

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

KEITH MUMPHERY,

Plaintiff,

v.

MICHIGAN STATE UNIVERSITY,
MICHIGAN STATE UNIVERSITY BOARD
OF TRUSTEES; LOU ANNA SIMON, individually and as
agent for Michigan State University, LIZ
ABDNOUR, individually and as agent for Michigan State
University, ANDE DUROJAIYE, individually and
as agent for Michigan State University, RICK SHAFER,
individually and as agent for Michigan State University,

Defendants.

Hon. _____

Case No. _____

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COMPLAINT AND JURY DEMAND

NOW COMES Plaintiff, Keith Mumphery, by and through his attorneys NESENOFF & MILTENBERG LLP, RUSTY HARDIN & ASSOCIATES, LLP, and BOGAS & KONCIUS P.C. hereby files the following complaint against the Defendants as captioned above.

THE NATURE OF THIS ACTION

1. Plaintiff Keith Mumphery (hereinafter “Plaintiff”) brings this lawsuit, which asserts violations of constitutional due process, Title IX, and related state claims against Defendants Michigan State University (“Michigan State”), The Michigan State University Board of Trustees, Liz Abdnour, Ande Durojaiye, and Rick Shafer. Plaintiff is a May 2014 graduate of Michigan State who was a non-registered graduate student during the events in question. Despite a previously unblemished disciplinary record and Michigan State’s initial finding of “no responsibility,” Plaintiff now finds himself permanently dismissed from Michigan State based on false allegations of sexual misconduct and sexual exploitation by a female Michigan State student referred to herein as Jane Roe.¹

¹ Plaintiff refers to the complainant pseudonymously, as “Jane Roe” for purposes of protecting her privacy.

2. In addition, Plaintiff is unable to play football professionally because of the specious charges and erroneous findings against him, having been cut by his employer, the Houston Texans, the day after a newspaper report in Houston questioned how the Texans could have hired a player who had been expelled from college for sexual assault. Since being cut by the Texans, Plaintiff has been unable to find a job in his chosen profession.

3. Michigan State's imposed discipline also has the effect of permanently preventing Plaintiff from completing a graduate degree in communications, a career he intended to pursue after his career as a professional athlete. In addition, Plaintiff is barred from setting foot on Michigan State's campus until the beginning of 2019 and will likely be barred from admission to a graduate program at other universities as a result of his improper dismissal from Michigan State.

4. Michigan State's findings were not based on any concrete evidence. Rather, Michigan State found Plaintiff "responsible" for sexual misconduct after Roe appealed the initial finding of "not responsible."

5. During the appeal, Roe, continued to complain about her treatment and threatened to sue Michigan State. That lawsuit was ultimately filed at the end of November 2017, and Roe, who was a first-year/freshman student at the time in question had four years of school and tuition payments remaining while Plaintiff had graduated.

6. Michigan State denied Plaintiff his right to due process of law in violation of the Fourteenth Amendment and 42 U.S.C. § 1983. There were repeated failures to give Plaintiff proper notice of the proceedings. There was no proper hearing, there was no cross-examination; there was no sworn testimony, and the evidence that supposedly supported Jane Roe's false allegations was originally determined to exonerate Plaintiff.

7. Moreover, after Jane Roe submitted an appeal, the presumption of innocence to which Plaintiff was entitled disappeared. Specifically, Roe repeatedly protested Michigan State's inclusion of what she considered prejudicial information in the initial report as well as the conclusion that Plaintiff was not responsible. Upon reconsideration of the initial findings, and to placate Roe, Michigan State changed its original position and determined that Roe's story was true and that Plaintiff was guilty. No new evidence substantiating Roe's claim was found. The findings of the initial Investigative Report were merely re-interpreted in Roe's favor.

8. Ultimately, Michigan State removed what it deemed prejudicial information related to Roe's prior conduct from the revised Final Investigative Report, but allowed similarly prejudicial, and uncorroborated, information regarding Plaintiff to remain. The net result was that there was no reasoned consideration of evidence as required by the proper burden of proof.

9. Moreover, there was a conflict of interest when Defendant Liz Abdnour served as both the investigator and the adjudicator in connection with the Final Investigative Report that resulted in the imposition of sanctions against Plaintiff. This dual role impermissibly allowed the Defendants to tailor decision-making in specific cases to give the appearance of vigorous Title IX enforcement and meet perceived reporting needs to the U.S. Department of Education Office for Civil Rights ("OCR") while simultaneously achieving a pre-determined result. Thus, Michigan State's procedures effectively allowed it to engage in discriminatory decision-making.

10. These procedures, when coupled with the Defendants repeated failure to provide Plaintiff with notice of the proceedings, prejudiced Plaintiff's ability to defend himself throughout the appeal process and resulted in the imposition of arbitrary and capricious discipline against Plaintiff.

11. Michigan State's and the individual Defendants' actions resulted in an erroneous outcome and an unduly severe and disproportionate sanction on Plaintiff. Further, the disciplinary process and ultimate finding were motivated by an anti-male and anti-athlete discriminatory bias against Plaintiff in violation of Title IX.

THE PARTIES

12. Plaintiff is a natural person domiciled in the State of Georgia. During the events described herein, Plaintiff was a non-registered graduate student at Michigan State.

13. Defendant Michigan State is a land grant university established by the State of Michigan and its main campus is located in East Lansing, Michigan. Michigan State is the beneficiary of state appropriations and is the recipient of state and federal grants.

14. Defendant Michigan State University Board of Trustees ("Michigan State Board of Trustees") is an eight-member board responsible for making rules and regulations to govern Michigan State. The election of these Trustees is prescribed by Article XIII, Section 5 of the Michigan State Constitution and Michigan Election Law section 168.286.

15. Defendant Lou Anna Simon was the President of Michigan State during all relevant times described in this complaint. Simon is sued in her individual capacity and as an agent for Michigan State. Upon information and belief, Simon is a resident of the State of Michigan.

16. The Board of Trustees, and Simon as the Board's administrative hand during the period in question, are responsible for ensuring that all Michigan State employees are properly trained and supervised to perform their jobs.

17. Defendant Liz Abdnour, J.D. is Michigan State's Institutional Equity Coordinator in Michigan State's Office of Institutional Equity ("OIE"). Abdnour conducted the

reinvestigation of Jane Roe's claims after the original investigator, Dr. Catherine "Cat" Riley left Michigan State. Abdnour is sued individually and in her capacity as an agent of Michigan State University. Upon information and belief, Abdnour is a resident of the State of Michigan.

18. Defendant Ande Durojaiye was the Director of the Office of Institutional Equity and Michigan State's Deputy Title IX Coordinator at the time the revised Final Investigative Report in this matter was issued in March 2016. Dr. Durojaiye was responsible for supervising the investigations described herein and approving Defendant Abdnour's Revised Final Investigative Report ("Abdnour's Report") and is sued individually and in his capacity as an agent of Michigan State University. Upon information and belief, Durojaiye is a resident of the Commonwealth of Kentucky.

19. Defendant Rick Shafer is Michigan State's Associate Director of Student Conduct and Conflict Resolution and is named herein individually and in his capacity as agent of Michigan State. Upon information and belief, Shafer is a resident of the State of Michigan.

JURISDICTION AND VENUE

20. This Court has federal and supplemental jurisdiction pursuant to 28 U.S.C. § 1331, 28 U.S.C. § 1332, and 28 U.S.C. § 1367 because: (i) the case arises under the laws of the United States; (ii) the claims brought under Title IX of the Educational Amendments of 1972, 20 U.S.C. § 1681 *et seq.*, and 42 U.S.C. § 1983 are civil rights claims; and (iii) the state law claims are so closely related to the Title IX and 42 U.S.C. § 1983 federal law claims as to form the same case or controversy under Article III of the U.S. Constitution.

21. This Court has personal jurisdiction over Defendants on the grounds that Defendants are conducting business at Michigan State within the State of Michigan.

22. Venue for this action properly lies in this district pursuant to 28 U.S.C. §1391 because the events or omissions giving rise to the claim occurred in this judicial district and because the Defendants are located in this judicial district.

FACTUAL ALLEGATIONS COMMON TO ALL CLAIMS

**BACKGROUND: THE “APRIL 2011 DEAR COLLEAGUE LETTER”
OF THE DEPARTMENT OF EDUCATION’S OFFICE FOR CIVIL RIGHTS**

23. On April 4, 2011, the OCR of the U.S. Department of Education (“DOE”) sent a “Dear Colleague Letter” to colleges and universities (hereinafter referred to as the “Dear Colleague Letter”). The Dear Colleague Letter provides a necessary set of background facts to this action.

24. The Dear Colleague Letter advised that, to comply with Title IX, colleges and universities must have prompt procedures to investigate and resolve complaints of sexual misconduct.

25. Most notably, the Dear Colleague Letter required schools to adopt a relatively low burden of proof – “more likely than not” – in cases involving sexual misconduct, including assault. Several colleges had been using “clear and convincing,” and some, like Stanford University, applied the criminal standard, “beyond a reasonable doubt.”

26. The Dear Colleague Letter stated that schools should “minimize the burden on the complainant,” transferring alleged perpetrators, if necessary, away from shared courses or housing.

27. The Dear Colleague Letter, while not completely ignoring due process concerns, suggested that schools should focus more on victim advocacy.

28. The Dear Colleague Letter stated that schools should give both parties the right to appeal a decision, which amounts to double jeopardy for an accused student.

29. After the Dear Colleague Letter was published, many schools changed their sexual assault and sexual harassment policies and procedures.

