

IN THE IOWA DISTRICT COURT FOR JOHNSON COUNTY

LAUREL FARRIN, Plaintiff, v. STATE OF IOWA, Defendant.	CASE NO. CVCV082621 PLAINTIFF’S AMENDED PRETRIAL BRIEF
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COMES NOW Plaintiff Laurel Farrin (sometimes, “Plaintiff” or “Professor Farrin”), by and through the undersigned attorney, James C. Larew, LAREW LAW OFFICE, and for her Amended Pretrial Brief, hereby states as follows:

FACTUAL BACKGROUND

Plaintiff Laurel Farrin at all times material hereto, was, and continues to be, a contracted employee of the University of Iowa, serving in her capacity as a professor of art at the Department of Art and Art History. Defendant State of Iowa (sometimes “Defendant”) has, as one of its agencies, the University of Iowa (hereinafter, sometimes, “UI”), which is located principally in Johnson County, Iowa. For all times material hereto, the UI retained the professional services of Plaintiff to research, create, and teach art to students. The State of Iowa is named as Defendant pursuant to Iowa Code Section 669.16 (2021).

The University of Iowa’s School of Art and Art History (“SAAH” or “School”), located at the College of Liberal Arts, has a storied history. Established in 1936, SAAH advertises itself as an entity that provides a creative, multidisciplinary environment for students of the studio arts, the history of art and art education. There are two Divisions at SAAH: the Art History Division

and the Studio Art Division. Within the Studio Division, there are 8 programs, each with a Program Head. One of those Programs is Painting and Drawing.

SAAH prides—and promotes—itsself on the fact that its painting and drawing programs were the first in the nation to hire artists as teachers, based on their professional record. Although a more prevalent practice in academic institutions, now, initially the University of Iowa's decision to award graduate degrees based on works of art created by students was considered revolutionary. The practice was so unique that, as a part of the School's tradition, works of art created by graduate students—considered by the University as thesis projects—were kept at SAAH, and which, as the fiduciary of those art works, the institution agreed to hold and care for in perpetuity.

Six regular faculty members, lecturers and recurring visiting faculty teach drawing and painting classes at all levels. SAAH, in describing its Painting and Drawing Program to the public, on the School's website, describes its faculty as one that is diverse and that exhibits regularly and widely in major cities across nation. Nationally and internationally renowned artists are invited to the School each year to lecture, to present their work, and to critique student work.

Plaintiff Laurel Farrin is Professor and Head of the Painting and Drawing Program. She received her B.F.A. from Ohio University and an M.F.A. from the University of Maryland.

Throughout her employment at the UI, for each calendar year, Professor Farrin has had a nine-month teaching contract, coupled with a 3-month research obligation to the UI. Since 1997, she has received residency fellowships at multiple venues in the United States. At those locations, she has studied painting techniques of other artists. She has brought that knowledge

back to the UI to incorporate into her own research and teaching. Professor Farrin's own art works, created during her employment at the UI, have been shown in galleries across the state of Iowa, throughout the United States, and in Europe.

Professor Farrin lives in the Northside Neighborhood, Iowa City, in a 900 square-foot bungalow, with a modest front porch. There is no place at her home to store her paintings. She drives a Prius, which is not large enough to transport paintings from one place to another. Her paintings have frames that are frequently 4 to 6 feet long on one side.

Professor Farrin's painting style, in a contemporary mode, has sometimes been characterized as "pop abstraction." Over the years, her paintings have been sold to individuals and institutions. She has donated paintings to galleries, from time to time, where they have been shown to the public. When she first applied to work at the UI, and during the years of her service on the faculty of The School of Art and Art History ("SAAH" or "School"), located at the College of Liberal Arts, she has been aware of, and she has appreciated, its storied history.

The SAAH, in 1997, hired Professor Farrin to serve on its faculty. Initially, in 1997/98, she served as a visiting assistant professor. In 1998, she was hired with a contract signed in April. She received generally positive reviews from students, and she received tenure in 2004. In 2021, Professor Farrin I was promoted to a full Professor.

