

EVAN L. GOLDMAN, ESQ. (ID# 011871979)
GOLDMAN DAVIS KRUMHOLZ & DILLON, P.C.
THREE UNIVERSITY PLAZA, SUITE 410
HACKENSACK, NEW JERSEY 07601
(201) 488-2600
(201) 488-5059 (TELECOPIER)
ATTORNEYS FOR PLAINTIFF

<p>Philip Mark Plotch</p> <p style="text-align: right;">Plaintiff,</p> <p style="text-align: center;">v.</p> <p>Saint Peter’s University,</p> <p style="text-align: right;">Defendant.</p>	<p>SUPERIOR COURT OF NEW JERSEY LAW DIVISION: BERGEN COUNTY Docket No.</p> <p style="text-align: center;"><i>Civil Action</i></p> <p style="text-align: center;">COMPLAINT AND JURY DEMAND</p>
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PARTIES

1. Plaintiff, Philip Mark Plotch (hereinafter “Plaintiff”), residing at 17 Bancroft Place, Fairlawn, New Jersey 07410, by and through his attorneys, by way of Complaint against the Defendant, Saint Peter’s University (hereinafter “the University” or “St Peter’s”), located at 2641 John F. Kennedy Boulevard, Jersey City, New Jersey 07306, alleges as follows:

NATURE OF ACTION

2. Plaintiff brings this action to redress the Defendant’s violation of the New Jersey Law Against Discrimination, N.J.S.A. § 10-5:1, *et seq.*, by discharging Plaintiff based on race and the Defendant’s Breach of Contract and Breach of the Covenant of Good Faith and Fair Dealing.

3. Defendant Saint Peter’s University is an educational corporation of the State of New Jersey located in Jersey City, Hudson County, New Jersey. It is an institution of higher

learning, accredited by the Middle States Commission on Higher Education with an undergraduate enrollment of over 2,100 students.

JURISDICTION

4. This Court has jurisdiction pursuant to N.J.S.A. §10-5:1 et seq., 1964.

FACTS

5. Dr. Plotch earned a Ph.D. in Public and Urban Policy from the Milano School of International Affairs, Management, and Urban Policy, at New School University in 2014. He also earned a master's degree in Urban Planning from Hunter College in 1992 and a Bachelor of Science degree, *summa cum laude*, in Computer Science from the State University of New York at Albany in 1983.

6. After earning his master's degree, Dr. Plotch began to work at the headquarters of New York's Metropolitan Transportation Authority as an assistant transportation planner. He was later promoted to the dual roles of manager of policy and manager of planning, responsible for leading planning improvements for the New York metropolitan area's transportation system.

7. After the 2001 World Trade Center attack, Dr. Plotch was hired by the Lower Manhattan Development Corporation (hereinafter the "LMDC") as its first director of transportation policy. He was later promoted to the position of Director of World Trade Center Redevelopment and Special Projects where he helped to lead the rebuilding of Lower Manhattan following the 9/11 attacks, including managing a \$250 million contract to plan, design, and build the National September 11 Memorial and Museum.

8. In 2007, while still working at the LMDC, Dr. Plotch became a member of the adjunct faculty at Hunter College's Department of Urban Affairs and Planning. In 2010 he began a doctoral program in public and urban policy at New School University.

9. After Dr. Plotch received his Ph.D. in 2014, he was hired by Saint Peter's University as an Assistant Professor.

10. Dr. Plotch consistently provided excellent job performance to Saint Peter's.

Dr. Plotch's Promotion and Tenure Applications

11. In 2019 Dr. Plotch filed an extensive application for promotion to the position of Associate Professor. The University applies a rigorous evaluation process to determine whether to promote an applicant to Associate Professor. Following the University's evaluation process, Saint Peter's University approved Dr. Plotch's application for promotion. Dr. Plotch was promoted to Associate Professor in August 2019.

12. Unlike most universities, Saint Peter's does not always make promotion and tenure decisions simultaneously. Therefore, Dr. Plotch applied for promotion and tenure separately. In September 2019, just after his application for promotion was approved, Dr. Plotch filed an application for tenure.

13. There was compelling reason to expect that Dr. Plotch would be granted tenure:

a. Dr. Plotch's application for promotion to Associate Professor had been approved just one month prior. The criteria for the grant of tenure are virtually identical to the criteria for promotion.

b. Dr. Plotch had consistently been advised during his employment by Saint Peter's that his job performance was excellent.

c. Dr. Plotch had never been warned or advised that his fields of study and teaching were inconsistent with the needs of the University.

d. Dr. Plotch handily satisfied the criteria listed in the University's Academic Handbook for the grant of tenure.

e. Saint Peter's University had recently awarded Dr. Plotch a merit-based sabbatical for the 2020-21 academic year.

f. Based in part on a glowing recommendation from the president of Saint Peter's University, the U.S. State Department selected Dr. Plotch for the

competitive and prestigious Fulbright U.S. Scholars Award to teach political science at one of South Korea's top universities.

