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Ithaca, New York 14850

March 12, 2008

Mary Opperman
VP Human Resources
Office of Human Resources
Cornell University
130 Day Hall
Ithaca, NY 14850

VIA FACSIMILE & CERTIFIED MAIL

Dear Ms. Opperman,

My name is Seth Peacock and I represent Eldred Harris. Last Friday, March 7th, 2008 my client was terminated as an employee with the Division of Alumni Affairs and Development (AA&D) under the most bizarre circumstances in violation of Cornell University's own policies and common standards of professional conduct.

Background

As the result of Mr. Harris's initiative, over the preceding six months, he and several senior members of AA&D's leadership team have engaged in multiple discussions regarding AA&D's direction and initiatives relating to the extreme lack of diversity within Cornell's AA&D division and its poor record of coordinated minority alumni outreach and giving history. These discussions included the role my client would play moving forward to help address these shortcomings. These divisional discussions began roughly in October, 2007, although Mr. Harris had reached out directly to President Skorton as far back as December, 2006, when during a conversation at the President's winter gathering in Duffield Hall, the President asked Mr. Harris to share his thoughts with him regarding diversity in fundraising.

The divisional conversations that ensued included email correspondence, written correspondence and individual and group meetings. Among others, Vice President Charlie Phlegar, Associate Vice-President Rick Banks, and Sr. Human Resource Consultant Julie Addy, were all involved in the discussions. In February 2008, the discussions involved the creation of an Individual Giving Officer ("IGO") position to target several hundred minority alumni for giving; however, equally central issues related to diversity in divisional recruitment and retention, diverse volunteer development, and coordinated programmatic investment were neglected.

After several months of trying to move AA&D in a direction that would only begin to address these issues it appeared that the latest plan offered by Cornell would be doomed to failure because it lacked several key elements, including even the slightest bit of clarity as to exactly how Mr. Harris's involvement in these

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additional aspects of the position would bear fruit. This, in addition to several comments made by senior members of the division during the unit's All Staff Week (February 25th - 29th 2008) left Mr. Harris frustrated and he expressed his frustration in an email sent to Julie Addy dated, February 27, 2008. In an effort to move Cornell forward, Mr. Harris communicated his frustration with the process and identified deficiencies with Cornell's proposal and AA&D's overall managerial shortcomings. Mr. Harris declined to accept the IGO position as offered because it lacked "the type of organized, programmatic, longitudinal opportunity that frankly our alumni deserve."

In the same email, Mr. Harris also stated that he thought it would ultimately be in his best interest to part ways with AA&D. However, he also made it abundantly clear that the details of how the parting of ways would occur were still unresolved. Mr. Harris earlier requested a severance package of \$20,000.00 for each of the five years he worked with AA&D and also mentioned this as compensation for the time he was allowed to languish, at the specific request of AA&D Senior Management before his valid concerns were recognized. Mr. Harris gave no date or specific timetable for this purported resignation, and more importantly no one from AA&D or any part of Cornell University contacted Mr. Harris to determine if he was indeed resigning and if so when.

Instead, On Monday, March 3, 2008, Rick Banks summoned Mr. Harris to his office where he and Julie Addy were waiting and presented a letter to Mr. Harris notifying him that Cornell had interpreted the February 27, 2008, email as Mr. Harris's resignation and further determined based on university policy, that his resignation should be effective March 27, 2008. (See attached letter) Mr. Harris informed Mr. Banks and Ms. Addy during that Monday meeting that he had no intention of resigning and stated that his February 27th email was not intended as his resignation and should not be interpreted as such.

The letter my client received from Rick Banks was unsolicited and he did not agree with or to anything it purported; not the timetable laid out or the \$5,000. During the same meeting, Mr. Harris indicated that he had no intention of resigning from AA&D either in form, or function, and intended to continue to perform in his current role. Mr. Harris explained that the February 27th e-mail simply expressed his frustration regarding the tendered IGO position and lack of clarity regarding the other components to the discussion; namely the leaders, purpose, expected outcomes, timetables etc. of the several committees on which Rick Banks and Charlie Phlegar asked Mr. Harris to participate.