30. The Obama Administration, through the DOE and OCR, treated the Dear Colleague Letter as binding on regulated parties for all practical purposes and thus pressured colleges and universities to aggressively pursue investigations of sexual assaults on campuses.

31. In February 2014, Former DOE Assistant Secretary for Civil Rights, Catherine J. Lhamon (“Lhamon”), told college officials attending a conference at the University of Virginia that schools needed to make “radical” change.

32. According to the *Chronicle of Higher Education*, college presidents said afterward that there were “crisp marching orders from Washington.” See “Colleges Are Reminded of Federal Eye on Handling of Sexual-Assault Cases,” *Chronicle of Higher Education*, February 11, 2014 (available at: <https://www.chronicle.com/article/Colleges-Are-Reminded-of/144703>).

33. In June 2014, Lhamon testified at a Senate Hearing that “some schools are still failing their students by responding inadequately to sexual assaults on campus. For those schools, my office and this Administration have made it clear that the time for delay is over.” Lhamon stated at the Senate Hearing in June 2014 that “we do” expect institutions to comply with the Dear Colleague Letter. She told the Senate Committee, “This Administration is committed to using all its tools to ensure that all schools comply with Title IX . . .” She further told the Committee: “If OCR cannot secure voluntary compliance from the recipient, OCR may initiate an administrative action to terminate and/or refuse to grant federal funds or refer the case to the DOJ to file a lawsuit against the school.”

34. In July 2014, Lhamon, speaking at a conference on campus sexual assault held at Dartmouth College, stated that she was prepared to cut off federal funding to schools that violate Title IX and that she would strip federal funding from any college found to be non-compliant with the requirements of the Dear Colleague Letter. “Do not think it’s an empty threat,” Lhamon warned. She went on to describe that enforcement mechanism as part of a set of “very, very effective tools,” adding that “[i]f a school refuses to comply with Title IX in any respect, I will enforce.” Lhamon was quoted: “It’s not surprising to me that we haven’t gone to the last step. . . . It means that so far the process has been working.” Meredith Clark, “Official to colleges: Fix sexual assault or lose funding,” July 15, 2014 (available at: <http://www.msnbc.com/msnbc/campus-sexual-assaultconference-dartmouth-college#51832>).

35. Lhamon was quoted in the *Los Angeles Times* stating, “We don’t treat rape and sexual assault as seriously as we should, . . . [There is] a need to push the country forward.” Savage and Timothy M. Phelps, “How a little-known education office has forced far-reaching changes to campus sex assault investigations,” *Los Angeles Times*, August 17, 2015.

36. To support making the Dear Colleague Letter binding, the OCR hired hundreds of investigators for Title IX enforcement. The Federal Government is investigating approximately 250 schools for possible Title IX violations, including notable schools such as UC Berkeley, Stanford, Harvard, Brown University, Columbia University, Cornell University, Dartmouth College, Johns Hopkins University, the University of Chicago as well as many top state universities including Michigan State.

37. The Department of Education negotiated settlements with many schools, including Michigan State, which resolved two Title IX investigations on September 1, 2015.

38. The investigations resolved in 2015 stemmed from Michigan State's failure to promptly act on two reports of sexual assault as well as Michigan State's failure to have proper procedures and policies in place to handle sexual assault reports.

39. Colleges and universities, including Michigan State, are fearful of and concerned about being investigated or sanctioned by the DOE and/or of potential Title IX lawsuits by the U.S. Department of Justice ("DOJ"). The Obama Administration issued a report entitled "Not Alone" in April 2014, which included a warning that if the OCR finds a Title IX violation, the "school risks losing federal funds." It further advised that the DOJ shares authority with OCR for enforcing Title IX, and may initiate an investigation or compliance review of schools. If a voluntary resolution cannot be reached, the DOJ may initiate litigation against the institution. In July 2016, Vice President Biden suggested that schools that do not comply with administration guidelines could be stripped of federal funding. "Obama, Biden Won't Visit Universities That Fall Short In Addressing Sexual Assault," Huffington Post, July 4, 2016 ("The vice president said he'd like to take away federal funding from those universities.")

40. To revoke federal funds – the ultimate penalty – is a powerful tool because institutions receive billions of dollars a year from the federal government. Anne Neal of the American Council of Trustees and Alumni was quoted as follows: "There is a certain hysteria in the air on this topic, . . . It's really a surreal situation, I think." She explained that "schools are running so scared of violating the civil rights of alleged victims that they end up violating the due process rights of defendants instead." "How Campus Sexual Assaults Came To Command New Attention," NPR, August 12, 2014.

41. The DOJ and OCR have created a significant amount of pressure on colleges and universities to treat all those accused of sexual misconduct with a presumption of guilt. The

Chronicle of Higher Education noted that “Colleges face increasing pressure from survivors and the federal government to improve the campus climate.” Robin Wilson, “*Presumed Guilty: College men accused of rape say the scales are tipped against them*,” *Chronicle of Higher Education*, September 1, 2014, <https://www.chronicle.com/article/Presumed-Guilty/148529> In the same article, the *Chronicle* noted that different standards were applied to men and women: “Under current interpretations of colleges’ legal responsibilities, if a female student alleges sexual assault by a male student after heavy drinking, he may be suspended or expelled, even if she appeared to be a willing participant and never said no. That is because in heterosexual cases, colleges typically see the male student as the one physically able to initiate sex, and therefore responsible for gaining the woman’s consent.” *Id.* Robert Dana, Dean of Students at the University of Maine, told NPR that some rush to judgment is inevitable. “I expect that that can’t help but be true,” he says. “Colleges and universities are getting very jittery about it.” “Some Accused Of Sexual Assault On Campus Say System Works Against Them,” NPR, September 3, 2014.

42. On September 22, 2017, OCR rescinded the Dear Colleague Letter and put in place an interim guidance while the current administration reviews and revises its practices with regard to the adjudication of complaints of sexual misconduct on college campuses receiving federal funding. *See, e.g.*, <https://www.ed.gov/news/press-releases/departments-education-issues-new-interim-guidance-campus-sexual-misconduct>.

43. The interim OCR guidance, in a significant departure from the 2011 Dear Colleague Letter, states: “The findings of fact and conclusions should be reached by applying either a preponderance of the evidence standard or a clear and convincing evidence standard,” as long as the standard for evaluating claims of sexual misconduct is the same as that applied in

other student disciplinary proceedings. The interim guidance also requires that “[a]ny rights or opportunities that a school makes available to one party during the investigation should be made available to the other party on equal terms.”

44. The interim OCR guidance, as well as the accompanying review of OCR’s prior guidance documents, suggest that the Equity Grievance policies and procedures in place at all times relevant to this lawsuit – which were tailored in such a way as to comply with the Dear Colleague Letter under threat of loss of federal funding – were unfair and, ultimately, out of step with the goal of gender equity in Title IX-related proceedings. *See* “Q&A on Campus Sexual Misconduct,” available at <https://www2.ed.gov/about/offices/list/ocr/docs/qa-title-ix-201709.pdf>.

THE CONTRACT BETWEEN PLAINTIFF AND MICHIGAN STATE

45. Plaintiff entered into a contract with Michigan State as part of his enrollment at Michigan State. Pursuant to that contract, Plaintiff received free tuition, room, board, and textbooks in exchange for his participation as a member of the Michigan State varsity football team.

46. In addition, Plaintiff, like all other students attending Michigan State, agreed to be bound by Michigan State’s policies and procedures including its Relationship Violence and Sexual Misconduct policy (the “RVSM Policy”)².

47. The RVSM Policy is intended to define relationship violence, stalking, sexual misconduct, and describe the process for reporting violations of the policy, outline the process used to investigate and adjudicate alleged violations of the policy, and identify resources

² Plaintiff’s description of the RVSM Policy is based on the Policy issued by Michigan State effective August 30, 2017. Plaintiff does not have access to the policies in effect at the time of the incident and reserves his right to amend his complaint to reflect the terms of the policy in effect at the time of the incident.

available to members of the Michigan State community who are involved in an incident of relationship violence, stalking, or sexual misconduct. *See* RVSM Policy I.

48. The RVSM Policy states that it applies to all members of the Michigan State community, including faculty, staff, and students regardless of gender, sexual orientation, or gender orientation and prohibits relationship violence, stalking, or sexual misconduct against employees, students, or third parties. A third party is defined as an individual who is not a member of the Michigan State community (faculty, staff, or student) and is intended to include visitors, guests, contractors, alumni, or students from other institutions. *See* RVSM Policy II.

49. Michigan State employs a Title IX Coordinator to oversee its gender equity work to ensure compliance with Title IX, including its grievance procedures, education/prevention efforts, and training. The Title IX Coordinator is charged with reviewing information about relationship violence, stalking, and sexual misconduct complaints to identify and address any patterns or systematic problems that arise during the review of such complaints. *See* RVSM Policy IV.

50. Pursuant to the RVSM Policy, Michigan State has established the OIE to ensure Michigan State's compliance with federal and state laws and Michigan State policies and procedures regarding discrimination, harassment, relationship violence, stalking, and sexual misconduct. *See* RVSM Policy V.

51. The Director of OIE is designated as the Deputy Title IX Coordinator for Investigations. *See* RVSM Policy V.

52. The RVSM Policy defines a "Claimant" as a person who may have been subjected to prohibited conduct regardless of whether that person makes a report or seeks action under the Policy. Claimants have the opportunity to review the preliminary investigative report

and provide feedback and appeal the outcome of the OIE decision and appeal or grieve the sanction. *See* RVSM Policy VI.

