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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM PICKENS COUNTY
Court of Common Pleas

The Honorable Perry H. Gravely
Circuit Court Judge

Appellate Case No.: 2022-001332

Andrew Pampu, ...Appellant-Respondent,

v.

Erin Wingo, David Wingo, and Colin J. Gahagan..... Respondents-Appellants.

RECORD ON APPEAL
VOLUME I

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STATE OF SOUTH CAROLINA
COUNTY OF PICKENS

ANDREW PAMPU

Plaintiff,

vs.

ERIN WINGO, DAVID WINGO, AND
COLIN J. GAHAGAN,

Defendants.

IN THE COURT OF GENERAL SESSIONS
FOR THE THIRTEENTH JUDICIAL
CIRCUIT

CIVIL ACTION NO.: 2017CP3900709

**ORDER DENYING DEFENDANT
WINGO'S MOTION TO RECONSIDER**

Defendant David Wingo filed a Motion to Reconsider certain findings by the Court in its Order on Post Trial Motions issued on July 11, 2022. These Motions were filed following a jury verdict and judgment against the Defendants submitted on March 25, 2022.

The sole grounds for the Motion to Reconsider deals with the Court's admissibility of a letter from Defendant David Wingo to Plaintiff's national fraternity. During the trial, the Court ruled that the findings and conclusions of the Clemson Office of Community and Ethical Standard (OCES) were not admissible because its procedures and burdens of proof were substantially different and should not be binding on this Court. Further, the Court found that the findings were more prejudicial than probative under Rule 403, SCRE. In conjunction, the Court found that these findings did not support a defense of collateral estoppel nor res judicata. A large portion of the letter in issue contained the findings and conclusions of the OCES which the Court had ruled as inadmissible. But a portion of the letter also contained other information which was not part of the OCES's findings and therefore admissible in support of Plaintiff's claim. The Court allowed the Plaintiff to put the letter into evidence with all portions relating to the OCES redacted, which resulted in an exhibit that was "heavily redacted". To rule otherwise would contradict the prior ruling of the Court. The Post Trial Order addressed this issue which had been raised by Defendant Wingo as a basis for a JNOV and New Trial.

In its present Motion, Defendant Wingo once again argues that the letter should have been introduced in its entirety or not at all. All of this had been addressed at trial and in the Order issued on July 11, 2022 and the

Court does not find a basis at this point to reverse its prior rulings. The Court would address a portion of its order that found that any prejudice could have “been cured by submitting only the admissible portions of the letter.” This was in response to Defendants’ Motion and the Court’s interpretation of Defendants’ argument that they were prejudiced since “the letter should never have been admitted in the heavily redacted state that it was.” (Defendant Wingo’s Motion for JNOV p. 3). Since the Court had addressed the OCES issue, the Court was addressing more of the appearance of the exhibit in its heavily redacted state which could have some impact regardless of the substance of the redactions and the Defendants may have been less prejudiced if they had presented the exhibit with the unredacted portions only. Of course, according to the Defendants’ argument, this does not address the prejudice caused by the failure to introduce the contents of the redacted portions of the letter.

Upon review of Defendant Wingo’s current Motion and consideration of the briefs from both sides, the Court finds no basis for amending its previous order and therefore, Defendant Wingo’s Motion is denied and the Order of July 11, 2022 shall stand as is.

It is so Ordered.

Electronic Signature of Judge Gravely to follow.



Pickens Common Pleas

Case Caption: Andrew Pampu VS Erin Wingo , defendant, et al

Case Number: 2017CP3900709

Type: Order/Other

So Ordered

s/ Honorable Perry H. Gravely, #2755

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STATE OF SOUTH CAROLINA
COUNTY OF PICKENS

Andrew Pampu,
Plaintiff,

vs.

Erin Wingo, David Wingo, and Colin J.
Gahagan
Defendants.

IN THE COURT OF GENERAL SESSIONS
FOR THE THIRTEENTH JUDICIAL
CIRCUIT

C.A. NO.: 2017CP3900709

**ORDER ON
POST TRIAL MOTIONS**

In this lawsuit, the Plaintiff sought damages for defamation and civil conspiracy arising out of an incident on October 24, 2015 at a fraternity party near Clemson University's campus, where both Plaintiff and Defendant Erin Wingo were students. Plaintiff asserted that he had consensual sex with Defendant Erin Wingo. Ms. Wingo later claimed that because of her consumption of alcohol, she did not have the capacity to consent and reported the Plaintiff to Clemson's Office of Community and Ethical Standards, (hereinafter "OCES"), stating that Plaintiff was in violation of Clemson's Anti-Harassment and Non-Discrimination Policy. Defendant Colin Gahagan was in a relationship with Ms. Wingo and was involved in some of the post encounter activities and various communications with other fraternity brothers of Plaintiff. Defendant David Wingo is Defendant Erin Wingo's father and was involved in various communications with Clemson University and the National office for the Plaintiff's Fraternity. The case went to trial on March 21, 2022 and a jury returned the following verdict on March 25, 2022: 1) On the defamation cause of action, in favor of the Plaintiff against Erin Wingo for \$700,000 actual damages and \$450,000 punitive damages; against David Wingo for \$230,000

actual damages and no punitive damages and against Colin Gahagan for \$700,000 actual damages and \$220,000 punitive damages; and 2) on the civil conspiracy cause of action, in favor of the Plaintiff against Erin Wingo for \$2,000,000 and against Colin Gahagan for \$1,000,000, and in favor for Defendant David Wingo.

Post-trial Motions filed

Following the Jury Verdict, the Court granted the parties 10 days to make any post-trial motions as provided for in Rule 50, SCRPC and the Defendants filed various post trial motions within the 10 days. Defendant Gahagan filed a Motion for the following relief: 1) JNOV; (2) New Trial and (3) New Trial Absolute under 13th Juror Doctrine. Erin and David Wingo filed a Motion for the following relief: (1) Motion for JNOV; (2) New Trial Absolute and (3) New Trial Remittitur.

After careful consideration, the Court grants Defendants' Motions for JNOV as to the Civil Conspiracy verdict, but denies the remainder of the Motions relating to the verdict on the defamation causes of action.

Civil Conspiracy Verdict as to All Defendants

First, the Court will address the Civil Conspiracy cause of action and resulting jury verdict against Erin Wingo and Colin J. Gahagan. The jury found in favor of David Wingo on this cause of action.

The Standard for JNOV is found in Rule 50(b):

Whenever a motion for a directed verdict made at the close of all the evidence is denied or for any reason is not granted, the court is deemed to have submitted the action to the jury subject to a later determination of the legal questions raised by the motion. A party who has moved for a directed verdict may move to have the verdict and any judgment entered thereon set aside and to have judgment entered in accordance with his motion for a directed verdict...

The South Carolina Supreme Court has ruled, “[i]n deciding motions for a directed verdict or judgment notwithstanding the verdict, the trial judge must consider the evidence in the light most favorable to the nonmoving party. If only one reasonable inference can be drawn from the evidence, the motion must be granted.” *Brady Dev. Co, Inc. v. Tow of Hilton Head Island*, 312 S.C. 73 (1993). See *Sorin Equipment v. The Firm*, 323 S.C. 359 474 S.E.2d 819 (Ct. App. 1996). (“View the evidence and its inferences in the light most favorable to the non-moving party. The jury’s verdict must be upheld if there is any evidence to sustain the factual findings implicit in the verdict.”) see also *Garrison v. Target*, 429 S.C. 324 838 S.E.2d 18 (Ct. App. 2020). (requiring the Court to “determine the existence of evidence to support the award and not its weight”.)

The South Carolina Supreme Court has recently clarified the murky cause of action for civil conspiracy. See *Paradis v. Charleston School District*, 433 S.C. 562 (2021). The elements of civil conspiracy are as follow:

A Plaintiff asserting a civil conspiracy claim must establish: (1) the combination or agreement of two or more persons, (2) to commit an unlawful act or lawful act by unlawful means, (3) together with the commission of an overt act in furtherance of the agreement, and (4) damages resulting to the plaintiff. *Paradis*, 433 S.C. at 575.

In the case before the Court, even considering the evidence in the light most favorable to the Plaintiff, the Court finds that the Plaintiff failed to introduce evidence to establish these necessary elements for civil conspiracy. First, there was no evidence of an agreement or plan between the Defendant Erin Wingo and Defendant Gahagan. Although there was a report to Clemson University regarding the alleged incident, there was no evidence that this was based on any type of agreement or plan between these 2 defendants. Secondly, there was no evidence of the commission of any unlawful act by these defendants nor a lawful act by unlawful means. And finally, the Plaintiff failed to provide any evidence of monetary damages resulting from the

conduct of these defendants. Under the defamation claim, Plaintiff's damages can be presumed, but that does not apply to the conspiracy claim and Plaintiff must prove some type of actual damages. Here, the Plaintiff presented testimony that because the Plaintiff failed to get into dental school, he would not make as much money as he would have otherwise. However, under the South Carolina Rules of Evidence, Plaintiff was not able to establish any amount of damages sustained. So, there was no basis for the jury to determine the amount of damages sustained by the Plaintiff without pure speculation. Further, the damages under the civil conspiracy cause of action were the same as the defamation cause of action and the Plaintiff would not be entitled to a "duplicative recover[y]". See *Paradis*, 433 S.C. at 574. Therefore, the Court grants these Defendants' Motion for Judgment Notwithstanding the Verdict and enters judgment in favor of Defendant Erin Wingo and Defendant Gahagan on the Civil Conspiracy cause of action.

Defendant Gahagan's Remaining Motions as to Defamation Cause of Action

As to the verdict on the Defamation Cause of action, Defendant Gahagan asserts several grounds for the basis for JNOV and/or New Trial.

Defendant Gahagan first argues that the Plaintiff was collaterally estopped from asserting his claim because of the findings of OCES and the hearing which was conducted through this office. While the OCES tribunal dealt with similar issues, the Court found that the OCES's findings were not based on the same standard applicable to civil actions, nor the same parties or issues to support a defense for collateral estoppel. The doctrine of collateral estoppel provides that, "any issue litigated and decided that was necessary to the judgment in the first case, may not be relitigated in a second action involving a different claim." *Catawba Indian Nation v. State*, 407 S.C. 526, 537, 756 S.E.2d 900, 906 (2014). Here, the Court found that the OCES does not follow the South Carolina Rules of Evidence applied in civil cases, follows a different procedure

by not allowing cross examination and requiring questions to be submitted to the chairperson before being asked. The Court found that this hearing was substantially limited and contrary to the Rules of Evidence and Rules of Civil Procedure applicable to a civil case. Further, the OCES Board applied provisions of its standard of conduct under Clemson's Anti-Harassment and Non-Discrimination Policy, which were not controlling in the matter at hand.

Second, Defendant Gahagan argues that evidence of the OCES hearing was improperly excluded. The Court ruled that the evidence of the decision by the OCES Board was improper because it would have been more prejudice than probative. Rule 403, SCREvid. The Court found that it was not admissible and therefore, finds that this is not a basis for the relief requested by this Defendant.

Third, Defendant Gahagan argues that there was no evidence of negligence on his part to support a claim for defamation. Whether Defendant Gahagan acted negligently in this matter was clearly a question for the jury and there was evidence to support the jury's finding in this regard.

Next, Defendant Gahagan argues that punitive damages were not appropriate. The Court has addressed the punitive damages as to all Defendants below and analyzed under the *Gamble* factors.

In regards to Defendant Gahagan's Motion relating to the civil conspiracy verdict, the Court has already addressed these issues above.

Defendant Gahagan asserts that the Plaintiff must elect his remedy from the verdicts. The Court would agree with Defendant Gahagan that the damages for both causes of action and proof at trial were the same and to allow the Plaintiff to recover under both would be a double recovery. But, this is a moot issue based on the Court's granting of Defendants' Motion for JNOV as to the Civil Conspiracy Cause of Action.

Finally, Defendant Gahagan request a new trial based on the 13th Juror Doctrine. Under the 13th Juror Doctrine, a trial judge may grant a new trial if the verdict is inconsistent and reflects the jury's confusion. Norton v. Norfolk S. Ry. Co., 350 S.C. 473, 479, 567 S.E.2d 851, 854 (2002). Under this analysis, the Court finds that the verdict does not warrant a New Trial under the 13th Juror Doctrine and therefore this Motion is respectfully denied.

Wingo Defendants' Remaining Motions as to Defamation Cause of Action

As to the verdict on the Defamation Cause of action, the Wingo Defendants assert several grounds for the basis for JNOV and/or New Trial.

I. The Court erred in failing to admit investigation from Title IX (or the OCES). As set forth above, the Court found that the evidence of the findings and conclusions of the OCES were not admissible and therefore this would not a be a basis for JNOV or New Trial.

II. The Court erred in failing to admit an entire document submitted by Defendant. The Defendants attempted to introduce a letter from Defendant David Wingo to the Plaintiff's national fraternity which contained substantial information about the findings of the OCES tribunal. Since the Court had ruled that the evidence relating to the findings of the OCES was not admissible, these portions of the letter were not admissible. Any prejudice resulting from the presentation of a heavily redacted letter could have been cured by submitting only the admissible portions of the letter instead of the entire letter with the redacted portions blacked out. Nonetheless, the Court does not find that this is a basis for a New Trial.

III. Plaintiff's claim barred by collateral estoppel. As set forth above, the Court found that collateral estoppel did not apply. Judge Letitia Verdin reached the same conclusion in denying Defendants' Motion for Summary Judgment. See Order issued October 13, 2021. Therefore, the Court finds that this is not a basis for a JNOV or New trial.

IV. The Court erred in not finding that statements made to OCES were privileged and dismissing the claims. As Plaintiff argued and showed throughout, his case was not based on statements made to the OCES and therefore Defendants' Motion on this ground is denied.

V. Motion for New Trial regarding issues with Civil Conspiracy. Based on the Court's ruling above granting Defendants' Motion for JNOV on the cause of action for civil conspiracy, all issues relating to this cause of action and verdict (including New Trial, 13th Juror and Election of Remedies) are moot.

VIII. Verdict excessive and disproportionate. These Defendants contend that the verdict was excessive and disproportionate. The Court will address the actual damages in this section and the punitive damages below. Although the verdicts as to each defendant was substantial in light of the evidence presented, the jury had sufficient evidence to determine damages to a person's reputation after being labeled a "rapist" in college. Further, in analyzing the excessiveness of a verdict, the Court should only grant a new trial for an excessive verdict if, "the amount is so grossly ...excessive as to shock the conscience of the court and clearly indicates the figure reached was the result of passion, caprice, prejudice, partiality, corruption or some other improper motives." *RRR, Inc. v. Toggas*, 378 S.C. 174, 662 S.E.2d 438 (Ct. App. 2008), *cert. granted, decision aff'd*, 381 S.C. 490, 674 S.E.2d 170 (2009). The Court does not find that the verdict shocks the conscience of the court nor that it was based on passion, caprice, prejudice, partiality, corruption or other improper motives.

IX. Thirteenth Juror for New Trial Absolute. As discussed above the verdict does not warrant a new Trial under the factors set forth in *Norton v. Norfolk S. Ry. Co.*, 350 S.C. 473, 567 S.E.2d 851 (2002).

X. New trial Nisi remittitur due to excessive verdict. This issue has been addressed above in the Court's finding that the verdict was not excessive. Therefore, the Motion for a new trial nisi is denied.

Punitive Damages Analysis

All Defendants have argued that the punitive damages were not warranted and were excessive in light of the evidence. As set forth in *Gamble v. Stevenson*, 305 S.C. 104 (1991), the Court must analyze the appropriateness and amount of punitive damages using the following factors: 1) defendant's degree of culpability; (2) duration of the conduct; (3) defendant's awareness or concealment; (4) the existence of similar past conduct; (5) likelihood the award will deter the defendant or others from like conduct; (6) whether the award is reasonably related to the harm likely to result from such conduct; (7) defendant's ability to pay; and finally, (8) as "other factors" deemed appropriate. As presented by the evidence, the defamatory statements made by the Defendants about the Plaintiff related to the commission of a crime of moral turpitude and classified as actionable per se. "If the alleged defamatory statement is actionable per se, the law presumes that the defendant acted with common law malice...." *Murray v. Holnam, Inc.*, 344 S.C. 129, 542 S.E.2d 743 (Ct. App. 2001) (citing *Holtzscheiter v. Thomson Newspapers, Inc.*, 332 S.C. 502, 506 S.E.2d 497 (1998)). Based on the evidence presented, the jury found that all Defendants were culpable. If you consider the time which elapsed from the initial report until the completion of the hearing by the OCES and subsequent communications with the National Fraternity, the duration of the conduct was for more than 4 months. Even though there was no evidence of prior similar conduct, the evidence showed that all of the Defendants were fully aware of their actions at the time. The verdict and award of punitive damages will likely deter others from bringing such claims which the jury found to be false and

the award was reasonably related to the harm. Additionally, the punitive award was much less than the actual damages. The Court would note that there was no evidence as to the Defendants' ability to pay, but our appellate courts have found that this is not to be a deciding factor. "The defendant's financial ability to pay is always a factor to be considered by the jury in awarding punitive damages. Yet, evidence of ability to pay is not a *sine qua non* of a punitive damage award." *Charles v. Texas Co.*, 199 S.C. 156, 18 S.E.2d 719 (1942). Further, "there is no requirement that the defendant be a man of means before the jury is justified in awarding punitive damages." *Norton v. Ewaskio*, 241 S.C. 557, 565, 129 S.E.2d 517, 521 (1963). Finally, the nature of the defamatory statements was severe. The Courts have found that there is a presumption of common law malice for the defamatory statements which is a factor to consider for awarding punitive damages. See *Murray* 344 S.C. 129 (2001). Therefore, the Court finds that the verdict for punitive damages is not excessive nor violates Defendants' rights of due process and denies Defendants' Motion for New trial or remittitur on this basis.

Conclusion

In conclusion, the Court grants the Defendants' Motion for JNOV as to the Civil Conspiracy verdict and awards a verdict in favor of Defendants Erin Wingo and Colin Gahagan. Further, the Court denies the remainder of Defendants' Motions as to the verdicts on the defamation cause of action.

It is so Ordered.

E- signature of Judge Gravely to follow



Pickens Common Pleas

Case Caption: Andrew Pampu VS Erin Wingo , defendant, et al

Case Number: 2017CP3900709

Type: Order/JNOV

So Ordered

s/ Honorable Perry H. Gravely, #2755

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FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF Pickens
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2017CP3900709

Andrew Pampu
PLAINTIFF(S)

Erin Wingo et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED** (CHECK REASON): ☐ Rule 12(b), SCRCPP; ☐ Rule 41(a), SCRCPP (Vol. Nonsuit); ☐ Rule 43(k), SCRCPP (Settled);
☐ Other
- ☐ **ACTION STRICKEN** (CHECK REASON): ☐ Rule 40(j), SCRCPP; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (CHECK APPLICABLE BOX):
☐ Affirmed; ☐ Reversed; ☐ Remanded;
☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

This matter is before the Court on Defendant Erin Wingo's Motion to Alter/Amend the Judgment. The Court has carefully considered the Defendant's arguments. However, the Court feels that Defendant's concerns were adequately addressed in the Court's October 13 Order. Therefore, Defendant's Motion to Alter/Amend is DENIED.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 11/16/2021 .

Terex Corporation
James E Figliozzi for Andrew Pampu
Kimberly C Lau for Andrew Pampu
Clemson University

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.



Pickens Common Pleas

Case Caption: Andrew Pampu VS Erin Wingo , defendant, et al

Case Number: 2017CP3900709

Type: Order/Electronic Form 4

So Ordered

s/Letitia H. Verdin, SC Judge 2162

Electronically signed on 2021-11-16 12:42:29 page 3 of 3

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF PICKENS	)	THIRTEENTH JUDICIAL CIRCUIT
	)	
Andrew Pampu,	)	C.A. NO. 2017-CP-39-00709
	)	
Plaintiff,	)	
	)	
vs.	)	ORDER
	)	
Erin Wingo, David Wingo, and Colin J. Gahagan	)	
	)	
Defendants.	)	
	)	
	)	

This matter was before the Court on October 1, 2021 for Defendants Motions for Summary Judgment. On October 24, 2015, Plaintiff Andrew Pampu (“Plaintiff”) and Defendant Erin Wingo (“Wingo”) attended a party at the Clemson Phi Delta Theta fraternity house. Before and during the party, Wingo consumed several shots of alcohol. At some point, Plaintiff and Wingo left the party together and had sexual intercourse in a secluded area near a restaurant. On November 11, 2015, Wingo submitted a formal Title IX complaint to Clemson’s Office of Community and Ethical Standards (“OCES”), claiming that she did not recall the sexual encounter with Plaintiff and therefore was not able to give consent. Clemson opened a formal investigation into whether Plaintiff violated Clemson’s General Student Regulations (“GSR”).

Plaintiff and Ms. Wingo attended a hearing regarding this matter on February 26, 2016. Three days later, Clemson sent Plaintiff a letter finding Plaintiff responsible for violating four sections of the GSR, and suspending Plaintiff from school for a period of 6 months. Both Plaintiff and Wingo appealed the decision and sanctions through Clemson’s OCES process. On May 27,

2016, Clemson Chief of Staff Max Allen upheld the decision and increased Plaintiff's suspension length to one year.

On January 26, 2017, Plaintiff commenced an action in federal court against Clemson University and several Clemson employees alleging various constitutional violations relating to the process by which Plaintiff was suspended from Clemson. On July 1, 2019, Plaintiff entered into a settlement agreement with Clemson ("Settlement"), dismissing the federal court action.

On January 26, 2017, Plaintiff commenced this action against Wingo, David Wingo ("David"), and Colin J. Gahagan ("Gahagan") (together "Defendants") alleging defamation and civil conspiracy. These motions for summary judgment followed.

I. STANDARD OF REVIEW

Pursuant to Rule 56 of the South Carolina Rules of Civil Procedure, summary judgment is appropriate if "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Rule 56(c). SCRCP. "The purpose of summary judgment is to expedite the disposition of cases not requiring the services of a fact finder." *Matsell v. Crowfield Plantation Cmty. Servs. Ass'n, Inc.*, 393 S.C. 65, 70, 710 S.E.2d 90, 93 (Ct. App. 2011) (citing *George v. Fabri*, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001)).

An adverse party may not rely on the mere allegations in the pleadings to withstand a summary judgment motion but must set forth specific facts showing there is a genuine issue for trial. *Strickland v. Madden*, 323 S.C. 63, 68, 448 S.E.2d 581, 584 (Ct. App. 1994). "However, it is not sufficient for a party to create an inference that is not reasonable or an issue of fact that is not genuine." *Town of Hollywood v. Floyd*, 403 S.C. 466, 477, 744 S.E.2d 161, 166 (2013).

“[W]hen the evidence is susceptible of only one reasonable interpretation, summary judgment may be granted.” *Brooks v. Northwood Little League, Inc.*, 327 S.C. 400, 403, 489 S.E.2d 647, 648 (Ct. App. 1997).

II. DISCUSSION

A. Plaintiff's Claims are not Barred by the Doctrine of Judicial Estoppel

Defendants argue that Plaintiff's claims are barred by the doctrine of Judicial Estoppel. Specifically, Defendants claim that Plaintiff's Settlement with Clemson is inconsistent with his claims in this lawsuit. The doctrine of judicial estoppel “precludes a party from adopting a position in conflict with one earlier taken in the same or related litigation.” *Hayne Fed. Credit Union v. Bailey*, 327 S.C. 242, 251, 489 S.E.2d 472, 477 (1997). In South Carolina, judicial estoppel requires:

“(1) two inconsistent positions taken by the same party; (2) the positions must be taken in the same or related proceedings involving the same party; (3) the party taking the position must have been successful in maintaining that position and have received some benefit; (4) the inconsistency must be part of an intentional effort to mislead the court; and (5) the two positions must be totally inconsistent.” *Cothran v. Brown*, 357 S.C. 210, 215-16, 592 S.E.2d 629, 632 (2004).

Defendants point to a term in the settlement agreement which reads “Clemson University will reinstate the hearing board's decision of February 29, 2016 as upheld by the University Vice President of Student Affairs.” As already noted, the hearing board's decision was that Plaintiff was responsible for the sexual assault. Based upon this, Defendants argue that the settlement agreement was, in effect, an admission of that assault. Therefore, according to Defendants, Plaintiff's claims, which essentially allege that Defendants have lied by saying he assaulted Wingo, must fail. On the other hand, Plaintiff points to the first page of the settlement which reads, in part, “Plaintiff denies the allegations of Jane Doe's November 11, 2015 formal Title IX complaint to Clemson

University, the basis of which the hearing board's decision of February 26, 2016 was made." Therefore, the Court must determine whether the settlement agreement, when read as a whole, was an admission by Plaintiff of the assault. The Court finds that it was not.

"General contract principles are applied in the construction of a settlement agreement because . . . a settlement agreement is a contract." *Pee Dee Stores, Inc. v. Doyle*, 381 S.C. 234, 241-42, 672 S.E.2d 799, 803 (Ct. App. 2009). Contract provisions must be interpreted to give effect to all of the contract's provisions, whenever practical. *Ecclesiastes Production Ministries v. Outparcel Associates, LLC*, 374 S.C. 483, 498, 649 S.E.2d 494, 502 (Ct. App. 2007).

Here, the Court finds that both sections of the settlement agreement can be read in harmony. The Plaintiff completely denies Wingo's allegations on page 1 of the agreement, while agreeing to allow Clemson to reinstate the board's decision on page 2. The page 2 statement does not necessarily mean that Plaintiff is admitting to the sexual assault. Such an admission would make no sense alongside the unequivocal denial that appears on page 1. Rather, the page 2 statement may simply be interpreted as the Plaintiff conceding that Clemson's hearing board made the right decision based on the evidence it had before it, without admitting to the assault itself. Importantly, Plaintiff has repeatedly denied the allegations in front of the Clemson board, the federal court, and this Court. Therefore, the Court finds that Plaintiff's claim that Defendants are lying about the assault is entirely consistent with his previous arguments before the federal court and Clemson board.

B. Plaintiff's Claims are not Barred by Collateral Estoppel

The doctrine of collateral estoppel, or issue preclusion, provides that any issue litigated and decided that was necessary to the judgment in the first case, may not be relitigated in a second action involving a different claim. *Catawba Indian Nation v. State*, 407 S.C. 526, 537, 756 S.E.2d

900, 906 (2014). Further, under South Carolina law, where a civil action arises out of the same factual scenario as one which has been before a state agency, a finding by that state agency with regard to an element that is critical to recovery in the civil action is binding upon the civil court. *Bennett v. South Carolina Dept. of Corr.*, 305 S.C. 310, 408 S.E.2d 230 (1991).

Defendants argue that Clemson’s OCES board is a state agency and that it’s decisions are entitled to preclusive effect. In support of this, Defendants first cite the South Carolina Tort Claims Act (“TCA”), which reads that “Agency means the individual office, agency, authority . . . including a state-supported governmental . . . school, college, [or] university . . . which employs the employee whose act or omission gives rise to a claim under this chapter.” S.C. Code Ann. 15-78-30 (a). The Court finds that this statute is inapplicable to the current action. The definition of agency in the TCA is specifically limited to entities “which employ the employee whose act or omission gives rise to a claim **under this chapter**.” (emphasis added). Neither this action or the action before the OCES had anything to do with a Clemson employee or the TCA. Therefore, this definition of agency, while perhaps instructive, is not binding on this Court.

Defendants also cite S.C. Code 1-23-310 (1), which defines the term “agency” to include “each state board, commission, department, executive department or officer, other than the legislature [or] the courts . . . authorized by law to make regulations or to determine contested cases.” This section of the code, titled “State Agency Rule Making and Adjudication of Contested Cases”, is more on point in the present action. The Court understands that this is a narrower definition of the term “agency” than the definition which appears in the TCA. However, the TCA was crafted in such a way as to include several entities that would normally not be considered agencies for the purpose of creating a limited carve-out for bringing tort claims against governmental bodies that would otherwise enjoy sovereign immunity. It is illustrative that the

TCA's definition of "agency" lists several entities to be included in the definition, including an "agency" itself. This further points to the legislature's intent that the TCA definition broadly capture entities that are not agencies otherwise.

Having decided that the definition of "agency" appearing in S.C. Code 1-23-310 (1) is the more appropriate one, the Court must now turn to whether Clemson's OCES board falls under that definition. Defendants have not cited any South Carolina cases which have held that a university board is considered a state agency. Similarly, after an exhaustive review, the Court cannot find a single case in this state holding that a university board is considered a state agency entitled to preclusive effect.

Further, the OCES board does not follow the procedures outlined in the same section in which the definition appears. Section 1-23-330 (3) states that "In contested cases, any party may conduct cross-examination." Plaintiff was entitled to ask a few questions of the witnesses, but these questions were required to be submitted to the chairperson before being asked, making cross-examination limited. It also does not appear that the OCES board followed the rules of evidence as applied in civil cases, which is required by S.C. Code 1-23-330. Simply put, Clemson's OCES board did not conduct itself as a state agency. It would be unfair to allow the OCES board's decisions to be entitled to preclusive effect while at the same time allowing it to operate outside of the rules that other state agencies follow. Further, it is unlikely that the legislature intended for the OCES board to be a state agency "authorized by law to decide contested cases." Therefore, the board's decision is not entitled to preclusive effect and the issue of whether Plaintiff assaulted Wingo is properly before this Court.

C. There Exist Genuine Issues of Material Fact Regarding Plaintiff's Claims Against Defendants Erin Wingo and Colin Gahagan

The Court has found that the OCES board's findings are not entitled to preclusive effect and that Plaintiff is not judicially estopped from arguing that the sexual encounter with Wingo was consensual. This is a material disputed issue in both of Plaintiff's claims. If the encounter with Wingo was consensual, as the Plaintiff claims, he may be entitled to recover on the grounds of defamation for statements allegedly made by Wingo and Gahagan that Plaintiff was guilty of the assault. If the encounter was nonconsensual, Plaintiff may not be entitled to recover based on the statements because they might be true. As to the civil conspiracy claim, if the allegations are untrue, and the defendants were aware of this, as Plaintiff alleges, a jury might find that Defendants engaged in a civil conspiracy against him to get him expelled from Clemson and his fraternity. These questions of fact are a matter for the jury. Therefore, Defendants Erin Wingo and Colin Gahagan's motions for summary judgment are DENIED.