On Tuesday and Wednesday, March 4&5, 2008, Mr. Harris attended work normally with no communication regarding the purported resignation. On Thursday, March 6, 2008, Rick Banks unexpectedly appeared at the regularly scheduled meet between Mr. Harris and his direct supervisor, Thomas LaFalce.

At this meeting, Mr. Banks said he attended the meeting because he did not want to Mr. LaFalce to find out tomorrow (Friday the 7th) that Mr. Harris would be resigning that day. Mr. Harris reiterated again during that meeting in front of his direct supervisor, Mr. LaFalce that his email message was sent to Julie Addy out of frustration with the pace of movement, the miscommunications and the palpable disdain he continued to receive daily from his current supervisors, and that he had no intention of resigning. In response, Mr. Banks indicated that despite Mr. Harris's comments, in the presence of his direct supervisor that he - Mr. Banks - did not know if he could "take it back" at this point.

The following day, Friday March 7, 2008 at 2:15 P.M. Rick Banks again summoned Mr. Harris to his office where he and Julie Addy were waiting. Mr. Harris again explained that he did not intend to resign and that his email to Julie was not a resignation. Despite this, Mr. Banks demanded right then and there that Mr. Harris turn over his security pass, his garage pass, his credit card and his Cornell University ID card. Mr. Banks then further directed Mr. Harris, in the presence of Ms. Addy, to immediately go downstairs and clear out his office space. Mr. Banks escorted Mr. Harris downstairs to his work floor, as Mr. Harris now had no access to his office on the second floor without his security card. All of this occurred even as my client continued to reiterate what he had been saying all week - that he did not resign and had no intention of resigning. Mr. Harris cooperated with the request to turn over the items, cleaned out his office and left the building as requested.

Improper Termination

AA& D's claim that Mr. Harris resigned from his job is devoid of any basis in reality. Mr. Harris did not submit his resignation to AA&D and at each instance when Cornell insisted that he did, he immediately and unequivocally refuted the false assertion. In his March 3rd letter, Mr. Banks cites Cornell University policy 6.12 as providing the basis for AA&D's arbitrary setting of March 27, 2008 as Mr. Harris's effective resignation date. Policy 6.12 does not state that when an employee offers a resignation without specifying a date that Cornell is free to substitute its judgment as to when that employee intended to resign by adding thirty days to any alleged resignation. The policy simply states that exempt employees are expected to give thirty days notice before they resign. Mr. Banks' "Gotcha" reading of Mr. Harris's February 27th email is not only contrary to Cornell's own policy, but demonstrates the very lack of professional courtesy and managerial intelligence that Mr. Harris referenced in that very email. In fact, the second note presented by Mr. Banks on Friday the 7th verifies that Mr. Banks was aware that Mr. Harris clearly denied resigning. Specifically, it reads "I am writing to respond to your comment to me yesterday (March 6) that you did not resign your position."

Not only was this use of policy 6.12 malevolent but it was also incorrect. If read properly and completely, the policy referenced supports Mr. Harris consistent claim that he never offered his resignation. The 6.12 separation policy says that employees should provide written notification to their supervisor at least one month prior to the date of separation. Ms. Addy was never Mr. Harris's supervisor nor did he copy any of his supervisors or instruct Ms. Addy to share the email with any of his supervisors. In fact, Mr. Banks claims to have attended my client's March 6th meeting with Mr. Harris's direct supervisor, Mr. LaFalce, because Mr. Banks did not want to Mr. LaFalce to find out for the first time on March 7th, that Mr. Harris was leaving on that day. Mr. Bank's further stated during the March 6th meeting that it was his fault that Mr. Harris's direct supervisor had not been brought up to speed on what was happening. Mr. LaFalce confirmed his ignorance of what was going on by stating several times both in that meeting and afterwards that he had no idea what Mr. Banks and Mr. Harris were discussing, other than he had heard that "some discussions were underway."

