaintiff filed this suit on September 29, 2008. The Plaintiff's Notice of Tort Claim was not filed until December 2, 2008.⁷ As the Plaintiff failed to comply with the ITCA by filing a Notice of Tort Claim before filing suit, his defamation claim must be dismissed as a matter of law.

2. Additionally, the Plaintiff's defamation claim is barred by "intentional tort immunity" set forth in I.C. §6-904(3).

Although the Plaintiff's failure to comply with the notice requirements of the ITCA disposes of his defamation claim in its entirety, an alternate ground for dismissal is found in the "intentional tort immunity" statute; namely, I.C. §6-904(3). This statute provides that a governmental entity and its employees while acting within the course and scope of employment and without malice or criminal intent shall not be liable for any claim which arises out of assault, battery, false imprisonment, false arrest, malicious prosecution, abuse of process, **libel**, slander, misrepresentation, deceit, or interference with contract rights. *See also Oppenheimer Industries, Inc. v. Johnson Cattle Co., Inc.*, 112 Idaho 423, 732 P.2d 661 (Idaho, 1986). As the Plaintiff's claim is for the intentional tort of defamation, Plaintiff's claim is precluded by intentional tort immunity under I.C. §6-904(3).⁸

⁷See Exhibit "9" to the Affidavit of John A. Bailey, Jr. filed herewith.

⁸See also *White v. University of Idaho*, 115 Idaho 564, 768 P.2d 827 (1989)(wherein the Idaho Court of Appeals upheld the District Court's grant of summary judgment to defendant University on tort claim pursuant to I.C. §6-904(3) as it had no liability for a claim that arose out of an intentional battery committed by its employee).

3. As Dr. Lineberry's email is not defamatory, the Plaintiff's defamation claim is also invalid and should be dismissed.

The email sent by Dr. Lineberry on August 1, 2008 was not defamatory. The email stated Dr. Lineberry's opinion that the Plaintiff had thrown a "tirade" and that he was a "nutcase" who "cannot help himself". (See Exhibit B to the Complaint). See *Rubenstein v. Univ. of Wis. Bd. of Regents*, 422 F. Supp. 61 (E.D. Wis. 1976) (wherein court held that calling assistant professor "old biddy" and commenting that she was just out to make trouble was not defamatory).

Although the comments made by Dr. Lineberry were not complimentary, they do not tend to harm the reputation of the Plaintiff as to lower his estimation of the community or to deter third persons from associating or dealing with him. The comments were not made to the general community and so could not lower its estimation of the Plaintiff. The Plaintiff admitted that he only knew of two individuals receiving this email; namely, Dr. Bennion and Dr. Imel, and that Dr. Bennion didn't believe the statements in the email and that he had no idea whether Dr. Imel believed the statements because he had never talked to him about it. (See Exhibit "1" to the Affidavit of John A. Bailey, Jr. at Vol. 3, pg. 354, ln. 24-25; pg. 355, ln. 1-5; pg. 356, ln. 18-25; pg. 357, ln. 1-25; pg. 358, ln. 1-20; pg. 359, ln. 20-25). It is significant to note that, the Plaintiff disseminated this email to upper administration himself. (*Id.* at pg. 359, ln. 20-25). Most critical, however, is the Plaintiff's acknowledgment that he is unaware of anyone's opinion of him being adversely affected by this email. (*Id.* at 359, ln. 14-19). As the comments of Dr. Lineberry are not defamatory, the Plaintiff's defamation claim also fails as a matter of law.

G. The Plaintiff's contract claim is time barred.

The applicable statute of limitation in Idaho on a written contract is five years. See I.C.

5

§5-216. The Plaintiff alleges that ISU breached his employment contract by failing to perform annual performance evaluations. Even if ISU had an obligation under its policies and procedures to conduct annual performance evaluations for tenured faculty members, which it did not, the Plaintiff knew that ISU had failed to conduct an annual performance evaluation as early as 2001. The Plaintiff believed that salary increases were tied to yearly reviews, and therefore, knew as early as 2001 that he may not receive an adequate salary increase. In fact, the Plaintiff's salary remained the same from 2002 until 2004. (See Exhibit 4 at bates page 237). As such, the Plaintiff's contract claim accrued in 2001 when he knew the evaluation had not been done, or at the latest in 2002 when his salary was not increased. The Plaintiff's suit was not filed until 2008 and, therefore, his contract claim is time barred by either accrual date.

H. The Plaintiff's contract claim is invalid as there is no evidence of breach or damages resulting from alleged breach.

The Plaintiff's contract claim is premised upon his unfounded assertion that ISU had a contractual duty to perform annual performance evaluations and that, because these evaluations were not performed, he was denied customary salary increases and the Chair position.

The Plaintiff has no evidence to show that he had received notice that he was to receive a salary increase based upon the results of the performance reviews conducted under ISU's policies or the amount of a salary increase. Nothing in the ISU Faculty Handbook indicates that performance evaluations of tenured faculty members are tied to salary increases. The Plaintiff has no evidence that he was told that he would receive a particular increase dependent upon the outcome of his performance evaluations. As such, he may have had a unilateral expectation for some level of pay increases, but that expectation was not part of his contract with ISU.⁹

⁹(See *Swartz v. Scruton*, 1991 U.S. Dist. LEXIS 20263 (S.D. Ind. 1991)(wherein the court noted that "there is no 'liberty' or 'property' interest in procedures themselves and, therefore, a plaintiff cannot have a property interest in the procedures set out in the salary guidelines, he is not entitled to due process if those

Similarly, nothing in the ISU Faculty Handbook indicates that the Chair position that the Plaintiff wanted is automatically awarded internally upon the unanimous vote of the faculty. The Faculty Handbook clearly leaves the Chair position decision to the Dean, subject to approval by the President and Vice President in the “best interests of departmental harmony and productivity”. (See excerpts from Faculty Handbook attached as Exhibit “5” to the Affidavit of Counsel). Just as the Plaintiff had no entitlement to annual performance reviews or review-based salary increases, he had no entitlement to the department Chair position under his contract with ISU. As the Plaintiff is unable to show that ISU breached the employment contract with respect to performance evaluations required for tenured faculty members, certain pay increases, or the Chair position which he sought, the Plaintiff’s contract claim fails as a matter of law.¹⁰

I. The Plaintiff’s contract claims are precluded by laches, waiver and estoppel because he failed to follow the grievance procedures set forth in the Faculty Handbook.

