

**STATE OF NEW MEXICO  
SXITH JUDICIAL DISTRICT COURT  
COUNTY OF GRANT**

STATE OF NEW MEXICO ex rel.  
RAÚL TORREZ, ATTORNEY GENERAL,

Plaintiff,

v.

No. D-608-CV-2025-00007

DR. JOSEPH SHEPARD,  
WESTERN NEW MEXICO UNIVERSITY BOARD OF REGENTS,  
DR. MARY E. HOTVEDT, in her official capacity,  
DR. LYNDON HAVILAND, in her official capacity,  
TRENT JONES, in his official capacity,  
DR. DANIEL H. LOPEZ, in his official capacity, and  
DAL MOELLENBERG, in his official capacity.

Defendants.

**COMPLAINT TO SET ASIDE CONTRACT FOR BREACH OF  
FIDUCIARY DUTY, LACK OF CONSIDERATION, UNCONSCIONABLE  
CONTRACT, VIOLATION OF THE ANTI-DONATION CLAUSE OF THE NEW  
MEXICO CONSTITUTION, VIOLATION OF THE OPEN MEETINGS ACT, AND  
UNJUST ENRICHMENT**

COMES NOW the State of New Mexico, by and through Raúl Torrez, Attorney General for the State of New Mexico, and hereby complains against the Defendants for breach of fiduciary duty, lack of consideration, unconscionable contract, violation of the Anti-Donation Clause of the New Mexico Constitution, violations of Open Meetings Act and unjust enrichment. In support of the complaint Plaintiff states as follows:

## **PARTIES, JURISDICTION, AND VENUE**

1. This Complaint is brought by the New Mexico Attorney General on behalf of the citizens of New Mexico in his statutory capacity to prosecute and defend all actions in which the State may be a party or interested when in his judgment the interest of the state requires such action pursuant to NMSA 1978, Section 8-5-2(B) (1975).

2. Western New Mexico University (the “University” or “Western”) is a state educational institution with its principal office located in Silver City, Grant County, New Mexico.

3. Defendant Western New Mexico University Board of Regents (the “Board”) is a state educational institutional board Constitutionally charged with the control and management of the University, including oversight of management of University finances.

4. Defendants Dr. Mary E. Hotvedt, Dr. Lyndon Haviland, Trent Jones, Dr. Daniel H. Lopez, and Dal Moellenberg, were regent members of the Board of Regents of the University and public officers at all times relevant to this complaint.

5. Dr. Joseph Shepard was the President of Western at all times relevant to this complaint.

6. The principal office of the University is located in Grant County, New Mexico, therefore giving rise to venue in this Court.

7. Venue is proper in Grant County, New Mexico, pursuant to NMSA 1978, Section 38-3-1(G) (1988).

8. This Court has jurisdiction over the subject matter of this action pursuant to Article VI, Section 13 of the New Mexico Constitution and the Declaratory Judgment Act, NMSA 1978, § 44-6-2 (1975).

9. The district court of the county in which the principal office of the state educational institution is located has jurisdiction over lawsuits against officers and employees of state educational institutions, and therefore, this Court has personal jurisdiction over the Defendants.

### **FACTUAL BACKGROUND**

10. The University, the Board, and Dr. Shepard are currently under investigation by the Office of the State Auditor (“OSA”) and the New Mexico State Ethics Commission for procurement violations, financial misconduct, and violations of internal University financial policies and misconduct arising from excessive expenditures and travel.

11. Effective October 1, 2022, the Board entered into a five (5) year “Employment Agreement for President Shepard,” (“Employment Agreement”) making him the chief executive officer of the University and “responsible for administering and leading the University and implementing its rules, regulations, policies, and directives of the Board and applicable law.”

12. Dr. Shepard, Board Members and University Executive Administrative staff engaged in University-related travel that violated University financial and travel policies and breached fiduciary duties owed to the University and the citizens of the State of New Mexico.