Even if we assume, arguendo, that Mr. Harris intended to resign, he never agreed to the AA&D proposal contained in the March 3, letter that he end his employment on either March 7th, or the 27th. Mr. Harris's response to the offer to end his employment on March 7th was that he did not intend to end his employment. Yet for some undisclosed reason Mr. Banks terminated his employment on March 7th, without confirming that Mr. Harris wanted to leave prior to the alleged separation date of March 27th. The most telling statement by Mr. Banks is that he was not sure that he could pull this back. This is another statement that makes no sense. If Mr. Harris instigated this resignation idea then what impediments stood in the way if he was clearly indicating that he did not wish to resign? The only logical explanation is that AA&D was intent on terminating Mr. Harris. And the resignation ploy was a convenient ruse under which to cloak their desire to rid themselves of him as they considered him a nuisance due to his persistence in arguing for a reasoned approach to redressing the neglect and under-investment Cornell's diverse constituents.

Although AA&D claims that Mr. Harris resigned it is clear that he was terminated. AA&D's termination of Mr. Harris was improper in violation of Cornell policy 6.11.3, which states:

Disciplinary actions are usually corrective and progressive in nature, however, serious misconduct and work performance problems, or violation of laws and /or university policies, procedures, and practices may warrant disciplinary action, including termination, outside of the corrective, progressive approach that is outlined below. Following the investigation and discussion with the staff member, a

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memorandum or letter, documenting the reason for termination, must be given to the staff member and placed in his/her human resources file in the unit.

AA&D never alleged serious misconduct against Mr. Harris and never documented any reasons for the termination which is therefore clearly improper and blatant violation of Cornell policy.

Not only did AA&D's treatment of Mr. Harris violate Cornell policy it also violated a common practice. If you again incorrectly assumed that the February 27th email stands as a resignation you must also accept the immediate and unequivocal statements from Mr. Harris rescinding any alleged resignation. I am aware of several instances where Cornell accepted formal, written, and very public resignations only to allow the employee to rescind the resignation without issue. Mr. Leon Lawrence, Director, Office for Diversity and Inclusiveness in the College of Arch, Art & Planning has resigned officially and publicly more than once, and was allowed to rescind his position each time. In addition, Danielle Germer, Director of Catering, also publicly resigned as well and returned to her position several weeks later. Therefore even if Mr. Harris had resigned, there is substantial precedent for taking a much different course of action than the extraordinary course chosen with him.

Constructive Discharge

AA&D's actions leave them open to a claim of constructive discharge, a claim that we will be most certain to pursue. The fact that my client even considered the IGO position is quite astonishing given the outrageous way he was, and has been treated, marginalized and isolated as one of three African American males in a division of approximately 400. Mr. Harris has provided me with numerous examples of how his direct supervisor, Mr. LaFalce, continually sought to create working conditions that no reasonable person would tolerate. Mr. LaFalce's actions were taken with the knowledge and acquiescence of higher-level managers. Many of these actions are supported with documentary evidence in the form of email and other interoffice communications. Our constructive discharge claim is further bolstered by Cornell's most recent action to unilaterally twist good faith negotiations and discussions initiated and spearheaded by Mr. Harris into a purported resignation. AA&D has made it abundantly clear that they had no intention to create an environment where Mr. Harris could succeed.

Mr. Harris's Continued Commitment to Cornell University

As a Cornell Law School alumnus Mr. Harris is committed to working to make his alma mater live up to its creed whether from the inside or out, and understandably we are not sure what type of relationship can be salvaged at this point. He believes his concerns are reasonable in light of the incongruous words and actions of Cornell's Alumni Affairs Division, where during the aforementioned

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All Staff Week he was taken aback and dismayed to learn that those selected to represent the areas of diversity in divisional recruiting, retention as well as with volunteer development admitted to him that they had no meaningful education, insight, experience, or history with diverse constituents or with diversity in general. Mr. Harris was not alone in recognizing these concerns, as many of his former colleagues expressed similar reservations about the division's commitment to diversity given these homogeneous selections and the lack of even the most basic articulated plan for diversity moving forward.

