For the reasons stated in their memorandum, and as discussed in more detail below, the court ALLOWS the unopposed motion to dismiss filed by defendants President and Fellows of Harvard College and Harvard University (collectively, Harvard). The court dismisses with prejudice all claims against these parties.

First, the court dismisses plaintiff's civil rights claims (Counts I and II). Even assuming arguendo that plaintiff's nude performance is entitled to some measure of protection under the First Amendment (which the court doubts), plaintiff nonetheless has failed to state a claim for relief under federal or state law. The Complaint does not, for example, allege that Harvard acted under color of state law, as required by the Federal Civil Rights Act, 42 U.S.C. s. 1983; nor does it plausibly suggest that Harvard used threats, intimidation, or coercion to achieve any alleged interference with his rights, as required by the Massachusetts Civil Rights Act, M.G.L. ch. 12, ss. 11H, 11I.

The court also dismisses plaintiff's contract-based claims (Counts III, IV, and V). Plaintiff does not identify any provision in the Sanders Theatre contract entitling him to perform nude. Indeed, he appears to concede that the Sanders Theatre contract contains a provision expressly prohibiting nudity in performances. He also does not explain how his termination, even if premised on the content of his performance, breached any employment agreement with the university. Plaintiff, after all, was an at-will employee and, subject to certain exceptions which plaintiff does not assert here, could be terminated at any time "for almost any reason or for no reason at all." See Jackson v. Action for Bos. Cmty. Dev., Inc., 403 Mass. 8, 9 (1988).

Count VI seeks to enforce a right to perform nude under a promissory estoppel theory (Count VI), rather than a contract theory. Plaintiff, however, does not sufficiently plead the elements of promissory estoppel. He does not allege, for example, that Harvard (or any authorized or apparent agent of Harvard) made a clear or definite promise that he could perform nude. And even if plaintiff had made such an allegation, the Complaint does not establish that reliance on such a promise would have been reasonable under these circumstances, where the Sanders Theatre contract contained an express prohibition to the contrary. The court thus dismisses this claim.

The court also dismisses plaintiff's defamation claim against Harvard (Count VII). To the extent the allegedly false and defamatory statements cited in plaintiff's Complaint - "(i) that Clopper, a Jewish man, is anti-Semitic; (ii) that Clopper improperly brought nudity to Sanders Theatre; and (iii) that Clopper had engaged in a 'nude, anti-Semitic rant' in Sanders Theatre," see Compl. p. 101 - were made by Harvard employees (e.g., Rachel Dane) or can otherwise reasonably be attributed to the university, these statements either accurately relay facts (plaintiff did perform nude without permission) or express unactionable opinions. In any event, even if these statements were somehow actionable, plaintiff's defamation claim against Harvard would still fail because plaintiff acted as a limited-purpose public figure with respect to his performance and has not adequately alleged actual malice on the part of Harvard.

Finally, the court determines that dismissal of plaintiff's remaining claims against Harvard is appropriate. As to his conversion claim (Count VIII), plaintiff fails to allege the existence of any personal, tangible property over which Harvard exerted dominion. And as to his conspiracy claim (Count X), he fails to establish the existence of an underlying tort or plead any facts supporting his conclusory allegation of any common plan or scheme.

(RGS, law3) (Entered: 10/14/2020)