Even if the Plaintiff had an expectation that ISU would follow the policies in the Faculty Handbook, the Plaintiff had an obligation under the express terms of his employment contract to follow the policies and procedures of the Faculty Handbook. (See Exhibit “5” to the Affidavit of Counsel). The Plaintiff’s contract claims against ISU for abridgement of its policies in the Faculty Handbook are not well taken, and should be precluded by the equitable doctrines of

procedures are not followed. The most which a plaintiff may be able to claim is that a state law contract right to have those procedures followed was violated”).

¹⁰To the extent that the Plaintiff is relying upon the alleged nonperformance of obligations under the contract to prove his retaliation claim, he is unable to make-out a prima facie case of retaliation because he cannot establish the causal link between the alleged adverse employment action-reduced annual raises in years subsequent to the “protected speech”. The records show that the Plaintiff received variable salary increases before the speech and after and, therefore, fails to show that the lack of “customary” salary increases were the result of retaliation against him for speaking out. See *Ghirardo v. Univ. of S. Cal.*, 156 Fed. Appx. 914 (9th Cir. Cal. 2005)(wherein court found that plaintiff failed to make out prima facie case of retaliation as the plaintiff received consistently low annual raises before her protected activity and after as well).

laches, waiver and estoppel, because the Plaintiff abandoned the contract by failing to file a grievance as required by Section V of the Faculty Handbook. By failing to follow the policies and procedures of the Faculty Handbook by taking advantage of the administrative grievance procedures so that his concerns could be addressed early on, and instead letting years go by wherein additional alleged "violations" by ISU mounted in the Plaintiff's mind, the Plaintiff should be precluded from relying upon the Faculty Handbook as a basis for his contract claims under the equitable doctrines of laches, waiver and estoppel.

IV.

CONCLUSION

Based upon the Defendants' Motion for Summary Judgment, the Affidavit of Counsel, and the points and authorities herein, Defendants respectfully move the Court for its Order granting summary judgment on all of the Plaintiff's claims.

DATED this 11 day of September, 2009

RACINE, OLSON, NYE, BUDGE
& BAILEY, CHARTERED


By: 
JOHN A. BAILEY, JR.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 11 day of September, 2009, I served a true and correct copy of the above and foregoing document to the following person(s) as follows:

Sam Johnson
JOHNSON & MONTELEONE, L.L.P.
405 South Eighth Street, Suite 250
Boise, Idaho 83702

- U. S. Mail
- Postage Prepaid
- Hand Delivery
- Overnight Mail
- Facsimile (208) 947-2424



JOHN A. BAILEY, JR.

ORIGINAL

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FILED
BANNOCK COUNTY
CLERK OF THE COURT
2009 SEP 28 PM 2:42
BY [Signature]
DEPUTY CLERK

Attorney for Defendants

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO IN AND FOR THE COUNTY OF BANNOCK

HABIB SADID, an individual,)
)
Plaintiff,)
)
vs.)
)
IDAHO STATE UNIVERSITY,)
MICHAEL JAY LINEBERRY, and)
JOHN/JANE DOES I THROUGH X,)
whose true identifies are presently)
unknown,)
)
Defendants.)
_____)

Case No. CV 2008-3942-OC

**MEMORANDUM IN OPPOSITION
TO PLAINTIFF'S MOTION TO
AMEND COMPLAINT**

COME NOW, Defendants Idaho State University and Michael Jay Lineberry, by and through counsel, and submit their Memorandum in Opposition to Plaintiff's Motion to Amend Complaint as follows:

I.

INTRODUCTION

The Plaintiff filed suit against Defendants Idaho State University, Dr. Michael J. Lineberry, and John Does I through X, on September 29, 2008. Now, a year later, after completion of

substantial discovery in this case, and only after Defendants filed their Motion for Summary Judgement, the Plaintiff seeks to amend his complaint to add several new party Defendants on his 42 U.S.C. §1983 claim, and he seeks to expand his 42 U.S.C. §1983 claim against all named Defendants, without providing any binding legal authority or legitimate reasons why his proposed amendments to the complaint should be allowed at this late stage.¹ The improper timing of this proposed amendment is demonstrated by the fact that it comes after the date originally set for the trial of this matter by Judge McDermott.

Specifically, the proposed amended complaint attempts to add the following new party Defendants on the Plaintiff's alleged 42 U.S.C. §1983 unconstitutional retaliation claim: (1) Robert Wharton (as former Provost and Vice President for Academic Affairs), (2) Jay Kunze (as former Dean of College of Engineering), (3) Manoochehr Zoghi (as former Chair of Dept. of Civil and Environmental Engineering), (4) Richard Jacobsen (as Dean of College of Engineering), (5) Gary Olson (as Provost and Vice President of Academic Affairs), and, (6) Arthur Vailas (as President).²

Not only is the Plaintiff's unconstitutional retaliation claim against newly named Defendants premised upon their purported "concerted action" to violate his First Amendment rights, but the Plaintiff's newly expanded unconstitutional retaliation claim is also against all named Defendants

¹The Plaintiff's Motion to Amend, which is unsupported by a legal memorandum or affidavit testimony, merely points to I.R.C.P. 7(b)(1) and 15(a) as grounds for relief. The Plaintiff claims that the motion is based upon his "legal need to identify and include additional party Defendants due to discovery which has ensued to date and based upon recent developments with ISU". The Plaintiff ignores that newly proposed party Defendants, Dr. Jacobsen, Dr. Wharton, and Dr. Kunze, were each identified in his original complaint and inexplicably omitted by the Plaintiff from the original suit. Further, the Plaintiff makes no reference to information developed in discovery which somehow justifies the proposed amendments to his complaint.

²The Plaintiff's proposed First Amended Complaint and Demand for Jury Trial generally alleges that these newly named Defendants acted, "at all relevant times", to violate the Plaintiff's constitutional rights. The Plaintiff's proposed amended pleading is nothing more than conclusory allegations made with no reference as to specific time or specific conduct of Defendants which actually caused him harm. No particular policy, custom, or concerted action by Defendants to harm the Plaintiff is alleged or detailed.

for their alleged “concerted action” to violate the Plaintiff’s Fifth, Seventh, and Fourteenth Amendment rights. Essentially, the Plaintiff is advancing a new unconstitutional retaliation theory based upon his recent administrative suspension from employment with ISU. Further, the Plaintiff is now arguing that, not only were Defendants’ actions done because of his “protected speech”, but also because he exercised his right to demand a jury trial in this case.³ As will be outlined below, the Plaintiff’s motion to amend his complaint to add new party Defendants and to expand his 42 U.S.C. §1983 claim should be denied as the motion is untimely, futile, and unduly prejudicial to all Defendants.