To highlight one of many of Mr. Harris's significant concerns, I have included three disturbing e-mails with this letter. They illustrate quite clearly, that for majority donors, there is a threshold gift level that impacts admission decisions despite all of the lofty protestations to the contrary. The first, sets forth the price of admission to Cornell; the second, if the price is paid even a mediocre student will be admitted. Both students were admitted to Cornell. The third represents an expression of frustration by an African American alum, [REDACTED] regarding what he feels is the short shrift given his child's application despite her clear qualifications and his giving potential. In fact, despite his past involvement and giving potential [REDACTED] is still not tracked by AA&D.

As African American alum himself, Mr. Harris is highly sensitive to the need to maintain equitable access to higher education. In addition, his professional training makes him acutely sensitive to the implications of these notes in light of the current political environment regarding higher education, wherein President Skorton just recently submitted significant amounts of data concerning the inner workings of Cornell's endowment to United States Senators Baucus and Grassley; who in their roles on the Senate Committee on Finance, requested this data to gain insight into the workings of the university's endowment and to gauge its impact on financial aid, admissions policies, and equitable access to higher education in general. Within this context the implications of these notes are particularly disturbing.

Given this recent interest perhaps there is an additional inquiry the senators need to make; to what extent do the gifts which help to create these vast endowments provide advantages in the admissions process for wealthy, white constituents over diverse candidates who these institutions - blatantly, and based on their own cultural incompetencies - deem unworthy of access? The very nature of these notes challenges the extent to which admissions decisions can be made purely on a need-blind basis—that is, without considering the financial circumstances of the student or the student's family.

My client has an astonishing number of similar messages, which break down roughly evenly between these same categories. In addition, I have frankly been shocked by what he has also shared with me evidencing the cavalier attitude with which employment decisions have been made in the past on behalf of majority

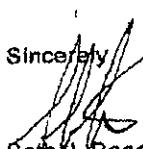
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job applicants. Again, I am not sure what can be done here to salvage this situation as it had been so badly mismanaged by his supervisors in AA&D. But my client is prepared to forward all one hundred plus messages to the Senators, as well as to the New York Attorney General's Office, numerous media outlets and most importantly he is ready to share these messages with Cornell's twenty-five thousand or so Asian, African American, and Latino Alumni of which I am one. As my client put it "unfortunately [REDACTED] can't afford to wait three years for Charlie to catch up; he has other children."

From my client's perspective, if the university truly can't bother themselves to be concerned with the best interests of their diverse alumni because they can't see a path towards inclusion, then these alumni should be made aware of this, beginning with [REDACTED]

My client will wait until 5 P.M. Monday, March 17, 2008, to begin sharing this information with the aforementioned parties. Please direct all communication regarding this matter to me and contact me immediately, so that we may move cooperatively forward towards a resolution with as little acrimony as possible to satisfy the needs and concerns of both Mr. Harris and Cornell University.

Sincerely,


Seth J. Peacock

Enclosures: (5)

Cc: David Skorton, President Cornell University,
Ekdred Harris



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VIA ELECTRONIC MAIL and FACSIMILE

March 13, 2008

Seth J. Peacock, Esq.
102 West State Street
Ithaca, New York 14850

Re: Eldred Harris

Dear Mr. Peacock:

Your letter to Mary George Opperman dated March 12, 2008 regarding Eldred Harris was referred to me for a response. Please be advised that the University is represented by counsel in this matter. Any and all communications from you should be directed to me.

Please be advised that the use of confidential University documents by your client violates the confidentiality agreement that he signed while employed at Cornell. Your threat to use these documents also appears to constitute extortion under New York law. Moreover, your own actions in writing the letter dated March 12, 2008 appear to violate the New York Code of Professional Responsibility, in particular 22 NYCRR §§ 1200.3(A)(3), (4), and (5) and 1200.33(7) and (8).

You and your client have until 11:00 a.m. on Friday, March 14, 2008 to return all copies of confidential documents taken from Cornell University. They can be returned to this office at 300 CCC Building, Garden Avenue, Cornell University, Ithaca, New York 14853. If these documents are not returned, the University will pursue all appropriate remedies under New York law.

Very truly yours,

A handwritten signature in black ink, appearing to read "W. Tarlow".

Wendy E. Tarlow

WET:kab