53. The RVSM Policy defines a “Respondent” as a person, registered student organization, or entity that has been accused of committing prohibited conduct. Respondents have the opportunity to review the preliminary investigative report and provide feedback and appeal the outcome of the OIE decision and appeal or grieve the sanction. *See* RVSM Policy VI.

54. The RVSM Policy defines an “Investigator” as a professionally trained staff member of the OIE or a professionally trained outside expert who conducts the investigation under the supervision of the Title IX Coordinator and/or Director of OIE. Both parties have the opportunity to review the preliminary investigative report and provide feedback and appeal the outcome of the OIE decision and appeal or grieve the sanction. *See* RVSM Policy VI.

55. The RVSM Policy defines “Sexual Violence” as including rape, sexual assault, and sexual contact. *See* RVSM Policy X.C.

56. The RVSM Policy defines “Sexual Assault” as a subset of Sexual Violence and includes “sexually penetrating, attempting to sexually penetrate, or having sexual contact with another individual by force or threat of force; without consent; or where the victim is incapacitated.” *See* RVSM Policy X.C.

57. The RVSM Policy defines “Incapacitation” as a state where an individual cannot make an informed and rational decision to consent to engage in sexual activity because the individual lacks conscious knowledge of the nature of the act. *See* RVSM Policy X.F.

58. The RVSM Policy calls for the OIE to investigate claims of sexual assault using trained professionals to conduct an investigation under the oversight of the Deputy Title IX Coordinator for Investigations. *See* RVSM Policy M.

59. The RVSM Policy states that “[t]he University has an obligation to conduct a prompt, adequate, reliable, and impartial investigation to determine what occurred and then to take appropriate steps to resolve the situation when it learns of an incident of sexual misconduct, stalking or relationship violence regardless of whether the alleged victim is the individual who reports the relationship violence, stalking, or sexual misconduct.” *See* RVSM Policy M.1.

60. Investigations begin with a determination of whether Michigan State has jurisdiction over the matter. If jurisdiction is established, the claimant and respondent are notified of the initiation of the investigation, the potential policy violations at issue, the right to participate in the investigation, the timeframe for responding, and that the investigation may proceed without the participation of either party.

61. Investigations include interviews with the claimant, respondent, and relevant witnesses. The claimant and the respondent may have an advisor of their choice present at any meeting during the investigation process and the claimant and the respondent both have the right to provide evidence, witnesses, and other relevant information during the investigation process. *See* RVSM Policy M.a.

62. The RVSM states that Michigan State encourages witnesses to cooperate with the investigative process, but that it cannot compel or require witnesses to participate. *See* RVSM VI.

63. OIE is charged with interviewing witnesses and reviewing electronic and written material if such documents exist. In general, OIE will not consider statements of personal opinion, rather than direct observations or reasonable inferences from facts, or statements as to any party’s general reputation for any character trait, including honesty or chastity. *See* RVSM Policy M.b.

64. The RVSM Policy also provides that the parties to the investigation are primarily responsible for providing information and evidence, but the OIE, to the extent possible will gather evidence relevant to the investigation that may be available within the University context or by contacting outside agencies. *See* RVSM Policy M.1.b.

65. During the investigation process, both parties will be provided timely notice of any meeting at which their presence is requested or required. Crucially, notices provided to students and employees under this Policy will be sent to the individual's official msu.edu email account. *See* RVSM Policy M.c.

66. The RVSM Policy prohibits the parties from cross-examining each other during the investigation or adjudication process. They are instead required to submit questions in writing to the OIE to be asked of the other party. Questions can be submitted at any time during the investigation process up to the deadline for the review of the preliminary investigation report. *See* RVSM Policy M.c.

67. At the conclusion of the fact-finding portion of the investigation process, both parties are supposed to be provided with an opportunity to review the preliminary investigation report and provide feedback to the information gathered, as well as ask any questions, before a final report is issued. Michigan State utilizes a preponderance of the evidence standard during the investigation process, as well as in all related proceedings, including disciplinary hearings. A respondent is presumed not to have violated the RVSM Policy unless a preponderance of the evidence establishes a policy violation. *See* RVSM Policy M.d.

68. Both the claimant and the respondent will be notified concurrently, in writing of the final outcome of the investigation, the rationale for the outcome, and the process to challenge the investigation findings. *See* RVSM Policy M.d.

69. Pursuant to the RVSM Policy, if the investigation results in a determination that relationship violence, stalking, or sexual misconduct occurred, the matter is referred to the Student Conduct and Conflict Resolution Office so that the Sanction Panel can determine the appropriate sanction. The Sanction Panel is comprised of one student, one faculty member, and one staff member. *See* RVSM Policy M.d.

70. The RVSM Policy provides that where the OIE considers evidence of prior sexual history as part of the investigation, the evidence is included in the preliminary report, and the parties will have an opportunity to challenge its relevance and whether it should be considered in the investigator's analysis. Relevant evidence of prior sexual history must be based on direct information; not rumor, hearsay, speculation, or conjecture. *See* RVSM Policy M.d.2.

71. The RVSM Policy contemplates that Michigan State will complete its investigation within sixty calendar days, although the time frame can be extended for good cause. To that end, the OIE Investigator is supposed to contact the claimant within five calendar days of receiving the report/complaint and contact the respondent within five calendar days of meeting with the claimant. The OIE's preliminary report is supposed to be provided to the parties within 25 calendar days of completing all relevant interviews and gathering relevant evidence. The final Report is supposed to be issued within 25 calendar days after receiving feedback from the parties or completing any additional investigation. *See* RVSM Policy M.D.5.

72. The RVSM Policy provides that in instances where no violation is found, the parties shall have ten calendar days from the date of the OIE decision to file an appeal. In the event a violation is found, the Sanction Panel is supposed to issue a written decision regarding an appropriate sanction within seven calendar days after the panel meets. The claimant and

respondent have ten calendar days from the date of the sanction decision to appeal either the OIE decision or the sanction imposed. *See* RVSM Policy M.D.6.

73. In cases where the OIE investigation finds that sexual misconduct, stalking, or relationship violence occurred, Michigan State will determine the appropriate, enforceable sanction. The sanction will be reasonably calculated to stop the harassment and prevent its recurrence. *See* RVSM Policy M.D.10.

PLAINTIFF IS WRONGLY ACCUSED AND ULTIMATELY FOUND RESPONSIBLE FOR A SEXUAL ASSAULT THAT HE DID NOT COMMIT.

74. Plaintiff enrolled at Michigan State in the summer of 2010 after having graduated in the top ten percent of his high school class, serving as senior class president, and earning “All State” recognition in football.

75. At Michigan State, he was a three-year starter on the football team and received academic Big Ten honors three years in a row.

76. Plaintiff received his Bachelor of Science in Communications in May 2014 and began work on his Master’s degree in Communications the following month.

77. During his tenure at Michigan State, Plaintiff won several awards based on academic performance, community involvement, leadership, and sportsmanship.

78. In addition, he was active in the local community, performing over 200 hours of community service on a volunteer basis. In 2016, after graduation he was actively involved in assisting the Flint Community during the water crisis.

79. Plaintiff met Jane Roe, a freshman student at the time of the events in question, on the dating website tinder.com in November 2014. Plaintiff and Roe exchanged messages on Tinder before eventually exchanging cellphone numbers and texting each other directly. After exchanging cellphone numbers, Plaintiff and Roe generally did not communicate using Tinder.

80. In January 2015, Plaintiff moved to Florida to train for the annual NFL Scouting Combine.

81. At about the time Plaintiff moved to Florida, he lost touch with Roe largely due to Roe's tendency to stereotype athletes as having a sense of entitlement and thinking that they can have everything their way.

82. On March 14, 2015, Plaintiff returned to the Michigan State campus for Pro Day, which was scheduled for March 18, 2015.

83. A "Pro Day" is a university organized day during which the National Collegiate Athletic Association allows NFL scouts to come and watch players participate in the events that take place at their school in an effort to showcase their talent prior to the NFL draft. Schools organize "Pro Days" because it is believed that the players feel more comfortable performing in front of NFL scouts on their own campus as opposed to the NFL scouting combine.

84. Upon returning to campus on March 14, 2015, Plaintiff reached out to Roe on Tinder. Roe did not respond.

85. On March 17, 2015, Roe texted Plaintiff on his cellphone. Plaintiff did not immediately recognize Roe's cellphone number because he had not spoken or texted with Roe since December. After a brief back and forth exchange, Plaintiff asked Roe to send him a picture so he could figure out who was texting him.

86. Plaintiff and Roe spoke on the telephone several times later that day, with Plaintiff offering to take her to dinner as part of a date for that evening.

87. Roe, however, was not interested in eating. She instead invited Plaintiff over to her dormitory room.

88. When Plaintiff tried to set a time to go over to Roe's apartment, she told him to wait because her roommates were still in the room and she wanted to be alone with Plaintiff.

89. Plaintiff was willing to wait to get together with Roe. Plaintiff, however, told Roe that he could not stay out late that evening because Michigan State's Pro Day was scheduled for the next morning and he had interviews with several teams early the next day. He also told Roe that he did not want to play games with her and that they should either get together or make plans with different people.

90. After Plaintiff conveyed this concern, Roe began barraging Plaintiff with numerous text messages and telephone calls urging him to come to her dormitory room.

91. Shortly after 8:00 p.m., Roe sent Plaintiff a topless photograph of herself that showed that she had a nipple ring on one of her breasts.