During her tenure at the University of Iowa, it has always been a part of her duties: to experiment with painting; to travel to visit other painters; to learn about other painting techniques; to discuss my work with visiting artists; and to teach students emerging art techniques. Like scholars in other, more traditional academic disciplines at the UI who, in addition to uses of classroom spaces, are provided spaces to conduct research and safe places to

store their research materials, she needed and was provided—in addition to classroom spaces and a small office to meet with students—a studio to do her research and safe place to store her paintings in proximity to her studio.

Initially, from 1997 to 1999, she was assigned a private studio, which was described in her contract with the UI, within in the Old Carnegie Library in downtown Iowa City, located at 212 South Linn Street. There were other art professors already working at that building. Proximate to her studio there was a large, locked common area, shared by all of the faculty members whose studios were at that site, where they stored our paintings and other art works.

This initial storage area located near Professor Farrin's studio was particularly important to her ability to perform her work as a faculty member. She had easy access to paintings that she wanted to review or to use for teaching purposes. She did not have the ability to move the paintings, many of which were quite large, in her own vehicle. Nor did she have any room at her private residence to store the paintings.

In 1999, the University of Iowa partially renovated former-residential housing at the Oakdale campus to create new studios in a central location for faculty members whose offices (such as mine, at the Carnegie Library building) had been distributed in various places around the UI campus. The Oakdale building had been originally constructed as a residential facility in 1950.

The newly-refurbished structure, comprised of nearly-25,000 square-feet, sometimes known as Oakdale Studio A, was maintained by Facilities Management, and not by the SAAH. Although the building was centrally heated, cooling was provided by multiple, new air conditioners, one each custom-fitted into windows in each respective studio. In each instance

the air conditioners were mounted in large plywood sheets that had been situated where windows had previously been located.

The University of Iowa had previously refurbished a wing of the same three-story building, to create studios in which SAAH faculty members had been placed. Those studios were located in what had been called “Blocks”: A-Block and B-Block. The 1999-refurbished areas of the building had two additional and separate entryways, C-Block and D-Block. Professor Farrin had not been a part of the planning process for the C-Block and D-Block renovations.

Each Block was three-stories high, topped with a flat roof. Professor Farrin was initially assigned to an office on the top floor of C-Block, a studio labeled C-5. It was very suitable as a studio space—an improvement over her existing studio quarters at the Carnegie Library building. On the first (entering) floor, there were storage rooms, one on either side of the stairway. A flight of stairs with a sharp turn separated the floors. That turn proved to be too sharp a turn to permit Professor Farrin to carry up or down the stairs her largest painted canvasses.

On a ground floor, Professor Farrin was introduced to rooms designated C-1 and C-2, rooms with the same foot prints as were those in D-1 and D-2, whose uses involve facts related to the present lawsuit. These two rooms—C-1 and C-2—were not prepared as studios. C-2 was comprised of a small restroom and a large storage area. Professor Farrin was provided a key both to her initial third-floor studio, C-5, and also to the first-floor storage area, C-2. Each of the four studios in C-Block on the second and third floors—C-3; C-4; C-5; and C-6—were assigned to professors in the SAAH faculty.

The faculty members at the Carnegie Library building were transferred to the newly refurbished Oakdale studio spaces at the same time. Movers hauled Professor Farrin's paintings from the Carnegie Library building to the new location at Oakdale, many of them in crates. She marked the destinations on the crates. The largest paintings, the ones that she knew would not fit up the stairs to her assigned studio, were marked for placement in C-2—the first-floor storage area at the Oakdale location.

When Professor Farrin later arrived at the C-Block, the paintings had been placed where she had designated them to be. When she first went to C-2, the first-floor storage area, not only were her larger paintings stored there but so, too, were paintings and art works belonging to other faculty members. Professor Farrin's initial paintings, along with others she had stored there, remained in C-2 for several years. She used them as her reference library. She would obtain them when she wanted to refer to, or work upon, them and showed them to students and visiting faculty members.

Professor Farrin will testify that her third-floor C-5 location, although an improvement over the studio space that had been initially assigned to her at the Carnegie Library, was inconvenient. The sharp stairway bend impaired her ability to transfer her largest works to optimal teaching locations. Both the initially-assigned C-5 and C-2 locations were air-conditioned with what appeared to Professor Farrin to have been new air conditioners.