13. The New Mexico Office of the State Auditor (OSA) initiated an examination regarding allegations of improper procurement and travel expenditures by Western

officials(“Examination”) and on December 7, 2023, the OSA Director of Special Investigations, Shawn Beck, requested information from Western as part of that examination.

14. On December 12, 2023, Kelley Riddle, the University’s Vice President of Business Affairs, sent a letter to OSA indicating that the Board, Dr. Shepard, and the Administration of Western were requesting permission to obtain a special audit of all of President Shepard’s procurements and travel expenditures from fiscal year 2012 through fiscal year 2023.

15. On November 19, 2024, the OSA issued a Letter of Concern to the President of the Board, Dr. Mary Hotvedt, that stated the University consistently failed to comply with established university policies related to travel and procurement expenses, including misuse of a procurement card (P-card) by Dr. Shepard.

16. At the December 12, 2024, Regular Meeting of the Board, a number of public comments expressed alarm about the OSA’s Letter of Concern.

17. On an unknown date in 2024, the Board, through a rolling quorum and in violation of the New Mexico Open Meetings Act, approved the formation of a personnel subcommittee consisting of Regent Lopez and Regent Moellenberg, and tasked said personnel subcommittee with drafting and negotiating a separation agreement with Dr. Sheperd and Dr. Sheperd’s attorney, John Anderson.

18. On December 20, 2024, the Board convened a Special Meeting (“Special Meeting”).

19. The only agenda item noticed for the Special Meeting was “President’s Contract.”

20. During the Special Meeting, the Board announced, for the first time publicly, the personnel subcommittee's efforts to negotiate a separation agreement with Dr. Shepard.

21. During the Special Meeting, the Board voted to terminate the existing Employment Agreement of Dr. Sheperd and voted to approve a new "Western Separation and Faculty Appointment Agreement" with Dr. Shepard ("Separation Agreement").

22. The Separation Agreement included, in part, a new employment contract for Dr. Shepard as a remote but tenured faculty member with the School of Business with a base annual salary of \$200,000.00, an eight-month sabbatical with full pay, and a \$1,909,788.00 lump sum Severance Payment to be paid by January 15, 2024.

23. During the Special Meeting, Dr. Shepard announced his resignation and read aloud from his resignation letter.

24. On December 20, 2024, Dr. Shepard's base salary was \$398,507.00.

25. Under the terms of the Employment Agreement, the absolute maximum the University would have been legally obligated to pay President Shepard if the Board terminated his Employment Agreement without cause was approximately \$597,760.50 - assuming there was no resignation or just cause for termination (both of which would require no severance payment at all).

26. The Board has not publicly acknowledged, explained, or held any discussion regarding the variety of other termination options found in the existing Employment Agreement much less explain their reasons for not exercising any of those options or for taking this action with audits and investigations pending.

27. On January 1, 2025, Board Chair Hotvedt announced that she was resigning effective January 1, 2025.

28. On January 1, 2025, the University confirmed to the Albuquerque Journal that an additional three Board Members intended to step down.

29. On January 2, 2025, the University paid the Severance Payment to Dr. Sheperd under the terms of the Separation Agreement.

30. On January 6, 2025, the New Mexico Attorney General filed an Emergency Motion for Temporary Restraining Order with the District Court to delay the lump sum payment owed to Dr. Sheperd under the terms of the Separation Agreement until the investigations of both the OSA and New Mexico State Ethics Commission can be completed.

31. On January 7, 2025, at the Board's Regular Meeting, the Board announced that Regent Hotvedt, Regent Haviland, Regent Lopez, and Regent Moellenberg had resigned from the Board, leaving Regent Jones the only remaining Regent on the Board.