92. Shortly thereafter, Roe texted Plaintiff that her roommates had gone out and that he should come over to her dorm.

93. Plaintiff arrived at Roe's dorm around 9:00 p.m., and given the hour decided to eat his dinner in the truck that he had borrowed from the friend that he was staying with while he was in town for Pro Day.

94. Roe came out to Plaintiff's truck when he arrived. Roe told Plaintiff that her roommates were gone and that he could come in. Plaintiff was still eating his dinner, and told Roe that he wanted to finish eating before coming in. Roe responded saying, "Ok, just call me."

95. Roe would later make the outlandish claim that Plaintiff sent her away because he was about to sell someone drugs and he did not want her involved because he wanted to protect her.

96. After Plaintiff finished his dinner, he called Roe, who then let him into the building through the side door.

97. When Roe let Plaintiff into her building, she was clearly sober.

98. Plaintiff and Roe then proceeded to her dormitory room. Upon arriving, Roe stated that she wanted to change out of the yoga pants and t-shirt she was wearing and into some “rat clothes.” Roe then changed into basketball shorts and a different shirt. Roe changed in a section of her room where Plaintiff could see that she was neither wearing a bra nor underwear. The two then joked about Plaintiff having been able to see her while she changed clothes.

99. After changing clothes, Roe sat down on the futon where Plaintiff was sitting.

100. Plaintiff asked Roe to move closer, and after Roe moved closer, the two then began kissing.

101. After kissing for a while, Roe climbed on top of Plaintiff with her clothes on, and began kissing Plaintiff’s neck, chest, and stomach. Roe then began kissing Plaintiff’s abs, but contrary to what Roe would later claim, there was never any pushing or other form of aggression. Rather, the entire encounter was consensual in nature.

102. During the course of their foreplay, Plaintiff sucked on Roe’s breasts and her neck perhaps leaving a hickey on her neck. Roe then put Plaintiff’s fingers in her mouth and sucked on them.

103. Roe continued to kiss Plaintiff, and she eventually removed her clothes, after which Plaintiff sucked on Roe’s breasts as part of foreplay.

104. Roe then laid down on the futon and began masturbating and placing her fingers in her mouth as part of her foreplay with Plaintiff.

105. Shortly thereafter, she climbed back on top of Plaintiff, who was still fully clothed. Plaintiff then digitally penetrated Roe's vagina and kissed her nipples again. Roe then grabbed Plaintiff's fingers and put them in her mouth—sucking on them as if it was his penis.

106. Roe then grabbed Plaintiff's penis from his sweatpants and tried to initiate intercourse, touching her vagina with his penis.

107. Plaintiff told Roe that he did not engage in sexual intercourse without wearing a condom. Roe immediately jumped off Plaintiff and became visibly upset.

108. At this juncture, Plaintiff called a friend to discuss what had just happened and whether he had acted incorrectly in bringing up wearing a condom. Roe participated in this conversation, and at one point took Plaintiff's cellphone from him and spoke with Plaintiff's friend.

109. The timing of this telephone call is corroborated by Plaintiff's cellphone bill.

110. After speaking with his friend, Plaintiff and Roe began to argue. As Roe began to raise her voice, it quickly became apparent to Plaintiff that he needed to extricate himself from the situation—leaving approximately 30 to 40 minutes after he arrived.

111. Plaintiff later told the OIE investigators, Dr. Catherine "Cat" Riley and former Interim Director of the Office of Institutional Equity and Deputy Title IX Coordinator Rebecca Leitman Veidlinger, that he was concerned that if the argument continued the police might be called and that he would be unfairly treated because he was black and Roe was white. He also stated that he expressed this concern to Roe, that he did not appreciate being teased, and that he did not want to be wasting his time.

112. During their argument, Roe resorted to the same stereotypes of athletes that had caused the two to stop speaking the previous fall, responding: “Athletes think they can have everything that way.”

113. Shortly thereafter, Plaintiff left Roe’s room and erased her cellphone number from his cellphone, and deleted their text messages when he got home.

114. He would later tell the OIE investigators that he did not communicate with Roe after that point. He also told the OIE investigators that “When you’re a star athlete, chicks come for you from all directions. My sister got a baby and I don’t have sex without a condom.”

115. The next day Plaintiff received a call from one of his coaches asking him to report to Michigan State’s police department’s offices after his Pro Day and advising him that Roe was claiming that Plaintiff raped her.

116. After completing his Pro Day workout and interviews, Plaintiff voluntarily met with the Michigan State police. The police recovered the deleted messages from Roe, which Plaintiff had deleted the day before, including the topless photograph that she had sent him.

117. The police conducted an investigation of Roe’s claims against Plaintiff in the weeks that followed.

118. At the conclusion of the investigation, the police referred the matter to the Ingham County Prosecutor’s office, which declined to press charges against Plaintiff, concluding that the case could not be proven beyond a reasonable doubt. The prosecutor’s file also contains a notation “Attempts to contact the Victim to meet were never returned.”

119. Roe reported the incident to Michigan State’s Office for Inclusion and Intercultural Initiatives on March 18, 2015.

120. Roe's report alleging sexual misconduct against Plaintiff was then referred to the OIE, which commenced an investigation.

121. The OIE conducted an investigation that culminated in the issuance of an investigative report on September 8, 2015, written by Dr. Riley.

122. Dr. Riley concluded in her report that the parties' accounts of the incident differed, and in particular, the parties disputed whether sexual intercourse occurred; the preponderance of the evidence did not support Roe's allegation of non-consensual sexual intercourse; and that Plaintiff did not violate the RSVM Policy.

123. Dr. Riley's report notes that the report was reviewed and approved by Rebecca Leitman Veidlinger, Michigan State's Deputy Title IX Coordinator.

124. In reaching this conclusion, Dr. Riley noted that under the RSVM Policy, sexual misconduct encompasses sexual violence, which is defined as "a physical sexual act perpetrated against a person's will." Thus, the first question Dr. Riley considered was whether the alleged conduct as described by Roe occurred and, if so, whether it was a physical sexual act.

125. Dr. Riley concluded that the parties did not dispute that consensual activity occurred. Rather, the parties disputed whether the act of sexual intercourse occurred, and if it did, whether it was consensual.

126. Dr. Riley noted that Roe's version of events was generally consistent with what her witnesses, J.M. and A.C., claimed Roe told them after the incident as well as what Roe had stated to the OIE.

127. Dr. Riley found, however, that Roe's "witnesses" "did not provide much detail regarding the specifics of the sexual encounter and did not shed significant light on the events

other than supporting [Roe's] statement that she had told them [Plaintiff] had sexual intercourse with her.”

128. Dr. Riley went on to state that the information provided by Roe's witnesses was “limited to what they had been told by [Roe] since neither was present on the day in question and neither witnessed any of the events in question.”

129. In contrast, Dr. Riley concluded that Plaintiff's version of events was supported by his friend, who Plaintiff had called that evening near the end of his encounter with Roe. Plaintiff's friend stated that Plaintiff did not have sex with Roe and that “she was basically teasing him.”

130. Dr. Riley's credibility assessments were also significant. She found that Roe's witnesses provided what they were told after the incident while Plaintiff's witness recounted a telephone call that took place during the event, and the occurrence of that telephone call was corroborated by Plaintiff's telephone log.

131. In contrast, Dr. Riley questioned Roe's credibility noting that she made several inconsistent statements, including that she changed into basketball shorts “without underwear,” but had stated to her friend A.C. that her “navy blue underwear [were] pulled to the side” by Plaintiff.

132. Dr. Riley also noted that the sexually explicit texts and the photo that Roe sent to Plaintiff tended to support Plaintiff's version of what occurred between the parties prior to the alleged assault.

133. Similarly, Roe's suggestion that the bruise on her neck was caused by Plaintiff's hands was undercut by her statements during her OIE interview that she did not recall Plaintiff

having placed his hands on her neck. Dr. Riley concluded that Roe's claim was inconsistent with her statement in the Sexual Assault Nurse Examination ("SANE") report.

134. Dr. Riley also concluded that Roe did not dispute the possibility that Plaintiff had given her a hickey and that she had laid down on the futon with her neck on the metal arm piece. Dr. Riley concluded that both scenarios would explain the bruise on Roe's neck.

135. Dr. Riley also noted additional inconsistencies in her report finding, for example, Roe's statement to the OIE that Plaintiff kissed her on her inner thigh was inconsistent with her statement in the SANE report that states that Plaintiff "bit her inner thigh."

136. Similarly, Dr. Riley noted that Roe's claim that she "grabbed [Plaintiff's] chest" and "thought she might have scratched him" was contradicted by the observations of the Michigan State police officer who stated he saw no visible marks on Plaintiff's chest the following day. The officer's observation was made with the naked eye from about three feet away in normal light.

137. Based on the above, Dr. Riley concluded in her report that the preponderance of the evidence did not support Roe's claim of sexual assault and concluded the matter with a finding of "no responsibility."

138. Pursuant to Michigan State's RVSM Policy, Michigan State emailed the report to Plaintiff's "@msu.edu" email address, but the email was returned as undeliverable because Plaintiff's mailbox was full. The returned email is consistent with Plaintiff's contention that he did not receive a copy of Dr. Riley's Final Investigative Report or any other correspondence from Michigan State and the OIE regarding Roe's claims in the months that followed.

139. Roe appealed the OIE's findings on or about October 27, 2015.

140. On October 27, 2015, the Associate Director of Student Conduct and Conflict Resolution, Defendant Shafer purportedly sent a letter to Plaintiff advising Plaintiff of Roe's appeal of the initial OIE Final Investigative Report and detailing the challenges made. There is no indication on the letter as to where or how the letter was sent or whether it was delivered.