D. There Exist Genuine Issues of Material Fact Regarding Plaintiff's Claims Against Defendant David Wingo

Defendant David Wingo claims that he is entitled to Summary Judgment because the letter he sent to Plaintiff's fraternity only stated that Clemson found the Plaintiff responsible for the assault. Therefore, David Wingo argues that his letter was true and cannot be actionable. However, Mr. Wingo's letter was not simply a copy of Clemson's decision. Rather, the letter contains numerous allegations, in Mr. Wingo's own words, regarding the Plaintiff and the incident in question, including, among other claims, that Plaintiff "sexually assaulted" Ms. Wingo. Therefore, for the same reasons as above, there exists a genuine issue of material fact regarding whether Plaintiff assaulted Ms. Wingo. This issue is relevant to both the defamation and civil conspiracy claim against Mr. Wingo. Therefore, David Wingo's Motion for Summary Judgment is DENIED.

III. CONCLUSION

In conclusion, the Court finds that there exist genuine issues of material fact regarding Plaintiff's defamation and civil conspiracy claim against each defendant. Therefore, Defendants Motions for Summary Judgment are DENIED.

IT IS SO ORDERED.

Letitia H. Verdin
Thirteenth Circuit Court Judge

October __, 2021

Greenville, South Carolina



Pickens Common Pleas

Case Caption: Andrew Pampu VS Erin Wingo , defendant, et al

Case Number: 2017CP3900709

Type: Order/Summary Judgment

So Ordered

s/Letitia H. Verdin, SC Judge 2162

Electronically signed on 2021-10-12 12:23:33 page 9 of 9

STATE OF SOUTH CAROLINA
COUNTY OF PICKENS

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

John Doe,

Case No: 2017-CP-39-00709

Plaintiff,

v.

**ORDER DENYING DEFENDANT
RICHARD DOE'S MOTION TO ALTER
OR AMEND**

Jane Doe, Charles Doe, & Richard Doe,

Defendants.

This matter comes before the Court upon Defendant Richard Doe's Motion to Alter or Amend this Court's October 25th, 2017 Order granting the Defendants' Motion to Dismiss as to the Abuse of Process claim and denying the Motion to Dismiss as to all other claims. After fully considering said Motion, this Court finds that oral argument is not needed for a final determination of this Motion. The Court has reviewed the Defendant's arguments and there does not appear to be any grounds to support an amendment to the Order previously filed in this matter. The Plaintiff's Complaint properly states causes of action for defamation, intentional infliction of emotional distress, and civil conspiracy against Defendant Richard Doe. Therefore, the Defendant's Motion to Alter or Amend is DENIED.

IT IS SO ORDERED!

Perry H. Gravely
Presiding Judge

Pickens, South Carolina

January _____, 2018



Pickens Common Pleas

Case Caption: John Doe VS Jane Doe , defendant, et al

Case Number: 2017CP3900709

Type: Order/Amend

So Ordered

s/ Honorable Perry H. Gravely, #2755

Electronically signed on 2018-01-10 14:42:31 page 2 of 2

FORM 4

**STATE OF SOUTH CAROLINA
COUNTY OF PICKENS
IN THE COURT OF COMMON PLEAS**

**JUDGMENT IN A CIVIL CASE
CASE NUMBER 2017CP3900709**

John Doe		Jane Doe, Charles Doe, and Richard Doe	

PLAINTIFF(S)	DEFENDANT(S)
Submitted by:	Attorney for: ☐ Plaintiff ☐ Defendant ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☒ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit)
☐ Rule 43(k), SCRPC (Settled); ☐ Other: _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j) SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order; (formal order to follow) ☐ Statement of Judgment by the Court:
ORDER INFORMATION

This order ☐ ends ☒ does not end the case.
Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order: _____

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

Circuit Court Judge Perry Gravely	Judge Code 2755	10/25/2017 Date

For Clerk of Court Office Use Only

This judgment was entered on , and a copy mailed first class or placed in the appropriate attorney's box on , to attorneys of record or to parties (when appearing pro se) as follows:

David F. Aylor 24 Broad Street, Charleston, SC 29401
Joseph S. Schmutz 24 Broad Street, Charleston, SC 29401

William A. Coates P.O. Box 10529, Greenville, SC 29603
Jeffrey C. Kull P.O. Box 6648, Columbia, SC 29260

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter Deborah Garrison

Harold P Welborn, Jr. - Clerk of Court

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRPC.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

This matter came before the Court on 2 separate Motions to Dismiss filed by Defendants Jane Doe and Richard Doe and Defendant Charles Doe. After careful review, the Court finds that Plaintiff John Doe has stated causes of action for Defamation, Intentional Infliction of Emotional Distress, and Civil Conspiracy against all Defendants. In deciding a motion to dismiss, the Court must view the allegations in the complaint in the light most favorable to the plaintiff, "with every doubt resolved in his behalf." *Gentry v. Yonce*, 337 S.C. 1, 5, 552 S.E.2d 137, 139 (1999). Accordingly, the trial court should deny a 12(b)(6) motion if the "facts alleged and inferences reasonably deducible therefrom would entitle plaintiff to any relief on any theory of the case." *Id.* (quoting *Stiles v. Onorato*, 318 S.C. 297, 300, 457 S.E.2d 601 (1995)). The Court finds that the Complaint has met this burden and the Motion to Dismiss as to these specific causes of action should be denied.

However, with regard to Plaintiff's Abuse of Process Claim against Jane and Charles Doe, the Plaintiff has failed to sufficiently plead a cause of action. At the hearing, the Plaintiff argued that Clemson University's Title IX proceedings according to rules promulgated by the University constituted "process" attendant to litigation. Under South Carolina law, "process" has been interpreted broadly to include the entire range of procedures incident to the litigation process. *Pallares v. Seinar*, 407 S.C. 359, 756 S.E.2d 128, 133 (2014); *see also Food Lion Inc. v. United Food & Commercial Workers Int's Union*, 351 S.C. 65, 567 S.E.2d 253 (Ct. App. 2002) ("In our view, 'process,' as it pertains to the abuse of process tort, embraces the full range of activities and procedures attendant to litigation."). Here, in contrast, Clemson's Title IX process does not embrace procedures attendant to litigation. The decision by Clemson University's Title IX Administrative Hearing Board is not appealable to an Administrative Law Court, and preclusive doctrines like collateral estoppel would not apply to findings made in proceedings before Clemson's Administrative Hearing Board. *See Young v. CareAlliance Health Services*, 2014 WL 4955225 at *18 (D.S.C. 2014) (finding an improper complaint to the Board of Nursing was an abuse of process because it could lead to formal charges by the Board, the administrative tribunal's decision is appealable to the Administrative Law Court, and preclusive doctrines apply to findings made in such proceedings.)

Therefore, the Court denies the Defendants' Motions with regard to the causes of action for Defamation, Intentional Infliction of Emotional Distress, and Civil Conspiracy claims, and grants Defendant Jane and Charles Doe's Motion to Dismiss with regard to the Abuse of Process Claim.



Pickens Common Pleas

Case Caption: John Doe VS Jane Doe , defendant, et al

Case Number: 2017CP3900709

Type: Order/Form 4

So Ordered

s/ Honorable Perry H. Gravely, #2755

Electronically signed on 2017-10-25 09:12:46 page 3 of 3

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON
PLEAS

COUNTY OF PICKENS

C.A. No. 2017-CP-39-_____

-----X

JOHN DOE,

:

Civil Action No. _____

Plaintiff,

:

COMPLAINT

-against-

:

JANE DOE, CHARLES DOE, and
RICHARD DOE,

:

(Jury Trial Demanded)

:

Defendants.

:

-----X

Plaintiff John Doe¹, (hereinafter referred to as “Plaintiff” or “John Doe”), by his attorneys Nesenoff & Miltenberg, LLP, David Aylor Law Offices and Schmutz & Schmutz, P.A., as and for his Complaint, respectfully alleges as follows:

THE NATURE OF THIS ACTION

1. This case arises out of the actions taken by Defendants Jane Doe and Charles Doe, freshman students at Clemson University (“Clemson”) during the incidents described herein, to defame, harass, abuse and punish Plaintiff John Doe, also a freshman student at Clemson during the incidents described herein, after Plaintiff and Defendant Jane Doe engaged in a consensual sexual encounter. Thereafter, Defendants Jane Doe, Charles Doe, and Richard Doe (Jane Doe’s father) conspired to target John Doe in furtherance of their own prurient interests,

¹ Plaintiff herewith files a motion to proceed pseudonymously.

and in retaliation for John Doe's interactions with Jane Doe, Charles Doe's "on-again/off-again" girlfriend.

2. After pursuing John Doe for more than a month, actively seeking him out at his birthday while he was intoxicated, seducing and initiating sexual activity with him, Jane Doe pleaded with John Doe to keep their encounter a secret from Defendant Charles Doe.

3. Notwithstanding, upon learning of the interactions between John Doe and Jane Doe, Defendant Charles Doe sought revenge against John Doe, his former fraternity pledge brother, by persuading Jane Doe that she must have been raped by John Doe.

4. Defendants Jane Doe and Charles Doe thereafter colluded to defame, harass and retaliate against John Doe through their use of Clemson's inherently biased and exceedingly deficient Title IX process, after a non-witness Resident Advisor made a fraudulent complaint of sexual misconduct against John Doe on Jane Doe's behalf.

5. Defendants Jane Doe and Charles Doe strategically utilized Clemson's Title IX investigation process to further their malicious vendetta against John Doe. Despite Jane Doe's inconsistent and varying accounts of the events, witness statements disproving Jane Doe's allegations, and significant exculpatory evidence, John Doe was ultimately found responsible for nonconsensual sexual

activity with Jane Doe and suspended from Clemson University through August 1, 2017, among other sanctions.

6. While John Doe's appeal was pending, and prior to the issuance of a final decision on the charges against John Doe, Defendant Richard Doe sent a copy of the confidential "pending" Decision Letter dated February 29, 2016 to the national headquarters of John Doe's fraternity, in violation of the Family Educational Rights and Privacy Act.

7. John Doe has been greatly damaged by the actions of Defendants: not only has John Doe suffered physical, psychological, emotional and reputational damages, but he has also suffered, and will continue to suffer, economic injuries, the loss of educational and career opportunities, and loss of future potential earnings as a result of the suspension, corresponding disciplinary mark on his academic record, and ever-present and very real potential of malicious or accidental public disclosure of the false allegations and flawed findings against John Doe as a sexual assault perpetrator.

8. John Doe therefore brings this action to obtain relief from Defendants Jane Doe, Charles Doe, and Richard Doe based on various state law claims.

THE PARTIES

9. Plaintiff is a natural person, citizen of the United States and resident of the County of Berkeley, State of South Carolina. During the events described

herein, Plaintiff was a student at Clemson University and resided in a dormitory on Clemson's campus in Clemson, South Carolina.

10. Upon information and belief, Defendant Jane Doe is a resident of the State of Connecticut. During the events described herein, Jane Doe was a student at Clemson University.

11. Upon information and belief, Defendant Charles Doe is a resident of the State of South Carolina. During the events described herein, Charles Doe was a student at Clemson University.

12. Upon information and belief, Defendant Richard Doe is a resident of the State of Connecticut and the father of Defendant Jane Doe.

JURISDICTION AND VENUE

13. This action is brought for damages and other appropriate relief pursuant to the statutory and common law of the State of South Carolina.

14. Venue is appropriate in this jurisdictional circuit pursuant to the *S.C. Code Ann.* § 15-7-30 (G) (1) and (2).

15. Jurisdiction is proper in this Court because Charles Doe is a resident of the State of South Carolina and the acts complained of are tortious acts committed in whole or in part in this State thus giving rise to jurisdiction pursuant to South Carolina Code § 36-2-803 (A) (3).

FACTUAL ALLEGATIONS COMMON TO ALL CLAIMS

Defendant Jane Doe's Pursuit of John Doe²

16. Defendant Jane Doe's pursuit of John Doe began well before the encounter which precipitated John Doe's suspension from Clemson.

17. Since as early as September 10, 2015, Jane Doe became preoccupied with John Doe when they first kissed. John Doe met Jane Doe for the first time on this day while at Charles Doe's dorm. John Doe gave Jane Doe a ride back to the high-rises on his moped, and a kiss was mutually initiated.

18. The following morning, September 11, 2015, Jane Doe sent a text message to John Doe, stating "don't hate me if I tell [Charles Doe] okay? I feel so guilty...sober me won't [tell him]. Drunk me tends to just speak so I'm going to try not to because I figure it's not worth it but I can't guarantee anything." Jane Doe went on to state "I just felt guilty because I was worried he was mad I didn't stay [at his dorm] but we're good so I don't feel bad anymore."

19. Despite her alleged feelings of guilt, as reflected in text messages between Jane Doe and her friend J.H., and Charles Doe and J.H., held in the investigative file maintained by Clemson University, Jane Doe continuously and persistently initiated contact with John Doe over the next month and a half,

² The factual allegations in this Complaint are based on Plaintiff's on-going investigation and the most current information available to him.

unbeknownst to Charles Doe, in a manner that demonstrated she sought to be more than friends with him. Indeed, Jane Doe actively sought to engage in a sexual encounter with John Doe, and continued to pursue him until the opportunity to lure him in arose.

20. Concurrently, Jane Doe also engaged in an “open relationship” with Charles Doe, one of John Doe’s pledge brothers, and engaged in sexual encounters with other male students at Clemson.

The Evening of October 24, 2015

21. On the evening of October 24, 2015, John Doe’s birthday, his fraternity Phi Delta Theta planned to host a party at the Compound, an off campus house.

22. Though neither she nor her friends received an invitation from John Doe, Jane Doe and her friends decided to attend.

23. John Doe and Jane Doe were friends who had engaged in one physical encounter a few weeks prior. Subsequent to the encounter, Jane Doe repeatedly initiated contact with John Doe, during September and October of 2015, while also continuing to seek a relationship with Charles Doe.

24. Around 8:00 p.m., John Doe began to celebrate his birthday alongside some of his pledge brothers. He consumed approximately five beers and 1 to 2 shots of Fireball over a period of approximately two and a half hours.

25. At approximately the same time, Jane Doe attended a “pregame” with friends in her dorm room. She self-reported that she consumed an implausible 9 shots before Jane Doe and her friends headed to the party at the Phi Delta Theta fraternity house. Jane Doe and her friends walked to the Compound without incident.

26. On the way to the Compound, and prior to arriving at the party, Jane Doe told at least three of her friends that she wanted to find the birthday boy, John Doe, and give him a birthday kiss.

27. Jane Doe and her friends arrived at the off-campus party at John Doe’s fraternity house at approximately 11:30 p.m. Upon her arrival, Jane Doe spoke with Charles Doe, who brushed Jane Doe off, telling her to “find someone else” and “go have a good time.” Given the prior nature of their relationship, this comment visibly upset Jane Doe and solidified her desire to engage in sexual activity with John Doe that evening.

28. Thereafter, Jane Doe was determined to pursue a sexual encounter with John Doe. Her fixation on finding John Doe was apparent to several witnesses who spoke with Jane Doe and observed her attempts to locate him.

29. Jane Doe approached B.Z., who was speaking with R.C., and asked about the whereabouts of John Doe. After about 15 minutes, B.Z. agreed to help Jane Doe locate John Doe, who they observed exiting one of the houses on the

Compound. Jane Doe went up to John Doe and gave him a hug and a kiss on the lips, in front of several people.

30. Jane Doe was evidently intent on engaging in sexual activity with John Doe; she pursued him for more than a month, discussed her desire to kiss John Doe with at least several friends prior to the party, pursued him at the party, aggressively and forcefully touched him, initiated a kiss on his lips, hugged him in front of numerous witnesses, and told him “if you don’t kiss me now, you won’t have sex with me tonight.”

31. Though taken aback by Jane Doe’s overt statement, John Doe succumbed to her forcefully kissing, hugging, and touching him. While John Doe generally avoided such public displays of affection, his inhibitions were lowered as a result of his intoxicated state.

32. Over the next forty-five minutes to an hour, as their sexual encounter escalated, John Doe asked Jane Doe playfully if she would give him a birthday blowjob. To his surprise, she responded yes, propositioning him further, and they began to discuss where to go. Ultimately, they mutually decided to leave the party to find somewhere more private.

33. As they began to walk away from the party, Jane Doe, walking unassisted, did not display any signs of intoxication; despite the darkness, she did

not stumble, did not slur her words and engaged in intelligible and conscious conversation with John Doe.

34. After walking and talking for approximately twenty minutes, John Doe and Jane Doe located an area near a shed that was situated behind a church and some apartments where they could continue their intimacy. In an effort to further bait him into engaging in sexual activity with her, Jane Doe provided John Doe with vodka from a water bottle she had brought to the party, from which they each took a sip. Notably, at no point in the evening did John Doe offer any alcohol to Jane Doe.

35. As they resumed kissing, Jane Doe unilaterally escalated the encounter when she started to undress herself and removed her pants, on her own volition. John Doe questioned what she was doing as he understood that Jane Doe was only going to give him oral sex. Surprised and caught off guard by this behavior, John Doe questioned why she was removing her pants, to which Jane Doe unequivocally responded “so we can have sex.”

36. Though he was intoxicated, and despite the fact that Jane Doe was the initiator of all physical contact between them and took off her own clothing, John Doe was still aware of the need to ensure that Jane Doe was coherent and was fully consenting to engaging in sexual intercourse.

37. As such, John Doe asked her repeatedly if she was sure she wanted to have sexual intercourse with him. Jane Doe consistently responded that she knew

what she was doing, and indicated on at least five separate occasions, both verbally and non-verbally, that it was fine to proceed.

38. John Doe asked Jane Doe whether he should use the condom in his wallet, which he was required to carry at all times as a pledge of a fraternity. Jane Doe told John Doe that he should use a condom, so John Doe complied and put on the condom.

39. Thereafter, John Doe surrendered to Jane Doe's seduction, which she had initiated and orchestrated, and they engaged in consensual sexual intercourse, an encounter entirely initiated by Jane Doe, and during which she was an active and willing participant.

40. Subsequently, they walked arm in arm back to the house. While conversing during their walk to the house, Jane Doe gradually became agitated and emotional about her past boyfriends, and specifically her on again/off again boyfriend, Defendant Charles Doe. Jane Doe discussed how terribly her past boyfriends had treated her and commented on how kind John Doe had been to her.

41. John Doe was not aware that Charles Doe had shunned and ignored Jane Doe earlier in the evening, prior to Jane Doe seeking out John Doe.

42. When they returned to the house, approximately thirty to forty minutes later, Jane Doe texted her friends, accurately reporting her location and ultimately reuniting with her girlfriends and B.Z. As they sat on the front porch, Jane Doe began

to cry, asking her friends why Charles Doe didn't love her or want to be with her. Jane Doe also texted Charles Doe, who had left the Compound.

43. Upon information and belief, after returning to her dorm room, Jane Doe discovered that she did not have the key to her room. She recalled that her key might be with John Doe, evidencing a recollection of who she had spent time with that evening.

44. Resident Advisor L.S., who lived next door to Jane Doe, obtained a temporary key and let the girls into Jane Doe's room. When providing Jane Doe with a key to her room, in the early morning hours of October 25, L.S. did not express any concern about Jane Doe's condition or level of intoxication. In fact, despite being a mandated reporter for Clemson University, L.S. did not observe anything that caused concern, sufficient to warrant the filing of a Title IX or alcohol related report.

45. L.S. later noted, during the investigation, that Jane Doe was not slurring her words, and was crying about being stood up by her boyfriend. At no time did she indicate that Jane Doe claimed she had been sexually assaulted, nor by her observation did it appear that was the case. At no time did L.S., in her capacity as a Resident Advisor, believe that it was necessary to invoke Clemson's alcohol amnesty rules to seek help for Jane Doe.

46. L.S. was sober throughout her interactions with Jane Doe. Yet, Clemson University ultimately gave greater weight to the testimony of the “drunk” witnesses during their investigation of Jane Doe’s false allegations.

47. Upon information and belief, prior to going to sleep that evening, Jane Doe exchanged numerous hostile text messages with Charles Doe, concerning the events of the night. Though a girlfriend of Jane Doe’s initially deleted the messages at the insistence of Charles Doe because of what he had said in those messages, Jane Doe later admitted that she was able to retrieve the messages from her iCloud.

Jane Doe’s Recollection of the Evening of October 25 and Subsequent Selective Memory

48. Demonstrating a clear recollection of their sexual encounter the previous evening, on October 25, 2015 at 10:45 a.m., prior to speaking with Charles Doe, Jane Doe sent a text message to John Doe, pleading “don’t tell [Charles Doe] what happened.” Significantly, her concerns focused solely on Charles Doe finding out that she had engaged in sexual intercourse with John Doe; she did not express any concern that the encounter was not consensual.

49. Yet, Jane Doe subsequently told investigators from Clemson’s Office of Community and Ethical Standards (“OCES”) that she did not awaken until 11:00 a.m. that day in an effort to cover up her “don’t tell [Charles Doe] what happened” text message sent to John Doe.

50. Further evidencing her recollection of the prior night's events, Jane Doe also asked John Doe via text message if he had seen her keys, recalling that they may have gotten lost during their sexual encounter.

51. However, Jane Doe would later omit these exculpatory text messages from her submission to the investigators from OCES. Yet, when John Doe identified this critical piece of information, the Investigators arbitrarily chose to ignore this piece of evidence and did not investigate it further. In fact, Jane Doe later claimed that she did not wake up until approximately 11:00 a.m., despite direct documentary evidence to the contrary.

52. Shortly after 11:00 a.m. on October 25, 2015, prior to speaking with Charles Doe, Jane Doe told her close friend J.H. that she had engaged in sexual intercourse with John Doe the previous evening. J.H. understood Jane Doe to be very concerned that Charles Doe would find out about the sexual encounter. She did not indicate that the encounter was non-consensual, or that she did not recall what transpired, but instead stated she was upset about Charles Doe having ignored her the previous evening and not being interested in pursuing a relationship with her.

53. At approximately 2:00 p.m. on October 25, 2015, prior to speaking with Charles Doe, Jane Doe also told her friends H.S. and O.P. that she engaged in sexual intercourse with John Doe the previous evening.

54. Despite Jane Doe's apparent attempts to keep this information a secret from Charles Doe, he nonetheless learned about the encounter between John Doe and Jane Doe when he received a text message within a group chat, wherein John Doe stated he had sex with a girl on his birthday, the night before. This text message was initially sent to J.S. alone; yet, J.S. subsequently copied and pasted John Doe's text message into a group chat, of which Charles Doe was a member, without John Doe's knowledge. Putting two and two together, Charles Doe deduced that the girl referred to by John Doe was Jane Doe given her promiscuous track record, her past indiscretions, their arguments prior to the party, and Jane Doe's text messages after the party.

55. Upon discovering that Jane Doe had engaged in sexual intercourse with John Doe, at approximately 5:30 p.m. on Sunday, October 25, Charles Doe confronted Jane Doe about their interaction. When questioned by Charles Doe as to whether she recalled the sexual encounter, she claimed that she did not, in direct contrast to her prior conversations with John Doe and J.H.

56. Incredibly, nearly seven hours after she instructed John Doe not to disclose this information to Charles Doe, Jane Doe's recollection changed. In an effort to maintain her relationship with Charles Doe and save face with her peers, Jane Doe fabricated a claim that she could not recall the events of the prior evening. In response, Defendant Charles Doe insisted, then "it is rape" and

willingly went along with Jane Doe's fictitious claim knowing it to be false so that they could maintain their unconventional relationship.

57. Yet, while continuing to suggest to Charles Doe that she could not recall the events of the prior evening and adopting Charles Doe's theory that her encounter with John Doe was "rape," which ultimately became their mantra, Jane Doe also texted J.H. to tell her that Charles Doe discovered she had engaged in sexual intercourse with John Doe.

58. Clearly, Jane Doe feigned ignorance of the events on the evening of October 24, 2015 and early morning hours of October 25, 2015 and fabricated her entire story with Charles Doe. They then conspired to set up John Doe and maliciously harm him using Clemson's Title IX policies and procedures to extract revenge.

59. On October 25, 2015 at 5:46 p.m., Charles Doe sent a text message to John Doe stating "whether it was your birthday or not. Not too proud of you for taking advantage of [Jane Doe] like you did last night. The poor girl doesn't even remember it." Yet, Jane Doe's own text messages to John Doe earlier that day had already confirmed that she recalled exactly what happened between her and John Doe.

60. John Doe was utterly shocked and dismayed by these false and hurtful allegations, as the sexual encounter had been completely consensual, confirmed by Jane Doe's initiation, active participation and repeated verbal agreement.

61. At 6:38 p.m., John Doe relayed this information to Jane Doe who curiously could no longer recall what had transpired the previous evening. Aligning with Charles Doe's beliefs as to what must have occurred, Jane Doe inexplicably revised her narrative, claiming "[Charles Doe]'s right, I don't remember it. I'm sorry. Not all of it at least." Upon information and belief, Charles Doe was present during this conversation between John Doe and Jane Doe and either influenced what Jane Doe texted to John Doe or sent the text messages himself, using Jane Doe's phone.

62. Curiously, Jane Doe quickly and conveniently developed selective amnesia. She claimed that she had no memory of what had occurred between her and John Doe, notwithstanding her 10:45 a.m. text message to John Doe in which she specifically advised John Doe not to tell Charles Doe about it and her subsequent statements to her friends that she had engaged in sexual intercourse with John Doe the previous day.

63. Moreover, a few days later, Jane Doe told her friend H.S. that everyone, including Charles Doe, was mad at her because she had engaged in sexual intercourse with John Doe; H.S. reported "[Jane Doe] did not think a big

deal of the sex and was dismissive of the event.” Indeed, H.S. stated in her interview with Clemson investigators, that it was “not until her meeting with OCES....that [Jane Doe] claimed she was raped...”

64. Similarly, later in the evening on October 25, 2015, on the way to their sorority meeting, Jane Doe told her friend R.C. “nonchalantly” that she had had consensual sex with John Doe the previous night. Given she and Jane Doe were close friends, R.C. later told investigators if anything improper had occurred between John Doe and Jane Doe, Jane Doe would have told her.

65. Further, analogous to H.S.’s statement, R.C. testified that the sexual encounter between John Doe and Jane Doe did not become an “issue” with Jane Doe “until she became aware of the anonymous report to OCES.” R.C. indicated that all of their friends were confused as to why it had now become an issue, and noted Jane Doe was upset that someone had chosen to file the anonymous report.

66. Given Jane Doe’s primary concern was salvaging her tumultuous relationship with Charles Doe, Jane Doe discarded the truth and readily embraced Charles Doe’s assumption that Jane Doe must not have been capable of consenting to the sexual activity with John Doe and accepted Charles Doe’s theory that “it is rape.” In so doing, Jane Doe threw John Doe under the proverbial “bus.”

The Ensuing Investigation and Defendants' Efforts to Defame, Harass and Punish John Doe

67. On October 26, 2015, Jane Doe's roommate C.F., who was not an eyewitness to the encounter and only learned of the alleged incident from Jane Doe after the fact, reported to a friend of a friend's Resident Advisor that Jane Doe had been the victim of sexual misconduct. Curiously, C.F. did not contact Jane Doe's Resident Advisor and neighbor, L.S., who had observed Jane Doe on the evening in question, but instead sought out someone with no personal knowledge of the facts to relay the report to OCES.

68. L.S. was sober during her observations and communications with Jane Doe on the day of the events at issue, and had a responsibility as a Resident Advisor to take action if she deemed it necessary to do so. Yet, L.S. did not take any action to report the incident.

69. Moreover, L.S. had recently reported Jane Doe for a minor in possession offense, and their relationship was described by others as strained as a result. L.S. was thus aware of Jane Doe's pattern of misbehavior, and Jane Doe knew that L.S. would not be easy to manipulate into reporting a false allegation to Clemson's OCES.

70. Thus, a friend of a friend's Resident Advisor, Y.S., ultimately reported the alleged incident to Clemson's OCES.

71. On October 29, 2015, Jane Doe reported the alleged incident to Chrystal Anderson (“Ms. Anderson”), a counselor at Clemson’s Counseling and Psychological Services, further perpetuating the false allegations against John Doe. Upon information and belief, Defendant Charles Doe attended every one of Jane Doe’s counseling sessions with Ms. Anderson and actively participated in spreading the false allegations that John Doe had raped Jane Doe.

72. Ms. Anderson later referred to Charles Doe as an “unstable” person.

73. Demonstrating a lack of any fear or distress, Jane Doe voluntarily attended events at the Compound the following two weekends: during the weekend of October 30, 2015 she attended a Halloween party and on the weekend of November 6, 2015, Jane Doe attended another party at the Compound.

74. On November 8, 2015, Defendant Charles Doe withdrew from pledging the fraternity, in response to alleged encouragement from the brothers regarding his failure to fulfill fraternity and pledge brother duties just like everyone else in his pledge class. He subsequently saw text messages sent by his former pledge brothers, expressing their delight that Charles Doe was no longer a member of the pledge class, which served to further intensify his disdain toward John Doe, who was still a member.

75. Indeed, Defendant Charles Doe admitted to Clemson’s Title IX investigators that despite his intention to rush for a new fraternity in the spring, he

was concerned that he would be labeled as “that guy” who got a fellow pledge brother in trouble, precluding him from gaining access to any fraternity.

76. On November 11, 2015, after pressure from OCES and Clemson’s Counseling and Psychological Services, Jane Doe submitted a formal Title IX complaint to OCES Director Alesia Smith (“Ms. Smith”). Consequently, as a result of Defendants’ collusion and intention to punish and defame John Doe, a formal investigation commenced.

77. Charles Doe was interviewed by OCES on December 3, 2015. Shortly thereafter, while the investigation was ongoing, John Doe learned that Charles Doe was discussing the investigation and the incident in question, and publicly referring to John Doe as a “rapist” around campus.

78. John Doe learned that Charles Doe made these statements to at least ten members of the Clemson community including L.S., R.H., J.S., J.Sm., J.A., P.O’D., A.G., J.H., R.H., and C.K.

79. In response to Defendant Jane Doe’s false allegations, on January 27, 2016, Ms. Smith imposed the following interim measures: John Doe was restricted from attending University recognized fraternity events not hosted by his fraternity; he was only allowed to attend official events sponsored by Phi Delta Theta; in the event he did attend any non-recognized events or programs and Jane Doe was in attendance, either on or off campus, he would need to leave the area immediately;

he was restricted from using the second floor of the Cooper Library; and he was restricted from entering Harcomb Dining Hall at any time. Such measures were to remain in effect until the student conduct process was concluded.