### **COUNT I: BREACH OF FIDUCIARY DUTY**

32. The State re-alleges and incorporates the factual allegations set forth above.

33. As public officials with broad constitutional powers and authority, Defendants Regent Hotvedt, Regent Haviland, Regent Jones, Regent Lopez, and Regent Moellenberg, ("Board Defendants") had broad fiduciary duties to the University and the public and breached those fiduciary duties by acting contrary to the interest of the University and the public.

34. As a public employee and chief executive officer of the University, with broad responsibilities, Dr. Shepard had broad fiduciary duties to Western and to the public. Dr. Shepard

breached his fiduciary duties by acting contrary to the interest of the University and the public and by seeking illegal personal gain through his public employment.

**COUNT II: LACK OF CONSIDERATION**

35. The State re-alleges and incorporates the factual allegations set forth above.

36. Consideration is a necessary element of a valid contract.

37. Board Defendants approved the Separation Agreement with a Severance Payment clause that lacked adequate consideration from Dr. Shepard.

**COUNT III: UNCONSCIONABLE CONTRACT**

38. The State re-alleges and incorporates the factual allegations set forth above.

39. An unconscionable contract with terms that are illegal, against public policy, or grossly unfair is void and unenforceable.

40. Board Defendants approved a Separation Agreement with a Severance Clause that is unconscionable and void.

**COUNT IV: VIOLATION OF THE NEW MEXICO CONSTITUTION**

41. The State re-alleges and incorporates the factual allegations set forth above.

42. By agreeing to a Severance Payment that lacks consideration, Board Defendants violated the Anti-Donation Clause of the New Mexico Constitution, which states “Neither the state, nor any county, school district, or municipality ... shall directly or indirectly lend or pledge its credit, or make any donation to or in aid of any person, association, or public or private corporation [...]” N.M. Const. Art. IX, § 14.

43. By agreeing to a Severance Payment that was not contained in the Employment Agreement and not part of Dr. Shepard's compensation for work previously performed, Board Defendants violated the prohibition against retroactive salary increases in violation of Article IV, Section 27 of the New Mexico Constitution.

**COUNT V: OPEN MEETINGS ACT VIOLATION**

44. The State re-alleges and incorporates the factual allegations set forth above.

45. Board Defendants violated the New Mexico Open Meetings Act (NMSA 1978, §§ 10-15-1 to -4 (1974, as amended through 2009) when it directed the personnel subcommittee of the Board, outside of an open public meeting, to negotiate the terms of the Separation Agreement with outside counsel and Dr. Sheperd.

46. Defendants' action of approving the Separation Agreement during the December 20, 2024, Regular Meeting is invalid since the Board did not direct the personnel subcommittee to negotiate the Separation Agreement in a properly-noticed public meeting.

**COUNT V: UNNJUST ENRICHMENT**

47. The State re-alleges and incorporates the factual allegations set forth above.

48. Defendant Sheperd has knowingly benefitted at the expense of the public in a manner that would be unfair and unjust to permit him to retain the benefit. He has thus been unjustly enriched by a Severance Payment provided in a Separation Agreement and Separation Payment clause that is either void or unenforceable.



**PRAYER FOR RELIEF**

WHEREFORE, the State respectfully requests that the Court:

- 1) Declare that Defendants actions during the December 20, 2024, Board meeting violated the New Mexico Open Meetings Act and order their approval of the Separation Agreement and/or Severance Payment invalid.
- 2) Order the Separation Agreement between Western and Joseph Shepard be set aside due to the Board's breaches of their fiduciary duties to the University and the Public.
- 3) Order the Severance Clause of the Separation Agreement is either void or unenforceable for lack of consideration and violation of the New Mexico Constitution.
- 4) Order the Severance Clause of the Separation Agreement is either void or unenforceable for unconscionability.
- 5) Order Defendant Joseph Shepard to disgorge any compensation received under the Separation Agreement back to the University.
- 6) Grant such further equitable or legal relief as the Court deems just and proper.

Respectfully Submitted:

**RAÚL TORREZ**  
New Mexico Attorney General

By: /s/ Rose Bryan  
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