

JERRY S. SMITH, PLLC
ATTORNEY AT LAW

November 14, 2014

VIA U.S. MAIL:

Pima County Community College District
Board of Governors
4905 E. Broadway Blvd.
Tucson, AZ 85709

VIA ELECTRONIC MAIL:

Brenda B. Even – District 1 (District1@pima.edu)
David A. Longoria – District 2 (District2@pima.edu)
Sylvia M. Lee – District 3 (District3@pima.edu)
Scott A. Stewart – District 4 (District4@pima.edu)
E. Mary Cortez – District 5 (District5@pima.edu)

Re: David A. Katz v. PCCCD – Demand for Reinstatement and Damages by Instructional Faculty Member

Dear Board Members:

I represent David A. Katz with respect to his legal claims against the Pima County Community College District (“PCCCD”) and three of its officials who were acting on its behalf. Mr. Katz has been a valuable and effective full-time member of the instructional faculty (in Chemistry) at the West Campus since he began his employment with the PCCCD in August 2002, until he was suspended without cause or a hearing in September 2013.

In 2013, Mr. Katz observed problems at the West Campus laboratory concerning the quality of instruction and the poor condition and lack of maintenance of laboratory equipment. He notified his superior, Mary Kay Gilliland, Dean of Science, Technology, Engineering and Math at the West Campus, about these problems and the need to remedy them. Dean Gilliland seemed unconcerned and disinterested in the laboratory problems raised by Mr. Katz, so he followed up with an e-mail to her and other PCCCD officials including President Louis Albert on July 30, 2013.

Without warning, on September 16, 2013, Ms. Gilliland suspended Mr. Katz with pay based on vague and unsubstantiated allegations of unprofessional conduct. On October 4, 2013, President Albert continued Mr. Katz' suspension but suspended his pay, putting him on unpaid suspension without any hearing or notice of the specific facts or reasons justifying such harsh discipline. On October 10, 2013, President Albert notified Mr. Katz of his intent to recommend termination, but Mr. Katz was not terminated, instead he was left on unpaid suspension. Further details are set forth in the enclosed draft "Complaint and Demand for Jury Trial" (unfiled lawsuit).

On August 20, 2014, just days before the start of the Fall 2014 semester, Jeff Silvyn presented Mr. Katz' then counsel, Dan Cooper, with a proposed Return to Work Agreement ("RTWA") without a contract. The RTWA contains 27 restrictions and limitations not imposed on other faculty which are clearly inappropriate and designed to deter Mr. Katz from returning to work. These restrictions by PCCCD would virtually make Mr. Katz' job impossible and are grossly disproportionate to any improper conduct alleged (and never specified or proven).

Despite repeated requests to date, the PCCCD has failed to provide sufficient evidence to support PCCCD's vague and conclusory allegations prevented Mr. Katz from returning to his classroom teaching at the West Campus. Most importantly, the PCCCD has failed to offer Mr. Katz a contract renewal although it was required to do so by law and PCCCD Policy.

As I have stated in the "Complaint and Demand for Jury Trial", the named Defendants have violated Mr. Katz' federal constitutional rights in direct violation 42 U.S.C. 1983 by suspending him in retaliation for speaking

out on matters of public concern, namely the poor quality of the West Campus Laboratory equipment and staff, and then failing to offer him a contract renewal for the current school year. PCCCD has acted inconsistently, violating not only Mr. Katz' constitutional rights but also his rights under PCCCD's published Policies, exposing the District to substantial liability, faculty discontent, and probable negative media coverage if he has to file his lawsuit.

Mr. Katz wishes to return to teaching as before and is willing to settle his pending claims against the PCCCD and its officials on the following terms:

- (1) a 2014/2015 contract (including the standard annual increase in his salary and without the special restrictions/limitations enumerated in the RTWA); and
- (2) back pay for the periods of the 2013/2014 contract not yet paid in the amount of \$16,079.96, as well as the balance due of the contracted overload for Fall 2013 in the amount of \$2,793.00; and
- (3) assignment in the Spring 2015 semester to those courses he has taught in the past, namely CHM 151 and 152 ("General Chemistry"), and either CHM 121 ("Chemistry & Society") or CHM 125 ("Consumer Chemistry"), all of which would have occurred had he not been suspended and then denied a contract for the current year (in violation of the law and the PCCCD published Policies regarding discipline and instructional faculty contract renewal).

Mr. Katz' offer (above) shall remain open until December 1, 2014, unless either (A) you reject it, or (B) I extend that date in writing upon your request. If the parties cannot reach a settlement agreement within that time, Mr. Katz will file the enclosed Complaint in the United States District Court against the parties listed as Defendants therein, including the PCCCD, seeking monetary damages, injunctive relief, and his attorneys' fees.

This letter and your response shall be subject to Federal and Arizona Rules of Evidence, Rule 408.

Sincerely,

A handwritten signature in black ink, appearing to read "Jerry S. Smith", written over a circular scribble.

Jerry S. Smith, Esq.
JERRY S. SMITH, PLLC
143 S. Sixth Ave.
Tucson, AZ 85701
Tel: (520) 326-0134
Email: jsmith@jsslawpllc.com

cc: David A. Katz
Jeffrey S. Silvyn, Esq.

Encl: (draft) U.S. District Court Complaint and Demand for Jury Trial
(including ten exhibits)