80. On February 4, 2016, investigators Suzanne Price and Loreto Jackson issued the Investigation Report, which included a recommendation that the matter against John Doe proceed to a formal hearing. A hearing was scheduled to take place at 8:30 a.m. on February 26, 2016.

81. On February 20, 2016, John Doe attempted to file an incident report form against Charles Doe based on his violation of the OCES policies against confidentiality and retaliation. Despite assurances from OCES that Jane Doe, as well as all students interviewed during the investigation process, were forbidden from speaking publicly about the investigation pursuant to the rules set forth by OCES, Charles Doe openly discussed the alleged incident and referred to John Doe as a “rapist” around Clemson’s campus, as heard by at least seven students, despite his knowledge of the falsity of this statement.

82. On February 20, 2016 John Doe also attempted to file a complaint against Jane Doe on the grounds that she engaged in sexual activity with John Doe without his consent and engaged in subsequent harassing and retaliatory behavior, in conspiracy with her boyfriend Charles Doe.

83. However, Ms. Smith assisted in perpetuating Defendants' campaign of harassment against John Doe when she informed John Doe that if he filed the foregoing complaints, they would be considered retaliatory and would result in his immediate expulsion. Ms. Smith thereby precluded John Doe from exercising his rights under Clemson's Policies and pursuing his meritorious complaints against Jane Doe and Charles Doe. As such, Clemson failed to consider or take any action with respect to John Doe's complaints, as intended by Defendants Jane Doe and Charles Doe to cover up and distract from Jane Doe's repeated acts of predatory sexual misconduct.

84. Thereafter, Charles Doe and Jane Doe engaged in repeated acts of harassment and retaliation against John Doe.

85. On February 26, 2016, John Doe appeared before an Administrative Hearing Board on the alleged violations against him; namely: (i) alcohol; (ii) disorderly conduct; (iii) harm to person; and (iv) sexual misconduct.

86. On February 27, 2016, Charles Doe posted to social media website Snapchat a message stating "Goodbye" with a hand waving this gesture.

87. On February 28, 2016, Charles Doe taunted John Doe and his fraternity brothers as they awaited entrance into their chapter meeting. Charles Doe mocked approximately 60 members of the fraternity, including John Doe, when he stated "haha it is too bad you are all down one person now," clearly in reference to

John Doe. When John Doe identified himself and indicated that they were not down one person, Charles Doe repeatedly asked John Doe why he was still there. Charles Doe then proceeded to shout and cuss at John Doe, in front of his fraternity brothers.

88. On February 29, 2016, John Doe was leaving the library with a friend, when he noticed Defendants were glaring, watching him intently as he exited the area, causing him to feel discomfort and anxiety.

89. John Doe reported each of the incidents on February 27, 28, and 29, 2016 to the OCES Director Alesia Smith.

90. Ultimately, on February 29, 2016, Chairperson David Frock issued a decision letter (the “Decision Letter”) finding John Doe responsible for all four charges (the “Decision”). As a result, the following sanctions were imposed on John Doe: (i) suspension from the University for one semester; (ii) disciplinary probation for the remainder of John Doe’s time at Clemson; (iii) eviction from University housing; (iv) no contact order for the duration of his time at Clemson; (v) entrance into a counseling program with Clemson University Counseling and Psychological Services; and (vi) in kind restitution by completion of an approved Sexual Assault Awareness course prior to re-enrollment (collectively, the “Sanction”).

91. On multiple occasions, including on March 30, 2016, April 1, 2016, and April 4, 2016, Charles Doe intentionally showed up during the middle of John Doe's workouts in an effort to bait him into engaging in further conflict.

92. Similarly, Jane Doe went out of her way to bait John Doe. On April 4, 2016, for example, Jane Doe arrived at the Greek Week Karaoke event at Tillman Auditorium with a friend approximately 20-30 minutes after the start of the event. Jane Doe arrived long after John Doe had selected his seat. Jane Doe intentionally sat four rows in front of John Doe and his fraternity brothers despite there being many empty seats in the auditorium. Jane Doe went out of her way to make eye contact with John Doe and spent most of the performance glaring at John Doe in an effort to make him feel uncomfortable and in violation of the no contact order. Witnesses to the incident include: C.C., C.R., A.J., Z.Q., S.R., B.G., R.P., D.T., M.A., C.H., and M.W.

93. Incredibly, rather than conducting a thorough and impartial assessment of John Doe's complaint against Charles Doe, on March 2, 2016, Ms. Smith imposed an additional No Contact Order against John Doe, and the entire Phi Delta Theta Fraternity, with respect to Charles Doe.

94. Subsequently, both John Doe and Jane Doe appealed the Decision and Sanction, through Clemson's OCES process.

95. On April 18, 2016, while both appeals to President Clements remained pending, John Doe received notice from Phi Delta Theta Director of Chapter Services Michael Wahba that Province President Ron Johnson was suspending John Doe from the fraternity, and recommended expulsion. The cause for this discipline was identified as “Title XVI, Section 155, of the Code of Phi Delta Theta- conduct unworthy of a member of Phi Delta Theta and violations of the Bond, the constitution of the fraternity.” The suspension was effective immediately.

96. This notice from the fraternity was prompted by the fraternity’s national headquarters’ receipt of the confidential “pending” Decision Letter dated February 29, 2016.

97. The Decision Letter was sent to the fraternity’s national headquarters by Jane Doe’s father, Richard Doe, on his own volition and/or at the urging of Jane Doe and Charles Doe as a further act of revenge.

98. Richard Doe’s actions violated the Family Educational Rights and Privacy Act (“FERPA”), as the Decision Letter was a private educational record.

99. Richard Doe sent the letter to the fraternity’s national headquarters knowing that it was inaccurate, still subject to Clemson’s appeal process, and a FERPA violation.

100. The Decision Letter was not final because it was under appeal and was not subject to disclosure to third-parties, including Richard Doe or the fraternity's national headquarters.

101. The disclosure of the Decision Letter to Richard Doe by Jane Doe or Charles Doe, and the subsequent forwarding of the Decision Letter to the fraternity's national headquarters was improper, done without authorization, and in violation of FERPA.

102. The disclosure of the Decision Letter further perpetuated the false allegation to a third-party, the Phi Delta Theta national headquarters, notwithstanding the pending appeal and a final determination on the charges, intentionally and prematurely indicting Plaintiff for the alleged wrongdoing.

103. Upon information and belief, Richard Doe individually, and at the urging of Jane Doe and Charles Doe published this defamatory and confidential information, knowing it concerned a false allegation and finding of sexual misconduct that they had in fact propagated, to an unprivileged third party.

104. Ultimately, Defendants were successful in utilizing Clemson's inherently biased and procedurally flawed Title IX process to further their personal and malicious vendetta of retaliation, harassment, and defamation against John Doe; on May 27, 2016, Chief of Staff Max Allen upheld the Decision, and egregiously

and unilaterally increased the Sanction's suspension length by one year, imposing a suspension on John Doe until August 1, 2017.

105. On or about December 2, 2016, Jane Doe continued to disseminate her lies by making a public presentation regarding sexual assault to members of the campus community at a Clemson sponsored event. At the conclusion of that presentation she publicly and falsely stated that she had been sexually assaulted on October 24, 2015.

106. Jane Doe provided sufficient detail during her presentation, including the date of the assault (which the Clemson community knew was John Doe's birthday), for attendees to identify John Doe as the perpetrator.

107. Jane Doe profited from her further defamation of John Doe when she was awarded a cash prize from Clemson University for her presentation.

108. Jane Doe's presentation was subsequently posted on the Internet and remains available to the public for viewing on various social media platforms including YouTube, Facebook and Twitter.

109. Since Chief of Staff Allen's decision, Defendants' lies have begun to unravel.

110. In January 2017, for example, Charles Doe sent a text message to John Doe in which he admitted that he had conspired with Jane Doe to pursue a false claim of rape against John Doe.

111. Charles Doe stated in those text messages he lied during the hearing regarding the rape allegations and admitted that John Doe was innocent of the charges stating “You’re innocent. I lied in that hearing. [Jane Doe] wanted to have sex that night. Get your brothers away from me and never touch your life again and I’ll come through with the truth that she lied. I deleted the texts from that night to prove she was f***** crazy. You’re innocent. Just pull your f***** boys off me and never touch me again. It’s sad that you were like a brother to me and this happened You’re innocent. Send this to your lawyer. Just don’t call me into the hearing and leave me alone. You’re welcome. That’s all I ask. You’re innocent bud.”

112. In that same text message exchange, Charles Doe forwarded to John Doe screen shots of a text message exchange between Charles Doe and Chrystal Anderson, who was sharing data with Jane Doe’s father. In that text message exchange, Charles Doe told Chrystal Anderson that Jane Doe lied about being raped and that John Doe was innocent, stating, among other things, “She destroyed my life. She deserves, Everything she gets. She lied about to everything. She don’t get raped. The sex with [John Doe] was consensual.”

113. Charles Doe further stated that Chrystal Anderson should relay to Jane Doe’s father “Good luck in court. Like I said, I’ll destroy your life Mr. [Doe]. If

you see this, Your daughter is a slut and you've been wasting your time with [c]. Because [John Doe] is innocent and I hope to see him back. Good f***** luck."

AS AND FOR A FIRST CAUSE OF ACTION
Defamation Against All Defendants

114. Plaintiff John Doe repeats and realleges each and every allegation hereinabove as though fully set forth herein.

115. Defendants Jane Doe and Charles Doe made false and defamatory statements about John Doe to administrators at Clemson University, to the national headquarters of John Doe's fraternity, as well as to fellow students.

116. Richard Doe's statements to the national headquarters of John Doe's fraternity were based on confidential and incomplete findings, which only served to breed further acts of defamation and harassment.

117. Similarly, Jane Doe's statements at the public speaking competition were defamatory and further perpetuated Defendants' acts of defamation and harassment.

118. Defendants' statements were made with actual malice.

119. Defendants' statements during the Title IX proceedings were defamatory and are not protected by "privilege" because Defendants made those statements knowing they were false.

120. Defendants cannot rely on the findings in the Title IX proceeding because those findings were made based on Defendants' false statements and fraudulent conduct.

121. Defendants Jane Doe and Charles Doe made non-privileged defamatory false statements that were culpably published and that were damaging.

122. The specific statements accusing Plaintiff John Doe of engaging in non-consensual sexual contact are factual: the language used and context in which the language appeared made clear that Jane Doe and Charles Doe were factually accusing John Doe of engaging in sexual assault.

123. Defendants falsely accused John Doe of sexual misconduct, and defamed his name and reputation when Jane Doe knowingly pursued a false complaint of misconduct with Clemson's OCES, at the urging of Charles Doe.

124. Jane Doe knowingly pursued a false report of sexual misconduct against John Doe; though claiming that she could not consent to the encounter with John Doe as a result of her intoxication level, and did not recall the sexual activity with John Doe, this claim was directly refuted by her own text messages sent to John Doe at 10:45 a.m. the following morning, statements made to her friends, as well as the statements of numerous witnesses.

125. Specifically, at 10:45 a.m. on October 25, prior to communicating with Charles Doe, Jane Doe texted John Doe concerning the previous events and,

demonstrating a clear recollection of their encounter, instructed that he not say anything about the incident to Charles Doe.

126. Only after Charles Doe discovered that Jane Doe and John Doe had engaged in sexual intercourse, and confronted her about it, did Jane Doe's account begin to evolve.

127. Notwithstanding, Jane Doe proceeded with this false report of misconduct, colluding with Charles Doe, who had convinced her that the encounter must have been a rape.

128. Defendants thereafter colluded and conspired to defame, harass and retaliate against John Doe by pursuing a false complaint with Clemson's OCES, knowing full well that such an allegation was false.

129. Defendants strategically utilized Clemson's deficient and biased Title IX process to pursue a false report against John Doe and further promulgate their lies in an effort to harass and defame John Doe, minimize Charles Doe's humiliation with the fraternity, and continue their open relationship.

130. Defendants published this false allegation to numerous administrators in Clemson's OCES when they pursued a false claim of sexual misconduct.

131. Defendants published this false allegation to the Clemson community when Defendant Charles Doe referred to John Doe as a "rapist" around Clemson's

campus, as heard by at least seven students, including, L.S., R.H., J.S., J.A., P. O'D., A.G., and C.K.

132. Defendant Richard Doe further published this false allegation when he sent a copy of the pending "Decision Letter" to the national headquarters of the Phi Delta Theta fraternity, in violation of John Doe's rights under FERPA.

133. Publication of this false and defamatory statement is also actionable because it has resulted in special harm, in the form of economic losses, including but not limited to the lifelong business and social relationships that would have been developed through his membership in the fraternity.

134. On or about December 2, 2016, Jane Doe continued to disseminate her lies by making a public presentation regarding sexual assault to members of the campus community at a Clemson sponsored event. At the conclusion of that presentation she publicly and falsely stated that she had been sexually assaulted on October 24, 2015. Jane Doe profited from this defamation of John Doe when she was awarded a cash prize from Clemson University for her presentation.

135. Defendants' statements were not privileged in that they acted with malice in knowingly filing and pursuing a false report of rape.

136. Defendants intentionally and knowingly published a false report of misconduct against John Doe, and are therefore at fault for such publication.

137. Publication of this false and defamatory statement was actionable per se as it concerned a crime of moral turpitude; namely, rape.

138. The aforesaid statement was defamatory because it imputed conduct which injuriously affected John Doe's reputation and/or degraded him in society and/or brought him into public contempt while causing emotional and psychological damages.

139. There was never a criminal investigation of Jane Doe's claims because there was no factual information to support her selective amnesia.

140. Defendants cannot rely on the Administrative Hearing Board's decision as a defense to John Doe's defamation claim because the testimony upon which the decision is based was based on the same false and defamatory statements that John Doe was a "rapist."

141. Based on the foregoing, Defendants are liable to Plaintiff for defamation.

142. As a direct and proximate result of the above conduct, Plaintiff sustained tremendous damages, including, without limitation, emotional distress, damage to reputation, loss of educational and career opportunities, loss of future earning capacity, economic injuries, emotional and psychological damages, and other direct and consequential damages.

143. 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.

AS AND FOR A SECOND CAUSE OF ACTION
Abuse of Process Against Jane Doe and Charles Doe

144. Plaintiff John Doe repeats and realleges each and every allegation hereinabove as though fully set forth herein.

145. Defendants Jane Doe and Charles Doe strategically utilized Clemson's Title IX process for an illegitimate objective; that is, to further harass, defame, retaliate against, and punish John Doe.

146. Defendants pursued the investigation through Clemson's Title IX process with an ulterior purpose, and one for which neither Clemson's OCES process nor Title IX was intended.

147. Defendants acted knowingly and willfully when they pursued the investigative process for nearly seven months, knowing the charge precipitating the process was false.

148. The use of Clemson's Title IX process for the purpose of seeking revenge or pursuing a personal vendetta against another individual was improper.

149. Defendants' primary motive in proceeding with Clemson's Title IX process was to defame, harass and punish John Doe, despite their knowledge that the allegation of misconduct was false.

150. Based on the foregoing, Defendants are liable to Plaintiff for abuse of process.

151. As a direct and proximate result of the above conduct, Plaintiff sustained tremendous damages, including, without limitation, emotional distress, damage to reputation, loss of educational and career opportunities, loss of future earning capacity, economic injuries, emotional and psychological damages, and other direct and consequential damages.

152. 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.

AS AND FOR A THIRD CAUSE OF ACTION
Intentional Infliction of Emotional Distress Against All Defendants

153. Plaintiff John Doe repeats and realleges each and every allegation hereinabove as though fully set forth herein.

154. Defendants intentionally inflicted severe emotional distress upon Plaintiff when they knowingly and willfully pursued a false complaint of sexual misconduct against John Doe.

155. Defendant Charles Doe feigned continued friendship and support of John Doe while simultaneously playing both sides in an effort to further damage John Doe.

156. Defendants Jane Doe and Charles Doe intentionally inflicted severe emotional distress upon Plaintiff when they participated in the investigation of a complaint of sexual misconduct against Plaintiff conducted by Clemson's OCES, knowing such a serious charge could result in a sanction of suspension, or worse, in addition to severe emotional damage.

157. Defendants were substantially certain such distress would result from their conduct, as Defendants utilized Clemson's Title IX process for the very purpose of harassing and retaliating against John Doe.

158. Defendant Richard Doe intentionally inflicted severe emotional distress upon Plaintiff when he sent a copy of the confidential "pending" Decision Letter dated February 29, 2016 to the national headquarters of John Doe's fraternity while John Doe's appeal was pending, knowing that such a decision was not final and that such disclosure was a violation of John Doe's rights under FERPA.

159. Defendant Richard Doe was certain such distress would result from this conduct as Plaintiff was ultimately expelled from the fraternity, which was the very intention of such disclosure.

160. Defendants' conduct was so extreme and outrageous as to exceed all possible bounds of decency and must be regarded as atrocious and utterly intolerable in a civilized community.

161. Defendants' actions directly caused severe emotional distress to Plaintiff, including but not limited to post-traumatic stress disorder, as their false reporting of a charge of rape against Plaintiff ultimately led to his suspension from school, removal from his fraternity, damage to his name and reputation, ostracism from his peers and severe emotional damage.

162. The distress suffered by Plaintiff as a result of Defendants' actions was so severe that no reasonable person should be expected to endure it.

163. Based on the foregoing, Defendants are liable to Plaintiff for intentional infliction of emotional distress.

164. As a direct and proximate result of the above conduct, Plaintiff sustained tremendous damages, including, without limitation, emotional distress, damage to reputation, loss of educational and career opportunities, loss of future earning capacity, economic injuries, emotional and psychological damages, and other direct and consequential damages.

165. 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.

AS AND FOR A FOURTH CAUSE OF ACTION
Civil Conspiracy Against All Defendants

166. Plaintiff John Doe repeats and realleges each and every allegation hereinabove as though fully set forth herein.

167. Jane Doe, Charles Doe, and Richard Doe acted in concert with the common purpose to defame and injure John Doe emotionally, reputationally and economically by engaging in the acts outlined above, including but not limited to the false reporting to Clemson, John Doe's fraternity, and other individuals that John Doe had "raped" Jane Doe.

168. It was foreseeable that the actions undertaken by Defendants would result in John Doe being injured and were undertaken by the Defendants for that express purpose.

169. John Doe has suffered as a direct and proximate result of the above conduct, tremendous damages, including, without limitation, emotional distress, damage to reputation, loss of educational and career opportunities, loss of future earning capacity, economic injuries, emotional and psychological damages, and other direct and consequential damages actions.

170. Defendants are equally and vicariously liable for their actions to defame and injure John Doe.

171. John Doe suffered and incurred Special Damages, which were foreseeable and were exacerbated and magnified as a result of the Defendants' conspiracy to defame.

172. John Doe's injuries were exacerbated and magnified because the defamatory statements were published on the Internet and in multiple jurisdictions, including South Carolina, Ohio, and Connecticut as a result of the conspiracy.

173. 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.

PRAYER FOR RELIEF

WHEREFORE, for the foregoing reasons, Plaintiff John Doe demands judgment against Defendants Jane Doe and Charles Doe as follows:

(i) on the first cause of action, a declaration that Defendants Jane Doe and Charles Doe defamed John Doe and an award of compensatory and punitive 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 career opportunities, and loss of future career prospects, plus prejudgment interest, attorneys' fees, expenses, costs and disbursements;

(ii) on the second cause of action for abuse of process, a judgment awarding John Doe an award of compensatory and punitive 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 career opportunities, and loss of future career prospects, plus prejudgment interest, attorneys' fees, expenses, costs and disbursements;

(iii) on the third cause of action for intentional infliction of emotional distress, a judgment awarding John Doe an award of compensatory and punitive 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 career opportunities, and loss of future career prospects, plus prejudgment interest, attorneys' fees, expenses, costs and disbursements;

(iv) on the fourth cause of action for civil conspiracy, a judgment awarding John Doe damages including but not limited to special damages; and

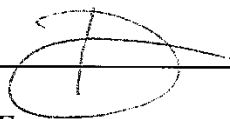
(v) awarding Plaintiff such other and further relief as the Court deems just, equitable and proper.

JURY DEMAND

John Doe herein demands a trial by jury of all triable issues in the present matter.

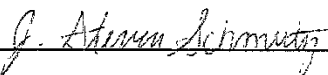
Dated: Charleston, South Carolina
June 14, 2017

DAVID AYLOR LAW OFFICES

By: _____

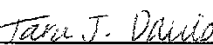
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Attorneys for Plaintiff John Doe

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF PICKENS

CIVIL ACTION NO: 2017-CP-39-0709

JOHN DOE,

Plaintiff,

v.

DEFENDANT JANE DOE AND RICHARD
DOE'S ANSWER AND DEFENSESJANE DOE, CHARLES DOE and
RICHARD DOE,

Defendants.

Now Come Defendants Jane Doe and Richard Doe ("these Defendants"), answering the Plaintiff's Complaint herein, would respectfully show unto the Court the following:

FOR A FIRST DEFENSE

1. Paragraphs 1 through 7 of the Complaint purport to set forth in allegations an introduction and summary of the action. With respect to such allegations, Defendants state the following.

Plaintiff was found responsible for sexual misconduct by Clemson University following a formal administrative hearing for the underlying conduct at issue in his suit against the Defendants. Contrary to any suggestion by the Plaintiff that Clemson University provided him with a sham disciplinary process, Clemson University conducted an appropriate disciplinary proceeding affording him extensive due process in accordance with its own established procedures and longstanding Federal Regulations requiring it conduct a prompt and equitable grievance procedure in response to reports of sexual harassment, such as sexual misconduct, even where, as here, it is reported by a third party. For example, Clemson's process included, upon information and belief, several procedural safeguards. Clemson provided Plaintiff notice of the allegations and charges against him. Plaintiff was given the opportunity to provide a statement, relevant

evidence, and suggest witnesses. Plaintiff was provided the opportunity to review all evidence against him, including the investigatory report. Two trained investigators conducted an extensive investigation interviewing multiple witnesses and reviewing evidence, and they concluded Plaintiff was responsible for sexual misconduct in violation of the Clemson Student Code of Conduct and recommended the matter proceed to an administrative hearing. Plaintiff was provided notice of the administrative hearing and afforded adequate time to prepare to respond to the allegations against him.

Clemson convened a five-person Administrative Hearing Board to hear the matter. The Administrative Hearing Board reviewed the record and heard testimony from nine witnesses, including Plaintiff and Jane Doe. Plaintiff was present for the entire hearing. A private attorney accompanied Plaintiff during the hearing. Plaintiff was provided the opportunity to, and did, give opening and closing statements. Plaintiff was given the opportunity to, and did, pose relevant questions to witnesses during hearing through the Administrative Hearing Board. This included the opportunity to cross examine Jane Doe, which he did.

While Plaintiff seeks to spin a fantasy of conspiracy against him, the Clemson panel had before it credible evidence demonstrating support for its finding that Jane Doe was too intoxicated to consent to the sexual encounter at issue in this matter. Jane Doe, a 5'2 Clemson freshman, consumed a heavy amount of alcohol prior to arriving at a party as confirmed by witness testimony and continued to consume alcohol once at the party. Plaintiff blacked out for much of the evening due to severe intoxication. Following the incident, Jane Doe was found by friends crying on the steps of the fraternity house. Jane

Doe vomited on her way home and continued to do so at home later that evening. That same evening, Plaintiff texted with a fraternity pledge brother concerning the incident bragging “I f--ked a chick by the garbage thing behind Chipotle”. The following day, Jane Doe was sick and vomiting from the previous night’s alcohol consumption.

At the conclusion of the Administrative Hearing Board, and after review of the testimony, record, and evidence presented, the panel deliberated. The panel found Defendant responsible for violation of the following Clemson policies: (1) Alcohol; (2) Disorderly Conduct; (3) Harm to Person; and (4) Sexual Misconduct. The Administrative Hearing Board issued sanctions suspending John Doe; placing him on disciplinary probation for the remainder of his time at Clemson; evicting him from University housing; issuing a no-contact order with Jane Doe during his suspension period and, should he re-enroll, for the duration of his time at Clemson; mandating counseling with Clemson University Counseling and Psychological Services; and requiring completion of a sexual assault awareness course prior to re-enrollment.

Following the Administrative Hearing Board’s decision, Plaintiff was afforded two opportunities to appeal and did so. First he appealed to the Vice President of Student Affairs, who denied the appeal and upheld the panel’s decision. Next, he appealed to Clemson’s President. Upon information and belief, Clemson’s President, through his Chief of Staff and after review of the record, upheld the decision of the panel and Vice President, denied Plaintiff’s appeal, and increased the sanctions against Plaintiff, extending the length of the suspension.

To the extent the Plaintiff seeks to introduce or characterize the action brought against the Defendants differently than the above, in any of the allegation in the Complaint, which Plaintiff does throughout the complaint, those allegations are denied. Further, Plaintiff's Complaint is riddled with statements of mere conjecture and speculation. Defendants therefore are not required to respond to those statements and do not do so.

With respect to the specific allegations in the Complaint, Defendants respond as follows:

2. Defendants Jane Doe and Richard Doe deny each and every allegation of the Plaintiff's Complaint not hereinafter specifically admitted.
3. To the extent the allegation in paragraph 1 to 7 of the Plaintiff's Complaint are deemed to be allegations of law, Defendants are not required to plead thereto. To the extent allegations in Paragraph 1 to 7 of the Complaint are not allegations of fact, but statements of mere conjecture and speculation, and Defendants therefore are not required to plead thereto. To the extent the remainder of the allegations in Paragraph 1 are deemed to be allegations of fact, Defendants deny those allegations as stated.
4. Paragraph 8 of the Plaintiff's Complaint states a legal conclusion to which no response is required. The Plaintiff is not entitled to any recovery against these Defendants.
5. These Defendants admit the allegations of Paragraph 9 of the Plaintiff's Complaint upon information and belief.
6. These Defendants admit the allegations of Paragraph 10 of the Plaintiff's Complaint.
7. These Defendants admit the allegations of Paragraph 11 of the Plaintiff's Complaint upon information and belief

8. These Defendants admit the allegations of Paragraph 12 of the Plaintiff's Complaint.
9. Paragraphs 13 and 14 of the Plaintiff's Complaint state a legal conclusion to which no response is required. The Plaintiff is not entitled to any recovery against these Defendants.
10. Paragraph 15 of the Plaintiff's Complaint states a legal conclusion to which no response is required. These Defendants state that they did not commit any tortious acts alleged by the Plaintiff.
11. These Defendants deny the allegations of Paragraphs 16 and 17 of the Plaintiff's Complaint as stated.
12. These Defendants lack sufficient information relating to the allegations of Paragraph 18 of the Plaintiff's Complaint and therefore deny the same and demand strict proof thereof.
13. These Defendants deny the allegations of Paragraphs 19 and 20 of the Plaintiff's Complaint as stated.
14. These Defendants admit the allegations of Paragraphs 21 upon information and belief.
15. These Defendants admit that Jane Doe attended the party with her friends upon invite of others besides John Doe. These Defendants lack sufficient information as to who invited Jane Doe's friends and therefore deny the remaining allegations of Paragraph 22 and demand strict proof thereof.
16. These Defendants deny the allegations of Paragraph 23 of the Plaintiff's Complaint.
17. These Defendants lack sufficient information relating to the allegations of Paragraph 24 of the Plaintiff's Complaint and therefore deny the same and demand strict proof thereof.

18. These Defendants deny the allegations of Paragraph 25 of the Plaintiff's Complaint as stated. These Defendants state that Jane Doe drank a substantial amount of alcohol on the night of the incident and became highly intoxicated.
19. These Defendants deny the allegations of Paragraph 26 of the Plaintiff's Complaint as stated.
20. In response to Paragraph 27 of the Plaintiff's Complaint, these Defendants state that Jane Doe arrived at the Compound at approximately 11:00 p.m. Defendants otherwise deny the remaining allegations of the Paragraph 27 as stated.
21. The Defendants deny the allegations of Paragraphs 28, 29, and 30 of the Plaintiff's Complaint as stated. In addition, these Defendants state that Jane Doe was already intoxicated and impaired during the time sequence described.
22. In response to the allegations of Paragraph 31 of the Plaintiff's Complaint, these Defendants admit that the Plaintiff did not have inhibitions relating to sexual conduct and was the aggressor. Defendants otherwise deny the remaining allegations of Paragraph 31 as stated.
23. These Defendants deny the allegations of Paragraphs 32 and 33 of the Plaintiff's Complaint as stated. Defendant Jane Doe was intoxicated and could not consent to sexual conduct of the Plaintiff towards her.
24. In response to Paragraph 34 of the Plaintiff's Complaint, these Defendants state that Defendant Jane Doe was intoxicated and not able to consent to the sexual conduct of the Plaintiff towards her. Defendant states that after the night of the incident, Defendant Jane Doe learned – after the Plaintiff bragged that he “f---d a chick by the garbage thing behind Chipotle” in a text message that was sent to other students at

Clemson University -- that the Plaintiff sexually assaulted her while she was too intoxicated to consent next to a dumpster behind a fast food restaurant in Clemson. At the time of the incident, Defendant Jane Doe was intoxicated and unable to consent when the Plaintiff sexually assaulted her. Defendants deny the allegations of Paragraphs 34 of the Plaintiff's Complaint as stated.

25. These Defendants deny the allegations of Paragraphs 35, 36, and 37 of the Plaintiff's Complaint as stated.

26. In response to Paragraph 38 of the Plaintiff's Complaint, these Defendants lack sufficient information regarding whether the Plaintiff was required to carry a condom at all times as a pledge of a fraternity so demands strict proof thereof, and denies the remaining allegations of Paragraph 38 as stated.

27. In response to Paragraph 39 of the Plaintiff's Complaint, these Defendants state that the Plaintiff raped Defendant Jane Doe and therefore denies the allegations of Paragraph 39 as stated.

28. In response to Paragraph 40 of the Plaintiff's Complaint, these Defendants admit that Jane Doe was distraught after the Plaintiff's rape of Jane Doe but deny the remaining allegations of Paragraph 40 as stated.