II.

STANDARD UNDER I.R.C.P. 15

The primary rules governing Plaintiff’s motion to amend are Idaho Rules of Civil Procedure 15(a) and 15 (c), which rules provide as follows:

Rule 15(a). Amended and supplemental pleadings— Amendments.

A party may amend the party’s pleading once as a matter of course at any time before a responsive pleading is served or, if the pleading is on to which no responsive pleading is permitted and the action has not been placed upon the trial calendar, the party may so amend it at any time within twenty (20) days after it is served. Otherwise a party may amend a pleading only by leave or court or by written consent of the adverse party; and leave shall be freely given when justice so requires, and the court may make such order for the payment of costs as it deems proper. A party shall plead in response to an amended pleading within the time remaining for response to the original pleading or within ten (10) days after service of the amended pleading, whichever period may be longer, unless the court otherwise orders.

³ The Plaintiff makes this unsupported allegation, despite the fact that Dr. Wharton and Dr. Kunze had absolutely no involvement in the Plaintiff’s recent administrative suspension. Dr. Wharton is no longer working for ISU and Dr. Kunze is no longer the Dean of the College of Engineering for ISU. Further, the Plaintiff alleges no specific facts showing that the newly named Defendants had knowledge of his so-called “protected speech”, the fact that the Plaintiff had filed suit, or that the Plaintiff had requested a jury trial in this case.

Rule 15 (c). Relation back of amendments.

Whenever the claim or defense asserted in the amended pleading arose out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading, the amendment relates back to the date of the original pleading. An amendment changing the party against whom a claim is asserted relates back if the foregoing provision is satisfied and, within the period provided by law for commencing the action against the party, the party to be brought in by amendment (1) has received such notice of the institution of the action that the party will not be prejudiced in maintaining a defense on the merits, and (2) knew or should have known that, but for a mistake concerning the identify of the proper party, the action would have been brought against the party. The relation back of an amendment joining or substituting a real party in interest shall be as provided in Rule 17(a). The delivery or mailing of process to the Idaho attorney general or designee of the attorney general, or an agency or officer who would have been a proper defendant if named, satisfies the requirement of clauses (1) and (2) hereof with respect to the state of Idaho or any agency or officer thereof to be brought into the action as a defendant.

The language “within the period provided by law for commencing the action” set forth in I.R.C.P. 15(c) means before the expiration of the applicable statute of limitation. *Winn v. Campbell*, 145 Idaho 727, 184 P.3d 852 (2008); *see also Wait v. Leavell Cattle*, 136 Idaho 792, 41 P.3d 220 (2001). Application of the relation-back provisions of I.R.C.P. 15 (c) should not be governed solely by whether the amendment avoids statute of limitation problems. Rather the focus should be upon whether the non-amending party has notice of a claim against it within the limitation of action period and whether the non-amending party would be prejudiced by any changes in the pleadings. *Herrera v. Conner*, 111 Idaho 1012, 729 P.2d 1075 (Id. App. 1987).

The trial court’s decision to deny a motion to amend a pleading is discretionary. *Winn v. Campbell*, 145 Idaho 727, 184 P.3d 852 (2008); citing *Trimble v. Engelking*, 130 Idaho 300, 303, 939 P.2d 1379, 1382 (1997); *Jones v. Watson*, 98 Idaho 606, 610, 570 P.2d 284, 288 (1977). Courts should closely examine amendments sought immediately before trial, after substantial pretrial work has been completed, to determine the extent of any prejudice that would be suffered

by the opposing party if the amendment were granted. *Herrera v. Conner*, 111 Idaho 1012, 729 P.2d 1075 (Id. App. 1987).

In determining whether an amended complaint should be allowed, where leave of court is required, the court may consider whether the new claims proposed to be inserted into the action state a valid claim. *Black Canyon Racquetball Club, Inc. v. Idaho First Nat'l Bank*, 119 Idaho 160, 804 P.2d 900 (1991). If an amended pleading does not set out a valid claim, or if the opposing party would be prejudiced by the delay in adding the new claim, or if the opposing party has an available defense such as a statute of limitations, it is not an abuse of discretion for the trial court to deny the motion to file the amended complaint. *Id.*

III.

ARGUMENT

Although the Plaintiff has moved for relief under I.R.C.P. 15(a), he actually wishes to avail himself of the relation-back doctrine to bring new party Defendants into this case and to expand upon his unconstitutional retaliation claim under 42 U.S.C. §1983, after the statute of limitation has expired on his claim and despite the fact that he is unable to satisfy any of the critical requisites of I.R.C.P. 15(c).

A. The Plaintiff Has Failed To Show That His Unconstitutional Retaliation Claims Set Forth In The Proposed Amended Complaint Meet The First Requirement Of I.R.C.P. 15(c); Namely, That The Claims Arose Out Of The Same Conduct, Transaction, Or Occurrence Set Forth In The Original Complaint.

The Plaintiff has failed to establish that his new unconstitutional retaliation claims set forth in the proposed First Amended Complaint and Demand for Jury Trial arose out of the same

conduct, transaction, or occurrence set forth in the original complaint.⁴ Rather, it is clear from the Plaintiff's deposition testimony, his original complaint, and his proposed amended complaint, that the alleged retaliatory actions of Defendants were distinct, isolated, and remote actions, purportedly done in violation of the Plaintiff's constitutional rights over a period spanning eight (8) years and by members of two different academic administrations with entirely different decision-makers and officials of ISU, who generally did not work together and often did not even know each other.

Specifically, the Plaintiff cites the following unrelated acts of Defendants, which he attributes to his exercise of "protected" speech and/or his request for a jury trial in this case: (1) Dean Kunze's placement of an "unfavorable" performance evaluation in his file in 2001⁵ and Dean Kunze's failure to perform annual performance evaluations⁶; (2) Provost Wharton's decision not to appoint him as the Chair of the College of Engineering, and to instead open the position for a national search, in August of 2006⁷; (3) Dr. Lineberry's "defamatory" email in

⁴The Plaintiff's proposed First Amended Complaint and Demand for Jury Trial generally alleges that "Defendants, through their concerted actions, systematically, and by design, pattern, and practice have **continually** retaliated against him" for his speech. The Plaintiff's proposed amended pleading is nothing but a thinly veiled attempt to avoid the statute of limitation by characterizing, without factual support actions of Defendants as continuing violations. *See Samuel v. Michaud*, 980 F. Supp. 1381 (D. Idaho 1996)(simply characterizing claims as continuing violations is insufficient to defeat the statute of limitation. *Id.*; citing *Singleton v. City of New York*, 632 F.2d 185, 192 (2d Cir. 1980), cert denied, 450 U.S. 920, 67 L.Ed. 2d 347, 101 S.Ct. 1368 (1981).