141. Plaintiff never responded to Roe's appeal because Michigan State repeatedly failed to give him notice of the Appeal and subsequent proceedings:

142. Roe's challenges to the report, as presented in her appeal, represented nothing more than revisionist history and her disappointment in Dr. Riley's failure to accept her narrative as more credible than Plaintiff's, despite the lack of corroborating evidence and the numerous inconsistencies presented within her various accounts.

143. Defendants, however, proceeded to ignore Dr. Riley's findings in an effort to appease Roe who was still a first-year student.

144. Upon information and belief, the Defendants believed that the easiest way to accomplish this was to ignore the due process rights of Plaintiff (who had graduated from Michigan State and was training in Florida) by repeatedly and systematically failing to give him notice of the appeal and subsequent renewed investigation.

145. In November 2015, shortly after Roe filed her appeal, Dr. Riley left Michigan State and the OIE investigation was reassigned to Defendant Liz Abdnour.

146. On November 11, 2015, Defendant Shafer, sent an email to Plaintiff's @msu.edu and a yahoo.com email addresses, notifying Plaintiff that the review panel had completed its review of Roe's challenge of the OIE finding and informing him of its decision to grant a hearing on the matter, with that hearing to be scheduled within 15 days.

147. Defendant Shafer's email to Plaintiff's @msu.edu email address was undeliverable because Plaintiff's mailbox was full and therefore Plaintiff did not receive notice of the challenge and the scheduled hearing through the required channel. Moreover, Plaintiff's yahoo.com email address was unmonitored email account and thus Shafer's use of that account as an alternative means of notice was insufficient.

148. The Review Panel sent a letter to "all parties concerned" informing the parties of a December 4, 2015 hearing on Roe's challenge.

149. The December 4, 2015 letter did not reflect where Plaintiff's copy of the letter was sent or how it was allegedly delivered.

150. Plaintiff did not receive a copy of the December 4, 2015 letter.

151. On December 15, 2015, the Antidiscrimination Policy/Relationship Violence and Sexual Misconduct Policy Student Conduct Review Panel (the "Review Panel") convened a hearing at which neither Plaintiff nor Roe were present.

152. Defendant Abdnour and Senior Institutional Equity Investigator Tracy Leahy attended the December 15, 2015 Review Panel meeting on behalf of OIE.

153. Defendant Abdnour and OIE investigator Leahy did not comment at the proceeding.

154. Upon information and belief, it appears that the December 15, 2015 hearing was adjourned.

155. The Review Panel sent another letter to "all parties concerned" informing the parties of a January 22, 2016 hearing on Roe's challenge. The letter once again did not contain an address or indicate a method of delivery.

156. Plaintiff did not receive a copy of the December 15, 2015 letter.

157. The Review Panel convened a hearing on January 22, 2016 to consider Roe's challenge.

158. Neither Plaintiff nor Roe attended the January 22, 2016 hearing.

159. On February 5, 2016, the Review Panel issued a decision that found that there were procedural errors in the OIE's prior investigation and decision. The Review Panel directed the OIE to reopen the investigation and correct its findings.

160. Specifically, the Review Panel found the following procedural errors:

- i. OIE's interview with Beth de la Ossa, Sexual Assault Nurse Examination ("SANE") Program Coordinator at Sparrow Hospital. The Review Panel felt that OIE should have interviewed Matthew Kasper, the SANE nurse who completed the examination of the Claimant on March 18, 2015 and not his supervisor.
- ii. OIE failed to follow up with witness A.S. when A.S. did not appear for an interview.
- iii. The inclusion in Dr. Riley's report of the statement, "The Claimant said she was fine with all other drunken hookups" suggested potential bias on the part of Dr. Riley.
- iv. Dr. Riley failed to consider whether Plaintiff violated the Sexual Misconduct Policy by engaging in "sexual exploitation" when he called his friend immediately after his encounter with Roe even though the policy in place at the time of the incident did not include sexual exploitation as a prohibited activity.

161. The Review Panel also found that the OIE's decision was arbitrary and capricious because (a) it did not include an assessment of whether Roe was incapacitated and (b) it did not include an analysis as to whether Plaintiff had committed the additional Policy violation of sexual exploitation.

162. The Review Panel, however, allowed the highly prejudicial and uncorroborated statements regarding Plaintiff's alleged drug dealing to remain in the report.

163. The Review Panel allegedly sent a letter to Plaintiff informing him of the Review Panel's decision. The letter once again did not contain an address or indicate a method of delivery.

164. Plaintiff once again did not receive a copy of the letter.

165. On February 8, 2016, OIE sent an email to Roe requesting an interview to obtain additional information.

166. On February 10, 2016, Defendant Abdnour interviewed SANE Program Coordinator for Sparrow Hospital, Dr. Matthew Kasper, who had performed Roe's SANE exam.

167. Kasper stated in his interview and confirmed for Defendant Abdnour that there was "no way of definitively saying" whether Roe was sexually assaulted. Kasper did note that there was an abrasion on Roe's hymen, but acknowledged that it was impossible to determine whether the abrasion was caused by nonconsensual penetration.

168. Kasper also noted scratches on Roe's body, which may "indicate the possibility of her resisting" Plaintiff. Kasper was not, however, able to conclude that a sexual assault had occurred, which confirmed De La Ossa's conclusions that were relied on by Dr. Riley in her initial final Investigative Report.

169. On February 15, 2016, OIE sent another email to Roe, again requesting an interview to obtain additional information. Roe responded to this second email and made an appointment for February 19, 2016.

170. Roe failed to appear for her February 19, 2016 appointment with OIE.

171. OIE sent a third email to Roe, this time seeking to reschedule the appointment when she failed to appear.

172. On February 22, 2016, Roe emailed OIE requesting an appointment on February 24, 2016.

173. On February 23, 2016, Roe emailed OIE requesting a different interview time on February 24, 2016.

174. On February 24, 2016, OIE emailed Roe to reschedule her appointment, but Roe failed to respond.

175. A.S. failed to cooperate with the reinvestigation in the same way that she failed to cooperate with the initial investigation.

176. On March 2, 2016, Defendant Abdnour allegedly emailed Plaintiff at his unmonitored yahoo.com email address informing him that the revised draft of the Investigative Report was finished and that he could contact her to review the report while also warning Plaintiff that he had five days to review the report before OIE would issue the final investigative report.

177. Plaintiff did not receive Defendant Abdnour's email because it was sent to an unmonitored account.

178. Defendant Abdnour's Report stated that Roe provided feedback to the report, but Plaintiff did not respond.

179. On March 21, 2016, Defendant Abdnour issued her Report.

180. Defendant Abdnour determined that Plaintiff violated the RVSM Policy by sexually assaulting Jane Roe and engaging in sexual exploitation of Roe by calling Plaintiff's friend after their sexual encounter was over.

181. Defendant Abdnour's report, however, was inherently flawed.

182. Examples of these flaws include:

- i. Defendant Abdnour's failure to give any weight to the numerous inconsistencies in Roe's statements throughout the investigative process as noted in Dr. Riley's Report, essentially attributing those inconsistencies, including Roe's sending of a topless photo to Plaintiff at approximately 8:00 p.m. that evening, to Roe experiencing "memory loss" or a "blackout" immediately prior to and during the incident in question. Abdnour's conclusion was not supported by the evidence, which unequivocally demonstrated that Roe was not incapacitated and did not show any signs of being intoxicated during the events in questions.
- ii. Defendant Abdnour wrongly relied on Roe's statements to her friends immediately after the incident as corroboration of Roe's version of events. Abdnour's reliance was misplaced given her conclusion that Roe was suffering from memory loss or a blackout because she had been drinking earlier that day. Moreover, Abdnour ignored the repeated failure of Roe's friends to cooperate with the investigation and A.S.'s failure to turnover to the OIE copies of the notes and pictures that were allegedly taken in the moments after they arrived at Roe's dorm room that evening.

- iii. Defendant Abdnour's complete disregard of the statement provided by Plaintiff's friend notwithstanding that he was the only person who spoke with both parties immediately after the encounter. The conversation occurred after Plaintiff and Roe began arguing over Plaintiff's desire to wear a condom during intercourse, which suggests that no-intercourse occurred. Yet, Abdnour rejected the statement of Plaintiff's friend because he did not provide "any information indicating that he had any information about whether or not the Claimant consented to being penetrated by the Respondent. Therefore, [the friend's] statement is not conclusive either way with regard to the credibility of each party's account of the events in question."
- iv. Ironically, Defendant Abdnour then proceeded to accept the testimony of the witnesses who arrived in Roe's room after Plaintiff left, finding their statements credible on the question of consent. In reaching this conclusion, Abdnour came to the exact opposite conclusion as Dr. Riley when she evaluated the same evidence.

183. On March 22, 2016, Defendant Shafer allegedly sent a letter to Plaintiff informing him that Defendant Abdnour filed a report in which she concluded Plaintiff had violated the RVSM Policy and informing Plaintiff of his right to challenge the report. The letter contains no address for Plaintiff and does not indicate the method of delivery.

184. Plaintiff did not receive the March 22, 2016 letter.

185. On April 11, 2016, Defendant Shafer sent another letter to Plaintiff, purportedly informing him of Shafer's recommendation that Plaintiff be dismissed as a student based on a

violation of the RVSM Policy. Once again, the letter did not contain an address for Plaintiff or indicate how it was being delivered.

186. Michigan State's file copy of the letter contains a "post-it" note that states that Plaintiff completed his B.A. degree in 2014, but still met the definition of a student in Spring 2015 even though Plaintiff was not enrolled in any classes that semester.