29. In response to Paragraphs 41, 42, 43, 44, 45 46, and 47 of the Plaintiff's Complaint, these Defendants admit that following the incident, Plaintiff cried on the porch of the fraternity house, and in the hours after the Plaintiff sexually assaulted her Jane Doe could not find her key, and that following the incident, she was agitated and emotionally distraught. Defendants otherwise deny the remaining allegations of these Paragraphs as stated. Defendants state that Jane Doe was intoxicated and unable to

recall in specific detail the events which occurred while and after the Plaintiff raped her and therefore demand strict proof thereof.

30. Defendants deny the allegations of Paragraphs 48, 49, 50, and 51 of the Plaintiff's Complaint as stated.

31. In response to Paragraphs 52, 53, and 54 of the Plaintiff's Complaint, these Defendants state that the Plaintiff has not identified the individuals and therefore these Defendants deny the allegations of these Paragraphs for lack of sufficient information and demand strict proof thereof. In further response to Paragraph 54, the Defendants admit that the Plaintiff sent a text at approximately 3:00 a.m. – within a few hours of the incident – bragging that he “f----d a chick by the garbage thing behind Chipotle.”

32. In response to Paragraph 55 of the Plaintiff's Complaint, these Defendants state that when Jane Doe discussed the incident with Charles Doe she could recall only minimal details about leaving the party with the Plaintiff, being slapped, and being unable to walk back to the party on her own because of being intoxicated and emotionally upset. The Defendants otherwise deny the allegations of Paragraph 55 as stated.

33. To the extent the allegation in paragraph 58 of the Plaintiff's Complaint are deemed to be allegations of law, Defendants are not required to plead thereto. These Defendants deny the allegations of Paragraphs 56, 57, and 58 of the Plaintiff's Complaint as stated.

34. In response to Paragraph 59 of the Plaintiff's Complaint, these Defendants admit upon information and belief that Charles Doe sent the text stating in part “not to

proud of you for taking advantage of [Jane Doe] like you did last night. The poor girl doesn't even remember it" at the stated time. Defendants otherwise deny the remaining allegations of Paragraph 59 as stated.

35. These Defendants deny the allegations of Paragraph 60 of the Plaintiff's Complaint as stated. These Defendants admit upon information and belief that Jane Doe sent a text, stating in part, "[Charles' Doe] is right, I don't remember it. I'm sorry. Not all of it at least." These Defendants further state that the Plaintiff was fully aware that Jane Doe could not consent to his sexual conduct towards her because she was intoxicated at the time her raped her.

36. These Defendants deny the allegations of Paragraphs 61 and 62 of the Plaintiff's Complaint as stated.

37. In response to Paragraphs 63, 64, and 65 of the Plaintiff's Complaint, these Defendants state that the Plaintiff has not identified the individuals and therefore these Defendants deny the allegations of these Paragraphs for lack of sufficient information and demand strict proof thereof.

38. These Defendants deny the allegations of Paragraphs 66 of the Plaintiff's Complaint as stated.

39. In response to Paragraphs 67, 68, 69, and 70 of the Plaintiff's Complaint, these Defendants state that the Plaintiff has not identified the individuals and therefore these Defendants deny the allegations of these Paragraphs for lack of sufficient information and demand strict proof thereof.

40. In response to Paragraphs 71 and 72 of the Plaintiff's Complaint, these Defendants state that Jane Doe sought counseling because of the trauma caused by being raped by

the Plaintiff and asserts a privilege over communications relating to their communications and otherwise deny the allegations of these Paragraphs.

41. These Defendants deny the allegations of Paragraph 73 of the Plaintiff's Complaint as stated.
42. These Defendants deny the allegations of Paragraphs 74 and 75 of the Plaintiff's Complaint for lack of sufficient information and therefore deny the same and demand strict proof thereof.
43. To the extent the allegation in Paragraph 76 of the Plaintiff's Complaint are deemed to be allegations of law, Defendants are not required to plead thereto. In response to Paragraph 76 of the Plaintiff's Complaint, these Defendants admit that Jane Doe submitted a Title IX Complaint to Clemson University's Office of Community and Ethical Standards but deny the remaining allegations of Paragraph 76 to the extent they are deemed factual allegations.
44. These Defendants deny the allegations of Paragraphs 77 and 78 of the Plaintiff's Complaint for lack of sufficient information and also because the Plaintiff did not identify the individuals and therefore deny the same and demand strict proof thereof.
45. These Defendants deny the allegations of Paragraph 79 of the Plaintiff's Complaint as stated. Jane Doe did not make any false allegations.
46. These Defendants admit the allegations of Paragraph 80 upon information and belief, two Clemson investigators issued an investigatory report recommending a formal hearing against Plaintiff.
47. In response to Paragraphs 81 and 82 of the Plaintiff's Complaint, these Defendants lack sufficient information as to whether the Plaintiff attempted to file an incident

report and complaint and therefore deny the same and demand strict proof thereof and deny the remaining allegations of the Paragraphs as stated.

48. These Defendants deny the allegations of Paragraphs 83 and 84 of the Plaintiff's Complaint as stated.

49. These Defendants admit the allegations of Paragraph 85 of the Plaintiff's Complaint.

50. In response to the allegations of Paragraphs 86 and 87 of the Plaintiff's Complaint, these Defendants lack sufficient information and therefore deny the same and demand strict proof thereof and further deny that Jane Doe engaged in the conduct alleged.

51. These Defendants deny the allegations of Paragraph 88 of the Plaintiff's Complaint as stated.

52. In response to the allegations of Paragraph 89 of the Plaintiff's Complaint, these Defendants lack sufficient information and therefore deny the same and demand strict proof thereof.

53. These Defendants admit the allegations of Paragraph 90 of the Plaintiff's Complaint. Following a formal hearing, Clemson University found Plaintiff responsible for four violations of University policy: (1) alcohol; (2) disorderly conduct; (3) harm to person; and (4) sexual misconduct.

54. In response to the allegations of Paragraph 91 of the Plaintiff's Complaint, these Defendants lack sufficient information and therefore deny the same and demand strict proof thereof.

55. These Defendants deny the allegations of Paragraph 92 of the Plaintiff's Complaint because they are false and because the Plaintiff has failed to identify the alleged witnesses.

56. These Defendants deny the allegations of Paragraph 93 of the Plaintiff's Complaint as stated.
57. These Defendants admit the allegations of Paragraph 94 of the Plaintiff's Complaint.
58. In response to the allegations of Paragraphs 95 and 96 of the Plaintiff's Complaint, these Defendants lack sufficient information and therefore deny the same and demand strict proof thereof.
59. These Defendants deny the allegations of Paragraphs 97, 98, 99, 100, 101, 102, and 103 of the Plaintiff's Complaint as stated.
60. In response to the allegations of Paragraph 104 of the Plaintiff's Complaint, these Defendants admit that the Chief of Staff to the President of Clemson University upheld the Decision and also increased the length of the Plaintiff's suspension by one year but deny the remaining allegations of Paragraph 104 as stated.
61. These Defendants deny the allegations of Paragraphs 105, 106, and 107 of the Plaintiff's Complaint as stated.
62. In response to the allegations of Paragraph 108 of the Plaintiff's Complaint, these Defendants lack sufficient information and therefore deny the same and demand strict proof thereof, but these Defendants deny that they posted the presentation on the Internet.
63. These Defendants deny the allegations of Paragraph 109 of the Plaintiff's Complaint as stated.
64. In response to the allegations of Paragraphs 110, 111, 112, and 113 of the Plaintiff's Complaint, these Defendants lack sufficient information and therefore deny the same

and demand strict proof thereof and further state that to the extent that any comments state or suggest that Jane Doe lied are false.

FOR A FIRST DEFENSE TO FIRST CAUSE OF ACTION
Defamation Against All Defendants

65. In response to Paragraph 114 of the Plaintiff's Complaint, these Defendants repeat and reallege their responses in paragraphs 1 through 113 above as if fully set forth herein.

66. These Defendants deny the allegations of Paragraphs 115 through 143 of the Plaintiff's Complaint.

FOR A FIRST DEFENSE TO SECOND CAUSE OF ACTION
Abuse of Process Against Jane Doe and Richard Doe

67. Paragraphs 144 through 152 purport to assert a cause of action for abuse of process against these Defendants. However, the Court dismissed this cause of action for failure to state a cause of action by Order entered October 25, 2017, and therefore the Defendant are not required to respond to this cause of action.

FOR A FIRST DEFENSE TO THIRD CAUSE OF ACTION
Intentional Infliction of Emotional Distress Against All Defendants

68. In response to Paragraph 153 of the Plaintiff's Complaint, these Defendants repeat and reallege their responses in paragraphs 1 through 152 above as if fully set forth herein.

69. These Defendants deny the allegations of Paragraphs 154 through 165 of the Plaintiff's Complaint.

FOR A FIRST DEFENSE TO FOURTH CAUSE OF ACTION
Civil Conspiracy Against All Defendants

70. In response to Paragraph 166 of the Plaintiff's Complaint, these Defendants repeat and reallege their responses in paragraphs 1 through 165 above as if fully set forth herein.

71. These Defendants deny the allegations of Paragraphs 166 through 173 of the Plaintiff's Complaint. These Defendants further state that the Plaintiff is not entitled to make any recovery against them as alleged in the Plaintiff's Prayer for Relief, including subparagraphs (i) through (v) thereunder, or otherwise.

FOR A SECOND DEFENSE

72. These Defendants would show that the Plaintiff's Complaint fails to state facts sufficient to constitute a cause of action. Therefore, pursuant to Rule 12(b)(6) of the *South Carolina Rules of Civil Procedure*, Defendants move the Plaintiff's Complaint be dismissed for failure to state a cause of action.

FOR A THIRD DEFENSE

73. The Plaintiff's claim to recover attorneys' fees must be stricken and dismissed because there is no contractual, statutory or other basis which would entitle the Plaintiff to recover attorneys' fees in this action.

FOR A FOURTH DEFENSE

74. The Plaintiff's claim to recover pre-judgment interest should be stricken and dismissed because there is no basis that would entitle the Plaintiff to make any such recovery in this action.

FOR A FIFTH DEFENSE

75. These Defendants would show that any statements made regarding the Plaintiff were true and therefore these Defendants plead truth as a complete defense to the Plaintiff's allegation of defamation.

FOR A SIXTH DEFENSE

76. These Defendants would show that no defamatory statements about the Plaintiff were published by them.

FOR A SEVENTH DEFENSE

77. These Defendants would show that any statements about the Plaintiff were not only true but also protected by an absolute and/or qualified privilege and were protected communications.

FOR AN EIGHTH DEFENSE

78. These Defendants would show that the Plaintiff's claim for punitive damages violates the Fifth, Sixth, Seventh, Eighth and Fourteenth Amendments to the Constitution of the United States of America in that it violates the double jeopardy clause in that these Defendants could be subjected to multiple awards of punitive damages for the same set of facts; the self-incrimination clause is being violated because these Defendants can be compelled to give testimony against themselves in a penalty situation such as punitive damages; the assessment of punitive damages by a burden of proof less than beyond a reasonable doubt is violative of the Sixth and Fourteenth Amendments in that punitive damages are a fine or penalty and are, therefore, quasi-criminal in nature; Plaintiff's claim for punitive damages violates these Defendants' rights to access the courts as guaranteed by the Seventh and Fourteenth Amendments because the threat of an award of punitive damages chills these Defendants' exercise of that right; the Plaintiff's claim for punitive damages violates the Eighth Amendment's guarantee that excessive fines shall not be imposed, the Plaintiff's claim for punitive damages violates both the due process and equal protection clauses of the Fourteenth Amendment in that the standard for

awarding either punitive damages is unduly vague and, therefore, violates both procedural and substantive due process safeguards; therefore, the Plaintiff's claim for punitive damages should be dismissed.

FOR A NINTH DEFENSE

79. The Plaintiff has failed to allege with sufficient specificity any defamatory statement that was made and to whom in particular any defamatory statement was published.

FOR A TENTH DEFENSE

80. The Plaintiff has failed to assert that any alleged comments made by Jane Doe in a public meeting sufficiently identified the Plaintiff, so that any statements by Jane Doe could not defame the Plaintiff.

FOR AN ELEVENTH DEFENSE

81. The Plaintiff has failed to allege sufficiently severe emotional distress to establish a cause of action for intentional infliction of emotional distress and merely restates the same conduct as alleged in his other causes of action.

FOR A TWELFTH DEFENSE

82. The Plaintiff has failed to sufficiently allege outrageous conduct to establish a claim for intentional infliction of emotional distress but instead merely restates the same conduct as alleged in his other causes of action.

FOR A THIRTEENTH DEFENSE

83. These Defendants would show that any injuries or damages sustained by the Plaintiff, which are specifically denied, were the result of the acts or omissions of the Plaintiff and/or others not in the employ or control of these Defendants and, therefore, the Plaintiff cannot recover from these Defendants.

WHEREFORE, having fully answered, Defendants Jane Doe and Richard Doe pray that the Plaintiff's Complaint be dismissed with costs.

Defendants Jane Doe and Richard Doe demand a jury by trial.

s/John M. Grantland
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Attorneys for Defendants Jane Doe and Richard Doe

Columbia, South Carolina
November 17, 2017

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF PICKENS

CIVIL ACTION NO: 2017-CP-39-00709

Andrew Pampu,

Plaintiff,

v.

Erin Wingo, David Wingo, and Colin J.
Gahagan,

Defendants.

**AMENDED ANSWER OF DEFENDANTS
ERIN WINGO AND DAVID WINGO**

TO: CHAD M. GRAHAM, ESQUIRE, KIMBERLY C. LAU, ESQUIRE, AND JAMES FIGLIOZZI, ESQUIRE, ATTORNEYS FOR PLAINTIFF, AND TO THE PLAINTIFF ABOVE NAMED:

Now Come Defendants Erin Wingo and David Wingo (“these Defendants”), answering the Plaintiff’s Complaint herein, would respectfully show unto the Court the following:

FOR A FIRST DEFENSE

1. Paragraphs 1 through 7 of the Complaint purport to set forth in allegations an introduction and summary of the action. With respect to such allegations, Defendants state the following.

Plaintiff was found responsible for sexual misconduct by Clemson University following a formal administrative hearing for the underlying conduct at issue in his suit against the Defendants. Contrary to any suggestion by the Plaintiff that Clemson University provided him with a sham disciplinary process, Clemson University conducted an appropriate disciplinary proceeding affording him extensive due process in accordance with its own established procedures and longstanding Federal Regulations requiring it conduct a prompt and equitable grievance procedure in response to reports of sexual

harassment, such as sexual misconduct, even where, as here, it is reported by a third party. For example, Clemson's process included, upon information and belief, several procedural safeguards. Clemson provided Plaintiff notice of the allegations and charges against him. Plaintiff was given the opportunity to provide a statement, relevant evidence, and suggest witnesses. Plaintiff was provided the opportunity to review all evidence against him, including the investigatory report. Two trained investigators conducted an extensive investigation interviewing multiple witnesses and reviewing evidence, and they concluded Plaintiff was responsible for sexual misconduct in violation of the Clemson Student Code of Conduct and recommended the matter proceed to an administrative hearing. Plaintiff was provided notice of the administrative hearing and afforded adequate time to prepare to respond to the allegations against him.

Clemson convened a five-person Administrative Hearing Board to hear the matter. The Administrative Hearing Board reviewed the record and heard testimony from nine witnesses, including Plaintiff and Erin Wingo. Plaintiff was present for the entire hearing. A private attorney accompanied Plaintiff during the hearing. Plaintiff was provided the opportunity to, and did, give opening and closing statements. Plaintiff was given the opportunity to, and did, pose relevant questions to witnesses during hearing through the Administrative Hearing Board. This included the opportunity to cross examine Erin Wingo, which he did.

While Plaintiff seeks to spin a fantasy of conspiracy against him, the Clemson panel had before it credible evidence demonstrating support for its finding that Erin Wingo was too intoxicated to consent to the sexual encounter at issue in this matter. Erin Wingo, a 5'2

Clemson freshman, consumed a heavy amount of alcohol prior to arriving at a party as confirmed by witness testimony and continued to consume alcohol once at the party. Plaintiff blacked out for much of the evening due to severe intoxication. Following the incident, Erin Wingo was found by friends crying on the steps of the fraternity house. Erin Wingo vomited on her way home and continued to do so at home later that evening. That same evening, Plaintiff texted with a fraternity pledge brother concerning the incident bragging “I f--ked a chick by the garbage thing behind Chipotle”. The following day, Erin Wingo was sick and vomiting from the previous night’s alcohol consumption.

At the conclusion of the Administrative Hearing Board, and after review of the testimony, record, and evidence presented, the panel deliberated. The panel found Defendant responsible for violation of the following Clemson policies: (1) Alcohol; (2) Disorderly Conduct; (3) Harm to Person; and (4) Sexual Misconduct. The Administrative Hearing Board issued sanctions suspending Andrew Pampu; placing him on disciplinary probation for the remainder of his time at Clemson; evicting him from University housing; issuing a no-contact order with Erin Wingo during his suspension period and, should he re-enroll, for the duration of his time at Clemson; mandating counseling with Clemson University Counseling and Psychological Services; and requiring completion of a sexual assault awareness course prior to re-enrollment.

Following the Administrative Hearing Board’s decision, Plaintiff was afforded two opportunities to appeal and did so. First he appealed to the Vice President of Student Affairs, who denied the appeal and upheld the panel’s decision. Next, he appealed to Clemson’s President. Upon information and belief, Clemson’s President, through his

Chief of Staff and after review of the record, upheld the decision of the panel and Vice President, denied Plaintiff's appeal, and increased the sanctions against Plaintiff, extending the length of the suspension.

To the extent the Plaintiff seeks to introduce or characterize the action brought against the Defendants differently than the above, in any of the allegation in the Complaint, which Plaintiff does throughout the complaint, those allegations are denied. Further, Plaintiff's Complaint is riddled with statements of mere conjecture and speculation. Defendants therefore are not required to respond to those statements and do not do so.

With respect to the specific allegations in the Complaint, Defendants respond as follows:

2. Defendants Erin Wingo and David Wingo deny each and every allegation of the Plaintiff's Complaint not hereinafter specifically admitted.
3. To the extent the allegation in paragraph 1 to 7 of the Plaintiff's Complaint are deemed to be allegations of law, Defendants are not required to plead thereto. To the extent allegations in Paragraph 1 to 7 of the Complaint are not allegations of fact, but statements of mere conjecture and speculation, and Defendants therefore are not required to plead thereto. To the extent the remainder of the allegations in Paragraph 1 are deemed to be allegations of fact, Defendants deny those allegations as stated.
4. Paragraph 8 of the Plaintiff's Complaint states a legal conclusion to which no response is required. The Plaintiff is not entitled to any recovery against these Defendants.
5. These Defendants admit the allegations of Paragraph 9 of the Plaintiff's Complaint upon information and belief.

6. These Defendants admit the allegations of Paragraph 10 of the Plaintiff's Complaint.
7. These Defendants admit the allegations of Paragraph 11 of the Plaintiff's Complaint upon information and belief
8. These Defendants admit the allegations of Paragraph 12 of the Plaintiff's Complaint.
9. Paragraphs 13 and 14 of the Plaintiff's Complaint state a legal conclusion to which no response is required. The Plaintiff is not entitled to any recovery against these Defendants.
10. Paragraph 15 of the Plaintiff's Complaint states a legal conclusion to which no response is required. These Defendants state that they did not commit any tortious acts alleged by the Plaintiff.
11. These Defendants deny the allegations of Paragraphs 16 and 17 of the Plaintiff's Complaint as stated.
12. These Defendants lack sufficient information relating to the allegations of Paragraph 18 of the Plaintiff's Complaint and therefore deny the same and demand strict proof thereof.
13. These Defendants deny the allegations of Paragraphs 19 and 20 of the Plaintiff's Complaint as stated.
14. These Defendants admit the allegations of Paragraphs 21 upon information and belief.
15. These Defendants admit that Erin Wingo attended the party with her friends upon invite of others besides Erin Wingo. These Defendants lack sufficient information as to who invited Erin Wingo's friends and therefore deny the remaining allegations of Paragraph 22 and demand strict proof thereof.
16. These Defendants deny the allegations of Paragraph 23 of the Plaintiff's Complaint.

17. These Defendants lack sufficient information relating to the allegations of Paragraph 24 of the Plaintiff's Complaint and therefore deny the same and demand strict proof thereof.
18. These Defendants deny the allegations of Paragraph 25 of the Plaintiff's Complaint as stated. These Defendants state that Erin Wingo drank a substantial amount of alcohol on the night of the incident and became highly intoxicated.
19. These Defendants deny the allegations of Paragraph 26 of the Plaintiff's Complaint as stated.
20. In response to Paragraph 27 of the Plaintiff's Complaint, these Defendants state that Erin Wingo arrived at the Compound at approximately 11:00 p.m. Defendants otherwise deny the remaining allegations of the Paragraph 27 as stated.
21. The Defendants deny the allegations of Paragraphs 28, 29, and 30 of the Plaintiff's Complaint as stated. In addition, these Defendants state that Erin Wingo was already intoxicated and impaired during the time sequence described.
22. In response to the allegations of Paragraph 31 of the Plaintiff's Complaint, these Defendants admit that the Plaintiff did not have inhibitions relating to sexual conduct and was the aggressor. Defendants otherwise deny the remaining allegations of Paragraph 31 as stated.
23. These Defendants deny the allegations of Paragraphs 32 and 33 of the Plaintiff's Complaint as stated. Defendant Erin Wingo was intoxicated and could not consent to sexual conduct of the Plaintiff towards her.
24. In response to Paragraph 34 of the Plaintiff's Complaint, these Defendants state that Defendant Erin Wingo was intoxicated and not able to consent to the sexual conduct

of the Plaintiff towards her. Defendant states that after the night of the incident, Defendant Erin Wingo learned – after the Plaintiff bragged that he “f----d a chick by the garbage thing behind Chipotle” in a text message that was sent to other students at Clemson University -- that the Plaintiff sexually assaulted her while she was too intoxicated to consent next to a dumpster behind a fast food restaurant in Clemson. At the time of the incident, Defendant Erin Wingo was intoxicated and unable to consent when the Plaintiff sexually assaulted her. Defendants deny the allegations of Paragraphs 34 of the Plaintiff’s Complaint as stated.

25. These Defendants deny the allegations of Paragraphs 35, 36, and 37 of the Plaintiff’s Complaint as stated.

26. In response to Paragraph 38 of the Plaintiff’s Complaint, these Defendants lack sufficient information regarding whether the Plaintiff was required to carry a condom at all times as a pledge of a fraternity so demands strict proof thereof, and denies the remaining allegations of Paragraph 38 as stated.

27. In response to Paragraph 39 of the Plaintiff’s Complaint, these Defendants state that the Plaintiff raped Defendant Erin Wingo and therefore denies the allegations of Paragraph 39 as stated.

28. In response to Paragraph 40 of the Plaintiff’s Complaint, these Defendants admit that Erin Wingo was distraught after the Plaintiff’s rape of Erin Wingo but deny the remaining allegations of Paragraph 40 as stated.

29. In response to Paragraphs 41, 42, 43, 44, 45 46, and 47 of the Plaintiff’s Complaint, these Defendants admit that following the incident, Plaintiff cried on the porch of the fraternity house, and in the hours after the Plaintiff sexually assaulted her Erin Wingo

could not find her key, and that following the incident, she was agitated and emotionally distraught. Defendants otherwise deny the remaining allegations of these Paragraphs as stated. Defendants state that Erin Wingo was intoxicated and unable to recall in specific detail the events which occurred while and after the Plaintiff raped her and therefore demand strict proof thereof.

30. Defendants deny the allegations of Paragraphs 48, 49, 50, and 51 of the Plaintiff's Complaint as stated.

31. In response to Paragraphs 52, 53, and 54 of the Plaintiff's Complaint, these Defendants state that the Plaintiff has not identified the individuals and therefore these Defendants deny the allegations of these Paragraphs for lack of sufficient information and demand strict proof thereof. In further response to Paragraph 54, the Defendants admit that the Plaintiff sent a text at approximately 3:00 a.m. – within a few hours of the incident – bragging that he “f----d a chick by the garbage thing behind Chipotle.”

32. In response to Paragraph 55 of the Plaintiff's Complaint, these Defendants state that when Erin Wingo discussed the incident with Colin Gahagan she could recall only minimal details about leaving the party with the Plaintiff, being slapped, and being unable to walk back to the party on her own because of being intoxicated and emotionally upset. The Defendants otherwise deny the allegations of Paragraph 55 as stated.

33. To the extent the allegation in paragraph 58 of the Plaintiff's Complaint are deemed to be allegations of law, Defendants are not required to plead thereto. These

Defendants deny the allegations of Paragraphs 56, 57, and 58 of the Plaintiff's Complaint as stated.

34. In response to Paragraph 59 of the Plaintiff's Complaint, these Defendants admit upon information and belief that Colin Gahagan sent the text stating in part "not to proud of you for taking advantage of [Erin Wingo] like you did last night. The poor girl doesn't even remember it" at the stated time. Defendants otherwise deny the remaining allegations of Paragraph 59 as stated.
35. These Defendants deny the allegations of Paragraph 60 of the Plaintiff's Complaint as stated. These Defendants admit upon information and belief that Erin Wingo sent a text, stating in part, "[Colin Gahagan] is right, I don't remember it. I'm sorry. Not all of it at least." These Defendants further state that the Plaintiff was fully aware that Erin Wingo could not consent to his sexual conduct towards her because she was intoxicated at the time he raped her.
36. These Defendants deny the allegations of Paragraphs 61 and 62 of the Plaintiff's Complaint as stated.
37. In response to Paragraphs 63, 64, and 65 of the Plaintiff's Complaint, these Defendants state that the Plaintiff has not identified the individuals and therefore these Defendants deny the allegations of these Paragraphs for lack of sufficient information and demand strict proof thereof.
38. These Defendants deny the allegations of Paragraphs 66 of the Plaintiff's Complaint as stated.
39. In response to Paragraphs 67, 68, 69, and 70 of the Plaintiff's Complaint, these Defendants state that the Plaintiff has not identified the individuals and therefore

these Defendants deny the allegations of these Paragraphs for lack of sufficient information and demand strict proof thereof.

40. In response to Paragraphs 71 and 72 of the Plaintiff's Complaint, these Defendants state that Erin Wingo sought counseling because of the trauma caused by being raped by the Plaintiff and asserts a privilege over communications relating to their communications and otherwise deny the allegations of these Paragraphs.

41. These Defendants deny the allegations of Paragraph 73 of the Plaintiff's Complaint as stated.

42. These Defendants deny the allegations of Paragraphs 74 and 75 of the Plaintiff's Complaint for lack of sufficient information and therefore deny the same and demand strict proof thereof.

43. To the extent the allegation in Paragraph 76 of the Plaintiff's Complaint are deemed to be allegations of law, Defendants are not required to plead thereto. In response to Paragraph 76 of the Plaintiff's Complaint, these Defendants admit that Erin Wingo submitted a Title IX Complaint to Clemson University's Office of Community and Ethical Standards but deny the remaining allegations of Paragraph 76 to the extent they are deemed factual allegations.

44. These Defendants deny the allegations of Paragraphs 77 and 78 of the Plaintiff's Complaint for lack of sufficient information and also because the Plaintiff did not identify the individuals and therefore deny the same and demand strict proof thereof.

45. These Defendants deny the allegations of Paragraph 79 of the Plaintiff's Complaint as stated. Erin Wingo did not make any false allegations.

46. These Defendants admit the allegations of Paragraph 80 upon information and belief, two Clemson investigators issued an investigatory report recommending a formal hearing against Plaintiff.
47. In response to Paragraphs 81 and 82 of the Plaintiff's Complaint, these Defendants lack sufficient information as to whether the Plaintiff attempted to file an incident report and complaint and therefore deny the same and demand strict proof thereof and deny the remaining allegations of the Paragraphs as stated.
48. These Defendants deny the allegations of Paragraphs 83 and 84 of the Plaintiff's Complaint as stated.
49. These Defendants admit the allegations of Paragraph 85 of the Plaintiff's Complaint.
50. In response to the allegations of Paragraphs 86 and 87 of the Plaintiff's Complaint, these Defendants lack sufficient information and therefore deny the same and demand strict proof thereof and further deny that Erin Wingo engaged in the conduct alleged.
51. These Defendants deny the allegations of Paragraph 88 of the Plaintiff's Complaint as stated.
52. In response to the allegations of Paragraph 89 of the Plaintiff's Complaint, these Defendants lack sufficient information and therefore deny the same and demand strict proof thereof.
53. These Defendants admit the allegations of Paragraph 90 of the Plaintiff's Complaint. Following a formal hearing, Clemson University found Plaintiff responsible for four violations of University policy: (1) alcohol; (2) disorderly conduct; (3) harm to person; and (4) sexual misconduct.

54. In response to the allegations of Paragraph 91 of the Plaintiff's Complaint, these Defendants lack sufficient information and therefore deny the same and demand strict proof thereof.
55. These Defendants deny the allegations of Paragraph 92 of the Plaintiff's Complaint because they are false and because the Plaintiff has failed to identify the alleged witnesses.
56. These Defendants deny the allegations of Paragraph 93 of the Plaintiff's Complaint as stated.
57. These Defendants admit the allegations of Paragraph 94 of the Plaintiff's Complaint.
58. In response to the allegations of Paragraphs 95 and 96 of the Plaintiff's Complaint, these Defendants lack sufficient information and therefore deny the same and demand strict proof thereof.
59. These Defendants deny the allegations of Paragraphs 97, 98, 99, 100, 101, 102, and 103 of the Plaintiff's Complaint as stated.
60. In response to the allegations of Paragraph 104 of the Plaintiff's Complaint, these Defendants admit that the Chief of Staff to the President of Clemson University upheld the Decision and also increased the length of the Plaintiff's suspension by one year but deny the remaining allegations of Paragraph 104 as stated.
61. These Defendants deny the allegations of Paragraphs 105, 106, and 107 of the Plaintiff's Complaint as stated.
62. In response to the allegations of Paragraph 108 of the Plaintiff's Complaint, these Defendants lack sufficient information and therefore deny the same and demand strict

proof thereof, but these Defendants deny that they posted the presentation on the Internet.

63. These Defendants deny the allegations of Paragraph 109 of the Plaintiff's Complaint as stated.

64. In response to the allegations of Paragraphs 110, 111, 112, and 113 of the Plaintiff's Complaint, these Defendants lack sufficient information and therefore deny the same and demand strict proof thereof and further state that to the extent that any comments state or suggest that Erin Wingo lied are false.