⁵To avoid redundancy and duplicate pleadings, *see* Exhibit "1" to the Affidavit of Counsel in Support of Motion for Summary Judgment on file herein at Vol. 1, pg. 134, ln. 19-22.

⁶*See* Complaint.

⁷*Id.*

August of 2008⁸; (4) Dr. Zoghi's "falsely accusatory" letter in April of 2009⁹; (5) Dean Jacobsen's "outlandish" notice of intent to have the Plaintiff dismissed from ISU in May of 2009¹⁰; (6) Provost Olson's letter of reprimand in July of 2009¹¹; and, (7) President Vailas' notification that Plaintiff was being placed on administrative leave in August of 2009¹².

The Plaintiff's mere assertion that the above actions were done in furtherance of some unarticulated conspiracy or policy of Defendants to deprive the Plaintiff of his First, Fifth, Seventh, and Fourteenth Amendment rights is simply insufficient to meet the first requirement of I.R.C.P. 15(c).¹³ The Plaintiff has articulated no set of facts establishing an official policy or custom of Defendant ISU, or conspiracy of Defendants, which caused him to suffer injury in either the Amended Complaint or the Motion. Instead, the Plaintiff's vague pleading minimally asserts "continuous and concerted actions" by Defendants to retaliate against him".¹⁴ Thus, these allegations are fatally vague and insufficient to allow amendment of the Complaint.

Other than the Plaintiff's self-serving belief that the actions of Defendants were concerted and continuous retaliatory actions, there is no evidence supporting the Plaintiff's theory. The alleged actions were not even undertaken by a cohesive group, but instead, by members of two

⁸*Id.*

⁹*See* proposed First Amended Complaint.

¹⁰*Id.*

¹¹*Id.*

¹²*Id.*

¹³It is only when execution of a body politic's policy, or custom, inflicts the injury that the body politic can be found responsible under 42 U.S.C. §1983. *See Monell v. Dep't. of Soc. Servs.*, 436 U.S. 658, 98 S.Ct. 2018, 56 L.Ed. 2d 611 (1978).

¹⁴*See* Paragraph 15 of Complaint on file herein and Paragraph 27 of the proposed amended complaint.

unrelated academic administrations for ISU, over a significantly extended period of time. As the Plaintiff is unable to satisfy the threshold requirement of I.R.C.P. 15(c), the proposed amendments to the Plaintiff's complaint should not be allowed.

B. The Plaintiff Has Failed To Show That He Has Satisfied The Second Requirement Of I.R.C.P. 15(c); Namely, That He Gave Notice Of This Action To Newly Named Defendants Within The Limitation Period.

The Plaintiff's failure to give notice of this action to Dr. Robert Warton, Dr. Jay Kunze, Dr. Manoochehr Zoghi, Dr. Richard Jacobsen, Dr. Gary Olson, or Dr. Arthur Vailas, within the limitation period precludes application of the relation-back doctrine and the sought amendments to his complaint. *See Damian v. Estate of Pina*, 132 Idaho 447, 974 P.2d 93 (Id. App. 1999); *see also Noreen v. Price Dev. Co.*, 135 Idaho 816, 25 P.3d 129 (Id. App. 2001).

As detailed in Defendants' Memorandum in Support of Motion for Summary Judgment, which summary judgment motion is pending before the Court on a number of grounds and is scheduled to be heard on October 13, 2009, the Plaintiff's unconstitutional retaliation claim under 42 U.S.C. § 1983 is time barred by Idaho's two year statute of limitation. *See Idaho State Bar v. Tway*, 128 Idaho 794, 919 P.2d 323 (Idaho, 1996); *see also Henderson v. State*, 110 Idaho 308, 715 P.2d 978 (Idaho, 1986); *Samuel v. Michaud*, 980 F. Supp. 1381 (D. Idaho 1996).

The Plaintiff's own deposition testimony shows that he knew of his alleged injury, and believed he had been retaliated against for exercising his First Amendment right to free speech, as early as July 9, 2001 when he received and signed what he perceived to be an unfavorable evaluation performed by Dr. Kunze.¹⁵ The Plaintiff testified that the placement of this evaluation

¹⁵See Exhibit "1" to the Affidavit of Counsel in Support of Motion for Summary Judgment on file herein at Vol. 1, pg. 134, ln. 19-22.

in his personnel file for anyone reviewing it to see was the beginning of his injury. Further, based upon the Plaintiff's original complaint, the latest he believed that he was retaliated against and was injured for exercising his First Amendment right to free speech was on August 24, 2006 when he was denied the Chair position by Dr. Wharton and when Wharton made the decision to open the position up for a national search.¹⁶ Therefore, the statute of limitation on Plaintiff's 42 U.S.C. §1983 unconstitutional retaliation claim has long ago expired, in July, 2003.¹⁷

The Plaintiff is unable to demonstrate that he provided notice of this action to the newly named Defendants on or before August 24, 2008, the very latest possible end of the limitation period. As such, the Plaintiff's failure to satisfy the timely notice requirement of I.R.C.P. 15(c) on his unconstitutional retaliation claim renders his attempt to add new party Defendants on this claim futile, and the motion to amend should be denied.

C. The Plaintiff Has Failed To Show That The Sought Amendments Will Not Be Unduly Prejudicial And, Therefore, The Plaintiff Has Not Met The Third And Final Requirement Of I.R.C.P. 15(c).

The Plaintiff has failed to satisfy the final requisite of I.R.C.P. 15(c); specifically, that Defendants will not be prejudiced by the amendments or that the newly named Defendants knew

¹⁶See Complaint on file herein; *see also* Memorandum in Support of Motion for Summary Judgment at Pg. 6-7.

¹⁷The Plaintiff's shifting arguments on the motivations behind the Defendants' allegedly retaliatory actions best shows how tenuous his 42 U.S.C. §1983 claim is against these Defendants. The Plaintiff has attributed retaliatory actions of all Defendants to his 2001 and 2003 speech, without showing that any knew of his speech in the first instance. Further, the Plaintiff prior to suit claimed that he was retaliated against due to his national origin in his EEOC charge. When the Plaintiff realized his unconstitutional retaliation claim was time barred, he suddenly claimed that Defendants' actions were also for his request to have a jury trial, again, without setting forth facts showing Defendants knew about this action in the first place. It is readily apparent that the Plaintiff is trying to shape his claims in efforts to get around the statute of limitation.

or should have known that, but for the Plaintiff's mistake, they would have been named as parties initially.