14. On June 15, 2020, the president of Saint Peter's informed Dr. Plotch that the University had denied his tenure application. The president provided no explanation for the decision.

15. The denial of tenure resulted in the termination of Dr. Plotch's employment at the end of the following academic year.

The Provost Told Dr. Plotch That His Tenure Application Was Denied Because the Department Did Not Need Another Tenured Professor.

16. Dr. Plotch sought to discuss his tenure denial with his department chair, Dr. Brown. Dr. Brown refused to meet with him.

17. Dr. Plotch discussed his tenure denial with Weidong Zhu, the dean of the College of Arts and Sciences. Dr. Zhu expressed great surprise about the decision. Dr. Zhu stated that he supported Dr. Plotch's tenure application.

18. On June 18, 2020, Dr. Plotch met with the provost, Frederick Bonato, to discuss his tenure denial.

19. Dr. Bonato informed Dr. Plotch that the tenure denial decision was not based on any of the criteria for the grant of tenure which are stated in the Saint Peter's University Academic Handbook. Instead, he said, it was based on "fit and need." He explained, "the university at this time doesn't need another tenured member of the department."

The Hiring of the Faculty Member Who Replaced Dr. Plotch.

20. The Political Science Department had been comprised for several years by three professors: Alain Sanders, Anna Brown, and Philip Plotch.

21. In or about 2019 Professor Sanders announced that he would be retiring in 2020.

22. In the Fall of 2020 Saint Peter's University appointed Professors Sanders, Brown, and Plotch to the committee to search for and select a person to replace Professor Sanders on the faculty.

23. As a first step in the hiring process, the three members of the hiring committee agreed that they would each identify their five top candidates from among the applicants.

24. Approximately 3.5% of all new political science Ph.Ds. nationwide are Black. The number of Black candidates in the applicant pool at Saint Peter's appeared to be generally consistent with the national percentage of new political science Ph.D.s who were Black based on applicants' self-identification and the contents of application materials which suggested that they might be Black (such as a research focus related to the African-American community).

25. All of the candidates Dr. Brown selected as her top five applicants had either self-identified as Black or submitted application materials which suggested that they were Black.

26. In February 2020, the hiring committee chose five candidates to interview from among the applicants on the committee members' top five lists.

27. After completing the interviews, the committee members agreed that each would independently create a list of three finalists from among the interviewees whom they believed to be best qualified for the position.

28. Dr. Plotch's list of finalists was identical to Professor Sanders' list. While the three finalists on those lists reflected racial and other types of diversity, none of them were Black.

29. Dr. Brown's list of finalists included both of the Black candidates who had been interviewed.

30. The third candidate on Dr. Brown's list of finalists was also selected as a finalist by Dr. Plotch and Professor Sanders.

31. The Academic Handbook does not specify the method by which a committee is to choose its preferred candidate.

32. If the committee made its selection by majority vote, then one of the three candidates on the lists created by Professor Sanders and by Dr. Plotch would have been selected because Professor Sanders and Dr. Plotch comprised the majority of the committee.

33. If the committee made its selection by consensus, then the one candidate who appeared on the finalist lists of all three members of the committee would have been selected.

34. The selection was not made based on majority vote or on consensus. Instead, the selection was made solely by Dr. Brown.

Dr. Brown's Manipulation of the Hiring Process to Select Dr. Russell.

35. After Dr. Brown saw Professor Sanders' and Dr. Plotch's lists of finalists, she announced that Dr. Plotch would have no vote in the hiring decision because he was not a tenured member of the department. The Academic Handbook does not in fact bar untenured members of the department from participating in selections or from voting on candidates. Dr. Brown did not have authority to take this action.

36. Next, Dr. Brown announced that the committee would hold no further meetings.

37. Finally, Dr. Brown sent a letter to the dean identifying Dr. Russell as the department's recommended candidate for the position.