In 2003, Professor Farrin learned that a faculty member over on the second floor of D-Block, was moving. So, she requested and received permission from SAAH administrators to move over to D-3. When permission was granted, she moved her studio equipment to that location. She also moved her stored paintings from C-2 to D-2. To do that had had to carry

them out the front door of C-Block and into the front door of D-Block. The storage room in D-2 was being used in the same manner as had been C-2—paintings and art works and equipment of art faculty members were located there. Her own moved paintings joined those already present in D-2. When Professor Farrin transferred her studio and paintings from C-Block to D-Block other professors' paintings and items remained in the C-2 storage room. She turned in her keys to the C-5 and C-2 locations to University of Iowa administrators; she was issued keys to the D-3 and D-2 locations. As before, the UI had its own access to the D-Block locations that she was now permitted to use.

In the years that followed, Professor Farrin will testify, she made frequent use of the storage room in the D-Block (D-2). It was more conveniently located with respect to her studio in D-3 than had been the situation in C-Block. No stairway angles prevented her from carrying even her largest canvasses from her studio to the storage area—or vice versa. This enhanced her ability to fulfill her contractual duties with the UI, by more frequently and effectively using her “reference library” comprised of stored paintings in my research and teaching activities.

A few years later, when a professor moved out of studio D-4—right next door to Professor Farrin's studio at D-3—she was allowed to use that space as well. For more than fifteen years, D-2, D-3 and D4 were adequately maintained by the UI. Neither heating nor air conditioning issues arose. Room D-2 (as had been the case with C-2) was comprised of a small common bathroom, a janitor's closet and a storage area. UI maintenance personnel used D-2 on a frequent basis when cleaning and performing routine maintenance.

Professor Farrin, along with other professors, kept paintings and art objects in the D-2 storage area. Professor Sue Hettmansperger, for example, used D-2 for storage of her paintings

from 2010 to 2020. Another professor stored several pieces of furniture in the area as he approached retirement.

Professor Farrin will testify that she was in room D-2 frequently—to use the restroom (the only one in the building) and to access her stored paintings. She will testify that she never observed water on the floor. She never—until the events giving rise to this lawsuit—observed any damage to any of her own paintings or those of any other faculty member who stored art works at that location.

Professor Farrin and other witnesses will testify that in room D1, the SAAH stored many hundreds of paintings that had been graduate-degree theses projects. There were creations of graduate students for many decades stored there, which had been necessary for those students to obtain advanced degrees. Witnesses will testify that the graduate students had left their creations in UI's care and custody in perpetuity. Room D1 had lots of shelves and places for paintings; it was air-conditioned.

Professor Farrin will testify that although her studio and storage areas were located at Oakdale, she conducted the largest share of my teaching activities at the UI's central campus locations afforded to her. She presently conducts her classroom teaching at the Visual Art Building, at the School of Art, in an office approximately 100 square feet in size, where she can meet directly with students. At that small office location, there is only room for a small desk, two chairs, and a bookcase. She neither paints nor teaches at that location. She can meet with individual students there. As Head of the Painting and Drawing Program, Professor Farrin will testify, she conducts much of the administrative work for that position at that office location.

Under the terms of Professor Farrin's employment contract, one-third of her work involves research, including learning painting techniques, and traveling to meet with artists to learn their techniques.\ She also shows her paintings at art galleries and meet with gallery personnel to discuss and review paintings for possible showings. She attends gallery shows exhibiting paintings and other forms of art by other artists. In these environments, she will attest, she has always been generally aware of market conditions and the amounts paid by persons and institutions for various types of art works.

Professor Farrin will describe how she experiments with painting techniques, which has been a part of the importance of the common storage room for her work. The collection of paintings that she stored in D-2 spanned her entire career as an artist. The sizes of my paintings she placed in D-2 ranged greatly, from smaller pieces to very large canvasses. She will testify that she frequently referred to pieces in that collection for the purpose of doing additional work on them—sometimes adding more touches to a finished work, sometimes referring to an earlier painting that had been made as part of a series, and sometimes pulling out pieces to share with a student, fellow faculty-member, visiting artist, or a curator.