FOR A FIRST DEFENSE TO FIRST CAUSE OF ACTION
Defamation Against All Defendants

65. In response to Paragraph 114 of the Plaintiff's Complaint, these Defendants repeat and reallege their responses in paragraphs 1 through 113 above as if fully set forth herein.

66. These Defendants deny the allegations of Paragraphs 115 through 143 of the Plaintiff's Complaint.

FOR A FIRST DEFENSE TO SECOND CAUSE OF ACTION
Abuse of Process Against Erin Wingo and David Wingo

67. Paragraphs 144 through 152 purport to assert a cause of action for abuse of process against these Defendants. However, the Court dismissed this cause of action for failure to state a cause of action by Order entered October 25, 2017, and therefore the Defendant are not required to respond to this cause of action.

FOR A FIRST DEFENSE TO THIRD CAUSE OF ACTION
Intentional Infliction of Emotional Distress Against All Defendants

68. In response to Paragraph 153 of the Plaintiff's Complaint, these Defendants repeat and reallege their responses in paragraphs 1 through 152 above as if fully set forth herein.

69. These Defendants deny the allegations of Paragraphs 154 through 165 of the Plaintiff's Complaint.

FOR A FIRST DEFENSE TO FOURTH CAUSE OF ACTION
Civil Conspiracy Against All Defendants

70. In response to Paragraph 166 of the Plaintiff's Complaint, these Defendants repeat and reallege their responses in paragraphs 1 through 165 above as if fully set forth herein.

71. These Defendants deny the allegations of Paragraphs 166 through 173 of the Plaintiff's Complaint. These Defendants further state that the Plaintiff is not entitled to make any recovery against them as alleged in the Plaintiff's Prayer for Relief, including subparagraphs (i) through (v) thereunder, or otherwise.

FOR A SECOND DEFENSE

72. These Defendants would show that the Plaintiff's Complaint fails to state facts sufficient to constitute a cause of action. Therefore, pursuant to Rule 12(b)(6) of the *South Carolina Rules of Civil Procedure*, Defendants move the Plaintiff's Complaint be dismissed for failure to state a cause of action.

FOR A THIRD DEFENSE

73. The Plaintiff's claim to recover attorneys' fees must be stricken and dismissed because there is no contractual, statutory or other basis which would entitle the Plaintiff to recover attorneys' fees in this action.

FOR A FOURTH DEFENSE

74. The Plaintiff's claim to recover pre-judgment interest should be stricken and dismissed because there is no basis that would entitle the Plaintiff to make any such recovery in this action.

FOR A FIFTH DEFENSE

75. These Defendants would show that any statements made regarding the Plaintiff were true and therefore these Defendants plead truth as a complete defense to the Plaintiff's allegation of defamation.

FOR A SIXTH DEFENSE

76. These Defendants would show that no defamatory statements about the Plaintiff were published by them.

FOR A SEVENTH DEFENSE

77. These Defendants would show that any statements about the Plaintiff were not only true but also protected by an absolute and/or qualified privilege and were protected communications.

FOR AN EIGHTH DEFENSE

78. These Defendants would show that the Plaintiff's claim for punitive damages violates the Fifth, Sixth, Seventh, Eighth and Fourteenth Amendments to the Constitution of the United States of America in that it violates the double jeopardy clause in that these Defendants could be subjected to multiple awards of punitive damages for the same set of facts; the self-incrimination clause is being violated because these Defendants can be compelled to give testimony against themselves in a penalty situation such as punitive damages; the assessment of punitive damages by a burden of proof less than beyond a reasonable doubt is violative of the Sixth and Fourteenth Amendments in that punitive damages are a fine or penalty and are, therefore, quasi-criminal in nature; Plaintiff's claim for punitive damages violates these Defendants' rights to access the courts as guaranteed by the Seventh and Fourteenth Amendments because the threat of an award of

punitive damages chills these Defendants' exercise of that right; the Plaintiff's claim for punitive damages violates the Eighth Amendment's guarantee that excessive fines shall not be imposed, the Plaintiff's claim for punitive damages violates both the due process and equal protection clauses of the Fourteenth Amendment in that the standard for awarding either punitive damages is unduly vague and, therefore, violates both procedural and substantive due process safeguards; therefore, the Plaintiff's claim for punitive damages should be dismissed.

FOR A NINTH DEFENSE

79. The Plaintiff has failed to allege with sufficient specificity any defamatory statement that was made and to whom in particular any defamatory statement was published.

FOR A TENTH DEFENSE

80. The Plaintiff has failed to assert that any alleged comments made by Erin Wingo in a public meeting sufficiently identified the Plaintiff, so that any statements by Erin Wingo could not defame the Plaintiff.

FOR AN ELEVENTH DEFENSE

81. The Plaintiff has failed to allege sufficiently severe emotional distress to establish a cause of action for intentional infliction of emotional distress and merely restates the same conduct as alleged in his other causes of action.

FOR A TWELFTH DEFENSE

82. The Plaintiff has failed to sufficiently allege outrageous conduct to establish a claim for intentional infliction of emotional distress but instead merely restates the same conduct as alleged in his other causes of action.

FOR A THIRTEENTH DEFENSE

83. These Defendants would show that any injuries or damages sustained by the Plaintiff, which are specifically denied, were the result of the acts or omissions of the Plaintiff and/or others not in the employ or control of these Defendants and, therefore, the Plaintiff cannot recover from these Defendants.

FOR A FOURTEENTH DEFENSE

84. “Under the doctrine of collateral estoppel, once a final judgment on the merits has been reached in a prior claim, the relitigation of those issues actually and necessarily litigated and determined in the first suit are precluded as to the parties and their privies in any subsequent action based upon a different claim.” *Richburg v. Baughman*, 290 S.C. 431, 434, 351 S.E.2d 164, 166 (1986); see also *State v. Bacote*, 331 S.C. 328, 330, 503 S.E.2d 161, 162 (1998) (“When an issue of fact or law is actually litigated and determined by a valid and final judgment, and the determination is essential to the judgment, the determination is conclusive in a subsequent action between the parties, whether on the same or different claim.”); *McNaughton-McKay Elec. Co. of N.C. v. Andrich*, 324 S.C. 275, 482 S.E.2d 564 (Ct.App.1997) (noting that collateral estoppel will bar relitigation of an issue that was actually litigated and necessary to the outcome of the prior lawsuit).

85. In determining the defense of collateral estoppel notwithstanding a lack of privity, the courts have taken into consideration: whether the doctrine is used offensively or defensively, and whether the party adversely affected had a full and fair opportunity to litigate the relevant issue effectively in the prior action. 31 A.L.R. (3d) 1052. (The South Carolina Supreme Court has recognized estoppel by judgment without privity in the case

of *Jenkins v. Atlantic Coast Line Railroad Company*, 89 S.C. 408, 71 S.E. 1010, and in the case of *Watson v. Goldsmith*, 205 S.C. 215, 31 S.E. (2d) 317.

86. South Carolina has held that "... the true ground upon which a former judgment, in a case like this, should be allowed to operate as a bar to a second action is not **res judicata**, or technical estoppel, because the parties are not the same, and there is no such privity between them as is necessary for the application of that doctrine; but that in such cases, on grounds of public policy, the principle of estoppel should be expanded, so as to embrace within the estoppel of a judgment, persons who are not, strictly speaking, either parties or privies. It is rested upon the wholesome principle which allows every litigant one opportunity to try his case on the merits, but limits him, in the interest of the public, to one such opportunity." *Jenkins*, 89 S.C. at 421, 71 S.E. 1010.
87. In *Watson*, supra, South Carolina applied judgment by estoppel to prevent a plaintiff from bringing a second action arising out of the same fire loss against a second insurance company that was not a party to the first action, nor a privy of the first insurance company. The Court stated in *Watson*: "This matter having been fully and fairly adjudicated, the appellant is collaterally estopped by prior judgment from bringing this action to adjudicate the same issue, notwithstanding a lack of privity between the insurance companies."
88. Defendants plead Collateral Estoppel and/or Estoppel By Judgement as a full and complete defense and bar to this action.

FOR A FIFTEENTH DEFENSE

89. Plaintiff's claim in this action is one which is based on the same factual transaction/allegations as a claim previously litigated. Plaintiff now seeks a remedy additional or alternative to the one sought earlier.

90. Under the doctrine of Res Judicata, a final judgment on the merits in a prior action will conclude the parties and their privies in a second action based on the same claim as to the issues actually litigated and as to issues that might have been litigated in the first action. *Sub-Zero Freezer Co. v. R.J. Clarkson Co.*, 308 S.C. 188, 417 S.E.2d 569 (1992); *Treadaway v. Smith*, 325 S.C. 367, 479 S.E.2d 849 (Ct.App.1996); *Foran v. USAA Cas. Ins. Co.*, 311 S.C. 189, 427 S.E.2d 918 (Ct.App.1993). For determining whether res judicata applies, the identity of the parties in the first lawsuit also includes persons in privity with the named parties. *Pye v. Aycock*, 325 S.C. 426, 480 S.E.2d 455 (Ct.App.1997).

91. Because of the interests of justice, society, and the Defendants, every individual is entitled to only one day in Court and the Plaintiff has had his day.

92. Defendants plead Res Judicata as a full and complete defense and bar to this action.

WHEREFORE, having fully answered, Defendants Erin Wingo and David Wingo pray that the Plaintiff's Complaint be dismissed with costs.

Defendants Erin Wingo and David Wingo demand a jury by trial.

(signature on following page)

s/Susan O. Porter

John M. Grantland, Esquire (S.C. Bar #64158)

Susan O. Porter, Esquire (S.C. Bar #68335)

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Attorneys for Defendants Erin Wingo and David Wingo

Columbia, South Carolina
October 2, 2020

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
<u>COUNTY OF PICKENS</u>	)	
	)	
ANDREW PAMPU,	)	Case No. 2017-CP-39-00709
	)	
Plaintiff,	)	
	)	
v.	)	DEFENDANT COLIN J. GAHAGAN'S
	)	ANSWER
ERIN WINGO, DAVID WINGO and	)	(Jury Trial Demanded)
COLIN J. GAHAGAN,	)	
	)	
Defendants.	)	
	)	

Defendant Colin J. Gahagan, answering the Complaint of the Plaintiff, would respectfully show unto the Court as follows:

FOR A FIRST DEFENSE

THE NATURE OF THIS ACTION

1. Denied.
2. Colin J. Gahagan is without sufficient knowledge or information to form a belief about the truth of the allegation in Paragraph 2, and the allegation is therefore denied.
3. Denied.
4. Denied.
5. Colin J. Gahagan admits that Andrew Pampu was ultimately found responsible on all four charges brought against him by the University, which resulted in sanctions including a suspension from Clemson University. The remainder of the allegations in Paragraph 5 are denied.
6. Colin J. Gahagan is without sufficient knowledge or information to form a belief about the truth of the allegation in Paragraph 6, and the allegation is therefore denied.
7. Denied.

8. Paragraph 8 contains no allegation against Colin J. Gahagan, and therefore no response is required. To the extent the Court deems a response required, Colin J. Gahagan denies the allegation.

THE PARTIES

9. Colin J. Gahagan is without sufficient knowledge or information to form a belief as to whether Plaintiff is a resident of Berkeley County, South Carolina, and that part of the allegation is therefore denied. Colin J. Gahagan admits that Plaintiff was a student of Clemson University and resided in a dormitory on Clemson University's campus during the timeframe covering the events described in the Complaint.

10. Admitted.

11. Admitted.

12. Admitted.

JURISDICTION AND VENUE

13. The allegations in Paragraph 13 contain only legal conclusions, which do not require a response. To the extent the Court deems a response required, Colin J. Gahagan denies the allegation.

14. Admitted.

15. Admitted.

FACTUAL ALLEGATIONS COMMON TO ALL CLAIMS

16. Colin J. Gahagan is without sufficient knowledge or information to form a belief about the truth of the allegation in Paragraph 16, and the allegation is therefore denied.

17. Colin J. Gahagan is without sufficient knowledge or information to form a belief about the truth of the allegation in Paragraph 17, and the allegation is therefore denied.

18. Colin J. Gahagan is without sufficient knowledge or information to form a belief about the truth of the allegation in Paragraph 18, and the allegation is therefore denied.

19. Colin J. Gahagan is without sufficient knowledge or information to form a belief about the truth of the allegation in Paragraph 19, and the allegation is therefore denied.

20. Colin J. Gahagan admits that Colin J. Gahagan and Erin Wingo were friends, and spent time with one another both before and after October 25, 2015; and, some time in or around November of 2015, the two began dating exclusively as boyfriend and girlfriend. Colin J. Gahagan denies the characterization that Colin J. Gahagan engaged in an "open relationship" with Erin Wingo. Colin J. Gahagan is without sufficient knowledge or information to form a belief about the nature and extent of Erin Wingo's sexual encounters "with other male students at Clemson" from August to October 2015. Colin J. Gahagan admits that he was aware of a single sexual encounter that Erin Wingo engaged in with another male freshman during that timeframe, because Erin Wingo voluntarily told him that she had sexual intercourse with another male student on or about October 3, 2015.

21. Admitted.

22. Colin J. Gahagan admits that Erin Wingo and some of her friends attended the off-campus fraternity party. Colin J. Gahagan is without sufficient knowledge or information to form a belief about the truth of the remainder of the allegations in Paragraph 22, and those allegations are therefore denied.

23. Colin J. Gahagan is without sufficient knowledge or information to form a belief about the truth of the allegation in Paragraph 23, and the allegation is therefore denied.

24. Colin J. Gahagan is without sufficient knowledge or information to form a belief about the truth of the allegation in Paragraph 24, and the allegation is therefore denied.

25. Colin J. Gahagan is without sufficient knowledge or information to form a belief about the truth of the allegation in Paragraph 25, and the allegation is therefore denied. Colin J. Gahagan admits that he received numerous text messages from Erin Wingo before the party (around 10 p.m.)

indicating that she was very intoxicated. For example, at 10:07 p.m., before arriving at the party, Erin Wingo wrote to Colin J. Gahagan, "we'er [sic] all drunk so should we call [a fraternity brother who would let them into the Phi Delta Theta party] or not yet." At 10:26 p.m., Erin Wingo told Colin J. Gahagan that she would be "drunk off me [sic] ass" when she arrived at the party.

26. Colin J. Gahagan is without sufficient knowledge or information to form a belief about the truth of the allegation in Paragraph 26, and the allegation is therefore denied.

27. The allegation is denied as phrased. Colin J. Gahagan denies that he "brushed Erin Wingo off" or told her to "find someone else." Rather, Colin J. Gahagan admits that he spoke with Erin Wingo upon her arrival to the off-campus party, observed that she was visibly intoxicated, and told her to "go have a good time with her friends." Colin J. Gahagan is without sufficient knowledge or information to form a belief about the truth of the remainder of the allegations in Paragraph 27 concerning Erin Wingo's desires, and those allegations are therefore denied.

28. Colin J. Gahagan is without sufficient knowledge or information to form a belief about the truth of the allegation in Paragraph 28, and the allegation is therefore denied.

29. Colin J. Gahagan is without sufficient knowledge or information to form a belief about the truth of the allegation in Paragraph 29, and the allegation is therefore denied.

30. Any information Colin J. Gahagan learned concerning Erin Wingo and Andrew Pampu's encounter on October 24, 2015 is based solely on information told to him by Erin Wingo and Andrew Pampu after the fact. Colin J. Gahagan was not an eyewitness to the events. Therefore, Colin J. Gahagan is without sufficient knowledge or information to form a belief about the truth of the allegation in Paragraph 30, and the allegation is therefore denied.

31. Any information Colin J. Gahagan learned concerning Erin Wingo and Andrew Pampu's encounter on October 24, 2015 is based solely on information told to him by Erin Wingo and Andrew Pampu after the fact. Colin J. Gahagan was not an eyewitness to the events. Therefore, Colin

J. Gahagan is without sufficient knowledge or information to form a belief about the truth of the allegation in Paragraph 31, and the allegation is therefore denied.

32. Any information Colin J. Gahagan learned concerning Erin Wingo and Andrew Pampu's encounter on October 24, 2015 is based solely on information told to him by Erin Wingo and Andrew Pampu after the fact. Colin J. Gahagan was not an eyewitness to the events. Therefore, Colin J. Gahagan is without sufficient knowledge or information to form a belief about the truth of the allegation in Paragraph 32, and the allegation is therefore denied.

33. Any information Colin J. Gahagan learned concerning Erin Wingo and Andrew Pampu's encounter on October 24, 2015 is based solely on information told to him by Erin Wingo and Andrew Pampu after the fact. Colin J. Gahagan was not an eyewitness to the events. Therefore, Colin J. Gahagan is without sufficient knowledge or information to form a belief about the truth of the allegation in Paragraph 33, and the allegation is therefore denied.

34. Any information Colin J. Gahagan learned concerning Erin Wingo and Andrew Pampu's encounter on October 24, 2015 is based solely on information told to him by Erin Wingo and Andrew Pampu after the fact. Colin J. Gahagan was not an eyewitness to the events. Therefore, Colin J. Gahagan is without sufficient knowledge or information to form a belief about the truth of the allegation in Paragraph 34, and the allegation is therefore denied.

35. Any information Colin J. Gahagan learned concerning Erin Wingo and Andrew Pampu's encounter on October 24, 2015 is based solely on information told to him by Erin Wingo and Andrew Pampu after the fact. Colin J. Gahagan was not an eyewitness to the events. Therefore, Colin J. Gahagan is without sufficient knowledge or information to form a belief about the truth of the allegation in Paragraph 35, and the allegation is therefore denied.

36. Any information Colin J. Gahagan learned concerning Erin Wingo and Andrew Pampu's encounter on October 24, 2015 is based solely on information told to him by Erin Wingo and John

Doe after the fact. Colin J. Gahagan was not an eyewitness to the events. Therefore, Colin J. Gahagan is without sufficient knowledge or information to form a belief about the truth of the allegation in Paragraph 36, and the allegation is therefore denied.

37. Any information Colin J. Gahagan learned concerning Erin Wingo and Andrew Pampu's encounter on October 25, 2015 is based solely on information told to him by Erin Wingo and Andrew Pampu after the fact. Colin J. Gahagan was not an eyewitness to the events. Therefore, Colin J. Gahagan is without sufficient knowledge or information to form a belief about the truth of the allegation in Paragraph 37, and the allegation is therefore denied.

38. Any information Colin J. Gahagan learned concerning Erin Wingo and Andrew Pampu's encounter on October 25, 2015 is based solely on information told to him by Erin Wingo and Andrew Pampu after the fact. Colin J. Gahagan was not an eyewitness to the events. Therefore, Colin J. Gahagan is without sufficient knowledge or information to form a belief about the truth of the allegation in Paragraph 38, and the allegation is therefore denied.

39. Any information Colin J. Gahagan learned concerning Erin Wingo and Andrew Pampu's encounter on October 25, 2015 is based solely on information told to him by Erin Wingo and Andrew Pampu after the fact. Colin J. Gahagan was not an eyewitness to the events. Therefore, Colin J. Gahagan is without sufficient knowledge or information to form a belief about the truth of the allegation in Paragraph 39, and the allegation is therefore denied.

40. Any information Colin J. Gahagan learned concerning Erin Wingo and Andrew Pampu's encounter on October 25, 2015 is based solely on information told to him by Erin Wingo and Andrew Pampu after the fact. Colin J. Gahagan was not an eyewitness to the events. Therefore, Colin J. Gahagan is without sufficient knowledge or information to form a belief about the truth of the allegation in Paragraph 40, and the allegation is therefore denied.

41. The allegation is denied as phrased. Colin J. Gahagan is without sufficient knowledge or information to form a belief about the truth about the allegation in Paragraph 41, and the allegation is therefore denied.

42. Colin J. Gahagan admits that he received two initial text messages from Erin Wingo later that night, around midnight after he had left the Compound. In those messages, Erin Wingo asked to be picked up or to have Colin J. Gahagan meet her at the "front steps" of "the compound pls." Colin J. Gahagan is without sufficient knowledge or information to form a belief about the truth of the remainder of the allegations in Paragraph 42, and these allegations are therefore denied.

43. Paragraph 43 contains no allegation against Colin J. Gahagan and no response is required. To the extent the Court deems a response required, Colin J. Gahagan denies the allegation.

44. Paragraph 44 contains no allegation against Colin J. Gahagan and no response is required. To the extent the Court deems a response required, Colin J. Gahagan denies the allegation.

45. Paragraph 45 contains no allegation against Colin J. Gahagan and no response is required. To the extent the Court deems a response required, Colin J. Gahagan denies the allegation.

46. Paragraph 46 contains no allegation against Colin J. Gahagan and no response is required. To the extent the Court deems a response required, Colin J. Gahagan denies the allegation.

47. The allegation is denied as phrased. Colin J. Gahagan admits that he exchanged a total of ten short text messages with Erin Wingo on October 25, 2015 between 12:01 a.m. and 12:14 a.m. After Colin J. Gahagan and Erin Wingo had exchanged these text messages, a girlfriend of Erin Wingo texted Colin J. Gahagan via Erin Wingo's cell phone that she, the girlfriend, had put Erin Wingo into bed and that she was going to delete the messages between Colin J. Gahagan and Erin Wingo from the early morning hours of October 25, 2015. After waking up on October 25, 2015, Erin Wingo retrieved those messages from her computer. The remainder of the allegations in Paragraph 47 are denied.

48. Paragraph 48 contains no allegation against Colin J. Gahagan and no response is required. To the extent the Court deems a response required, Colin J. Gahagan denies the allegation.

49. Paragraph 49 contains no allegation against Colin J. Gahagan and no response is required. To the extent the Court deems a response required, Colin J. Gahagan denies the allegation.

50. Paragraph 50 contains no allegation against Colin J. Gahagan and no response is required. To the extent the Court deems a response required, Colin J. Gahagan denies the allegation.

51. Paragraph 51 contains no allegation against Colin J. Gahagan and no response is required. To the extent the Court deems a response required, Colin J. Gahagan denies the allegation.

52. Paragraph 52 contains no allegation against Colin J. Gahagan and no response is required. To the extent the Court deems a response required, Colin J. Gahagan denies the allegation.

53. Paragraph 53 contains no allegation against Colin J. Gahagan and no response is required. To the extent the Court deems a response required, Colin J. Gahagan denies the allegation.

54. Colin J. Gahagan admits that he learned about the incident between Andrew Pampu and Erin Wingo from a group chat application called GroupMe, in which J.S. posted a screenshot of J.S.'s text message conversation with Andrew Pampu. The screenshot of that text message conversation showed that Andrew Pampu wrote to J.S.: "I f---ed a chick by the garbage thing behind chipotle . . ." Colin J. Gahagan denies that he "deduced" that Erin Wingo was the "chick" Andrew Pampu referred to based on any of the reasons Andrew Pampu alleged. Specifically, Colin J. Gahagan denies that "her promiscuous track record," her so-called "past indiscretions," and Erin Wingo's text messages after the party ever indicated to him that Erin Wingo was the "chick." Colin J. Gahagan also denies that Erin Wingo had a "promiscuous track record," and denies that she had any "past indiscretions." Colin J. Gahagan further denies that he and Erin Wingo had arguments prior to the party.

55. The allegation is denied as phrased. Colin J. Gahagan admits that at approximately 5:30 p.m. on October 25, he went to Erin Wingo's dorm room after she told him she thought was suffering from alcohol poisoning, and after he had completed a number of tasks he had to do that day, but denies that he did so for the express purpose of "discussing their relationship and the previous night's events." Rather, Colin J. Gahagan went to care for Erin Wingo because she told him that she had blacked out the night before from alcohol, was suffering severely from the effects of drinking at least eight (8) shots of liquor plus beer, and had vomited at least six times that day.

56. Colin J. Gahagan admits that, based on (1) his personal observations that Erin Wingo was heavily intoxicated that night, (2) Erin Wingo's statements to him on October 25, 2015 that she drank to the point of blackout, (3) her statements that she could not recall all of the events of the previous evening, and (4) in particular—after Colin J. Gahagan showed her the text message where Andrew Pampu told J.S. that he had sex with a girl behind a Chipotle restaurant Erin Wingo's statements that she had no memory of any part of the sexual encounter with Andrew Pampu, Colin J. Gahagan said to Erin Wingo that her inability to consent to sex with Andrew Pampu likely amounted to sexual assault or rape. Colin J. Gahagan is without sufficient knowledge or information to form a belief about the truth of the remainder of the allegations in Paragraph 56 concerning the direct quote plaintiff alleges he made to Erin Wingo or Erin Wingo's state of mind, and these allegations are therefore denied.

57. Paragraph 57 contains no allegation against Colin J. Gahagan and no response is required. To the extent the Court deems a response required, Colin J. Gahagan denies the allegation.

58. Colin J. Gahagan is without sufficient knowledge or information to form a belief about the truth of the first sentence in Paragraph 58 concerning Erin Wingo's state of mind, and the allegation is therefore denied. Colin J. Gahagan denies the remainder of the allegations in Paragraph

58, and specifically denies that he "fabricated" any story with Erin Wingo or "conspired to set up Andrew Pampu and maliciously harm him."

59. Colin J. Gahagan admits the first sentence of the allegation that Colin J. Gahagan sent the message alleged to Andrew Pampu on October 25, 2015 at approximately 5:46 p.m. Colin J. Gahagan is without sufficient knowledge or information to form a belief about the truth of the second sentence in Paragraph 59 concerning Erin Wingo's text message to Andrew Pampu and her state of mind, and that allegation is therefore denied.

60. Paragraph 60 contains no allegation against Colin J. Gahagan and no response is required. To the extent the Court deems a response required, Colin J. Gahagan denies the allegation.

61. The first two sentences of this paragraph contain no allegations against Colin J. Gahagan, and therefore no response is required. To the extent the Court deems a response required, Colin J. Gahagan denies the first two sentences of this allegation. Colin J. Gahagan denies the remainder of the allegations in Paragraph 61, and specifically denies that he influenced what Erin Wingo texted to Andrew Pampu and specifically denies that he sent the text messages from her phone himself.

62. Paragraph 62 contains no allegation against Colin J. Gahagan and no response is required. To the extent the Court deems a response required, Colin J. Gahagan denies the allegation.

63. Paragraph 63 contains no allegation against Colin J. Gahagan and no response is required. To the extent the Court deems a response required, Colin J. Gahagan denies the allegation.

64. Paragraph 64 contains no allegation against Colin J. Gahagan and no response is required. To the extent the Court deems a response required, Colin J. Gahagan denies the allegation.

65. Paragraph 65 contains no allegation against Colin J. Gahagan and no response is required. To the extent the Court deems a response required, Colin J. Gahagan denies the allegation.

66. Colin J. Gahagan admits that it was his belief that Andrew Pampu had sexually assaulted and/or raped Erin Wingo based on (1) his personal observations that Erin Wingo was heavily intoxicated that night, (2) Erin Wingo's statements to him on October 25, 2015 that she drank to the point of blackout, (3) her statements that she could not recall all of the events of the previous evening, and (4) in particular—after Colin J. Gahagan showed her the text message where Andrew Pampu told J.S. that he had sex with a girl behind a Chipotle restaurant—Erin Wingo's statements that she had no memory of any part of the sexual encounter with Andrew Pampu. Colin J. Gahagan further admits that Erin Wingo never disputed Colin J. Gahagan's understanding that Erin Wingo was too drunk to consent to having sex with Andrew Pampu, and never told him a different version of events at any point in time to this day. Colin J. Gahagan is without sufficient knowledge or information to form a belief about the truth of the remainder of the allegations in Paragraph 66, and these allegations are therefore denied.

67. Paragraph 67 contains no allegation against Colin J. Gahagan and no response is required. To the extent the Court deems a response required, Colin J. Gahagan denies the allegation.

68. Paragraph 68 contains no allegation against Colin J. Gahagan and no response is required. To the extent the Court deems a response required, Colin J. Gahagan denies the allegation.

69. Paragraph 69 contains no allegation against Colin J. Gahagan and no response is required. To the extent the Court deems a response required, Colin J. Gahagan denies the allegation.

70. Paragraph 70 contains no allegation against Colin J. Gahagan and no response is required. To the extent the Court deems a response required, Colin J. Gahagan denies the allegation.

71. Colin J. Gahagan admits that on October 29, 2015, Erin Wingo told Chrystal Anderson about the incident with Andrew Pampu while Colin J. Gahagan was present, and further admits that he attended a number of counseling sessions with Erin Wingo, until the spring of 2016, to offer her moral support. Colin J. Gahagan denies that he attended every one of Erin Wingo's counseling sessions with

Chrystal Anderson. The remainder of the allegations in Paragraph 71 are denied, and Colin J. Gahagan specifically denies spreading false allegations against Andrew Pampu.

72. Paragraph 72 contains no allegation against Colin J. Gahagan and no response is required. To the extent the Court deems a response required, Colin J. Gahagan denies the allegation.

73. Paragraph 73 contains no allegation against Colin J. Gahagan and no response is required. To the extent the Court deems a response required, Colin J. Gahagan denies the allegation.

74. The allegation is denied as phrased. Colin J. Gahagan admits that he withdrew from pledging the Phi Delta Theta fraternity on November 8, 2015. On the same day, he read disparaging remarks about him sent by Andrew Pampu and others in their pledge class in their GroupMe group chat from the day before (made during a period in which he was not looking at the group messages), and Colin J. Gahagan asked his pledge brothers whether they did not want him in the pledge class anymore. On November 8, upon reading these the next day, several brothers sent hostile messages encouraging him to drop the fraternity, which he did. The remainder of the allegations in Paragraph 74 are denied.

75. The allegation is denied as phrased. Colin J. Gahagan admits that he told Clemson's Title IX investigators that he was concerned that his fellow pledge brothers--who had mocked and shamed him for advising the group that they should not take sexual advantage of females who were under the influence of alcohol--would make statements to others outside of the fraternity in an attempt to prevent him from successfully rushing a different fraternity the next semester, and further admits that he still had a desire to rush a new fraternity in the spring in hopes of finding friends who would not mock him or take sexual advantage of women. The remainder of the allegations in Paragraph 75 are denied.

76. The first sentence does not contain an allegation against Colin J. Gahagan and no response is required. To the extent the Court deems a response required, Colin J. Gahagan denies the

allegation. Colin J. Gahagan specifically denies that he colluded with anyone or had any intention to punish or defame Andrew Pampu.