38. The Committee had not met to discuss the finalists before (or after) Dr. Brown unilaterally selected Dr. Russell.

39. The Committee did not vote on a selectee before (or after) Dr. Brown unilaterally selected Dr. Russell.

40. The majority members of the selection committee had ranked other candidates higher than Dr. Russell.

41. Dr. Brown knew that the majority of the selection committee had ranked the other candidates higher.

42. Dr. Brown did not have authority to make a unilateral hiring decision.

43. Several other candidates were plainly better qualified than Dr. Russell.

44. Upon information and belief, Dr. Brown did not check Dr. Russell's references before selecting her, as is ordinarily consistent with ordinary University practice.

45. The Academic Handbook requires that candidates be evaluated for their ability to teach introductory, general, core, and specialized courses as well as for their potential for instructional innovation. Dr. Russell did not meet that requirement because the only proof she submitted of her teaching skills was a single set of student evaluations from a single class which she had taught only in the capacity of a teaching assistant more than eight years earlier.

Dr. Plotch was Plainly far Better Qualified than was Dr. Russell.

46. Dr. Plotch was far better qualified for the professorship at Saint Peters than was Dr. Russell in all the ways in which academic employees are evaluated, including academic background, teaching qualifications, publications, and contributions to academia and their community.

47. Dr. Plotch's teaching evaluations conducted by the university's professors and deans were consistently and overwhelmingly positive whereas Dr. Russell's evaluations demonstrated only that she had taught a single class many years earlier and only in the capacity as a teaching assistant.

48. Dr. Russell had published no articles and no books since achieving her Ph.D. Her publications consisted of just a single book review. Dr. Plotch, on the other hand, had written two full-length scholarly books (published by the prestigious Rutgers University Press and Cornell University Press), he had a contract with the University of Michigan Press for the publication of his upcoming third book, and he had written two dozen published articles and op-eds.

49. Dr. Russell had made two conference presentations and two conference talks whereas Dr. Plotch had given well over 40 presentations, webinars, and featured interviews.

50. Dr. Plotch had nevertheless achieved far more publications and presentations than Dr. Russell even though Dr. Russell had begun her Ph.D. well before Dr. Plotch began his.

51. Dr. Plotch was a founding member of the Board of Directors of the Museum of Political Corruption and the Center for Ethical Governance. He also led a civic organization that spurred the New Jersey state legislature to pass a law that requires democratic elections in all homeowner associations (which affects more than a million people state-wide).

52. Dr. Plotch's work has been influential and widely cited. For example, he had been quoted more than 80 times by the media, including by the New York Times, CBS TV, and the Wall Street Journal.

The University's Shifting Explanations for Dr. Plotch's Tenure Denial.

53. At his June 18 meeting with Dr. Plotch the provost stated that the reasons for Dr. Plotch's nonselection were (i) "fit and need" and (ii) that the department did not need another tenured faculty member.

54. At Dr. Plotch's request, the provost provided a written statement three days later of the reasons for Dr. Plotch's nonselection.

55. In his written statement, the provost stated that the reason for Dr. Plotch's nonselection was poor job performance.

56. The provost's claim that Dr. Plotch was denied tenure because of poor job performance is demonstrably false. In fact, the University had determined that Dr. Plotch's job performance was exemplary when it promoted him to Associate Professor just months earlier.

57. In a statement to the EEOC, Saint Peter's University repeated the claim that it had denied Dr. Plotch's tenure application because of poor work performance. But Saint Peter's added five additional reasons for its decision. (i) The University claimed that Dr. Plotch had provided incomplete information regarding his student evaluations. (ii) The University claimed that Dr. Plotch had violated the federal Family Educational Rights and Privacy Act two years earlier. (iii) The University claimed that Dr. Plotch did a poor job running the MPA Program. (iv) The University claimed that Dr. Plotch had "Abandoned" the MPA Program. And (v) the University claimed that that it was critical that the University have an International Relations professor.

58. Saint Peter's had never previously identified any of those five additional reasons as factors in its decision.

59. Each of the five new reasons in the University's EEOC statement is demonstrably false or demonstrably not the reason for the nonselection.

Dr. Plotch Satisfied The Tenure Requirements In The Academic Handbook.

60. At all relevant times, the procedure and criteria governing the grant of tenure were governed by Saint Peter's Academic Handbook.

61. The Academic Handbook constitutes a contract between Saint Peter's University and certain faculty who work there, including Dr. Plotch.

62. Dr. Plotch satisfied all of the requirements for promotion and tenure stated in the Parties' contract.

The Evidence Demonstrates That Dr. Brown Engineered Dr. Plotch's Termination.

63. In the first step of the tenure review process, the Departmental Rank & Tenure Committee voted unanimously in favor of Dr. Plotch's application.