187. Plaintiff did not receive the April 11, 2016 letter.

188. On June 7, 2016, Denise Maybank, Vice President of Student Affairs and Services, allegedly sent a letter to Plaintiff at an address in Georgia and his @msu.edu email address. The letter claims that in a letter dated April 11, 2016, Plaintiff was informed of the Review Panel's decision, that a hearing was held on January 22, 2016, and that on March 22, 2016, OIE found Plaintiff had violated the RVSM, which was unchallenged by Plaintiff, and that on April 11, 2016, a Review Panel Administrator recommended that Plaintiff be dismissed from Michigan State, which was also unchallenged by Plaintiff.

189. Maybank went on to write that she accepted the recommendation and was dismissing Plaintiff, which meant that he was permanently prohibited from re-enrolling at Michigan State and was prohibited from visiting the campus until the beginning of 2019.

190. Maybank further stated in her letter that Plaintiff would be arrested if he visited the Michigan State campus unless special permission was obtained.

191. Maybank also sent the letter to the Associate Provost of Graduate Education, the Office of the Registrar, the Michigan State Police Department, the Department of Student Conduct and Conflict Resolution, and the OIE.

192. Plaintiff did not receive a copy of the June 7, 2016 letter.

193. On June 8, 2016, Defendant Shafer allegedly sent a copy of Maybank's letter to Plaintiff advising him of his student status. Again, the letter has no address and there is no indication on the letter that it was delivered or received by Plaintiff.

194. Plaintiff did not receive a copy of the June 7 letter.

195. Plaintiff was drafted by the Houston Texans in the fifth round of the 2015 National Football League ("NFL") draft.

196. On May 31, 2017, the *Detroit Free Press* published an article stating that Plaintiff was expelled from Michigan State in 2016 and barred from Michigan State's campus until December 31, 2018 as a result of Michigan State's proceedings as described above. <https://www.freep.com/story/sports/college/michigan-state/spartans/2017/05/31/michigan-state-football-keith-mumphery/356645001/>.

197. On June 1, 2017, *Houston Press* sports writer, Sean Pendergast published an article questioning how the Houston Texans did not know about the Michigan State Title IX investigation when they drafted Plaintiff two years earlier. <http://www.houstonpress.com/news/texans-wr-mumphery-expelled-from-michigan-state-in-2016-over-sexual-misconduct-case-9487651>

198. On June 2, 2017, one day after the Pendergrast article was published in the *Houston Press*, the Houston Texans terminated Plaintiff's contract and cut him from the team. https://en.wikipedia.org/wiki/Keith_Mumphery

199. Plaintiff has been unable to find a job in the NFL because of the Defendants' actions and Michigan State's wrongful findings.

COUNT I
(42 U.S.C. § 1983: Denial of Fourteenth Amendment Due Process)
(Against the Individual Defendants)

200. Plaintiff repeats and re-alleges each and every allegation hereinabove as if fully set forth herein.

201. The Fourteenth Amendment to the United States Constitution provides that no state shall “deprive any person of life, liberty, or property, without due process of law.”

202. In this case, Defendants are state actors subject to the Fourteenth Amendment.

203. Section 1983 of Title 42 of the U.S. Code provides in pertinent part:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. . . .

204. A person has a protected liberty interest in his good name, reputation, honor, and integrity, of which he cannot be deprived without due process.

205. A person has a protected property interest in pursuing his education, as well as in future educational and employment opportunities and occupational liberty, of which he cannot be deprived without due process.

206. Plaintiff’s constitutionally protected property interest in his continued enrollment at Michigan State and his right to complete his graduate degree at Michigan State after his professional sports career was violated by Defendants’ actions.

207. Plaintiff had a constitutional right to be free from arbitrary suspension, dismissal, or restrictions on his ability to enter the Michigan State campus.

208. Plaintiff’s constitutionally protected property interest in his right to continued enrollment at Michigan State also arises from the policies, courses of conduct, practices, and understandings established by Michigan State.

209. Plaintiff's constitutionally protected property interest further arises from the express and implied contractual relationship between Michigan State and Plaintiff.

210. It is well established that Fourteenth Amendment due process protections are required in higher education disciplinary proceedings.

211. A person who has been admitted to a public university has a protected property interest in continuing his education at that university until he has completed his course of study. The state cannot deprive a person of this interest without due process.

212. As a result, if Plaintiff as a Michigan State student faced disciplinary action that included the possibility of suspension or dismissal if found responsible for alleged sexual misconduct, then the Due Process provisions of the Fourteenth Amendment to the United States Constitution applied to the disciplinary process that Michigan State used.

213. Michigan State, as a land grant university established by the State of Michigan, and the individual Defendants, as agents of Michigan State, have a duty to provide Michigan State's students equal protection and due process of law by and through any and all policies and procedures set forth by Michigan State.

214. Plaintiff obeyed all institutional rules when he was wrongly barred from campus by Michigan State.

215. Under both federal and state law, Plaintiff had a constitutionally protected property interest in completing his graduate education at Michigan State after his professional sports career (and during his off-season) at the time he was disciplined by Michigan State and in the future.

216. Plaintiff was entitled to notice, a meaningful opportunity to be heard, and process commensurate with the seriousness of the allegations and the potential discipline, sanctions, and

repercussions he was facing. The allegations in this case resulted in a sanction that will have lifelong ramifications for Plaintiff.

217. Plaintiff was entitled to fundamentally fair procedures to determine whether he was responsible for the alleged sexual misconduct.

218. In the course of such investigation and adjudication, Defendants flagrantly violated Plaintiff's established rights under the Due Process Clause of the Fourteenth Amendment through its deprivation of the minimal requirements of procedural fairness by employing a process in which they failed to provide Plaintiff with any notice after the initial OIE report was issued.

219. Moreover, Michigan State improperly employs a disciplinary process that fails to utilize mechanisms designed to ensure the parties involved receive fair and appropriate due process:

- a. There is no sworn testimony.
- b. There is no cross-examination.
- c. There is no proper hearing in which testimony was taken.
- d. There is no access for the Plaintiff even to see the investigator's report because Defendants' failed to provide Plaintiff with notice, or to the extent notice was issued, to ensure that Plaintiff received notice, of any of the appeals and subsequent proceedings after Dr. Riley's report was issued.
- e. Defendants' failure to give or ensure that Plaintiff received notice of the proceedings prevented Plaintiff from adequately preparing for, participating in, and properly defending himself in the proceedings.

- f. Defendants' conduct in failing to give Plaintiff notice or ensure that he received proper notice stemmed from a presumption that Roe's accusations were true because she repeatedly complained about OIE's initial findings.
- g. Defendants failed to engage in any reasoned consideration of evidence as required by an appropriate burden of proof as reflected by the diametrically opposed conclusions of Dr. Riley in the first instance and Defendant Abdnour in the second instance. Dr. Riley and Abdnour relied on virtually the same set of facts.
- h. Defendants' failure to provide Plaintiff with notice or effective notice resulted in their having what amounts to unfettered discretion to engage in discriminatory decision-making in favor of a female first year student at the expense of a male non-registered graduate student.

220. Even if Plaintiff had received notice of the proceedings, Michigan State's procedures were defective because they do not allow for the taking of testimony and cross-examination of witnesses.

221. Yet, in a case where Michigan State relied upon a credibility assessment, there was no hearing in which testimony was taken at any point in the disciplinary process, and thus no cross-examination was available because no sworn testimony was taken in violation of due process of law.

222. Defendants violated Plaintiff's due process rights by allowing Defendant Abdnour to both investigate the claims and issue recommendations without conducting a hearing.

223. Defendant Abdnour's responsibilities were overbroad and she held a conflict of interest as determined by Title IX guidance: "Title IX coordinators should not have other

responsibilities that may create a conflict of interest. For example, serving as the Title IX coordinator and a disciplinary hearing board member or general counsel may create a conflict of interest.” By putting decision-making as to violation and sanction in one person who is both Dean of Students and Title IX Coordinator, it permits, among other things, decision-making in specific cases be tailored to give the appearance of vigorous Title IX enforcement and meet perceived reporting needs to U.S. Department of Education Office for Civil Rights.

224. Defendants were pressured by the Obama Administration’s DOE into following the Title IX investigative and adjudicatory process mandated by the Dear Colleague Letter regardless of what otherwise would be due process considerations. Michigan State was the subject of two OCR investigations that were resolved in 2015. The OCR concluded that Michigan State failed to investigate two sexual assault complaints in a timely manner and that policy deficiencies may have contributed to a hostile environment for some students and employees in the past.

225. Lhamon, as quoted above, made numerous public statements about the obligation of colleges and universities to conform to the Dear Colleague Letter or face the cut-off of federal funding. The DOE and OCR have accordingly treated the Dear Colleague Letter as binding on regulated parties for all practical purposes.

226. The Dear Colleague Letter has in fact resulted in significant action and legal consequences. At the July 2014 Dartmouth College conference, Ms. Lhamon stated: “Our release of the [Dear Colleague Letter] is widely credited with having sparked significant changes at colleges and universities as they worked to meet Title IX’s requirements consistent with the [Dear Colleague Letter].”

227. Defendants deprived Plaintiff of his liberty and property interests without affording him basic due process, including, but not limited to, his right to receive fair and proper notice of the proceedings, to a fair adjudication free of bias, his right to be informed of the evidence against him, his right to be innocent until shown to be responsible and not to be subjected to the burden of proving his innocence, his right to be heard by an impartial factfinder, to question his accuser, challenge the credibility of other adverse witnesses and present evidence and witnesses in support of his defense, and a right not to be subjected to double jeopardy. These rights are well established by Sixth Circuit precedent.