There was no other place other than D-2 where these paintings could be stored. There were no other storage spaces allowed or offered by the UI in proximity to her studio. Professor Farrin will describe that some art professors she has worked with have created studios and storage places in their homes. This has not been possible for her, however. She has lived, and resides, in a 900 square-foot home in Iowa City, nearly five miles away from the Oakdale campus, with no space to store paintings; her home is also too far from her studio to be practical or beneficial for teaching purposes. It is also that case that most of her paintings stored in D-2 have been too large to transport in her car.

Professor Farrin will testify that, over time, the number of paintings she stored in D-2 grew to more than 40. For more than fifteen years, she had no issues with the studio and storage spaces to which she had been assigned by the UI. However, in 2016, as she will describe, she began to notice problems with the facility's maintenance, caused by the UI's neglect of it—problems that, in her opinion, could, and should, have been handled and resolved routinely by the UI's Facilities Management department. In the summer of that year (2106), the in-window air-conditioners in Room D-4 (her studio) and the storage room below her studio, room D-2, failed to operate fully. The room temperatures in her studio, she will testify, which was on the floor above D-2, in summer months, increased, sometimes uncomfortably. The air conditioner fans, she observed, in both spaces continued to operate, but the cooling function in each unit did not work.

The evidence will demonstrate that Professor Farrin reported the situation to Troy Fitzpatrick, also an employee of the UI, and a SAAH Administrator, with the expectation that the situation would be properly addressed. The request to fix or replace those air conditioning units was denied. During that same summer, in 2016, when Professor Farrin was working at an art residency in New York, and, unreported to her, a roof leak arose at a location directly above third-floor Studio D-6, which was located directly above her own second-floor Studio D-4, which, in turn was located directly above the faculty's common storage room, first-floor room D-2. The water intrusion appeared to have come in the southeast corner of her second-floor D-4 studio, as the ceiling's surface, although dry when discovered by her, was bulging at that location. Water appeared to have intruded from the roof, first, down into third-floor studio D6, then down further into her own second floor studio, D4, below.

In her absence, she had not been informed of the situation, but had discovered it only upon her return. Water intruding into Professor Farrin's studio D-4, from above, had come in direct contact with five paintings she had been working on in that location, resulting in water and mold damage to the paintings' canvasses and, leading ultimately, to her having to destroy them to avoid the spread of mold. Professor Farrin's discovery of the 2016 water-causing-damage incident was described, in real time, by her, in a series of telephone calls and emails she made to Mr. Fitzpatrick and others.

Those paintings ruined by the water intrusion did not result in her filing any claim (a Tort Claim or a lawsuit). Those ruined paintings are not a part of the claim made by her in this case, either. She did not, at that time, know that she had any recourse. However, the painting ruination incident of 2016 did cause her to be vigilant and made her determined to make her voice heard to appropriate departmental officials with respect to property maintenance issues. This initial, 2016, water-damage incident would later be described in an email from her dated April 26, 2017. In the 2016 water damage incident in Studio D-4, no observable water had intruded further, directly below her studio, down into room D-2, located in the building's first level; no paintings stored by her in first-floor room D-2 had been damaged at that painting storage location at that time.

Given the frequency with which she had been in and out of the storage space in room D-2 on a daily basis (as described, herein, to use the restroom, to store or to remove particular paintings), and with which she had generally inspected or shipped her stored paintings, Professor Farrin will testify that she is confident that, had any damage to the paintings in that location existed at that time, in 2016, she would have observed, reported it, and taken measures to mitigate it.

Professor Farrin will testify that, considering the 2016 water intrusion incident, she was concerned that any water from the third floor could have come into her second-floor studio, D-4. She promptly informed the UI's employee, Mr. Fitzpatrick, that, as a result of the water penetration into her studio, during a period of her absence, mold and mildew had begun to grow on some of her artwork that had been located on the floor in that studio space, the result of intruding water touching several paintings.

he will testify that she informed the UI that maintenance crews who had then entered to studio with respect to the 2016 water intrusion incident, in her absence, to address the earlier water intrusion problems, had unfortunately moved her artwork in such a manner as to have had caused additional physical damage to several of my pieces. The UI's response Professor Farrin concerned her. The conditions of the building, she was told, were known to be "post-apocalyptic."