64. Next, the dean of the College of Arts and Sciences voiced his strong support for Dr. Plotch's application.

65. Dr. Plotch's application was then advanced to the University Committee on Rank and Tenure. There, seven members of the committee voted against the grant of tenure, one voted in favor of tenure, and one abstained.

66. The decision by the University Rank and Tenure Committee was the result of false information that Dr. Brown had provided to the committee. This false information included the assertions (i) that Dr. Plotch was qualified to teach only two courses in the political science department and (ii) that the course he was qualified to teach were a poor match for the future needs of the Department.

67. Following the vote by the University Rank and Tenure Committee the Provost voiced his strong support for Dr. Plotch's application.

68. The provost disagreed with the University Rank and Tenure Committee's recommendation against tenure.

69. The provost believed that if there were truly concerns as to Dr. Plotch's "fit" within the department it should have been addressed with him much earlier.

70. The provost believed that Dr. Plotch was capable of teaching a broad range of courses, including international relations.

71. The Academic Handbook defines the tenure process not only as the faculty member's application for tenure but also the years preceding during which faculty work in "tenure-track" positions.

72. The Academic Handbook requires that the University alert faculty if their performance puts them in danger of being denied tenure.

73. The Defendant never expressed to Dr. Plotch that his performance was deficient or that he needed to make any changes to his field of study or teaching in order to obtain tenure.

74. Dr. Brown refused Dr. Plotch's repeated requests for a copy of his fall 2019 teaching evaluations. Dr. Brown's refusal was a violation of the explicit rule in the Academic Handbook and deprived Dr. Plotch of the opportunity to present positive comments in his tenure application and appeal and to respond to any negative comments.

COUNT ONE

DISCRIMINATION

75. The Plaintiff repeats the allegations contained in Paragraphs 1 through 74 as if specifically set forth herein.

76. Defendant's actions in failing to grant tenure to the Plaintiff were motivated in whole or in part on Plaintiff's race, white.

77. As a direct and proximate result of the Defendant's actions, Plaintiff has suffered mental anguish, emotional distress, humiliation, indignity, pain and suffering, and damage to his personal and professional reputations justifying an award including but not limited to damages for emotional distress and compensatory, punitive, and consequential damages against the Defendant.

COUNT TWO

BREACH OF CONTRACT

78. The Plaintiff repeats the allegations contained in Paragraphs 1 through 77 as if specifically set forth herein.

79. The Academic Handbook constitutes a binding contract between the University and the Plaintiff.

80. The Academic Handbook defines the terms under which Plaintiff would be granted tenure at the University.

81. Dr. Plotch met all of the requirements for the grant of tenure as set forth in the Academic Handbook.

82. The University breached its contract with the Plaintiff when it denied him tenure despite his having successfully met all of the criteria for tenure stated in the Academic Handbook.

83. The University breached its contract with the Plaintiff when it evaluated his application for tenure based on criteria not stated in the Academic Handbook.

84. The University breached its contract with the Plaintiff when it failed to evaluate his application for tenure in good faith.

85. The University's aforesaid action against Plaintiff were willful and malicious.

86. As a direct and proximate result of the Defendant's actions, Plaintiff has suffered injury and damages justifying an award including but not limited to compensatory and consequential damages against the Defendant.

COUNT THREE

BREACH OF COVENANT OF GOOD FAITH AND FAIR DEALING

87. Plaintiff repeats the allegations of Paragraph 1 to 86 of the Complaint as if fully set forth herein.

88. The University denied Dr. Plotch's application for promotion and tenure without an honest belief that good cause grounded in the Academic Handbook existed for such denial.

89. The University's denial of Dr. Plotch's application for tenure is an action that no reasonable person would regard as fair.

90. The University denied Dr. Plotch's application for tenure for purposes of depriving him of the benefit of the provisions of the contract between him and the University.

91. The University, in so doing, took action which had the effect of destroying or injuring the right of Plaintiff to receive the fruits of the provisions of the Academic Handbook. That conduct on the University's part was taken in bad faith and/or was unconscionable and, as such, violated the covenant of good faith and fair dealing which New Jersey law implied in the contract.

COUNT FOUR

DECLARATORY JUDGMENT

92. Plaintiff repeats the allegations of Paragraphs 1 through 911 as if fully set forth herein.

93. Under the Academic Handbook, Plaintiff meet all the requirements for and was entitled to be promoted from Assistant Professor to Associate Professor with tenure. A controversy exists between the parties as to whether Plaintiff satisfied the standards in the Academic Handbook

for promotion and tenure. Plaintiff contends that he is entitled under the Academic Handbook to said tenure.