228. In attempting to demonstrate their compliance with the Dear Colleague Letter, the Defendants subjected Plaintiff to an insufficient process when they failed to provide Plaintiff with notice of the proceedings against him as well as a fair and reasonable opportunity to defend himself; and arrived at a predetermined, arbitrary and unwarranted decision tainted by gender bias.

229. As a result, Defendants failed to provide Plaintiff with the basic due process protections that they are required to provide students accused of sexual misconduct at a state school.

230. Defendants, as well as other agents, representatives, and employees of Michigan State, were acting under color of state law when they showed intentional, outrageous, and reckless disregard for Plaintiff's constitutional rights.

231. Defendants all agreed to, approved, and ratified this unconstitutional conduct as described above.

232. As a result of these due process violations, Plaintiff continues to suffer ongoing harm, including damages to his reputation, permanent loss of employment opportunities, and other economic and non-economic damages.

233. In particular, the discipline imposed by Michigan State has permanently damaged his career prospects in his chosen profession, denied him the benefits of education at his chosen school after his career as a professional athlete is completed thereby damaging the post-athletic career he intended to pursue after his professional football career, and damaged Plaintiff's academic and professional reputation.

234. Accordingly, Defendants are liable to Plaintiff in violation of 42 U.S.C. § 1983 for violations of the Due Process Clause of the Fourteenth Amendment, and for all damages arising therefrom.

235. As a direct and proximate result of the above conduct, Plaintiff sustained tremendous damages, including, without limitation, emotional distress; loss of educational, athletic and non-athletic career opportunities; economic injuries; and other direct and consequential damages. Plaintiff's interests in the results of the disciplinary process are significant.

236. As a result of the foregoing, Plaintiff is entitled to damages in an amount to be determined at trial, plus prejudgment interest, attorneys' fees, expenses, costs and disbursements and to an injunction enjoining violations of the Fourteenth Amendment in the process of investigating and adjudicating sexual misconduct complaints, expunging Plaintiff's records, and requiring Michigan State to destroy all disciplinary records concerning Plaintiff.

COUNT II
(Violation of Title IX of the Education Amendments of 1972)
(Against Michigan State)

237. Plaintiff repeats and re-alleges each and every allegation hereinabove as if fully set forth herein.

238. Title IX of the Education Amendments of 1972 provides, in relevant part, that:

No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.

239. Title IX of the Education Amendments of 1972 applies to an entire school or institution if any part of that school receives federal funds; hence, athletic programs are subject to Title IX of the Education Amendments of 1972 even though there is very little direct federal funding of school sports.

240. According to Michigan State's 2015-2016 Budget, it received over \$18 million in federal funds.

241. Title IX may be violated by a school's failure to prevent or remedy sexual harassment or sexual assault or by the imposition of university discipline where gender is a motivating factor in the decision to discipline. In either case, the statute is enforceable through an implied private right of action.

242. The Obama Administration's promulgated regulations under Title IX require a school to "adopt and publish grievance procedures providing for the prompt and equitable resolution of student... complaints alleging any action which would be prohibited by" Title IX or regulations thereunder. Such prohibited actions include all forms of sexual misconduct. 34 C.F.R. § 106.8(b).

243. Even the Obama Administration ostensibly recognized that the procedures adopted by a school such as Michigan State covered by Title IX must accord due process to both parties involved.

244. Moreover, there must be “[a]dequate, reliable, and impartial investigation of complaints” and that a school has an obligation under Title IX to make sure that all employees involved in the conduct of the procedures have “adequate training as to what conduct constitutes sexual harassment, which includes “alleged sexual assaults.”

245. Challenges to university disciplinary proceedings for sex discrimination generally fall in two categories: (1) “erroneous outcome” cases which claim that plaintiff was innocent and wrongly found to have committed an offense with gender bias being a motivating factor in the erroneous findings; and (2) “severity of penalty/selective initiation” cases, in which the claim asserts that, regardless of the student’s guilt or innocence, the severity of the penalty and/or decision to initiate the proceeding was affected by the student’s gender.

Michigan State’s Actions Resulted in An Erroneous Outcome Finding

246. An “erroneous outcome” occurred in this case because Plaintiff was wrongfully found to have committed the alleged offense and such decision was motivated by gender bias.

247. Evidence of the erroneous outcome is reflected in, among other things:

- a. Defendant Abdnour interpreting the Review Panel’s decision to order a reinvestigation as being a directive to find the Plaintiff responsible despite ample evidence supporting his exoneration as reflected in Dr. Riley’s report.
- b. The repeated failure of the Defendants to provide Plaintiff with notice of the appeal and subsequent proceedings, which prevented him from presenting a defense.
- c. Defendant Abdnour’s reliance on Roe’s statement to her friends immediately after the incident as corroboration of Roe’s version of events despite Roe’s statements that she was suffering from memory loss.

- d. Defendant Abdnour's decision to ignore the repeated failure of Roe's witnesses to appear for interviews.
- e. Defendant Abdnour's failure to give any weight to the numerous inconsistencies in Roe's statements throughout the investigative process.
- f. Defendant Abdnour's decision to ignore the failure of Roe's witnesses to provide to the OIE the notes and pictures that they allegedly took after the incident.
- g. Defendant Abdnour's complete disregard of the statement provided by Plaintiff's friend who spoke with both parties immediately after the encounter.

Michigan State's Actions And Penalties Were Affected by Plaintiff's Gender

248. Michigan State failed to conduct an adequate, reliable, and impartial reinvestigation after the Review Panel ordered the reinvestigation.

249. The Defendants' reinvestigation after the appeal and subsequent adjudication was biased against Plaintiff because he was a male.

250. The Defendants' male bias, and in particular Michigan State's and Defendant Abdnour's, is evidenced by the finding of responsibility based on virtually the same set of facts that originally resulted in Plaintiff being found "not responsible" and Michigan State's settlement with the OCR on September 1, 2015.

251. Further, Plaintiff was prevented from being able to defend himself (and therefore prejudiced) because he was denied notice of the proceedings. The record reflects that Michigan State failed to follow-up with Plaintiff when he failed to appear at the proceedings even though the OIE directly, or through the Athletic Department, had ways to contact Plaintiff.

252. In contrast, Dr. Riley's report was rejected because she failed to make "sufficient" efforts to follow-up with Roe's witnesses after they failed to appear for interviews further evidencing Defendants' bias against males.

253. Michigan State made no effort to provide Plaintiff as the respondent, with the evidence that supposedly supported the false allegations, and thus Plaintiff was severely prejudiced in being able to prepare a defense to those false allegations.

254. After the September 1, 2015 settlement with the OCR, Michigan State created a process in which findings of no responsibility are routinely ignored in favor of a complainant's appeals thus presuming guilt over findings of innocence. Such a one-sided process deprived Plaintiff, as a male student, of educational opportunities at Michigan State on the basis of his sex.

255. Michigan State held no hearing of any kind to determine the facts. Instead, it relied upon the findings of Defendant Abdnour to make a determination almost entirely based on a review of the written allegations, Roe's written response to the allegations in her appeal, and the intentional failure to provide Plaintiff with notice of the proceedings. Equally significant, in a case where Michigan State relied upon a credibility assessment, there was no hearing even after the initial credibility assessment was called into question by Roe in her appeal.

256. Defendant Abdnour discharged responsibilities in University Title IX adjudications that involved a conflict of interest contrary to Title IX guidance.

257. Defendant Abdnour's report ignored evidence that suggested Plaintiff had not engaged in a sexual assault.

258. Defendant Abdnour wrongly ignored Roe's contradictory statements, credited witnesses that were not present on the evening in question, and wrongly found Plaintiff was

responsible for “Sexual Violence” to achieve a finding of responsibility of Plaintiff, a male student.

259. Defendant Abdnour’s responsibilities were overbroad and constituted a conflict of interest as determined by Title IX guidance against coordinators having conflicting responsibilities. Here she served as both investigator and adjudicator.

260. The totality of the circumstances establishes that Defendants were motivated by a gender bias in reaching the “erroneous outcome.” Michigan State credited false accusations of sexual assault made by a female who was biased against athletes, ignoring evidence tending to exculpate the male Plaintiff, including numerous text messages between Roe and Plaintiff that indicated that Roe had a bias against athletes.

261. Defendant Abdnour’s report reflected a failure to apply a burden of proof, which requires a reasoned consideration of the evidence to reach a conclusion, and actually revealed the absence of a preponderance of evidence supporting the finding of a violation by Plaintiff. Abdnour provided no explanation supporting her stated credibility judgments for the female Roe and against the male Plaintiff, there was no objective evidence supporting her stated credibility judgments, and without a hearing that included the questioning of witnesses, there was no proper basis for making such credibility judgments. Only an anti-male bias to find for the female complainant and against the male respondent can explain the purported findings.

262. Michigan State failed to provide Plaintiff the factual basis for the findings and sanctions because Michigan State repeatedly failed to provide Plaintiff with notice of the appeal and the proceedings that took place thereafter including the reinvestigation and subsequent findings. Plaintiff’s lack of notice meant that he could not participate in the reinvestigation or contest the new findings on appeal, let alone challenge the discipline imposed against him.

263. . Moreover, the Defendants' decision to order sanctions that were unduly severe did not take into account that Plaintiff had a previously unblemished disciplinary record at Michigan State.