Despite the fact that the 2016 water intrusion had come in through the southeast corner of the ceiling of the Studio D-6, directly above, and despite that fact that the intruding water had resulted in water damage to her own Studio D-4, and a number of her paintings located there, the UI made no permanent repairs to the roof area above third-floor studio D-6. Professor Farrin will testify, further, that in 2017, she continued to use her paintings stored in the first-floor room, D-2, extensively, and that there were no signs of mold or mildew. Nor were no signs of water intrusion on the floor or anywhere else in that room. The evidence will reveal that no action was taken by any Department of the University of Iowa to repair or replace air conditioning units in first-floor room D2 or in second-floor studio D4, despite Professor Farrin's reports of problems with both of those units.

Professor Farrin will describe that, in early 2018, the Director of the Department, in an email, informed the faculty that Oakdale Studios would be demolished later in the Spring. It did not happen on schedule, however. In the meantime, that same year, in the Fall of 2018, now two years after the initial water intrusion into Professor Farrin's second-floor Studio D-4, she, again, noticed water intrusion into that space. She will describe water on the floor of Studio D-4, and a wet bulging ceiling in the same southeast location of that room, similarly as had occurred in 2016.

Professor Farrin will testify, and documentary evidence will demonstrate that, once again, she contacted the UI, through Mr. Fitzpatrick, and informed him of the problem, by filing a report. Mr. Fitzpatrick, in turn, informed Professor Farrin that she should contact Facilities Management, directly, as if his department had no responsibility concerning the building. In response, Professor Farrin contacted Facilities Management; however, the evidence will prove that no action was taken by any UI person or department to remedy the situation. Further, no action was taken with respect to Professor Farrin's report of air conditioners that remained without operating compressors.

The evidence will show that in September of 2018, the Iowa Board of Regents was asked to approve the UI's request to raze the Oakdale building where Professor Farrin's studio was located. According to the plan announced at that time to the Regents, SAAH's studios would be moved back to the main campus, in close proximity to the UI's new Visual Arts Building, at 107 River Street, west of the Iowa River, where Professor Farrin's administrative office and teaching classrooms were located. The removal of the Oakdale building, according to the 2018 Regent request, was in line with the UI's master plan to decrease square footage supported by general education funds. Demolition of the building was projected to cost more than \$500,000.

According to reports, construction of the new art studio building—originally pitched at 10,992 square feet—was projected to cost \$1.9 million, plus \$580,000 in planning and design, furniture and equipment and contingency. According to the approved plan, as reported in 2018, construction would begin in the Fall of 2020.

On December 3, 2018, with respect to the water intrusion that had occurred shortly before, following the advice of Mr. Fitzpatrick, Professor Farrin requested repairs in a report made to another University of Iowa employee, Mr. Ben Anzelc, Facilities and Safety Coordinator for the UI. On December 7, 2018, an email from Steph Rourke, Customer Services Supervisor, was sent to Professor Farrin to inform her that a work order had been created in response to her December 3, 2018 report. Whether any work was performed is unclear. Professor Farrin will testify that she did not observe workers repairing the roof. No work Orders have been produced in the course of this litigation to indicate that any such work was, in fact, performed.

Six months later, on May 17, 2019, Professor Farrin will testify that she arrived at her Oakdale Studio D-4 to find that water intrusion had occurred once again, the result of water penetration through the ceiling. She will describe that she had no cleaning equipment accessible to her, but that she attempted to mitigate damages by cleaning up water with paper towels as best she could.

Three days later, on May 20, 2019, Monica Correia, Director of Undergraduate Studies at the UI's School of art & Art History, the occupant of third-floor Studio D-6, located directly above Professor Farrin's second-floor studio, mailed Mr. Anzelc to verify with him as to whether all issues relating to the water intrusion events had been resolved, and attempted to verify that no

further issues would arise. Professor Correia indicated, further, that, as a result of the past events, her belongings and equipment “had really bad damage” and that she had “lost supplies.” On that same day, May 20, 2019, Professor Farrin also emailed Mr. Anzelc and informed him of the same ongoing issues she had experienced in the years past—that water, especially after heavy rains, would penetrate the roof of the building and then intrude into her second-floor Studio D-4, where her own art and equipment had been used and stored. In that communication, she reiterated that she had already, by that time, lost 5 paintings due to water damage in her studio. She indicated, further, that she would not be on-site for the coming summer, and that, therefore, she was requesting additional inspections throughout the coming summer to verify the items inside the Studios would remain safe and kept from harm.