The fact is, the Plaintiff's proposed amendments to his complaint, which come after substantial discovery has been done, including two (2) separate depositions of the Plaintiff, are highly prejudicial to Defendants in maintaining a defense on the merits. If the amendments are allowed, the newly named Defendants will be forced to re-do depositions and conduct other discovery to ensure that their interests are protected on Plaintiff's futile claims, which will only cause wasted time and increased litigation expenses for existing and newly named Defendants. This should not be permitted under the circumstances, for each of the following reasons:

1. The Plaintiff's Failure To Include The New Defendants In His Original Complaint Was Not Based Upon Mistake.

The Plaintiff's failure to include the newly named Defendants as parties to his original complaint was not based upon his mistake, which mistake was somehow uncovered in discovery. Rather, examination of the Plaintiff's original allegations on his 42 U.S.C. §1983 claim for violation of First Amendment rights shows that these allegations were aimed directly at Dr. Wharton, Dr. Kunze, and Dr. Jacobsen, yet the Plaintiff inexplicably failed to file suit against these newly named Defendants within the limitation period. Without any legitimate reason, the Plaintiff simply failed to notify any of these individuals of this action within the limitation period as required by I.R.C.P. 15(c), thereby prejudicing them in their defense of this action.

2. The Plaintiff Has Not Stated A Valid Claim Against Any Of The Newly Named Defendants For Violation Of His First Amendment Rights.

The Plaintiff has failed to state a valid claim against newly named Defendants for violation of his First Amendment rights and, therefore, his proposed amendment is futile. Even

if the Plaintiff's comments could be viewed as touching on matters of public concern, it is undisputed that he made his statements pursuant to his official duties as a professor for ISU and not as a private citizen. All of the Plaintiff's so-called "protected speech" cited in his complaint surrounded topics such as ISU's "secret" plan to merge the College of Technology with the College of Engineering and the Plaintiff's opposition thereto, or the Plaintiff's criticism of the University and his intent to hold an informal Vote of No Confidence in the administration. The Plaintiff's comments on these topics were undeniably made not as a citizen, but pursuant to the Plaintiff's official duties as a professor.¹⁸ Defendants should not be forced to defend against this invalid claim and the proposed amendment should be denied.

3. The Plaintiff Has Failed To State A Valid Claim Against Defendants On His Expanded 42 U.S.C. §1983 Claim Related To His Administrative Suspension.

The Plaintiff's attempt to expand upon his 42 U.S.C. §1983 claim for his recent administrative suspension by ISU is improper, highly prejudicial, and should not be permitted. This new unconstitutional retaliation theory is not even ripe against any of the named Defendants. The Plaintiff has failed to complete the administrative grievance procedures which he has initiated with ISU under his employment contract and, therefore, none of the Defendants should be forced to litigate this issue at this time. This is particularly true because the newly

¹⁸The United States Supreme Court recently made clear that the First Amendment does not prohibit managerial decisions based upon an employee's expressions made pursuant to official responsibilities rather than as a private citizen. *See Garcetti v. Ceballos*, 547 U.S. 410, 126 S.Ct. 1951, 164 L.Ed.2d 689 (2006). *See also Hong v. Grant*, 516 F.Supp. 2d 1158 (C.D. Cal. 2007)(wherein the United States District Court for the Central District of California granted University and individual officials and administrators' motion for summary judgment in plaintiff professor's 42 U.S.C. §1983 action alleging he was the victim of illegal retaliation for exercising his right to free speech, finding that the professor's speech was not protected as it was made pursuant to his official duties as a faculty member and that the speech did not even involve a matter of public concern).

named Defendants are not parties to the grievance process and are unable to cross-examine the Plaintiff in that process on matters he is attempting to raise against them in this case.

More importantly, however, is the fact that this new theory is not yet even actionable, if it ever will be. An administrative suspension with pay does not implicate the Plaintiff's property interest as a public employee. *See Stearns-Groseclose v. Chelan County Sheriff's Dep't.*, 2006 U.S. Dist. LEXIS 4496 (E.D. Wash. 2006); citing *Cleveland Bd. of Ed. v. Loudermill*, 470 U.S. 532, 544-545, 105 S.Ct. 1487, 84 L.Ed.2d 494 (1985) (stating that a due process violation arising from an employer's inability to keep an employee at work to afford him an opportunity to respond prior to termination due to "significant hazards" could be avoided by "suspending with pay"); *see also Hicks v. City of Watonga, Okla.*, 942 F.2d 737, 746 n. 4 (10th Cir. 1991) ("suspension with pay does not raise due process concerns"); *Pitts v. Board of Education*, 869 F.2d 555, 556 (10th Cir. 1989) (suspension of public employee with pay does not infringe any measurable property interest). As the Plaintiff has been suspended with pay, he cannot sustain an action for any damages and no due process violation can be said to have occurred. Thus, this amendment is futile.

Where it is clear that Defendants will be unduly prejudiced if they are forced to defend against the Plaintiff's proposed new 42 U.S.C. §1983 claim, which claim is premature and futile, the motion to amend to include this theory and new Defendants on this claim should be denied.

4. The Plaintiff's 42 U.S.C. §1983 Claims Against Newly Named Defendants Are Precluded By Qualified Immunity.

A governmental official, such as a teaching institution executive of a state university, will be entitled to immunity for discretionary actions and orders in the conduct of his or her office so

long as the actions or orders do not violate clearly established statutory or constitutional rights of which a reasonable person would have knowledge. *Lamb v. University of Hawaii*, 1998 U.S. App. LEXIS 10775 (9th Cir. Haw. 1998); *Hong v. Grant*, 516 F.Supp. 2d 1158 (C.D. Cal. 2007); *Desyllas v. Bernstine*, 351 F.3d 934 (9th Cir. Or. 2003); *Harlow v. Fitzgerald*, 457 U.S. 800, 73 L.Ed.2d 396, 102 S. Ct. 2727 (1982); *Oppenheimer Industries, Inc. v. Johnson Cattle Co., Inc.*, 112 Idaho 423, 732 P.2d 661 (Idaho, 1986).¹⁹

The Plaintiff's proposed amended complaint acknowledges that the newly named Defendants were acting in their official capacities for ISU when the alleged unconstitutional retaliation occurred.²⁰ As described above, the alleged actions of these newly named Defendants were not done in violation of clear constitutional rights of which a reasonable person would have knowledge because: (1) the Plaintiff's speech was not constitutionally protected speech²¹, (2) the Plaintiff's administrative suspension did not infringe upon his protected property interest²²; and, (3) there is no evidence that the administrative suspension had anything to do with the Plaintiff asserting his right to a jury trial because no proof exists that newly named Defendants had any

¹⁹Although the case of *Stock v. Funston*, 1994 U.S. App. LEXIS 712 (9th Cir. Cal. 1994) also supports this proposition, it must be noted that this is an unpublished opinion, and does not have precedential value, as provided under 9th Cir. R. 36-3.