77. Colin J. Gahagan admits that he was interviewed by OCES on or around December 3, 2015. The remainder of the allegations in Paragraph 77 are denied.

78. Denied. Colin J. Gahagan specifically denies that he was "publicly referring to Andrew Pampu as a 'rapist' around campus," and Colin J. Gahagan is without sufficient knowledge or information to form a belief about the truth about the identities of L.S., R.H., J.S., J.Sm., J.A., P.O'D., A.G., J.H., and C.K, the allegation contains no specifics regarding the alleged time(s) and/or place(s) when Colin J. Gahagan purportedly spoke to these unidentified individuals, and therefore, the remainder of these allegations are denied.

79. Paragraph 79 contains no allegation against Colin J. Gahagan and no response is required. To the extent the Court deems a response required, Colin J. Gahagan denies the allegation.

80. Paragraph 80 contains no allegation against Colin J. Gahagan and no response is required. To the extent the Court deems a response required, Colin J. Gahagan denies the allegation.

81. The first sentence of Paragraph 81 contains no allegation against Colin J. Gahagan and no response is required. To the extent the Court deems a response required, Colin J. Gahagan denies the allegation. As to the second sentence of Paragraph 81, Colin J. Gahagan is without sufficient knowledge or information regarding what assurances OCES gave Andrew Pampu and therefore denies the portion of the allegation. Colin J. Gahagan denies that he "openly discussed the incident" or that he "referred to Andrew Pampu as a 'rapist' around campus." Colin J. Gahagan further denies that the characterization of Andrew Pampu as a "rapist" was false given that Clemson University thrice found that Andrew Pampu had sexual intercourse with Erin Wingo on October 24, 2015 while she lacked the capacity to consent.

82. Paragraph 82 contains no allegation against Colin J. Gahagan and no response is required. To the extent the Court deems a response required, Colin J. Gahagan denies the allegation.

83. To the extent that the allegations in Paragraph 83 are not directed at Colin J. Gahagan, no response is required. To the extent the Court deems a response required, Colin J. Gahagan denies the allegation. Colin J. Gahagan denies that Colin J. Gahagan and Erin Wingo influenced Clemson's decision to take no action on Andrew Pampu's complaints, or that they "intended" that Clemson take no action in order to "cover up and distract from Erin Wingo's repeated acts of predatory sexual misconduct." Colin J. Gahagan further denies that he attempted to "cover up" anything whatsoever and denies any knowledge that Erin Wingo committed any acts of "predatory sexual misconduct."

84. Denied.

85. Paragraph 85 contains no allegation against Colin J. Gahagan and no response is required. To the extent the Court deems a response required, Colin J. Gahagan denies the allegation.

86. Admitted.

87. Colin J. Gahagan admits that on February 28, 2016, Colin J. Gahagan saw approximately sixty (60) members of the Phi Delta Theta fraternity standing outside of a building on campus. After the fraternity brothers verbally taunted Colin J. Gahagan with multiple jeers, including one of the fraternity brothers calling out to Colin J. Gahagan, "Hey, look at this fag," Colin J. Gahagan responded with words to the effect of, "it is too bad you are all down one person now." Colin J. Gahagan further admits that after Andrew Pampu appeared from the group, saying "I'm still here," Colin J. Gahagan repeatedly asked Andrew Pampu why he was still there, which resulted in Colin J. Gahagan being called a "faggot" at least several times by Andrew Pampu and his fraternity brothers as Colin J. Gahagan walked by the group and away from the scene. The remainder of the allegations in Paragraph 87 are denied.

88. Colin J. Gahagan admits that he saw Andrew Pampu on February 29, 2016, while walking with Erin Wingo, approximately 50 feet away from Andrew Pampu. Colin J. Gahagan lacks sufficient knowledge or information to form a belief as to whether Andrew Pampu felt discomfort or anxiety upon seeing Colin J. Gahagan; however, Andrew Pampu expressed no outward signs of discomfort or anxiety.

89. Paragraph 89 contains no allegation against Colin J. Gahagan and no response is required. To the extent the Court deems a response required, Colin J. Gahagan denies the allegation.

90. Paragraph 90 contains no allegation against Colin J. Gahagan and no response is required. To the extent the Court deems a response required, Colin J. Gahagan was made aware, including through the allegations in this Complaint, that the letter issued the enumerated sanctions against Andrew Pampu.

91. Denied.

92. The allegations in Paragraph 92 are not directed at Colin J. Gahagan, and therefore, no response is required. To the extent the Court deems a response required, Colin J. Gahagan denies the allegation.

93. The allegation is denied as phrased. Colin J. Gahagan admits that OCES imposed a No Contact Order with respect to Colin J. Gahagan against Andrew Pampu and the Phi Delta Theta fraternity because Andrew Pampu and the fraternity were harassing Colin J. Gahagan. The remainder of the allegations in Paragraph 93 are denied.

94. Paragraph 94 contains no allegation against Colin J. Gahagan and no response is required. To the extent the Court deems a response required, Colin J. Gahagan denies the allegation.

95. Paragraph 95 contains no allegation against Colin J. Gahagan and no response is required. To the extent the Court deems a response required, Colin J. Gahagan admits that he is aware that both Andrew Pampu and Erin Wingo appealed the University's decision.

96. Paragraph 96 contains no allegation against Colin J. Gahagan and no response is required. To the extent the Court deems a response required, Colin J. Gahagan denies the allegation.

97. Colin J. Gahagan was advised by Erin Wingo, at some point after the fact, that David Wingo sent the "Decision Letter" to the fraternity's national headquarters. Colin J. Gahagan specifically denies that he urged or otherwise asked David Wingo in any fashion to send the Decision Letter to the fraternity's national headquarters. Colin J. Gahagan further denies that he took any action whatsoever against Andrew Pampu in order to seek "revenge."

98. Paragraph 98 contains no allegation against Colin J. Gahagan and no response is required. To the extent the Court deems a response required, Colin J. Gahagan denies the allegation.

99. Paragraph 99 contains no allegation against Colin J. Gahagan and no response is required. To the extent the Court deems a response required, Colin J. Gahagan denies the allegation.

100. Paragraph 100 contains no allegation against Colin J. Gahagan and no response is required. To the extent the Court deems a response required, Colin J. Gahagan denies the allegation.

101. Colin J. Gahagan denies that he disclosed the Decision Letter to David Wingo. Colin J. Gahagan neither received nor was ever shown a copy of the Decision Letter by anyone. Colin J. Gahagan only learned about the Decision Letter when Erin Wingo texted Colin J. Gahagan on February 29, 2016, informing him that sanctions were imposed on Andrew Pampu that same day. To the extent that Paragraph 101 claims that David Wingo's alleged action was in violation of FERPA, that portion of the allegation calls for a legal conclusion, to which no response is required. To the extent the Court deems a response required, Colin J. Gahagan denies this portion of the allegation.

102. Denied.

103. Colin J. Gahagan denies disclosing the Decision Letter to David Wingo and urging or in any fashion asking David Wingo to disclose the Decision Letter to any third-parties, including the Phi Delta Theta national headquarters.

104. Paragraph 104 contains no allegation against Colin J. Gahagan and no response is required. To the extent the Court deems a response required, Colin J. Gahagan admits that he became aware, including through the allegations in this Complaint, that Chief of Staff Max Allen affirmed the school's decision to sanction Andrew Pampu and increased Andrew Pampu's suspension by one year until August 1, 2017. Colin J. Gahagan denies that he in any way "utilized" Clemson's Title IX process and denies that he had any, or engaged in any, "vendetta of retaliation, harassment, and defamation" against Andrew Pampu.

105. Paragraph 105 contains no allegation against Colin J. Gahagan and no response is required. To the extent the Court deems a response required, Colin J. Gahagan denies the allegation.

106. Paragraph 106 contains no allegation against Colin J. Gahagan and no response is required. To the extent the Court deems a response required, Colin J. Gahagan denies the allegation.

107. Paragraph 107 contains no allegation against Colin J. Gahagan and no response is required. To the extent the Court deems a response required, Colin J. Gahagan denies the allegation.

108. Paragraph 108 contains no allegation against Colin J. Gahagan and no response is required. To the extent the Court deems a response required, Colin J. Gahagan denies the allegation.

109. Denied.

110. Denied. Colin J. Gahagan admits that he sent text messages in the late hours of January 20, 2017 to Andrew Pampu. Colin J. Gahagan asserts that these text messages to Andrew Pampu were false because he believed at the time he sent these messages, and still believes, that Erin Wingo was too intoxicated to consent to sexual intercourse with Andrew Pampu, and specifically denies that he conspired with Erin Wingo to pursue a false claim of rape.

111. The allegation is denied as phrased. Colin J. Gahagan admits to having sent the alleged message. Colin J. Gahagan denies, however, having knowingly lied during the hearing. In the hearing, Colin J. Gahagan truthfully described what he had learned about Erin Wingo's ability to consent to the

sexual encounter from (1) his observations of Erin Wingo appearing heavily intoxicated from the night prior, (2) Erin Wingo's statements to him on October 25, 2015 that she drank to the point of blackout, (3) her statements that she could not recall all of the events of the previous evening, and (4) in particular—after Colin J. Gahagan showed her the text message where Andrew Pampu told J.S. that he had sex with a girl behind a Chipotle restaurant-- Erin Wingo's statements that she had no memory of any part of the sexual encounter with Andrew Pampu. Colin J. Gahagan further states that when he sent this January 20, 2017 text message, stating "You're innocent," he believed it to be false at the time and still believes it to be false. Colin J. Gahagan did not and does not believe Andrew Pampu to be "innocent." Colin J. Gahagan believes that Erin Wingo truthfully reported to Colin J. Gahagan that she was too drunk to consent to sexual intercourse with Andrew Pampu on the night of October 24, 2015. And, during Clemson's Title IX administrative process, he truthfully testified about what Erin Wingo told him since October 25, 2015.

112. Colin J. Gahagan admits to having sent the alleged message. Colin J. Gahagan, however, is without sufficient firsthand knowledge or information to form a belief about the truth of the allegation that Chrystal Anderson shared data with Erin Wingo's father. Colin J. Gahagan states that, in that message, he falsely told Chrystal Anderson that Erin Wingo had lied about being raped and falsely said that he believed Andrew Pampu to be "innocent." Colin J. Gahagan knew, at the time of sending this text message, that his statements to Chrystal Anderson were false.

113. Colin J. Gahagan admits that he sent the alleged message, but states that he knew that the message was untrue at the time he sent this message. Colin J. Gahagan further states that he did not and does not believe Andrew Pampu to be "innocent." Colin J. Gahagan believes that Erin Wingo truthfully reported to Colin J. Gahagan that she was too drunk to consent to sexual intercourse with Andrew Pampu on the night of October 24, 2015. And, he truthfully testified about what Erin Wingo told him—that she

had drank to the point of blackout and did not recall the sexual encounter with Andrew Pampu—to OCES interviewers and during Clemson's Title IX administrative process.

AS TO THE FIRST CAUSE OF ACTION

DEFAMATION

114. Colin J. Gahagan repeats and reasserts his response to each and every allegation as if fully set forth herein.

115. Denied.

116. The allegations in Paragraph 116 are not directed at Colin J. Gahagan, and therefore, no response is required. To the extent the Court deems a response required, Colin J. Gahagan denies the allegation.

117. The allegations in Paragraph 117 are not directed at Colin J. Gahagan, and therefore, no response is required. To the extent the Court deems a response required, Colin J. Gahagan denies the allegation.

118. Denied.

119. Denied.

120. Colin J. Gahagan denies that he made any false statements or engaged in any fraudulent conduct.

121. Colin J. Gahagan denies that he made any non-privileged, defamatory statements and denies that Andrew Pampu suffered any damages.

122. Denied.

123. Denied.

124. Paragraph 124 contains no allegation against Colin J. Gahagan and no response is required. To the extent the Court deems a response required, Colin J. Gahagan denies the allegation.

125. Paragraph 125 contains no allegation against Colin J. Gahagan and no response is required. To the extent the Court deems a response required, Colin J. Gahagan denies the allegation.

126. Paragraph 126 contains no allegation against Colin J. Gahagan and no response is required. To the extent the Court deems a response required, Colin J. Gahagan denies the allegation.

127. Denied.

128. Denied.

129. Denied.

130. Denied.

131. Denied.

132. Paragraph 132 contains no allegation against Colin J. Gahagan and no response is required. To the extent the Court deems a response required, Colin J. Gahagan denies the allegation.

133. Denied.

134. Paragraph 134 contains no allegation against Colin J. Gahagan and no response is required. To the extent the Court deems a response required, Colin J. Gahagan denies the allegation.

135. Denied.

136. Denied.

137. Paragraph 137 calls for a legal conclusion, and therefore no response is required. To the extent the Court deems a response required, Colin J. Gahagan denies the allegation.

138. Paragraph 138 calls for a legal conclusion, and therefore no response is required. To the extent the Court deems a response required, Colin J. Gahagan denies the allegation.

139. Colin J. Gahagan is without sufficient knowledge or information to form a belief about the truth of the allegation in Paragraph 139, and the allegation is therefore denied.

140. Denied.

141. Denied.

142. Denied.

143. Denied.

AS TO THE SECOND CAUSE OF ACTION

ABUSE OF PROCESS

144. This Court has dismissed the cause of action for abuse of process. Therefore, the allegations set forth in paragraphs 144-152 are denied.

145. Denied.

146. Denied.

147. Denied.

148. Denied.

149. Denied.

150. Denied.

151. Denied.

152. Denied.

AS TO THE THIRD CAUSE OF ACTION

INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

153. Colin J. Gahagan repeats and reasserts his response to each and every allegation as if fully set forth herein.

154. Denied.

155. Denied.

156. Denied.

157. Denied.

158. Paragraph 158 contains no allegation against Colin J. Gahagan and no response is required. To the extent the Court deems a response required, Colin J. Gahagan denies the allegation.

159. Paragraph 159 contains no allegation against Colin J. Gahagan and no response is required. To the extent the Court deems a response required, Colin J. Gahagan denies the allegation.

160. Denied.

161. Denied.

162. Denied.

163. Denied.

164. Denied.

165. Denied.

AS TO THE FOURTH CAUSE OF ACTION

CIVIL CONSPIRACY

166. Colin J. Gahagan repeats and reasserts his response to each and every allegation as if fully set forth herein.

167. Denied.

168. Denied.

169. Denied.

170. Denied.

171. Denied.

172. Denied.

173. Denied.

PRAYER FOR RELIEF

This is a prayer for relief, which does not require a response. To the extent that a response is required, Colin J. Gahagan denies that Plaintiff has been damaged and is entitled to the specific relief requested.

GENERAL DENIAL AND RESPONSE

1. Colin J. Gahagan denies all allegations contained in Plaintiff's Complaint which have not been admitted, denied, or otherwise specifically responded to.
2. Colin J. Gahagan denies that he tortiously harmed Andrew Pampu in any way.
3. Colin J. Gahagan denies the specific relief sought in Andrew Pampu's prayer for damages.

FOR A SECOND DEFENSE

Plaintiff is barred from recovery for his claims asserted against Colin J. Gahagan, in whole or in part, because Plaintiff has failed to state a claim upon which relief can be granted.

FOR A THIRD DEFENSE

Plaintiff is barred from recovery on his claim of defamation against Colin J. Gahagan because the statements made by Colin J. Gahagan were true, and truth is an absolute defense to defamation.

FOR A FOURTH DEFENSE

Plaintiff's claims are barred by the doctrine of privilege and/or immunity.

FOR A FIFTH DEFENSE

This Defendant would assert that Plaintiff is collaterally estopped to contest the finding by the Clemson University administrative hearing board that Andrew Pampu was guilty of sexual misconduct with Erin Wingo and that this finding may not now be relitigated. Because the non-consensual sexual misconduct by Andrew Pampu may not now be contested, any action which is based upon the falsifying of assertions regarding that misconduct or upon the asserted consensual nature of that conduct lack any basis for recovery.

FOR A SIXTH DEFENSE

Colin J. Gahagan reserves the right to assert, and does assert, any additional defenses the basis of which are set forth in the Answers of any co-defendants or may be later revealed in discovery.

WHEREFORE, having answered the Complaint, this Defendant would pray that it be dismissed with prejudice.

TURNER PADGET GRAHAM & LANEY, P.A.

s/ David L. Moore, Jr.

David L. Moore, Jr., SC Bar No. 4050

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October 5, 2020

ATTORNEYS FOR DEFENDANT

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF PICKENS

CIVIL ACTION NO: 2017-CP-39-00709

Andrew Pampu,

Plaintiff,

vs.

Erin Wingo, David Wingo, and Colin J.
Gahagan

Defendants.

**DEFENDANTS ERIN WINGO'S AND
DAVID WINGO'S MOTION FOR
SUMMARY JUDGMENT**

YOU WILL PLEASE TAKE NOTICE that the undersigned, as attorneys for the Defendants, Erin Wingo and David Wingo, will move before the presiding judge of the Pickens County Court of Common Pleas at the Pickens County Courthouse at 10:00 a.m. on the tenth (10th) day after service hereof, or as soon thereafter as counsel may conveniently be heard, for an Order granting summary judgment in favor of the Defendants, Erin Wingo and David Wingo, on grounds that there is no genuine issue as to any material fact.

This Motion is made pursuant to Rule 56 of the South Carolina Rules of Civil Procedure and will be supplemented and supported by such affidavits, depositions, discovery responses, memoranda of law, and such other documents as appropriate.

MURPHY & GRANTLAND, P.A.

s/ Susan O. Porter

John M. Grantland, Esquire

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Attorney for Defendants Erin Wingo and David Wingo

Columbia, South Carolina
July 2, 2021

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF PICKENS	)	Docket No.: 2017-CP-39-00709
ANDREW PAMPU,	)	
	)	
Plaintiff,	)	
	)	MOTION FOR SUMMARY
v.	)	JUDGMENT BY COLIN J.
	)	GAHAGAN
ERIN WINGO, DAVID WINGO AND	)	
COLIN J. GAHAGAN,	)	
	)	
Defendants.	)	
_____	)	

TO: KIMBERLY C. LAU, JAMES E. FIGLIOZCI AND CHAD M. GRAHAM,
ATTORNEYS FOR THE PLAINTIFF:

YOU WILL PLEASE TAKE NOTICE that the undersigned, as attorneys for Colin J. Gahagan, will move the Court as such time and place as the Court may hereinafter direct, for an Order granting summary judgment pursuant to Rule 56 of the South Carolina Rules of Civil Procedure. This motion is based upon the pleadings which have been filed in this matter, the depositions which have been undertaken and a brief in support of this motion to be filed subsequent hereto, all of which demonstrates that there is no issue of fact and that as a matter of law the Plaintiff's action against Colin J. Gahagan should be dismissed pursuant to the principle of collateral estoppel.

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Attorneys for Defendant Colin J. Gahagan

Greenville, South Carolina
July 13, 2021

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF PICKENS

CIVIL ACTION NO: 2017-CP-39-00709

Andrew Pampu,

Plaintiff,

vs.

Erin Wingo, David Wingo, and Colin J.
Gahagan

Defendants.

**DEFENDANTS ERIN WINGO'S AND
DAVID WINGO'S MEMORANDUM OF
LAW IN SUPPORT OF THEIR MOTION
FOR SUMMARY JUDGMENT**

Defendants Erin Wingo and David Wingo submit this Memorandum of Law in support of their Motion for Summary Judgment in this matter pursuant to Rule 56, SCRPC.

SUMMARY

Clemson University repeatedly found Plaintiff Andrew Pampu responsible for sexual misconduct, specifically finding that Plaintiff had sex with Defendant Erin Wingo while she was incapacitated and unable to consent. Thereafter, Plaintiff instituted parallel actions –a federal court action against Clemson University and this state court action against the Defendants. In this litigation, Plaintiff asserts defamation and civil conspiracy causes of action against Ms. Wingo and the other Defendants. Plaintiff's claims require him to show that Ms. Wingo was not incapacitated due to alcohol and was able to give consent when they engaged in sexual intercourse on October 24, 2015. The problem for Plaintiff, however, is that he has already taken a contrary position in the parallel lawsuit against Clemson University.

In his suit against Clemson, Plaintiff participated in mediation and entered into a binding settlement agreement. The settlement agreement included as a condition that Clemson would reinstate the Hearing Board's decision (as upheld on appeal) finding Plaintiff knew or should have known that Ms. Wingo was incapacitated when he had sex with her. In other words, Plaintiff agreed to be bound by Clemson's finding that he engaged in nonconsensual sexual activity with Ms. Wingo.

Plaintiff's claims in this case depend on his ability to prove that Ms. Wingo's reports were false. But Plaintiff's express and unambiguous agreement to be bound by Clemson's finding that he engaged in nonconsensual sexual activity with Ms. Wingo precludes him from asserting the exact opposite in this litigation: that Ms. Wingo was not incapacitated due to alcohol and was able to give consent. As such, Defendants are entitled to judgment as a matter of law.

FACTUAL BACKGROUND

On October 24, 2015, Plaintiff Andrew Pampu, Defendant Erin Wingo, and Defendant Colin J. "CJ" Gahagan attended a party at the Clemson Phi Delta Theta fraternity house. Before heading to the party, Defendant Erin Wingo "pregamed" with her friends in a dorm room, where she consumed several shots of fireball liquor and mixed drinks containing vodka.¹ Additionally, Defendant Erin Wingo brought a water bottle filled with vodka to the party and drank from it during the party.²

Plaintiff Andrew Pampu engaged in sexual intercourse with Defendant Erin Wingo on the evening of October 24, 2015. (Ex. E, Dep. of Drew Pampu 149-156). As Plaintiff described it in his own words: "I f--ked a chick by the garbage thing behind Chipotle...." (Ex. G, Text Message). In his Complaint, Plaintiff admitted that on the walk back to the fraternity house after the sexual intercourse, he noticed that "Jane Doe [Ms. Wingo] suddenly began to have some difficulty walking" and "[a]s they each began to feel the effect of the alcohol, they walked arm in arm." (Ex. H, Federal Compl. ¶ 84). Plaintiff was aware that Ms. Wingo was drinking vodka from a water

¹ (Ex. A, Dep. of Olivia Pescatore 33-35); (Ex. B, Dep. of Hayley Sinclair 19:3-20:12); (Ex. C, Dep. of Rachel Corbin 13:8-16, 92:14-93:23); (Ex. D, Dep. of Erin Wingo 68:13-69:17, 328:10-17, 366:11-367:10).

² (Exhibits D - F: Erin Wingo Depo., pg. 75, lines 3-25, pg. 76, lines 1 – 2, pg. 80, lines 16-25, pg. 330, lines 4 – 13, pg. 367, lines 11- 18; Drew Pampu Depo., pg. 109 lines 4 – 25, pg. 110, lines 1-10, pg. 141, lines 17-25, pg. 142, lines 1-11, pg. 380, lines 5 – 25, pg. 381, lines 1-7; CJ Gahagan Depo., pg. 52 lines 12- 25, pg. 53, lines 1 – 25, pg. 54, lines 1-3, pg. 63, lines 8-16).

bottle before the sexual encounter. (Ex. I, Compl. ¶ 34); (Ex. E, Dep. of Drew Pampu 109:4-110:10, 141:17-142:11, 380:5-381:7). Ms. Wingo texted the Plaintiff the following day stating that she did “not remember it” or “not all of it at least,” and she told another person the following day that she did not recall the sexual encounter. (Ex. I, Compl. ¶¶ 55, 61).

The following day, Ms. Wingo’s roommate made a report of the incident to a Resident Advisor. (Ex. I: Compl. ¶ 67). The Resident Advisor subsequently reported the incident to Clemson’s Office of Community and Ethical Standards (OCES), which eventually led to a formal Title IX complaint to Clemson by Ms. Wingo on November 11, 2015. (Ex. I, Compl. ¶ 70).

Clemson University instituted an investigation of the October 24, 2015 incident. (Ex. J, February 18, 2016 Letter). As a result of the investigation, Clemson University charged Andrew Pampu with violating the following Clemson University General Student Regulations: Alcohol, Disorderly Conduct, Harm to Person, and Sexual Misconduct. (*Id.*). The University referred the matter for a formal administrative hearing. (*Id.*). On February 29, 2016, Clemson University ultimately found that Defendant Erin Wingo was “incapacitated and unable to give consent which [Plaintiff] should have reasonably known, therefore [Plaintiff] were found in violation of all four charges . . . ,” including sexual misconduct. (Ex. K, February 29, 2016 Decision Letter). Plaintiff exhausted Clemson’s appeal process, and the University upheld the above finding and increased the Plaintiff’s sanctions after the second appeal.³

³ (Ex. E, Dep. of Drew Pampu 252: 2-4, 256:24-257:6); (Ex. L, March 4, 2016, Appeal letter by Andrew Pampu); (Ex. M, March 22, 2016 Decision Letter from Clemson); (Ex. N, March 30, 2016 Second Appeal letter by Andrew Pampu); (Ex. O, May 27, 2016 Final Decision Letter from Clemson).

PROCEDURAL BACKGROUND

A. Plaintiff's Federal Lawsuit Against Clemson

On June 15, 2016, Plaintiff filed suit in the United States District Court for the District of South Carolina against Clemson University, Clemson's Board of Trustees, Clemson's President and Vice President for Student Affairs, Clemson's Title IX Coordinator Executive Director of Equity Compliance, Clemson's Director of Residential Learning, Clemson's Associate Director of Athletics, and Clemson's Executive Director of Campus Recreation (collectively, "Clemson Defendants") alleging several causes of action related to the Clemson Defendants' handling of the Title IX allegations that Plaintiff engaged in nonconsensual sexual activity. *Doe v. Clemson Univ.*, No. 8:16-CV-1957, 2019 WL 1383822 (D.S.C. Mar. 27, 2019); (Ex. H, Federal Compl.); (Ex. E, Dep. of Drew Pampu 265:18-21).

On March 21, 2018, the parties in *Doe v. Clemson* participated in mediation and reached a settlement agreement, which was reduced to writing. Significantly, the settlement endorsed the findings of the Clemson Title IX Administrative Hearing Board's decision—that Pampu should have reasonably known that Ms. Wingo was "incapacitated and unable to give consent"—and reinstated the initial sanctions issued by the Hearing Board against the Plaintiff. (Ex. R, Settlement Agreement).⁴

After the mediation, the Plaintiff obtained new counsel and attempted to alter the terms of the settlement agreement. On May 24, 2018, the Clemson Defendants filed a Motion to Enforce the Settlement Agreement and Plaintiff opposed the motion, in writing and at oral argument. See *Doe v. Clemson Univ.*, No. 8:16-CV-1957, 2019 WL 1383822 (D.S.C. Mar. 27, 2019). On March

⁴ The Defendants Erin and David Wingo agreed to file under seal the settlement agreement from the federal case. As such, Exhibit R, the settlement agreement, and Exhibit P, the Federal Court's unredacted Order concerning the settlement agreement, will not be filed with this Memorandum but provided directly to the Judge for his in-camera review.

25, 2019, the District Court granted the Clemson Defendants' Motion to Enforce the Settlement Agreement and denied Plaintiff's Cross-Motion to Void Settlement in Principle and Reopen the Instant Action. *Id.*; (Ex. P, Federal Court's Unredacted Order). That order gave binding effect to the settlement agreement and all of its terms. Specifically, the Court found that the parties unambiguously reached a settlement during mediation and the terms were enforceable, including reinstatement of the Title IX Administrative Hearing Board's February 29, 2016 decision and factual findings and the Hearing Boards' initial sanctions.

B. Plaintiff's Lawsuit Against Erin Wingo, David Wingo, and CJ Gahagan

On June 15, 2017, Plaintiff filed the present suit asserting claims for (1) defamation, (2) intentional infliction of emotional distress, (3) civil conspiracy, and (4) abuse of process. The claims all stem from the nonconsensual sexual encounter between the Plaintiff and Defendant Erin Wingo, the basis for the Title IX action at Clemson. The abuse of process and intentional infliction of emotional distress claims were previously dismissed. (October 25, 2017 Order); (Ex. Q, Consent Stipulation of Dismissal). The only remaining claims before the Court are defamation and civil conspiracy. Defendants are entitled to summary judgment on both claims.

STANDARD OF REVIEW

Pursuant to Rule 56 of the South Carolina Rules of Civil Procedure, summary judgment is appropriate when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Rule 56(c), SCRPC. "The purpose of summary judgment is to expedite the disposition of cases not requiring the services of a fact finder." *Matsell v. Crowfield Plantation Cmty. Servs. Ass'n, Inc.*, 393 S.C. 65, 70, 710 S.E.2d 90, 93 (Ct. App. 2011) (citing *George v. Fabri*, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001)).

An adverse party may not rely on the mere allegations in the pleadings to withstand a summary judgment motion but must set forth specific facts showing there is a genuine issue for trial. *Strickland v. Madden*, 323 S.C. 63, 68, 448 S.E.,2d 581, 584 (Ct. App. 1994). “However, it is not sufficient for a party to create an inference that is not reasonable or an issue of fact that is not genuine.” *Town of Hollywood v. Floyd*, 403 S.C. 466, 477, 744 S.E.2d 161, 166 (2013). “[W]hen the evidence is susceptible of only one reasonable interpretation, summary judgment may be granted.” *Brooks v. Northwood Little League, Inc.*, 327 S.C. 400, 403, 489 S.E.2d 647, 648 (Ct. App. 1997).

ARGUMENT

I. Plaintiff is Judicially Estopped From Asserting That Defendants Defamed or Conspired Against Him By Making Statements That He Had Nonconsensual sex with Erin Wingo.

Plaintiff has pursued a strategy of suing those individuals directly involved in addressing Erin Wingo’s report that he sexually assaulted her. In doing so, however, Plaintiff seeks to present the facts to his advantage in the present litigation without regard to the position he has previously taken in his federal lawsuit against Clemson. Plaintiff entered into a settlement agreement with Clemson in which he agreed to, and thus is bound by, the Title IX Administrative Hearing Board’s finding that Erin Wingo was incapacitated due to alcohol and therefore unable to consent to sexual intercourse, and that Plaintiff should have reasonably known that when he had sexual intercourse with her. (Ex. R, Settlement Agreement). Because Plaintiff affirmatively adopted that position in a parallel litigation related to the same underlying events, and a federal court accepted that position, this Court should judicially estop Plaintiff from asserting a contrary position now, as he seeks to do.