Throughout this period, Professor Farrin will testify, she had kept a careful eye upon, and had not noticed either water intrusions into, or damage inflicted upon, any paintings stored in the first-floor storage room, D-2. As she had done routinely since occupying the D-4 studio years earlier, Professor Farrin will testify that she regularly consulted, reviewed and, sometimes, temporarily removed individual paintings stored in first-floor room D-2 to use them for research or teaching purposes.

In the course of those multiple visits, Professor Farrin will testify, she had never found damp floors or water standing in that D-2 storage location. Neither she nor, to her knowledge, had other faculty members who had stored their paintings at that location ever discovered water or mold/mildew damage in that location up to that point in time.

On May 22, 2019, Mr. Anzelc, Facilities Management, sent an email to Professor Farrin, along with a number of other individuals, concerning the second-floor Studio D-4 site issues.

Based upon a review of the site, it was determined by the inspection that roof drains above third-floor studio D-6 had been blocked with debris, and that the blockage had cause water to intrude through the roof and into that studio. By report, Professor Farrin understood that the blockage had been removed and that no further action was deemed necessary by the UI's maintenance employees.

Six months later, in November 2019, the University of Iowa announced new plans, this time, at a cost of \$2.5 million, to move forward with building a new stand-alone 7,300 square-foot art studio complex at its Oakdale campus (not, as earlier announced, near the central campus), for the School of Art and Art History, to replace aging studios scattered in buildings on the main UI and Oakdale campuses. As proposed, the new facility would house 14 art studios, a display space, a paint spray room a kiln, restrooms, and storage space.

Shortly thereafter, the Covid-19 pandemic began to take its toll on the proposed site relocation of Oakdale—where once the Oakdale buildings were to be demolished, and all individuals and their items and equipment were to have been relocated—individuals (such as Professor Farrin) were informed that that demolition and relocation work would be postponed until the following summer, in 2020. Prior to the faculty's move from the existing Oakdale Studio complex (where Professor Farrin's studio was located) to the new facility, the Department of Art and Art History moved the many hundreds of Theses Paintings from their respective location in D-1—located in the first-floor room immediately next to D2, where Professor Farrin's (and others') paintings had been stored. Professor Farrin was not made aware of any reported incidents of mold on any of the Theses Paintings; in the course of this litigation, the UI has not described any such mold.

In July of 2020, Professor Farrin, along with other faculty members with studios at the Oakdale Studio complex, began to prepare for the move to the new location. When in the process of moving her artwork from D-2, she discovered that mold had grown on a substantial number of them. She was devastated. The damaged paintings represented much of her life's work.

As a further part of that same move, she went to over to C-2, where I had left some materials and supplies years earlier. In retrieving them, she found no damage to any of her items, including canvass materials. She observed, further—and, in speaking with other faculty members, confirmed—that no mold or mildew had accumulated on paintings stored at that first-floor C-2 location for years.

Having identified the mold damage on paintings as being those that had been stored at D2, Professor Farrin informed the UI of that fact. In an attempt to salvage her artwork damaged at D2, she consulted with experts with experience in painting mold mitigation, including:

- a. Joshua Johnson, Assit Registrar, Figge Museum, Davenport;
- b. Gail Enns, Director, Green Chalk Contemporary Art, Monterey, CA; and
- c. Dan Devening, Director, Devening Projects, Chicago, IL.

She spent most of July and August of that year preparing to move, a considerable number of those hours used in an effort to mitigate the damage to her paintings, using techniques recommended to her by curators working for a number of museums. Professor Farrin will testify that experts recommended to her that a vacuum with a HEPA filter be used to attempt to remove the mold. The University of Iowa purchased such a vacuum for her and she used it—but without success. Professor Farrin will testify that she also tried using an alcohol spray, which the experts had suggested. However, none of these actions removed the mold damage.