²⁰See Pg. 2-3 of proposed First Amended Complaint and Demand for Jury Trial.

²¹See *Garcetti v. Ceballos*, 547 U.S. 410, 126 S.Ct. 1951, 164 L.Ed.2d 689 (2006); see also *Potera-Haskins v. Gamble*, 519 F.Supp.2d 1110 (D. Mont. 2007)(wherein qualified immunity shielded university officials from university women's basketball coach's 42 U.S.C. §1983 claim for unconstitutional retaliation as her speech was not "protected speech" because she spoke in her official capacity and not as a private citizen).

²²See *Stearns-Groseclose v. Chelan County Sheriff's Dep't.*, 2006 U.S. Dist. LEXIS 4496 (E.D. Wash. 2006); *Cleveland Bd. of Ed. v. Loudermill*, 470 U.S. 532, 544-545, 105 S.Ct. 1487, 84 L.Ed.2d 494 (1985); *Hicks v. City of Watonga, Okla.*, 942 F.2d 737, 746 n. 4 (10th Cir. 1991); *Pitts v. Board of Education*, 869 F.2d 555, 556 (10th Cir. 1989), supra.

idea of the Plaintiff's request for a jury trial in this case. As the Plaintiff is unable to show that the alleged actions undertaken by named Defendants were done in violation of his known constitutional rights, the Plaintiff's proposed claims against newly named Defendants are precluded by qualified immunity and they should not be allowed.

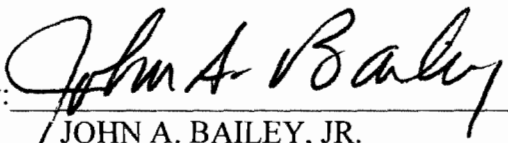
IV.

CONCLUSION

Based upon the foregoing, as well as points and authorities set forth in Defendants' Memorandum in Support of Motion for Summary Judgment and the Affidavit of Counsel in Support of Motion for Summary Judgment on file herein, Defendants respectfully move the Court to deny the Plaintiff's Motion to Amend as it is untimely, futile, and unduly prejudicial to Defendants.

DATED this 28 day of September, 2009

RACINE, OLSON, NYE, BUDGE
& BAILEY, CHARTERED


By: 
JOHN A. BAILEY, JR.

CERTIFICATE OF SERVICE

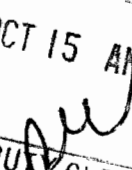
I HEREBY CERTIFY that on the 28 day of September, 2009, I served a true and correct copy of the above and foregoing document to the following person(s) as follows:

Sam Johnson
JOHNSON & MONTELEONE, L.L.P.
405 South Eighth Street, Suite 250
Boise, Idaho 83702

- U. S. Mail
- Postage Prepaid
- Hand Delivery
- Overnight Mail
- Facsimile (208) 947-2424



JOHN A. BAILEY, JR.

FILED
BANNOCK COUNTY
CLERK OF THE COURT
2009 OCT 15 AM 11:59
BY 
DEPUTY CLERK

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Idaho State Bar No. 4777

Attorneys for Plaintiff

**IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT FOR THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK**

ORIGINAL

HABIB SADID, an individual,

Plaintiff,

v.

IDAHO STATE UNIVERSITY, ROBERT
WHARTON, JAY KUNZE, MICHAEL
JAY LINEBERRY, MANOCHEHR
ZOGHI, RICHARD JACOBSEN, GARY
OLSON, AUTHUR VAILAS and
JOHN/JANE DOES I through X, whose
true identities are presently unknown,

Defendants.

Case No. CV 2008-3942OC

**FIRST AMENDED COMPLAINT AND
DEMAND FOR JURY TRIAL**

COMES NOW Plaintiff, Habib Sadid, by and through his attorney of record, Sam Johnson, of the law firm of Johnson & Monteleone, L.L.P., and for causes of action against the above-named Defendants complains and alleges as follows:

PARTIES, JURISDICTION AND VENUE

1. Plaintiff, Habib Sadid, Ph.D., PE, is now, and at all relevant times herein was a Tenured Faculty member and Full Professor with the College of Engineering at Idaho State University, located in the city of Pocatello, Idaho. Professor Sadid currently resides in Pocatello, Bannock County, Idaho.

2. Defendant Idaho State University (hereinafter "ISU"), is now, and at all relevant times herein was, a "body politic and corporate, with its own seal and having power to sue and be sued in its own name" (*See Idaho Code § 33-3003*) and is now and at all relevant times herein "was established in the city of Pocatello, Idaho, an institution of higher education to be designated and known as the Idaho State University, consisting of such colleges, schools or departments as may from time to time be authorized by the state board of education." *See Idaho Code § 33-3001.*

3. Defendant Robert Wharton, at relevant times herein, held the position of Provost and Vice President for Academic Affairs for ISU, and while in his official capacity acted under color of law, regulation, custom or policy in a manner which caused Plaintiff to suffer from the deprivation of rights, privileges, or immunities secured to Plaintiff by the United States Constitution and the Constitution of the State of Idaho, and is being sued in his individual and representative capacities.

4. Defendant Jay Kunze, at relevant times herein, held the position of Dean for the College of Engineering for ISU, and while in his official capacity acted under color of law, regulation, custom or policy in a manner which caused Plaintiff to suffer from the deprivation of rights, privileges, or immunities secured to Plaintiff by the United States

Constitution and the Constitution of the State of Idaho, and is being sued in his individual and representative capacities.

5. Defendant Michael Lineberry, is now, and at all relevant times herein was acting pursuant to custom and policy derived from the official capacity delegated to him by ISU, and is being sued in both his individual and representative capacities.