The doctrine of judicial estoppel “precludes a party from adopting a position in conflict with one earlier taken in the same or related litigation.” *Hayne Fed. Credit Union v. Bailey*, 327

S.C. 242, 251, 489 S.E.2d 472, 477 (1997) (judicially estopping defendant from asserting ownership of property in a foreclosure action after previously stating that he had no legal interest in the property during his divorce proceeding); *see also New Hampshire v. Maine*, 532 U.S. 742, 749 (2001) (“[A]bsent any good explanation, a party should not be allowed to gain an advantage by litigation on one theory, and then seek an inconsistent advantage by pursuing an incompatible theory.” (quoting 18 C. Wright, A. Miller, & E. Cooper, *Federal Practice & Procedure* § 4477)). The purpose of the doctrine is...to protect the integrity of the judicial process and the courts.” *Quinn v. Sharon Corp.*, 343 S.C. 411, 414, 540 S.E.2d 474, 475 (Ct. App. 2000); *see Colleton Reg’l Hosp. v. MRS Med. Review Sys.*, 866 F. Supp. 896, 900 (D.S.C. 1994) (“The doctrine [of judicial estoppel] is designed to prevent litigants from ‘blowing hot and cold’ or ‘playing fast and loose’ with the judicial process.”). In South Carolina, judicial estoppel applies to statements of fact. *Hayne*, 327 S.C. at 251, 489 S.E.2d at 477. “When a party has formally asserted a certain version of facts in litigation, he cannot later change those facts when the initial version no longer suits him.” *Id.* at 252, 489 S.E.2d at 477. Judicial estoppel applies to settlement agreements and requests to enforce settlement agreements. *See, e.g., ADT, LLC v. Alder Holdings, LLC*, No. 9:15-CV-80073, 2018 WL 398453 (S.D. Fla. Jan. 12, 2018); *Gaalen v. Sparks*, 555 F. Supp. 325 (E.D. Va. 1983); *see also In re Gibraltar Res., Inc.*, 210 F.3d 573, 576 (5th Cir. 2000) (“A settlement agreement approved and embodied in a judgment by a court is entitled to full res judicata effect.”).

Judicial estoppel is an equitable doctrine. *New Hampshire*, 532 U.S. at 750. In South Carolina, judicial estoppel requires: (1) two inconsistent positions taken by the same party; (2) the positions must be taken in the same or related proceedings involving the same party; (3) the party taking the position must have been successful in maintaining that position and have received some benefit; (4) the inconsistency must be part of an intentional effort to mislead the court; and (5) the

two positions must be totally inconsistent.”⁵ *Cothran v. Brown*, 357 S.C. 210, 215–16, 592 S.E.2d 629, 632 (2004). All of these elements are present in this case.

First, Plaintiff’s current position is clearly inconsistent with his prior position in his settlement with Clemson, upheld by the federal district court. *See, e.g., Alder Holdings*, 2018 WL 398453 at *3 (stating judicial estoppel applies to settlement agreements and requests to enforce settlement agreements). In the Clemson Settlement, Plaintiff agreed to be bound by the explicit finding that Erin Wingo was unable to consent due to intoxication and Plaintiff should have known that when he admittedly had sexual intercourse with her. This is the very definition of sexual assault and/or rape.⁶ (Ex. S, Student Code of Conduct); (Ex. T, Clemson University’s Anti-Harassment and Non-Discrimination Policy, p. 2). Plaintiff cannot now claim the exact opposite in his Complaint:

- that Erin Wingo’s statements that Plaintiff engaged in non-consensual sexual contact or sexual misconduct were defamatory because they were untrue;
- that Erin Wingo “knowingly pursued a false report [to Clemson] of sexual misconduct”; or
- that Erin Wingo falsely claimed “that she could not consent to the encounter with [Plaintiff] as a result of her intoxication level.”

(Ex. I, Compl. ¶¶ 122–24). This satisfies the first and second factors of South Carolina’s judicial estoppel test. Plaintiff (the same party) is taking a position in the present litigation that is inconsistent with the position to which he agreed in a related proceeding in which he was directly

⁵ Judicial estoppel may also apply to “parties in privity with one another.” *Id.* Because Plaintiff is the same party in both proceedings, the “parties in privity” language does not apply to this case.

⁶ In Clemson University’s Student Code of Conduct and Anti-Harassment and Non-Discrimination Policy, “rape” is defined to be “the carnal knowledge of a person without the consent of the victim” and includes instances where the victim is so intoxicated as to be incapable of giving consent and the accused knows or should know of that incapacity. Carnal knowledge includes sexual intercourse. (Exhibit T: Clemson University’s Anti-Harassment and Non-Discrimination Policy, pg. 2).

involved – i.e. his lawsuit against Clemson and its employees arising from the exact same set of underlying facts. *Cothran*, 357 S.C. at 215–16, 592 S.E.2d at 632.

This also satisfies the fifth factor of South Carolina’s judicial estoppel test: the two positions are “totally inconsistent” with each other. *Id.* In prior litigation, Plaintiff *agreed* that Erin Wingo was incapacitated and incapable of consent, which he should have known, when he had sexual intercourse with her and, as a result, was responsible for sexual misconduct. That position is “totally inconsistent” with his current position that Erin and David Wingo defamed him by *falsely* claiming that Plaintiff engaged in non-consensual sexual conduct with Erin Wingo. *See Erickson v. Jones St. Publishers, L.L.C.*, 368 S.C. 444, 465, 629 S.E.2d 653, 664 (2006) (stating that required element of defamation claim is that false statement was made). In short, in the Clemson settlement, Plaintiff agreed Erin Wingo could not (and therefore did not) consent to the sexual conduct, yet now seeks to claim she did consent.

The third factor of South Carolina’s judicial estoppel test is also satisfied. Plaintiff both succeeded in maintaining his prior position and benefitted from it. *Cothran*, 357 S.C. at 215–16, 592 S.E.2d at 632. Plaintiff’s earlier position—agreeing to be bound by the Title IX Administrative Hearing Board’s findings and initial sanctions—was accepted by a federal district court, and he was therefore successful. *See* (Ex. R, Settlement Agreement). Additionally, Plaintiff benefited from his settlement with Clemson—both monetarily and otherwise. (*Id.*); *see New Hampshire*, 532 U.S. at 752 (explaining that the settlement agreement was “sufficiently favorable to New Hampshire to garner its approval” and the “compromise enabled New Hampshire to settle the case, on terms beneficial to both” parties). *See* (Ex. R, Settlement Agreement); (Ex. E, Dep. of Drew Pampu 265:18-266:13).

Finally, the fifth factor of South Carolina’s judicial estoppel test is satisfied: the inconsistency must be part of an intentional effort to mislead the court. *Cothran*, 357 S.C. at 215–

16, 592 S.E.2d at 632. If Plaintiff were to prevail in the present case based on the claim that Erin Wingo and the other Defendants defamed him, it would create an inconsistent result that would necessarily mean that either this Court or the federal district court “was misled.” *New Hampshire*, 532 U.S. at 750 (quoting *Edwards v. Aetna Life Ins. Co.*, 690 F.2d 595, 599 (6th Cir. 1982)). Plaintiff had every incentive and opportunity to litigate this issue in his parallel litigation against Clemson. See *New Hampshire*, 532 U.S. at 754. There is no colorable argument that Plaintiff’s prior position was the result of mistake or inadvertence. *Id.* at 753. To the contrary, Plaintiff’s prior agreement to be bound by Clemon’s finding that he engaged in nonconsensual sexual activity with Ms. Wingo was the result of a carefully crafted settlement agreement stemming from mediation and the subject of extensive briefing and argument. Plaintiff will undoubtedly reap an unfair advantage if he is allowed to disregard entirely his agreement to be bound by a factual finding in a parallel case, only to prevail in a case premised entirely on the contention that the prior finding is false. See, e.g., *Hawkins v. Bruno Yacht Sales, Inc.*, 353 S.C. 31, 43, 577 S.E.2d 202, 208 (2003) (“[A]lthough parties may vigorously assert their version of the facts, they may not misrepresent those facts in order to gain advantage in the process” (quoting *Hayne*, 327 S.C. at 252, 489 S.E.2d at 477)). Plaintiff cannot now pursue an inconsistent position simply to gain an advantage over these Defendants. This Court should not condone Plaintiff’s blatant attempt to undermine the integrity of the judicial process.

Plaintiff strategically agreed to a settlement agreement with Clemson. A key component of that settlement was the Title IX Administrative Hearing Board’s factual findings and reinstating the initial sanctions imposed on him. The federal district court approved and enforced the settlement. This Court should reject Plaintiff’s attempt to assert a contradictory position now. As discussed in detail below, because Plaintiff is estopped from asserting this position, Defendants are entitled to summary judgment on both of the remaining claims against them.

II. Plaintiff's Contentions that Erin Wingo's Statements Accusing Plaintiff of Sexual Misconduct Are False and Defamatory or Conspiratorial are Barred By Collateral Estoppel.

Collateral Estoppel entitles Defendants to summary judgment on Plaintiff's claims because the issue of consent has already been litigated and a final resolution has been determined. The doctrine of collateral estoppel or issue preclusion provides that any issue litigated and decided that was necessary to the judgment in the first case, may not be relitigated in a second action involving a different claim. *See Catawba Indian Nation v. State*, 407 S.C. 526, 537, 756 S.E.2d 900, 906 (2014); *Lowe v. Clayton*, 264 S.C. 75, 212 S.E.2d 582 (1975). Collateral estoppel applies when an issue was "actually litigated and determined by a valid and final judgment" in a prior suit. *Zurcher v. Bilton*, 379 S.C. 132, 135, 666 S.E.2d 224, 226 (2008). Collateral estoppel applies to specific issues, regardless of whether the claims in the first and subsequent suits are the same, as long as "the precluded party has had a full and fair opportunity to litigate the issue in the first action." *Id.*; *see also Lowe*, 264 S.C. at 81, 212 S.E.2d at 585. The Court in *Lowe* explained:

The rule granting conclusiveness to a judgment in regard to issues of fact which could properly have been determined in the action is limited to cases involving the same cause of action. Where a second action is upon a different claim, demand, or cause of action, the established rule is that the judgment in the first action operates as an estoppel only as to the (issues,) points or question actually litigated and determined, and not as to matters not litigated in the former action, even though such matters might properly have been determined therein.

Lowe, 264 S.C. at 81, 212 S.E.2d at 585 (quoting *Griggs v. Griggs*, 214 S.C. 177, 51 S.E.2d 622 (1949); 46 Am. Jur.2d, Judgments, Section 418).

As a threshold matter, collateral estoppel does not require mutuality of parties "where the party against whom estoppel is asserted had a full and fair opportunity to previously litigate the issues." *Carolina Renewal, Inc. v. South Carolina Dep't of Transp.*, 385 S.C. 550, 554, 684 S.E.2d 779, 782 (Ct. App. 2009) (citing *Snavelly v. AMISUB of S.C., Inc.*, 379 S.C. 386, 398 (Ct. App. 2008)). The South Carolina Supreme Court has held that collateral estoppel barred a plaintiff

from relitigating an issue even where the defendant was not a party, or in privity with a party, to the initial action. *Graham v. State Farm Fire & Cas. Ins. Co.*, 277 S.C. 389, 391, 287 S.E.2d 495, 495 (1982); *Irby v. Richardson*, 278 S.C. 484, 487, 298 S.E.2d 452, 454 (1982). The identity of the parties, and their relationships to one another, is simply not a concern when deciding whether collateral estoppel applies. *Carolina Renewal*, 385 S.C. at 554, 684 S.E.2d at 782.

Thus, although Defendants were not parties to Plaintiff's lawsuit against the Clemson Defendants, collateral estoppel nonetheless prevents Plaintiff from relitigating whether Ms. Wingo was incapacitated and unable to consent when he had sexual intercourse with her and whether he should have known. Plaintiff had a full and fair opportunity to litigate that issue in the Title IX administrative hearing, subsequent appeals, and federal court. Consequently, collateral estoppel prevents the Plaintiff from re-litigating it now. *See Wade v. Berkeley County*, 330 S.C. 311, 498 S.E. 2d 684 (Ct. App. 1998).

The party asserting collateral estoppel must demonstrate that the issue in the present lawsuit was: (1) actually litigated in the prior action; (2) directly determined in the prior action; and (3) necessary to support the prior judgment. *Beall v. Doe*, 281 S.C. 363, 369 n. 1, 315 S.E.2d 186, 189–90 n. 1 (Ct. App. 1984). A fact shown to have been a basis of the relief, or other ultimate right established by the judgment, is considered adjudicated. *Lowe*, 264 S.C. at 86, 212 S.E.2d at 587.

Here, Plaintiff thoroughly litigated the issue of whether he sexually assaulted Ms. Wingo when she was incapacitated and incapable of consent. He first disputed the issue through every level of Clemson's Title IX Administrative Hearing Board proceeding and appeals process. (Exs. K-O, Outcome Letters and Appeal Decisions). Dissatisfied with the outcome there, Plaintiff then pursued a lengthy federal litigation against Clemson and many of its employees. *See generally* (Ex. H, Federal Compl.). That litigation—centered on Plaintiff's responsibility for sexually

assaulting Erin Wingo—ultimately concluded with the upholding of the finding Erin Wingo was unable to consent in a mediated settlement agreement, the validity of which was also thoroughly litigated and resolved by the federal district court. *Doe*, 2019 WL 1383822. The federal court judgment and the findings of Clemson’s Title IX proceedings satisfy each element of issue preclusion, and Plaintiff is estopped from relitigating whether Erin Wingo was too intoxicated to give consent when he engaged in sexual intercourse with her.

The issue of consent was actually litigated and directly determined, first by Clemson’s Title IX Administrative Board Hearing process and then by the settlement agreement, which the federal district court approved and enforced. Under South Carolina law, where a civil action arises out of the same factual scenario as one which has been before a state agency, a finding by that state agency with regard to an element that is critical to recovery in the civil action is binding upon the civil court. *Bennett v. South Carolina Dept. of Corr.*, 305 S.C. 310, 408 S.E.2d 230 (1991); *Perry v. South Carolina Law Enforcement Div.*, 310 S.C. 558, 426 S.E.2d 334 (1992). As such, the administrative finding may serve as a basis for collateral estoppel precluding re-litigation of that issue.⁷ *Id.* The South Carolina Campus Sexual Assault Information Act requires colleges and universities to establish procedures for institutional disciplinary actions in cases of alleged sexual assault. S.C. Code Ann. § 59-105-40. These procedures include the opportunity on the part of the accused to have counsel and the right to be informed of the outcome of the proceeding. *Id.* As authorized by statute, Clemson University’s OCES provided Plaintiff not only the right to retain counsel, but also the right to be notified of the proceedings, the right to participate in the

⁷ “Agency” has been defined to include state schools, colleges, and universities. S.C. Code Ann. § 15-78-30(a). Section 1-23-310 of the South Carolina Code also defines the term “agency” to include each state board, commission, department, or officer, other than the legislature or the courts, authorized by law to determine contested cases. The term “contested case” is defined in § 1-23-310 to be a proceeding in which the legal rights, duties or privileges of a party are to be determined by an agency after an opportunity for a hearing.

proceedings, the right to notice of the findings of the agency, and the right of appeal. *See* (Ex. S, Clemson University Student Code of Conduct); (Ex. T, Clemson Anti-Harassment and Non-Discrimination Policy). Plaintiff received notice of the hearing, retained counsel, participated in the proceedings with the assistance of counsel and was notified of the agency finding. (Ex. E, Dep. of Drew Pampu 243:2-18); (Ex. J, November 11, 2015 Notice of Title IX Investigation and February 18, 2016 Notice of Formal Charges and Administrative Hearing); (Ex. K, February 29, 2016 Notice of Outcome of Administrative Hearing). He also exercised his right to appeal the Hearing Board's decisions on two levels, to the Vice President of Student Affairs and then to the President of the University. (Ex. E, Dep. of Drew Pampu 252: 2-4, 256:24-257:6); (Exs. L–O, March 4, 2016 Appeal letter by Andrew Pampu; March 22, 2016 Decision Letter from Clemson; March 30, 2016 Second Appeal letter by Andrew Pampu; and May 27, 2016 Final Decision Letter from Clemson). Because OCES is a part of Clemson University, authorized to enforce institutional disciplinary actions for alleged sexual assaults through contested cases, it is a state agency authorized by law to determine contested cases and its findings are binding upon Plaintiff.

After exhausting his appeals within Clemson's system, Plaintiff sued Clemson and its employees in federal court over the same issue. In that matter, Plaintiff specifically sought a declaratory judgment that "the outcome and findings made by Clemson be reversed." (Ex. H, Federal Compl. pp. 82, 84). As discussed above, after nearly two years of contentious litigation, Plaintiff and Clemson reached a settlement agreement, which the federal district court enforced, cementing the finding that Erin Wingo was unable to consent to sexual intercourse. That issue was actually litigated and decided through federal litigation.

The issue of consent was central and necessary to the outcome of both Clemson's Title IX Administrative Board Hearing process and Plaintiff's federal lawsuit against Clemson. A key component of the settlement agreement was the validity of Clemson's Title IX Administrative

Hearing Board's findings. In turn, those findings were the basis of Plaintiff's claim that Clemson had wronged him. Such findings included: (1) Erin Wingo was incapacitated and unable to consent, which Plaintiff should have reasonably known; and (2) Plaintiff's actions violated Clemson's Regulations prohibiting "sexual misconduct" and "harm to person." (Ex. K, February 29, 2016 Final Outcome Letter from the Administrative Hearing Board). The settlement agreement explicitly stated that the parties agreed that the Title IX Administrative Hearing Board's findings would be upheld, and the initial sanctions be reinstated. The district court determined that the terms of that settlement were "clear and unambiguous" and signed by Plaintiff. *Doe*, 2019 WL 1383822, at *3; *see also* Restatement 2d of Judgments § 27 cmt. e (explaining that an issue is actually litigated where parties enter an agreement manifesting an intention for an issue to be conclusively decided).

Thus, Plaintiff has had a full and fair opportunity to litigate the issue of whether the sexual activity between himself and Defendant Erin Wingo was consensual – first through the Title IX Administrative investigation and hearing, then through the appeals of the decision through the University, and finally in federal court, where he expressly agreed to be bound by the Board's findings. The finding by the Title IX Administrative Hearing Board that Ms. Wingo was incapacitated and unable to consent, which Plaintiff should have reasonably known, has been decided and cannot now be re-litigated in this action.

III. Plaintiff is Both Judicially and Collaterally Estopped From Relitigating the Issue of Consent and, thus, Cannot Prevail on His Defamation Claim.

A. Erin Wingo is Entitled to Summary Judgment on Plaintiff's Defamation Claim.

In his Complaint, Plaintiff alleges that Erin Wingo defamed him by making statements that:

- (1) Plaintiff engaged "in non-consensual sexual contact";

- (2) accused Plaintiff “of engaging in sexual assault”;
- (3) “falsely accused [Plaintiff] of sexual misconduct”;
- (4) “knowingly pursued a false complaint of misconduct with Clemson’s OCES”;
- (5) “knowingly pursued a false report of sexual misconduct against John Doe” by
“claiming that she could not consent to the encounter with John Doe as a result
of her intoxication level”;
- (6) “pursuing a false complaint with Clemson’s OCES, knowing full well that such
an allegation was false”; and
- (7) “making a public presentation regarding sexual assault to members of the
campus community,” where she “publicly and falsely stated that she had been
sexually assaulted on October 24, 2015.”

(Ex. I, Compl. ¶ 29–33). There is no dispute that Plaintiff had sexual intercourse with Ms. Wingo on October 24, 2015. Therefore, the truth or falsity of each statement turns on whether Ms. Wingo had the capacity to consent.

In South Carolina, the first element a defamation plaintiff must prove is that “a false and defamatory statement was made.” *Fleming v. Rose*, 350 S.C. 488, 494, 567 S.E.2d 857, 860 (2002). Thus, an allegedly defamatory statement that is true is not actionable. *WeSave Fin. Corp. v. Luigfelt*, 316 S.C. 442, 450 S.E.2d 580 (1994); *Dauterman v. State-Record Co.*, 249 S.C. 512, 154 S.E.2d 919 (1967). As previously explained, Plaintiff affirmatively agreed to be bound by Clemson’s Title IX Administrative Hearing Board’s finding that Erin Wingo was incapacitated and unable to consent, which Plaintiff should have reasonably known. See (Ex. K, February 29, 2016 Final Outcome Letter). Therefore, Plaintiff cannot now argue that Defendants’ statements that he engaged in non-consensual contact, engaged in sexual assault, committed sexual misconduct, or that Erin Wingo was unable to consent because of her level of intoxication were

false.⁸ Clemson’s Title IX Administrative Hearing Board conclusively found that the sexual activity between Plaintiff and Erin Wingo was nonconsensual and constituted sexual misconduct. Thereafter, through his signed settlement agreement with Clemson, Plaintiff affirmatively agreed to be bound by that finding. Therefore, he cannot establish an essential element of his defamation claim.

To the extent Plaintiff contests the use of the word “rape” or “rapist,” those statements also cannot form the basis of a defamation action. Clemson University’s Student Code of Conduct and Anti-Harassment and Non-Discrimination Policy defines “rape” as “the carnal knowledge of a person without the consent of the victim” and includes instances where the victim is so intoxicated as to be incapable of giving consent and the accused knows or should know of that incapacity. (Ex. T, Clemson University’s Anti-Harassment and Non-Discrimination Policy, p. 2.) “Carnal knowledge” includes sexual intercourse, which Plaintiff admits occurred. (*Id.*). The only disputed issue was the issue of consent, and Plaintiff has now affirmatively agreed to be bound by the Clemson Title IX Administrative Hearing Board’s finding that Ms. Wingo could not—and thus did not—consent due to incapacitation. Plaintiff is collaterally estopped from asserting otherwise. Thus, statements that Plaintiff’s sexual conduct with Ms. Wingo was non-consensual cannot form the basis of Plaintiff’s defamation claim, and Ms. Wingo is entitled to summary judgment on that claim.

⁸ In addition, South Carolina law protects as privileged statements of judges, parties, and witnesses made during judicial proceedings from forming the basis for defamation claims. *Crowell v. Herring*, 301 S.C. 424, 429, 392 S.E.2d 464, 466 (1990). In South Carolina, this absolute privilege extends to “any utterance arising out of the judicial proceeding and having any reasonable relation to it, including preliminary steps leading to judicial action of any official nature provided those steps bear reasonable relation to it.” *Id.* at 430, 392 S.E.2d at 467. One court very recently concluded that a similar privilege covered statements made in campus disciplinary hearing for sexual assault. See *Khan v. Yale*, No. 3:19-cv-01966, 2021 WL 66458, at *8 (D. Conn. Jan. 7, 2021).

B. David Wingo is Entitled to Summary Judgment on Plaintiff's Defamation Claim.

The basis for Plaintiff's accusations against David Wingo is his contention that Mr. Wingo further published "this false allegation" by sending a copy of Clemson's "Decision Letter" to the Phi Delta Theta fraternity's national headquarters. (Ex. I, Compl. ¶ 132). This statement is not defamatory because there was no false information in the letter. (*Id.*). Rather, the letter simply stated that *Clemson* found Plaintiff responsible for four violations of the school's code of conduct: (i) alcohol; (ii) disorderly conduct; (iii) harm to person; and (iv) sexual misconduct. The fact that Clemson made those findings is an undisputed fact that Plaintiff himself pleaded. Moreover, although the statements were not false when they were made, they certainly cannot form the basis of a defamation claim now that Plaintiff himself has intentionally and affirmatively agreed in federal court to be bound by Clemson's decision and findings. *See, e.g., McBride v. Sch. Dist. of Greenville Cty.*, 389 S.C. 546, 562–63, 698 S.E.2d 845, 853 (Ct. App. 2010) ("[T]he only statement in the local newscasts that was attributable to a [defendant] employee and specifically named [the plaintiff] was the quotation from the superintendent stating his intention to recommend that [the plaintiff] be terminated. This statement was a true statement."). Plaintiff's defamation claim cannot be based on the publication of Clemson's Decision Letter or statements made regarding the sexual assault, which Plaintiff cannot now contend are false statements. Therefore, Mr. Wingo is entitled to summary judgment on Plaintiff's defamation claim.

IV. Defendants are Entitled to Summary Judgment on Plaintiff's Civil Conspiracy Claim.

Plaintiff also asserts a claim for civil conspiracy against Defendants. Specifically, Plaintiff alleges that Defendants Erin Wingo, David Wingo, and CJ Gahagan acted in concert with the common purpose to defame and injure Plaintiff emotionally, reputationally, and economically by

falsely reporting to Clemson, Plaintiff's fraternity, and other individuals that Plaintiff had raped or sexually assaulted Defendant Erin Wingo. (Ex. I, Compl. ¶¶ 167-173).

Civil conspiracy consists of four elements: 1) A combination or agreement of two or more persons; 2) to commit an unlawful act or a lawful act by unlawful means; 3) together with the commission of an overt act in furtherance of the agreement, and (4) damages proximately resulting to the Plaintiff. *Paradis v. Charleston County School District*, 2021 WL 1992245 (May 19, 2021). Plaintiff alleges that Defendants Erin Wingo and CJ Gahagan conspired with the purpose of harming him, specifically by lying to the Title IX Administrative Hearing Board so that he would be suspended from school for rape. This portion of the complaint merely realleges the alleged defamation cause of action. (Ex. I, Compl. ¶ 167-173). For the same reasons stated above regarding the defamation cause of action, any statements that Plaintiff's sexual conduct with Erin Wingo was non-consensual cannot form the basis of Plaintiff's civil conspiracy claim. Plaintiff affirmatively agreed to be bound by Clemson's finding that he engaged in non-consensual sexual contact with Ms. Wingo, and Defendants are entitled to summary judgment on the civil conspiracy claim.

Plaintiff further contends that Defendants David Wingo and CJ Gahagan conspired with the purpose of having him expelled from his fraternity. However, Plaintiff's suspension from Clemson University and expulsion from Phi Delta Theta fraternity were directly based on the Title IX Administrative Hearing Board's determination that the sexual activity between Plaintiff and Defendant Erin Wingo was nonconsensual, not any additional, joint actions by the Defendants. Thus, because Plaintiff is estopped from contesting the validity of Clemson's Title IX Administrative Hearing Board's findings and decision, he cannot prevail on this argument.

CONCLUSION

Plaintiff appealed the Title IX Administrative Hearing Board's findings through Clemson's appeal process, lost twice, and subsequently litigated the Title IX Administrative Hearing Board's decision in his federal civil action against Clemson University. Plaintiff resolved his claims against Clemson by voluntarily entering into a settlement agreement and affirmatively agreeing that the Hearing Board's findings would be reinstated—and thus that he would be bound by them. The Hearing Board's central finding—one that Plaintiff has endlessly disputed—was that Erin Wingo was incapacitated, unable to consent, and Plaintiff should have known that when he had nonconsensual sexual intercourse with her. The federal district court, after extensive consideration, briefing, and oral argument, enforced the settlement agreement and in doing so, relied on the unambiguous terms to which the parties had agreed. The doctrine of judicial estoppel thus bars Plaintiff from now asserting that statements that Plaintiff had non-consensual sexual intercourse with Erin Wingo are false.

In addition, the doctrine of collateral estoppel equally bars the Plaintiff from relitigating the Title IX Administrative Hearing Boards' finding. Because the finding is that the sexual activity was nonconsensual, Plaintiff cannot now allege that statements premised on the sexual activity being nonconsensual are false, as required for them to be actionable. As a result, there is no genuine issue as to any material fact, and Defendants are entitled to summary judgment.

For the reasons stated above, Defendants Erin Wingo and David Wingo respectfully request that this Court grant their Motion for Summary Judgment and for all other relief deemed appropriate by the Court.

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Attorney for Defendants Erin Wingo and David Wingo

Columbia, South Carolina
September 22, 2021

EXHIBIT A

1 Q Do you remember if there was -- if
2 anyone else brought any alcohol to the room?

3 A There was definitely a handle of
4 Fireball. That's all I know for sure.

5 Q Okay. And do you know who brought
6 the Fireball?

7 A I believe it was Rachel.

8 Q When you say a handle, what do you
9 mean?

10 A Like a liter bottle.

11 Q Is it a liter or a fifth?

12 A A fifth, it was a fifth.

13 Q A fifth, okay. A fifth of a
14 gallon, or 750 milliliters.

15 Is that correct?

16 A Yes.

17 Q Do you remember who was drinking
18 the Fireball?

19 A I know Erin, Rachel, definitely
20 were.

21 Q How were they drinking the
22 Fireball?

23 A Straight from the bottle.

24 Q They were taking shots?

25 A Yes.

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1 Q Do you remember approximately how
2 many shots they took? May 01, 2020
3 A I don't remember.
4 Q Do you remember how many shots Erin
5 took?
6 A I don't remember.
7 Q Did you take any shots of Fireball?
8 A I don't remember.
9 Q Do you know if Olivia -- I'm sorry,
10 you're Olivia, do you know if Haley took any
11 shots of Fireball?
12 A I don't remember.
13 Q Do you recall any other
14 individuals -- did Katie drink any of the
15 vodka and/or Fireball?
16 A I don't think she was drinking that
17 night. Not that I remember, at least.
18 Q All right. What was the purpose of
19 the pre-game, just to drink?
20 A Yes, just to drink and hang out
21 before we went to the party.
22 Q While y'all were hanging out were
23 you listening to music, talking about boys,
24 talking about football or sports, what do you
25 remember about that?

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1 A I think we were talking about our
2 sorority and Erin facetimed her sister. May 01, 2020
OLIVIA PESCATORE
PAMPU vs WINGO

3 Q What do you remember about Erin
4 facetiming her sister?

5 A They were just chatting and
6 catching up. Maggie was also drinking at her
7 respective college, and they were both trying
8 to chug the bottle at the same time, to see
9 who would last longer.

10 Q The liquor?

11 A Yes.

12 Q Okay.

13 A They were both taking shots with
14 one another, straight from the bottle.

15 Q They were trying to see who would
16 chug it longer than the other?

17 A I believe so.

18 Q How big is this dorm room?

19 A Not very big. Enough to fit two
20 twin beds, and a little bit of space for us
21 to sit around, but --

22 Q Pretty crowded at this point with
23 five girls in there?

24 A Not crowded.

25 Q Could you social distance in there

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EXHIBIT B

1 what time typically did y'all go to parties?