94. By reason of the foregoing, a declaratory judgment is both necessary and proper in order to set forth and determine the rights, obligations and liabilities which exist among the parties pursuant to the Academic Handbook.

95. Plaintiff is entitled to declaratory judgment under the Declaratory Judgment Act, N.J.S.A. 2A:16-51, et seq., and under R. 4:42-3.

WHEREFORE, the Plaintiff seeks judgment in his favor and against Saint Peters' University and prays for the following relief:

- a. The entry of a declaratory judgment that Plaintiff satisfied the requirements of the Academic Handbook for promotion and tenure, and that Defendant is obligated to grant tenure to Plaintiff, retroactive to July 1, 2019.
- b. The entry of a declaratory judgment that Defendant unlawfully discriminated against Plaintiff in violation of law.
- c. Reinstatement and award of tenure retroactive to July 1, 2019.
- d. A permanent injunction affirmatively and permanently enjoining Defendant from failing to reinstate and grant tenure to Plaintiff retroactive to July 1, 2019.
- e. An award of back pay.
- f. An award of lost benefits.
- g. An award of punitive damages.
- h. An award of pre- and post-judgment interest and costs of suit.

- i. Such other relief as the Court shall deem reasonable and just.

CERTIFICATION PURSUANT TO R. 4:5-1

I certify that, to the best of my knowledge, the matter in controversy is not the subject of any other action pending in any Court or of any pending arbitration proceeding and no other action or arbitration proceeding is contemplated. At the present time, I do not know the names of any other parties who should be joined in this action.

Attorneys for Plaintiff
S/ *Evan L. Goldman*
Evan L. Goldman

Dated: February 24, 2023

JURY DEMAND

Plaintiff hereby demands trial by jury on all issues herein pursuant to R.1:8-2(b) and R.4:35-1(a).

DESIGNATION OF TRIAL COUNSEL

Pursuant to Rule 4:25-4, Evan L. Goldman, Esq. is hereby designated as trial counsel for Plaintiff in the within matter.

CERTIFICATION

I, Evan L. Goldman, Esq., also hereby certify that an original and copy of the within Complaint was filed with the Clerk of the Superior Court of New Jersey, Bergen County, within the time provided by the Rules.

S/ *Evan L. Goldman*
Evan L. Goldman

Dated: February 24, 2023

DEMAND FOR PRODUCTION OF DOCUMENTS

Plaintiff hereby demands that all Defendants produce Plaintiff's entire personnel file within 45 days.

Civil Case Information Statement

Case Details: BERGEN | Civil Part Docket# L-001056-23

Case Caption: PLOTCH PHILIP VS SAINT PETER'S
UNIVER SITY

Case Initiation Date: 02/24/2023

Attorney Name: EVAN L GOLDMAN

Firm Name: GOLDMAN DAVIS KRUMHOLZ & DILLON,
P.C.

Address: THREE UNIVERSITY PLZ STE 410
HACKENSACK NJ 07601

Phone: 2014882600

Name of Party: PLAINTIFF : Plotch, Philip, M

Name of Defendant's Primary Insurance Company
(if known): Unknown

Case Type: LAW AGAINST DISCRIMINATION (LAD) CASES

Document Type: Complaint with Jury Demand

Jury Demand: YES - 6 JURORS

Is this a professional malpractice case? NO

Related cases pending: NO

If yes, list docket numbers:

**Do you anticipate adding any parties (arising out of same
transaction or occurrence)?** NO

Does this case involve claims related to COVID-19? NO

Are sexual abuse claims alleged by: Philip M Plotch? NO

THE INFORMATION PROVIDED ON THIS FORM CANNOT BE INTRODUCED INTO EVIDENCE

CASE CHARACTERISTICS FOR PURPOSES OF DETERMINING IF CASE IS APPROPRIATE FOR MEDIATION

Do parties have a current, past, or recurrent relationship? YES

If yes, is that relationship: Employer/Employee

Does the statute governing this case provide for payment of fees by the losing party? YES

**Use this space to alert the court to any special case characteristics that may warrant individual
management or accelerated disposition:**

Do you or your client need any disability accommodations? NO

If yes, please identify the requested accommodation:

Will an interpreter be needed? NO

If yes, for what language:

Please check off each applicable category: Putative Class Action? NO **Title 59?** NO **Consumer Fraud?** NO

I certify that confidential personal identifiers have been redacted from documents now submitted to the court, and will be redacted from all documents submitted in the future in accordance with *Rule* 1:38-7(b)

02/24/2023

Dated

/s/ EVAN L GOLDMAN

Signed