In conducting her research about mold damage, Professor Farrin will testify that she was acutely aware that mold can infect objects near it. She understood that, without the ability to remove the mold successfully from her paintings' canvasses, they could not be placed in homes or offices or near other paintings. The only option available and known to her was to destroy the paintings. These paintings constituted a substantial body of her life's work, created over a period of more than twenty years. She will testify that she found it extremely difficult to destroy them.

In an effort to document the damage, Professor Farrin will describe a process during which she created a claim with over 130 pages of photographs and condition reports from qualified experts in the art valuation field regarding the damaged artwork. To determine the value of the destroyed painting, she will testify, she relied on her own experiences attending and showing her work in galleries and selling her paintings privately to individuals and institutions. She determined that a reasonable value of the paintings destroyed by the mold was between \$135,000 and \$140,000. She will testify, in addition, that she has spent many hours trying to salvage the paintings, all without compensation.

The evidence will include the opinion testimony of Dan Devening, who is a lecturer in art and who operates an art gallery. He will testify that he is familiar with Professor Farrin's work and the market that is interested in purchasing her paintings. He will testify that in his opinion a loss valuation in the \$135,000 to \$140,000 is reasonable.

ARGUMENT

A. Bailment

Plaintiff has asserted a claim against Defendant based on its role as a bailee of her artwork. Plaintiff will demonstrate the above-described evidence at trial. A bailment:

denotes delivery of personalty by one person [the bailor] to another [the bailee] for a specific purpose beneficial to bailee or bailor or both, upon a contract, express or implied, that the conditions shall be faithfully executed and the personalty returned to bailor, or duly accounted for when the specific purpose of the bailment shall have been accomplished, or kept by the bailee until claimed by the bailor.

Farmers Butter & Dairy Co-op. v. Farm Bureau Mut. Ins. Co., 196 N.W.2d 533, 538 (Iowa 1972). One of the benefits of Professor Farrin's employment, which assisted the UI in attracting talented professors and graduate students, was the studio space and storage space used by professors to start their art, such as D-2 and D-4 spaces used by Professor Farrin. A bailment can also arise by operation of law when justice requires. *Dinnes v. Martin (In re Estate of Lewis)*, 817 N.W.2d 31 (Iowa Ct. App. 2012). There are three types of bailments: "(1) those for the sole benefit of the bailor, known as a gratuitous bailment; (2) those for the sole benefit of the bailee; and (3) those for the mutual benefit of both." *Id.* (citing *Khan v. Heritage Prop. Mgmt.*, 584 N.W.2d 725, 729-30 (Iowa Ct. App. 1998) and 8A Am. Jur. 2d *Bailments* at § 2, 520-21). Professor Farrin asserts that this bailment was for the mutual benefit of both UI (which was able to attract and retain talented professors and graduate students and to have the readily-available art shown to students and other visitors) and herself (as she had nowhere else to store her artwork and had been provided a storage space for her paintings since she had started working for UI). Where the bailment is for the mutual benefit of the parties, "the fact that property was damaged while in the bailee's possession creates a presumption the damage is due to the bailee's lack of care." *Id.* (citation omitted). "This presumption, along with proof of the amount of loss, establishes a prima facie case for the bailor." *Id.* In order to rebut the presumption, the bailee (UI) must demonstrate that the damage occurred despite due care. *Id.* A gratuitous bailment, on the other hand, generally applies the negligence standard of reasonable care not being exercised, or gross negligence. *Id.* Plaintiff asserts that this was clearly a bailment of mutual benefit, but in

the alternative, will demonstrate that at a minimum, there was a constructive or gratuitous bailment, and Defendant's lack of care constituted gross negligence.

CONCLUSION

Upon the conclusion of the submission of evidence to the Jury, Plaintiff will be asking the Jury to award a sufficient amount of damages to make her whole.

Respectfully submitted,

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PROOF OF SERVICE

The undersigned certifies that the foregoing document was served upon all parties to each of the attorneys of record herein at their respective addresses disclosed on the pleadings on April 14, 2023.

By: EDMS

Signature /s/ Andrew Kramer