6. Defendant Manoochehr Zoghi, at relevant times herein, has held and does currently hold the position of Chair of Department of Civil and Environmental Engineering for ISU, and while in his official capacity acted under color of law, regulation, custom or policy in a manner which caused Plaintiff to suffer from the deprivation of rights, privileges, or immunities secured to Plaintiff by the United States Constitution and the Constitution of the State of Idaho, and is being sued in his individual and representative capacities.

7. Defendant Richard Jacobsen, at relevant times herein, has held and does currently hold the position of Dean for the College of Engineering for ISU, and while in his official capacity acted under color of law, regulation, custom or policy in a manner which caused Plaintiff to suffer from the deprivation of rights, privileges, or immunities secured to Plaintiff by the United States Constitution and the Constitution of the State of Idaho, and is being sued in his individual and representative capacities.

8. Defendant Gary Olson, at relevant times herein, has held and does currently hold the position of Provost and Vice President for Academic Affairs for ISU, and while in his official capacity acted under color of law, regulation, custom or policy in a manner which caused Plaintiff to suffer from the deprivation of rights, privileges, or immunities secured

to Plaintiff by the United States Constitution and the Constitution of the State of Idaho, and is being sued in his individual and representative capacities.

9. Defendant Arthur Vailas, at relevant times herein, has held and does currently hold the position of President for ISU, and while in his official capacity acted under color of law, regulation, custom or policy in a manner which caused Plaintiff to suffer from the deprivation of rights, privileges, or immunities secured to Plaintiff by the United States Constitution and the Constitution of the State of Idaho, and is being sued in his individual and representative capacities.

10. John/Jane Does I through X, Defendants (“the Doe Defendants”), are individuals or entities, political, corporate, or otherwise, whose true identities are unknown at the present time, but who engaged in the activities and conduct set forth herein. Alternatively, John/Jane Does I through X are entities or individuals who are now, or at the material and operative times were, the agents, employees, independent contractors, subdivisions, franchisees, wholly-owned subsidiaries, or divisions of Defendants herein, or are entities or individuals acting on behalf of, or in concert with, the individual Defendant(s) named herein.

11. The amount in controversy is greater than the sum of \$10,000.00, and this claim therefore exceeds the jurisdictional limits of the magistrate’s division and thereby satisfies the monetary prerequisites of the district court.

FACTUAL ALLEGATIONS

12. Professor Sadid has been a Tenured Faculty member and Associate Professor in the Department of Civil Engineering at ISU since 1994, and has been a Full Professor at

ISU since 1999; and, as such, Professor Sadid enjoys a property interest in his employment with ISU.

13. In his capacity as a Faculty Member and Full Professor of ISU, Professor Sadid has, from time to time, openly and publicly expressed his views embracing matters of public concern relating to ISU, and its standing in the academic and local community; these expressions constitute “protected speech”.

14. In 2001, for instance, Professor Sadid published a letter to his fellow faculty members and ISU administrators criticizing ISU’s decision to merge the College of Technology with the College of Engineering. ISU ultimately withdrew the merger plan by secretly tabling the issue for the time being.

15. In 2003, Professor Sadid spoke publicly against ISU’s renewed plan, designed in secret, to again merge the College of Engineering with the College of Technology. (A true and correct copy of the newspaper publication is appended hereto as Exhibit “A” and by this reference hereby incorporated herein). Professor Sadid has spoken openly and publicly on other matters and on other occasions relating to ISU and of importance to the academic and local community, some of such publications were likewise published in the newspaper (*see Exhibit “A”*), while others were published internally at ISU.

16. Starting in 2001 and for the next five (5) years thereafter, ISU acting through the then-Dean of Engineering, Defendant Jay Kunze, failed or refused to conduct annual performance evaluations of Professor Sadid’s work and these retaliatory practices caused Professor Sadid to suffer economic losses due to a lack of otherwise normal and customary salary increases and growth and advancement opportunities.

17. Thereafter, in August 2006, the ISU faculty by unanimous vote selected Professor Sadid as the Chair of the Department of Civil Engineering which selection was approved and ratified by the new Dean of Engineering, Defendant Jacobsen. Nonetheless, ISU acting through its Provost, Defendant Wharton, overrode the selection of Professor Sadid and instead demanded a national search be conducted by a committee chaired by two non-engineering faculty, who were hand selected by Provost Defendant Wharton. These retaliatory measures culminated in Defendant ISU's selection and appointment of an associate professor from Dayton, Ohio, to Chair of the Department of Engineering, effective July 2007. The new appointee was clearly not as qualified as Professor Sadid.

18. Defendants would not have decided to hire the associate professor from Ohio instead of Professor Sadid, unless motivated to retaliate against Professor Sadid for his use of protected speech.

19. Defendants have likewise retaliated against Professor Sadid by increasing his salary at the lowest of percentages in spite of him performing at the highest levels of academic excellence.

20. On or about August 1, 2008, ISU once again retaliated against Professor Sadid. This retaliation took the form of an e-mail published by ISU administrator, Defendant Lineberry, where Defendant Lineberry accused Professor Sadid of throwing a "tirade" and referred to him as a "nut-case" who "cannot help himself". (A true and correct copy of the above referenced e-mail is appended hereto as Exhibit "B" and by this reference hereby incorporated herein).

21. On September 29, 2008, Professor Sadid petitioned the courts for redress of his grievances and asserted his right to trial by jury by initiating this lawsuit.

22. Since filing suit on September 29, 2008, the Defendants have continued to retaliate against Professor Sadid not only for exercising his rights to freedom of speech, but have likewise retaliated against Professor Sadid for petitioning the court for redress of grievances and for asserting his right to trial by jury.

23. On or about, April 6, 2009, for example, Defendant Chair Zoghi sent a letter to Professor Sadid falsely accusing him of, *inter alia*, confronting an administrative assistant in an “accusatory” manner in an effort to tarnish the exemplary record Professor Sadid has created for himself at ISU. (A true and correct copy of the above referenced letter is appended hereto as Exhibit “C” and by this reference hereby incorporated herein).

24. Thereafter, on or about May 6, 2009, Defendant Dean Jacobsen placed Professor Sadid on notice of his intent to have Professor Sadid dismissed from ISU based upon outlandish accusations not supported by real facts. (A true and correct copy of the above referenced notice is appended hereto as Exhibit “D” and by this reference hereby incorporated herein). The outlandish nature of Defendant Dean Jacobsen’s accusations are demonstrated most positively by the contrasting performance evaluations signed by Defendant Dean Jacobsen and Defendant Chair Zoghi, praising Professor Sadid for his laudatory efforts as an outstanding and leading professor at ISU. (A true and correct copy of the above referenced performance evaluations are appended hereto as Exhibit “E” and by this reference hereby incorporated herein).