264. Upon information and belief, Defendants were pressured by the Obama Administration's DOE into following the Title IX investigative and adjudicatory process mandated by the Dear Colleague Letter regardless of due process considerations.

265. Upon information and belief, Michigan State's mishandling of Plaintiff's case was wrongfully affected by federal pressure.

266. The totality of circumstances establishes that Michigan State has demonstrated a pattern of inherent and systematic gender bias and discrimination against male students accused of misconduct.

267. Upon information and belief, all students that have been suspended or expelled from Michigan State for sexual misconduct have been male.

268. Male respondents, and particularly male athletes, in sexual misconduct cases at Michigan State are discriminated against solely on the basis of sex. They are invariably found guilty, regardless of the evidence, or lack thereof.

269. As a direct and proximate result of the above conduct, Plaintiff sustained tremendous damages, including, without limitation, emotional distress; loss of educational, athletic, and career opportunities; economic injuries; and other direct and consequential damages.

270. As a result of the foregoing, Plaintiff is entitled to damages in an amount to be determined at trial, plus prejudgment interest, attorneys' fees, expenses, costs and disbursements and to an injunction enjoining violations of the Title IX in the process of investigating and

adjudicating sexual misconduct complaints, expunging Plaintiff's records and requiring Michigan State to destroy all disciplinary records concerning Plaintiff.

COUNT III
(State Law Estoppel and Reliance)
(Against Michigan State)

271. Plaintiff repeats and re-alleges each and every allegation hereinabove as if fully set forth herein.

272. Michigan State's various policies constitute representations and promises that Michigan State should have reasonably expected to induce action or forbearance by Plaintiff.

273. Michigan State expected or should have expected Plaintiff to accept its offer of admission, incur tuition and fee expenses, and choose not to attend other colleges based on its express and implied promises that it would not tolerate, and Plaintiff would not suffer harassment by fellow students; and would not deny Plaintiff his procedural rights should he be accused of a violation of Michigan State's Policies.

274. Plaintiff relied to his detriment on these express and implied promises and representations made by Michigan State.

275. Based on the foregoing, Michigan State is liable to Plaintiff based on estoppel.

276. Plaintiff is entitled to recover damages for Michigan State's breach of the express and/or implied contractual obligations described above. As a direct and proximate result of the above conduct, Plaintiff sustained tremendous damages, including, without limitation, emotional distress, loss of educational, professional athletic and other career opportunities, economic injuries and other direct and consequential damages.

COUNT IV
(State Law Tortious Interference with Contractual Relations and/or An Advantageous Business Relationship)

277. Plaintiff repeats and re-alleges each and every allegation hereinabove as if fully set forth herein.

278. Plaintiff was under contract with and employed by the Houston Texans of the NFL as a wide receiver and therefore had an advantageous business relationship and/or expectancy in his employment with the Texans. This advantageous business relationship and/or expectancy had a reasonable likelihood of future economic benefit for Plaintiff.

279. Defendants were aware that Plaintiff was under contract with and employed by the Houston Texans of the NFL as a wide receiver.

280. Defendants intentionally/improperly interfered with Plaintiff's contract and/or business relationship and/or expectancy including by publication of the existence of a Title IX proceeding.

281. Defendants' actions were intended to, and did, interfere with the contract and/or the business relationship and/or expectancy, causing their breach, disruption, or termination.

282. Defendants were aware that virtually every player in the NFL, including Plaintiff, plays without a guaranteed contract and can be cut by his team at any time, and for any reason.

283. Defendants knew or should have known that the mere publication of the existence of a Title IX proceeding involving a Michigan State athlete would adversely affect that player's ability to obtain and retain a position with a professional team in his chosen sport.

284. Defendants knew that Michigan State's Code of Conduct required all participants to keep the existence and the results of the proceedings confidential, and not to engage in any retaliatory conduct.

285. Upon information and belief, one or more of the Defendants publicized the existence of the Title IX proceedings and the imposition of discipline against Plaintiff in

violation of the Code of Conduct to individuals, including to members of the press in the City where Plaintiff was employed.

286. Defendants knew or should have known that providing information regarding the disciplinary proceedings involving the Plaintiff would result in the publication of articles in the local newspapers regarding the proceedings.

287. Defendants knew or should have known that providing information regarding the disciplinary proceedings involving Plaintiff could result in damage to his career.

288. Plaintiff's employment was terminated the day after a local newspaper reported about the discipline imposed against him by Michigan State.

289. Plaintiff has been unable to obtain employment in his chosen profession as a result of the Defendants' conduct.

290. Plaintiff has suffered significant financial losses as a result of the Defendants' actions.

291. Plaintiff is entitled to recover damages for Michigan State's breach of the express and/or implied contractual obligations described above. As a direct and proximate result of the above conduct, Plaintiff sustained tremendous damages, including, without limitation, emotional distress; loss of educational, professional athletic, and other career opportunities; economic injuries and other direct and consequential damages.

COUNT V
**(Common Law: Denial of Basic Fairness/
Arbitrary and Capricious Decision Making)**

292. Plaintiff repeats and realleges each and every allegation hereinabove as if fully set forth herein.

293. Defendants had a duty as a matter of common law to ensure that the proceedings against Plaintiff were conducted in good faith and with basic fairness.

294. Defendants breached this duty of good faith and basic fairness by, without limitation:

- Failing to provide Plaintiff with: notice of Roe's appeals and the claims therein, the proceedings before the Review Panel, the Review Panel's decision, OIE's renewed investigation, OIE's revised findings as reflected in the Revised Final Investigation Report, Plaintiff's right to challenge those findings, and Michigan State's subsequent imposition of discipline on Plaintiff;
- Failing to follow-up with Plaintiff when he failed to appear in response to any of the Notices sent by the Michigan State or seek alternate methods to contact Plaintiff from the Athletic Department;
- Seeking to placate and eliminate Roe's complaints rather than conducting a fair and impartial investigation;
- Failing to conduct a hearing in which testimony was taken at any point in the process;
- Relying on stereotypes regarding athletes and other prejudicial information as reflected in Defendant Abdnour's Report;
- Ignoring the inconsistencies in Roe's statements as reflected in Defendant Abdnour's Report in a manner designed to bolster the accounts of female accusers and rationalize their inconsistencies, to the detriment of the male accused;
- Failing to provide Plaintiff the opportunity to be heard in front of a fair and impartial tribunal;
- Failing to provide Plaintiff the opportunity to confront and cross-examine witnesses at a fair hearing.
- Arbitrarily and capriciously dismissing Plaintiff from Michigan State.

295. Defendants' breach of the duty to ensure basic fairness proximately caused Plaintiff to sustain tremendous damages, including, without limitation, emotional distress; loss of

educational, professional athletic, and other career opportunities; economic injuries and other direct and consequential damages.

296. As a result of the foregoing, Plaintiff is entitled to damages in an amount to be determined at trial.

PRAYER FOR RELIEF

WHEREFORE, for the foregoing reasons, Plaintiff demands judgment against Defendants as follows:

- (i) on the first cause of action for violation of constitutional due process under 42 U.S.C. § 1983, a judgment against Michigan State awarding Plaintiff damages in an amount to be determined at trial, including, without limitation, damages to physical well-being, emotional and psychological damages, damages to reputation, past and future economic losses, loss of educational and athletic opportunities, and loss of future career prospects, plus prejudgment interest, attorneys' fees, expenses, costs and disbursements and an injunction enjoining violations of the Fourteenth Amendment in the process of investigating and adjudicating sexual misconduct complaints, expunging Plaintiff's records, and requiring Michigan State to destroy all disciplinary records concerning Plaintiff;
- (ii) on the second cause of action for violation of Title IX of the Education Amendments of 1972, a judgment against Michigan State awarding Plaintiff damages in an amount to be determined at trial, including, without limitation, damages to physical well-being, emotional and psychological damages, damages to reputation, past and future economic losses, loss of educational and athletic opportunities, and loss of future career prospects, plus prejudgment interest, attorneys' fees, expenses, costs and disbursements and an injunction against and to an injunction enjoining violations of the Title IX in the process of investigating and adjudicating sexual misconduct complaints, expunging Plaintiff's records, and requiring Michigan State to destroy all disciplinary records concerning Plaintiff;
- (iii) on the third cause of action for state law breach estoppel and reliance, a judgment awarding Plaintiff damages in an amount to be determined at trial, including, without limitation, damages to physical well-being, emotional and psychological damages, damages to reputation, past and future economic losses, loss of educational and athletic opportunities, and loss of future career prospects, plus prejudgment interest, attorneys' fees, expenses, costs and disbursements;

- (iv) on the fourth cause of action for tortious interference with Contract, a judgment awarding Plaintiff damages in an amount to be determined at trial, including, without limitation, damages to physical well-being, emotional and psychological damages, damages to reputation, past and future economic losses, loss of educational and athletic opportunities, and loss of future career prospects, plus prejudgment interest, attorneys' fees, expenses, costs and disbursements;
- (v) on the fifth cause of action for violation of the common duty of good faith and basic fairness, a judgment awarding Plaintiff damages in an amount to be determined at trial, including, without limitation, damages to physical well-being, emotional and psychological damages, damages to reputation, past and future economic losses, loss of educational and athletic opportunities, and loss of future career prospects, plus prejudgment interest, attorneys' fees, expenses, costs and disbursements;
- (vi) awarding Plaintiff such other and further relief as the Court deems just, equitable and proper.

JURY DEMAND

Plaintiff demands a trial by jury of all issues presented herein that are capable of being tried by a jury.

Respectfully submitted,

Bogas & Koncius P.C.

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