25. Thereafter, on or about July 2, 2009, Defendant Provost Olson issued Professor Sadid a “formal letter of reprimand” over alleged “transgressions of ISU’s purchasing policies.” The alleged transgressions claimed by Defendant Provost Olson, even if true,

simply did not warrant the level of disciplinary action taken against Professor Sadid. (A true and correct copy of the above referenced reprimand is appended hereto as Exhibit “F” and by this reference hereby incorporated herein).

26. Next, on August 4, 2009, Defendant President Vailas, notified Professor Sadid of Defendant Dean Jacobsen’s recommendation that Professor Sadid’s employment with ISU be terminated for “adequate cause” and Defendant Professor Vailas has now restricted Professor Sadid’s access to the ISU campus and has placed him on administrative leave. (A true and correct copy of the above referenced notification is appended hereto as Exhibit “G” and by this reference hereby incorporated herein).

27. Defendants, through their concerted actions, systematically, and by design, pattern, and practice have continually retaliated against Professor Sadid for speaking openly on matters of public concern and by doing so have impaired and violated Professor Sadid’s rights to freedom of speech guaranteed under the First Amendment to the United States Constitution, and Article 1, Sections 9 and 10 of the Constitution of the state of Idaho. The incidents of retaliation have continued to the present day.

28. Defendants have now placed Professor Sadid’s employment based property interest in jeopardy without due process by alleging arbitrary, capricious and pretextual grounds for termination in violation of the Fifth and Fourteenth Amendments to the United States Constitution and Article I, Section 13 of the Constitution of the State of Idaho.

29. The above-referenced retaliatory actions likewise stand in direct violation of Professor Sadid’s tenured contract of employment with ISU and the laws of the state of Idaho, the Rules and Governing Policies and Procedures of the State Board of Education,

and all policies and procedures of ISU and any of its departments or offices expressly incorporated therein.

30. As a direct and proximate result of the breach of the employment contract and the violations of Professor Sadid's constitutional rights, Professor Sadid has suffered direct and consequential losses and damages in amounts to be determined at trial. The losses and damages comprise both economic and non-economic harms, including impairment of reputation, personal humiliation, and injury to his mental and physical health and well being. The losses and damages are prospective in nature and will likely continue for the foreseeable future.

31. Defendants would not have retaliated against Professor Sadid but for the fact Professor Sadid chose to exercise his right to engage in protected speech.

32. A written Notice of Tort Claim has been filed in compliance with the Idaho Tort Claims Act, with the Secretary of State for the State of Idaho pursuant to Idaho Code § 6-905, and § 6-907.

33. As a direct and proximate result of the acts and omissions of Defendants, Professor Sadid has been required to retain the services of Johnson & Monteleone, L.L.P., in connection with the prosecution of this action and requests an award of attorney fees and costs incurred in the prosecution and maintenance of the instant action.

COUNT ONE – DEPRIVATION OF CONSTITUTIONAL RIGHTS
UNDER COLOR OF LAW

34. Plaintiff incorporates herein by reference all of the foregoing and following allegations of the Complaint.

35. By retaliating against Professor Sadid in the manner and under the circumstances heretofore set forth in this Complaint, Defendants have impaired and violated Professor

Sadid's rights to freedom of speech guaranteed under the First Amendment to the United States Constitution, and Article 1, Sections 9 and 10 of the Constitution of the State of Idaho and his property rights under the Fifth and Fourteenth Amendments to the United States Constitution and Article I, section 13 of the Constitution of the State of Idaho. These violations entitle Professor Sadid to relief under Title 42, Section 1983 of the United States Code, and under the Idaho Constitutional provisions cited above.

36. As a direct and proximate result of the violations of Professor Sadid's constitutional rights, Professor Sadid has suffered direct and consequential losses and damages in amounts to be determined at trial.

COUNT TWO – BREACH OF EMPLOYMENT CONTRACT AND THE COVENANT OF GOOD FAITH AND FAIR DEALING IMPLIED THEREIN

37. Plaintiff incorporates herein by reference all of the foregoing and following allegations of the Complaint.

38. A valid and binding contract of employment was formed and entered into by and between Plaintiff and Defendant ISU.

39. Defendant ISU materially breached the contract of employment and the covenant of good faith and fair dealing implied therein.

40. As a direct and proximate result of the breach of the employment contract and the covenant of good faith and fair dealing implied therein, Plaintiff has suffered direct and consequential losses and damages in amounts to be determined at trial.

COUNT THREE – DEFAMATION OF CHARACTER

41. Plaintiff incorporates herein by reference all of the foregoing and following allegations of the Complaint.

42. Defendants ISU's and Lineberry's retaliatory and slanderous affronts perpetrated against and published of and concerning Professor Sadid, with actual malice, have defamed his character and good standing in the community.

43. As a result of these libelous and defaming statements, Professor Sadid's reputation in the community, and his professional, financial, and dignitary interests have been harmed.

44. Professor Sadid is therefore entitled to recover damages in amounts to be proven at trial.

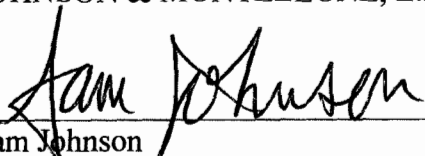
PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays judgment against Defendants as follows:

1. For Plaintiff's special and general damages in amounts which may be proven at trial;
2. For injunctive relief directing the reinstatement of Plaintiff to the position of Chair of the College of Civil Engineering or to such higher position as this Court deems just and equitable in the premises;
3. For Plaintiff's reasonable costs and attorney fees incurred herein; and
4. For such other and further relief as this Court deems just and equitable in the premises.

DATED: This 13 day of October, 2009.

JOHNSON & MONTELEONE, L.L.P.



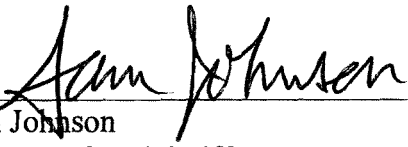
Sam Johnson
Attorneys for Plaintiff

DEMAND FOR JURY TRIAL

Pursuant to I.R.C.P. 38(b), Plaintiff hereby demands a trial by jury on any and all issues properly triable by jury in this action.

DATED: This 13 day of October, 2009.

JOHNSON & MONTELEONE, L.L.P.



Sam Johnson
Attorneys for Plaintiff