2 A Ten, 10:30. I don't recall exactly.

3 Q Okay. All right. When you -- what was
4 the purpose of getting together in Rachel's room?

5 A To hang out beforehand and to drink.

6 Q All right. Do you remember anything about
7 what you had to drink that evening?

8 A No.

9 Q Do you remember if it was beer or wine
10 coolers or wine or liquor or anything?

11 A No.

12 Q In your interview notes with the
13 investigator, Ms. Price and Ms. Jackson, you said
14 you didn't drink, but then in the administrative
15 hearing transcript you stated that you had been
16 drinking. Can you confirm for me which is accurate?

17 A It would have been that I had been
18 drinking.

19 Q And that evening in Rachel's dorm room, do
20 you recall if everyone involved was drinking?

21 A I believe so.

22 Q Okay. Can you tell me who was in the room



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1 with y'all?

2 A I mean, it would have been me, Rachel,
3 Erin, Olivia. And I do not recall if there's any
4 others.

5 Q Okay. Do you recall what any of them were
6 drinking?

7 A No.

8 Q All right. In your administrative hearing
9 you -- well, do you recall seeing Erin drink?

10 A Yes.

11 Q But you just don't recall what it was?

12 A Yes.

13 Q How long did y'all stay there and drink?

14 A Probably an hour and a half or two hours.
15 I don't recall.

16 Q Okay. And were y'all drinking the whole
17 time?

18 A I do not recall.

19 Q Do you remember if y'all were doing shots?

20 A I do not recall.

21 Q Do you recall if Erin got on the phone
22 with anybody?



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EXHIBIT C

1 A Yes.

2 Q Who came to your room in addition?

3 A Haley, Olivia, and just Erin.

4 Q And who was that last name?

5 A Erin.

6 Q Just Erin.

7 A It was those three.

8 Q Did you observe Ms. Wingo consume any alcohol
9 while she was in your dorm room?

10 A I did.

11 Q How much alcohol did she consume while she
12 was in your dorm room?

13 A I don't have an exact amount, but I do know a
14 lot of Fireball was consumed. At least half a fifth
15 was consumed between her and I. But I absolutely hate
16 Fireball. So I know I didn't have a lot of it.

17 Q Okay. Other than the Fireball, did you
18 consume any alcohol in your dorm room while you and
19 your friends were there?

20 A From my statement, yes.

21 Q Do you recall independently?

22 A No.

23 Q So you don't know how much alcohol you
24 consumed on that date?

25 A I know a rough amount, but I can't give you

1 after dinner?

2 A Yes.

3 Q Okay. In your interview, you said that you
4 had a fifth of Fireball, which is 570 milliliters; is
5 that correct?

6 A I don't know the exact milliliters.

7 Q A fifth is a fifth of a gallon; right?

8 A Yes. But isn't a handle 1.5 liters? And
9 then a fifth is more, and it's 750?

10 Q Right. 700 -- what did I just say? A fifth
11 is 750 milliliters.

12 A Sorry. I heard 500 and something. I don't
13 know why.

14 Q So 750 milliliters, which is a 128 fluid
15 ounces. And you in your testimony said that it was
16 three-fourths full when y'all began and then a fourth
17 full when y'all left. Is that accurate?

18 A I wouldn't know accurately in that. So yes.

19 Q And in here too, you -- and today you said
20 you didn't like Fireball?

21 A Yes.

22 Q So Erin drank most of it?

23 A Yes.

24 Q All right. So she roughly drank, if we're
25 going with that, that's a half; right?

1 A Yes.

2 Q So she roughly drank a half of a fifth of
3 Fireball?

4 A Give or take a shot, yes.

5 Q All right. So give or take a shot. And how
6 big is a shot? 1 ounce?

7 A Yes. 1.5 ounces.

8 Q 1.5 ounces?

9 A I think it's 1.5. You can Google it.

10 Q And it depends on how big you pour.

11 A I think like an actual shot glass I thought
12 was 1.5. But I could be wrong with my measurements.

13 Q All right. So roughly based on what you
14 remember and your recorded recollection in your
15 interview notes that you agree with --

16 A Yes.

17 Q -- she had roughly eight shots of Fireball
18 while at your dorm room?

19 A Give or take a shot or two, yes.

20 Q Okay.

21 A I'd give it more towards six.

22 Q You'd give it more towards six?

23 A Yes.

24 Q Do you recall her FaceTimeing her sister when
25 she was in your room?

EXHIBIT D

1 wearing that night?

2 A. Yes, ma'am.

3 Q. What was that?

4 A. A hunter green long sleeve, soft and sexy
5 material, that's like the brand name of the American
6 Eagle long sleeve. Whitewash American Eagle jeans
7 with rips in the knees, and brown booties.

8 Q. Okay.

9 A. And I believe I was wearing a belt.

10 Q. Do you remember if it was raining that
11 night?

12 A. I don't remember there being any rain.

13 Q. How much alcohol did you consume while in
14 McCabe Hall?

15 A. Five or six shots.

16 Q. By the way, this was Rachel's room?

17 A. Yes, ma'am.

18 Q. Did Rachel have a roommate?

19 A. Yes, ma'am.

20 Q. Who was that?

21 A. I don't remember.

22 Q. Did Rachel's roommate drink anything while
23 you were there?

24 A. I don't remember.

25 Q. Was she present while you were there?

1 A. I don't remember.

2 Q. What kind of alcohol did you have shots of?

3 A. Fireball, and Mango Pineapple Svedka.

4 Q. Do you remember how much of each?

5 A. According to the report, I had four shots
6 of Fireball, and two mixed drinks containing a total
7 of five to six shots of Mango Pineapple Svedka.

8 Q. Do you have an independent recollection of
9 how much you had of each?

10 A. Four shots of Fireball, and five shots of
11 Mango Pineapple Svedka.

12 Q. When I asked you how much alcohol you
13 consumed, you first said five or six shots.

14 A. Yes, ma'am.

15 Q. So is that still the case?

16 A. No, ma'am. I was mistaken. I forgot to
17 count the Fireball shots.

18 Q. Do you know if your friends also consumed
19 alcohol at McCabe Hall?

20 A. Yes, ma'am.

21 Q. Did you see how much alcohol Rachel
22 consumed?

23 A. No, ma'am.

24 Q. How about Olivia?

25 A. No, ma'am.

1 based on the consumption of alcohol that I was
2 incapacitated, then yes, ma'am.

3 Q. Did you possess any alcohol while you
4 walked to The Compound?

5 A. Yes, ma'am.

6 Q. And what was that?

7 A. An empty water bottle about halfway or
8 three quarters of the way filled with Mango
9 Pineapple Svedka.

10 Q. Was the vodka mixed with anything?

11 A. No, ma'am.

12 Q. I'm going to show the witness a bottle, a
13 water bottle, so that we can get a frame of
14 reference here. Can you see this Poland Spring's
15 water bottle (indicating)?

16 MS. LAU: James, can you bring this up?

17 THE WITNESS: Thank you.

18 A. Yes, ma'am.

19 BY MS. LAU:

20 Q. Okay. Is that the kind of water bottle
21 you're talking about?

22 A. Yes, ma'am.

23 Q. Okay.

24 And you said the water bottle was empty,
25 and you filled it up with -- halfway to

1 three-quarters full with Svedka?

2 A. Yes, ma'am.

3 Q. Okay.

4 MS. LAU: I just want to let the record
5 reflect that this water bottle is 16.9 -- or holds
6 16.9 fluid ounces when it is at full capacity.

7 BY MS. LAU:

8 Q. How did you hold that water bottle,
9 Ms. Wingo? Did you hold it in your hand, or
10 somewhere else?

11 A. I don't remember.

12 Q. Did you drink from it on the walk from
13 McCabe to The Compound?

14 A. I don't remember.

15 Q. Do you remember anything else about the
16 walk from McCabe to The Compound?

17 A. No, ma'am.

18 Q. So the only thing you remember is making a
19 stop at Johnstone Hall?

20 A. Yes, ma'am.

21 Q. At any point that evening on October 24th,
22 did you tell your friends that you wanted to give
23 Mr. Pampu a birthday kiss while at The Compound?

24 A. I believe so.

25 Q. Who did you tell?

1 A. Yes, ma'am. It was gravel and grass and
2 some asphalt, because it was connected to a
3 driveway.

4 Q. Okay.

5 Was there some fencing around the perimeter
6 of The Compound?

7 A. I believe so.

8 Q. Okay.

9 Was the party taking place anywhere outside
10 the fencing of The Compound?

11 A. Not that I'm aware of.

12 Q. When you first met CJ at The Compound in
13 the front house, did the two of you discuss
14 anything?

15 A. Not that I recall.

16 Q. Did you drink anything with CJ while you
17 were with him?

18 A. Yes, ma'am. I took two pulls from my water
19 bottle.

20 Q. What do you mean by "two pulls"?

21 A. Two long enough sips to constitute at least
22 one shot.

23 Q. You're referring to a standard-sized shot
24 glass?

25 A. Yes, ma'am.

1 And what page would you like me to go to?

2 Q. If you'll take a look at your account,
3 please. I believe it starts on Page 4.

4 A. Okay.

5 (Complies with request.)

6 Yes, ma'am.

7 Q. Okay. Do you see that first bullet point?

8 A. Yes, ma'am.

9 Q. It says:

10 (Reading) "Erin had four shots of Fireball,
11 and two mixed drinks, containing a total of five
12 shots of Mango Pineapple Svedka."

13 A. Yes, ma'am.

14 Q. What does "shot" mean to you?

15 A. It means the standard one-and-a-half ounce
16 pour.

17 Q. Okay.

18 And that's what it meant to you in freshman
19 year of Clemson University?

20 A. Yes, ma'am.

21 Q. Okay. And did you explain what you meant
22 when you said "shot" to the investigators at
23 Clemson?

24 A. I don't remember if I did, but I also
25 didn't measure these shots, and my perception of

1 top of the shot glass?

2 A. I don't remember where I poured the alcohol
3 to. It was definitely full.

4 Q. Okay. Remember when you testified to
5 taking two pulls from your water bottle of vodka
6 with CJ at the front house on The Compound?

7 A. Yes, ma'am.

8 Q. Did you measure how much you were drinking
9 during each pull?

10 A. No, ma'am. I just drank until I couldn't
11 drink any more in each sip.

12 Q. So a mouthful?

13 A. A very hearty mouthful. Yes, ma'am.

14 Q. Your mother's name is Elizabeth Wingo;
15 right?

16 A. Yes, ma'am.

17 Q. Did you ever see your mother using your
18 dad's cell phone to send e-mails or messages?

19 A. No, ma'am.

20 Q. So you've never seen her using your dad's
21 personal or work phone to send e-mails or messages?

22 A. I may have seen her use it to send a text
23 message, but my parents both have their own phones.
24 And if anybody has a phone, it's my mom.

25 Q. Do you know when you might have seen your

1 episode before this October 24 event?

2 A. Yes, sir.

3 Q. When was that?

4 A. Middle of October.

5 Q. Okay. So shortly before this particular
6 event?

7 A. Yes, sir.

8 Q. Yes.

9 Now, you mentioned this before, and I want
10 to make sure.

11 You've indicated you had several shots of
12 liquor before you went over to The Compound. Am I
13 understanding that correctly?

14 A. Yes, sir, you are.

15 Q. Okay. And that would be from a shot cup?

16 A. I was not pouring into a shot glass when I
17 was making my mixed drinks. So it was just
18 eyeballing however much looked good in the cup.

19 Q. Okay.

20 A. The Fireball shots I took, I do believe
21 were in a shot glass.

22 Q. Okay. And how many Fireball shots did you
23 take?

24 A. Four, I believe.

25 Q. And how many mixed drinks did you take?

1 A. Two mixed drinks.

2 Q. All right. And how many shots do you think
3 were in those mixed drinks?

4 MS. LAU: Objection to form.

5 A. A combined total of around five shots.

6 BY MR. MOORE:

7 Q. Five shots each, or five shots for each --
8 for both drinks?

9 A. Five shots between both drinks.

10 Q. Okay.

11 Now, then, you mentioned also that when you
12 got to The Compound, at least when you were around
13 CJ, you drank a little bit from the vodka container
14 you had?

15 A. Yes, sir.

16 Q. Okay. Do you know how much you had there?

17 A. At least a shot, if not two.

18 Q. Okay.

19 All right. Now, when did you start
20 drinking that day?

21 A. Probably around 9:30, 9:45 p.m..

22 Q. Okay. In the evening?

23 A. Yes, sir.

24 Q. Okay.

25 And then you went over to The Compound,

EXHIBIT E

1 A. Pampu
2 you know, been provided that I'm sure we'll
3 talk about.

4 Q. Okay. Did she have a drink in her
5 hand the first time you saw her?

6 A. The only thing I remember her
7 having was that bottle of vodka that she
8 brought. It was a water bottle filled with
9 vodka.

10 Q. Like a water bottle like I'm
11 holding, an eight-ounce water bottle, or was
12 it like Ms. Lau's liter-and-a-half water
13 bottle, or somewhere in between?

14 A. It was like, you know, the standard
15 size that come in the 24-packs.

16 Q. The 16.9?

17 A. Yeah. Whatever the fluid ounce is
18 on there, yes, ma'am. Yeah. Definitely not
19 this one.

20 Q. Was it one you throw away, or was
21 it one that you wash and keep?

22 A. It was a disposable one.

23 Q. Okay. And how do you know that
24 there was vodka in there?

25 A. Because she offered me a drink and

1 A. Pampu
2 I took a sip of it. And it was clear.
3 Q. And you've tasted vodka before?
4 A. Yeah. I assume it was vodka, yeah.
5 Q. Well, you drank it; right?
6 A. Yes.
7 Q. Was it vodka?
8 A. Yeah. I mean --
9 Q. It tasted like vodka?
10 A. Yeah.
11 Q. When did she offer you the drink?
12 Right when she saw you?
13 A. I don't know the timing of it.
14 Sometime at one point when we were standing
15 there in the front yard. Well, not front
16 yard. I'm sorry. The front part of the
17 compound. I guess the center.
18 Q. Are you still standing where you --
19 A. We were still standing -- yeah. We
20 were still standing in the same spot I
21 indicated on whatever it is, Exhibit 1, yes.
22 Q. Ben delivers Erin to you. Does he
23 hang around and y'all participate in a
24 conversation?
25 A. I wouldn't say deliver. I think he

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A. Pampu
I don't remember anyone being caught.
Q. What did you carry it in?
A. Oh, jeez. You know those like soft
containers that you get like a cheap pair of
glasses in, it's kind of got the strings on
top and you tie them up, it was in something
like that.
Q. Like a bag, a cloth bag that you
would get sunglasses in?
A. Yeah, that sounds right.
Q. But not like a fanny pack or a
backpack?
A. No.
Q. It was like a little cloth bag?
A. Right.
Q. What do you remember Erin having
with her?
A. I only remember the water bottle.
Q. You don't remember the water
bottle?
A. No. I only remember her water
bottle, which, again, that was just a water
bottle but it was filled with vodka. Not too
big, not too small.

1 A. Pampu

2 Q. While y'all were walking around,
3 are y'all drinking from the water bottle
4 filled with vodka?

5 A. I only remember having a sip once
6 we finally stopped.

7 Q. Did she have any, do you recall?

8 A. I believe she did. I believe she
9 -- and I don't know the order of, you know,
10 she drank it first, I drank it first. I'm
11 pretty sure we both had a drink.

12 Q. So since the time you first came
13 into contact with Erin, y'all had at least
14 two -- what's a sip, sips of vodka?

15 A. Definitely not the quantity of a
16 shot. I mean it would be like if you were
17 taking a quick sip from, you know, a bottle
18 of water.

19 Q. So you've had at this point at
20 least -- you've shotgunned at least five
21 beers, a shot of Fireball from the
22 mini-bottle?

23 A. Yeah.

24 Q. Did you drink the whole
25 mini-bottle?

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A. Pampu

A. I don't really know.

Q. Why did you feel pressured?

A. Because there was a decision that had to be made, and I just wasn't prepared for it. I mean I didn't anticipate it.

Q. Okay. So any decision you don't anticipate having to make you feel pressure?

A. Well --

MS. LAU: Objection.

A. -- that specific --

MS. LAU: Go ahead.

A. That specific circumstance, yes.

Q. Okay. Pressure from whom?

A. Well, it would have been from her.

Q. So what decision did you make at that moment by kissing her?

A. Well, I mean from what she said, technically it would be including sex, but that was never my intention. I didn't plan on having sex with her that night.

Q. Just planned on getting a blowjob?

A. Yeah. I mean really.

Q. Okay. So you backed it down a little bit, instead of sex, you just

1 A. Pampu

2 requested a blowjob?

3 A. Yeah. Yes, ma'am.

4 Q. So when y'all are making out
5 between the fence and the shed, did you
6 request it a second time?

ANDREW PAMPU
PAMPU vs WINGO

January 16, 2020

7 A. No, I didn't.

8 Q. But that was your intent in finding
9 the secluded area was to get the blowjob?

10 A. Yes, ma'am.

11 Q. All right. So while you're there,
12 you were shocked when she pulled down her
13 pants?

14 A. Yes, ma'am.

15 Q. How did you react?

16 A. Well, I asked her what she was
17 doing.

18 Q. And what did she say?

19 A. She said so I can have sex with
20 you.

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21 Q. Those are her specific words?

22 A. I don't know exact words, but it
23 was something along the lines of so we can
24 have sex.

25 Q. And what was your response?



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A. Pampu

A. I asked her if she was sure,
because, you know, from my understanding, I
thought I was just going to get a blowjob.

Q. And that was just -- well, let's
back up, because you asked for a birthday
blowjob.

A. Yes, ma'am.

Q. Did she say sure, absolutely, heck
yeah?

A. Yeah. She agreed to it.

Q. How did she agree?

A. I can't remember her exact words.

Q. Did she grab your hand at that
moment and lead you off?

A. I don't know. Like I told you
before, I don't remember exactly how things
led to the next.

Q. Okay.

A. I just know it was a general
consensus that that's what we were going to
do.

Q. Okay.

A. Yes, ma'am.

Q. And you got in between the fence

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A. Pampu

and the shed, and all of a sudden just out of
the blue she pulls her pants down?

A. Yeah.

Q. And at that point you said, What
are you doing? And at that point you realize
we're going to have sex?

A. At that point I knew something else
was going on. I mean I didn't -- we weren't
doing what I thought we were going to do,
which was to get a, you know, for me to get a
blowjob.

Q. Well, let me ask you this. Before
she pulled down her pants, did you pull down
your pants?

A. I didn't.

Q. Did she begin to unbutton your
pants?

A. She didn't.

Q. Were y'all holding each other while
you were making out? Were you fondling her
in any way? Was she fondling you in any way?

MS. LAU: Objection. You can
answer.

A. I don't remember fondling.

1 A. Pampu

2 Q. So help me understand. You get
3 behind the fence. Define what y'all were
4 doing right before she pulled down her pants.

5 A. Like I said, I believe we were
6 kissing. But I don't know the exact actions
7 that were taking place. I mean it was four
8 years ago.

9 Q. Okay. Well, when you're kissing,
10 was she up against the shed or up against the
11 fence? Were you up against the shed or up
12 against the fence?

13 A. I don't remember her or I being
14 pressed on anything.

15 Q. Okay. So she pulls down her pants.
16 What happens next?

17 A. So I asked her what she was doing,
18 and she's like, so we can have sex, or
19 whatever her exact words were. And, you
20 know, I asked her if she was sure, because,
21 you know, I was surprised. And she insisted,
22 yeah, it was fine. And at that point in time
23 I, you know, I didn't question it. I asked
24 her if I should use a condom, and I had the
25 one in my pledge pack, and so I did.

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A. Pampu

Q. What did she say when you asked her if you should use a condom?

A. She agreed. She's like yeah, you can.

Q. So you asked if it was okay and she said it's fine?

A. Um-hmm.

Q. Then what happened?

A. And then we just had sex.

Q. How?

A. She was -- her hands were on the side of the shed, and I was behind her. We were standing up.

Q. So you turned her around? I'm assuming somehow she got turned around to put her hands?

A. When she pulled her pants down, she was turned around.

Q. From you?

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A. Yeah. I mean I don't know if she like turned around first, pulled her pants down, or she was pulling her pants as she was turning around, but yeah, she was faced away from me.



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A. Pampu

Q. And she put both of her hands on the shed?

A. When we did finally start having sex, yes.

Q. So you were having intercourse from behind her?

A. Yes.

Q. What was she doing at this time?

A. Can you specify what you mean by that.

Q. Was she saying anything? Was she making any noises?

A. No, not anything to indicate that she wasn't enjoying herself.

Q. Anything to indicate that she was enjoying herself?

A. At some point in time there's I mean some moaning. I don't know how to describe it exactly.

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Q. How about you? What were you doing? Were you saying anything to her?

A. No. I mean.

Q. Were you making noises?

A. Yeah. I mean I was definitely

1 A. Pampu
2 breathing. I don't know if my respiration
3 rate was up or not. I'm assuming it was.

4 Q. How long does this last?

5 A. I don't know exactly. I know I
6 testified to twenty minutes in the
7 investigative hearing, but I don't know
8 really how long it was. I knew it was
9 probably longer than, you know, I'm used to.

10 Q. What do you mean by that?

11 A. I just -- I mean usually at the
12 time it didn't take a long time for me to
13 have sex.

14 Q. Did you have any trouble getting an
15 erection?

16 A. No.

17 Q. So what do you mean? It took you
18 longer than it usually took you to climax?

19 A. Yes, ma'am.

20 Q. Did she climax?

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21 A. I'm not sure.

22 Q. Did y'all stop immediately after
23 you climaxed?

24 A. Yeah. That's what I remember.

25 Q. All right. So you think the



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A. Pampu

Q. So you appealed and you appealed timely; is that correct?

A. Yes, ma'am.

Q. And if you'll look, which is Page 4 of Exhibit 8, is that your first appeal? It begins with "My name is Andrew Pampu and I wish to appeal my administrative hearing."

A. Yes, ma'am, that looks correct.

Q. If you'll go to the third paragraph -- I'm sorry. Excuse me. The third page.

A. Of that appeal?

Q. Of that appeal, under number 4, the third paragraph in Section C. That last paragraph about halfway down you state, "I truly hope that a person doesn't just rubber stamp a denial of my claim and demands for justice and equality within the investigation, but they probably will."

And then this is the sentence I'm interested in. "At that point I'll have no choice but to file a federal lawsuit against the university I love."

At this point have you already begun plans to file a federal lawsuit against

1 A. Pampu

2 A. Yes, that is correct.

3 Q. And this is basically the same
4 language used in the appeal previously but
5 with references to the administrative hearing
6 transcript; is that correct?

7 A. Yeah. It was in response to just
8 the non-mentioned information, the
9 testimonies that were not included, pretty
10 essential evidence.

11 Q. So it's basically the same
12 information in the previous appeal with the
13 added references to the transcripts?

14 A. Yes.

15 Q. Except you took out that language
16 about suing Clemson federally; is that
17 correct?

18 A. It looks correct.

19 Q. And then the last page of this
20 exhibit is a letter dated May 27, 2016, which
21 is another denial of that appeal; is that
22 correct?

23 A. Yes, that is correct.

24 Q. So the administrative hearing panel
25 found by a preponderance of the evidence that

1 A. Pampu
2 you were in violation of the code of conduct,
3 which was upheld by the vice president and --
4 the vice president of OCS and by the
5 president of Clemson; is that correct?

6 A. That is correct.

7 Q. And that letter came in May of
8 2016?

9 A. That is correct.

10 Q. May 27. So at this time when do
11 you file the federal lawsuit against Clemson?

12 A. I don't know the exact date.

13 Q. Shortly thereafter?

14 A. I don't know the exact date.

15 Q. Was it the same month?

16 A. I don't know the exact date.

17 Q. Did you also file a lawsuit against
18 Erin shortly thereafter?

19 A. I don't know the exact date.

20 Q. And did you also file a lawsuit
21 against C.J. Gahagan shortly thereafter?

22 A. I don't know the exact date.

23 Q. You don't know the dates that you
24 filed lawsuits?

25 A. No, ma'am, I don't recall.

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A. Pampu

Q. When are those applications due?

A. The dates vary for the due dates for each college, each university. I know it opens pretty sure at the beginning of June.

Q. The enrollment period is in the beginning of June for the following fall?

A. Yes, ma'am. You can start submitting your applications at that point.

Q. So they don't take applications until June to begin in August?

A. No. There's a whole year process. You apply for the following year. So the next term.

Q. So this beginning June you'll apply for the fall of 21?

A. Yes, ma'am.

Q. Got it. Has your federal lawsuit with Clemson been resolved?

A. The details of that currently is that it has been settled.

Q. Now that that lawsuit has been settled, is the administrative hearing determination still intact?

A. I'm not sure what you mean by that.

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A. Pampu

Q. Does it still stand that you've been found by a preponderance of the evidence to have violated those four sections of the student conduct code?

A. On my transcript --

MS. LAU: Objection.

A. On my transcripts, no.

Q. What do you mean on your transcripts, no?

A. My transcript is clean.

Q. How is your transcript clean?

A. Because of our settlement.

Q. Did the settlement overturn their decision?

A. Whose decision?

Q. Clemson's administrative board, hearing board.

A. For what specifically?

Q. That you were in violation of the sexual conduct code, harm to person, disorderly conduct, and alcohol?

A. All I know is it was settled. So what that entirely entails, all I know is we were promised something that we didn't

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A. Pampu

Q. When did you retain counsel?

A. I'm not sure the exact date. January 16, 2020

Q. Was it after you told your parents?

A. Chronologically that would make sense, yes.

Q. Was it before you left for Christmas break?

MS. LAU: Objection.

A. No, it was not.

Q. So it was after you returned but before the hearing?

A. That is correct.

Q. Did you have an attorney with you at the hearing?

A. I did.

Q. And who was that?

A. His name was David Aylor.

Q. How do you spell his last name?

A. Ayler is A-y-l-e-r or l-o-r I believe it is.

Q. And does he practice in South Carolina?

A. From my understanding, he does. 800.211.DEPO (3376)
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Q. Do you know where he's located? Is

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A. Pampu
he located in Upstate?
A. No, ma'am.
Q. He's located in the Lowcountry?
A. Lowcountry, yes, ma'am.
Q. And this hearing took place on
February 26, 2016; is that correct?
A. That looks correct, yes, ma'am.
Q. What did you do to prepare for the
hearing?
A. I met with my lawyers, I don't know
how many times, but I know I met with them.
I don't remember preparing a whole lot for
it.
Q. Did you meet with your SAFE
advocate?
A. Yeah. I met with him I only
remember once.
Q. Did he assist you in the hearing as
well?
A. No. I met with him sometime during
that fall semester. As far as preparation
goes for the hearing, he wasn't involved at
all.
Q. Did you and/or your attorney hire a

1 A. Pampu

2 private investigator?

3 A. Yes, we did.

January 16, 2020

4 Q. And did he assist you in preparing
5 for the administrative hearing?

6 A. No, he didn't.

7 Q. Was he after the administrative
8 hearing?

9 A. I believe so.

10 Q. Did you contact individuals and
11 request information from them regarding what
12 they observed at the party in preparation for
13 the hearing?

14 A. Yes, I did.

15 Q. Did you recruit witnesses to come
16 and speak on your behalf?

17 A. Yes, ma'am. I was told by the
18 school I could.

19 Q. And did you discuss with those
20 witnesses what occurred at the event that was
21 the subject of the hearing?

22 A. I remember asking my witnesses if
23 they would help on my behalf and testify.

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24 Q. What discussions did you have with
25 your pledge class about who were potential



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A. Pampu
witnesses?
A. That's a pretty vague question.
Q. Well, how did you know to approach
certain people because they were a witness?
A. I mean I'm sure at some point I
said does anyone remember seeing me with
Erin?
Q. Where and whom did you say that to?
A. I don't remember the context.
Q. You don't remember who you said it
to?
A. No.
Q. Did you put it out on the GroupMe,
by chance?
A. Sounds right.
Q. And, I'm sorry, you said your
attorney sat with you during the hearing; is
that correct?
A. Yes. David Aylor did.
Q. And he assisted with your
questioning of the witnesses? I know he
couldn't ask them directly, but he was there
and assisting you?
A. Yeah, he played a part, you know,

1 ANDREW PAMPU CONTINUED
ANDREW PAMPU vs ERIN WINGO January 17, 2020

2 was during our fall blowout, and I'm not sure
3 if it was recorded specifically, but people
4 had said there was roughly 500 people.

5 Q. When Ben Zboray helped Erin Wingo
6 find you at the party on October 24th, 2015,
7 did you observe whether she was stumbling?

8 A. She did not appear to be stumbling,
9 no.

10 Q. Was she slurring her words when she
11 spoke to you?

12 A. No.

13 Q. Was she leaning on Ben Zboray for
14 assistance?

15 A. No.

16 Q. You mentioned she had an
17 approximately 16.9-ounce water bottle filled
18 with vodka, right, something like a standard
19 size Poland Springs water bottle?

20 A. Yes, that is correct.

21 Q. Was it completely full, to your
22 knowledge?

23 A. No, ma'am.

24 Q. Do you know approximately how
25 filled it was?

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ANDREW PAMPU CONTINUED
ANDREW PAMPU vs ERIN WINGO

January 17, 2020

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A. I'm not sure for certain, but
definitely less than half full.

Q. Where did she keep that bottle, if
you know, that night?

A. I think she had it in her back
pocket when it wasn't in her hand.

Q. So was the bottle deflated or
crumpled in any way?

A. Yes, ma'am, it was.

Q. You said there came a time when
Erin Wingo propositioned you, something along
the lines of, if you don't kiss me, you won't
have sex with me. Do you remember that?

A. Yes, ma'am, I do.

Q. Did you find that statement to be
aggressive?

A. Yes, I did.

Q. Did you find her statement to be
very forward?

A. Yes, I did.

Q. Is that why you felt pressured to
kiss her?

A. Yes, ma'am.

Q. I'm going to start talking about

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A. Pampu
receive. My transcript is clean.
Q. Promised something you didn't
receive. What were you promised?
A. Full exoneration.
Q. And what do you mean by you didn't
receive it?
A. At the time I mean I wasn't
exonerated. At the time my transcript was
still marked.
Q. That you had been charged with
this?
A. That I had been falsely accused,
yes.
Q. Or accused and found to be in
violation by a preponderance of the evidence?
A. Yeah. Falsely accused, yes.
Q. All right. Let's at this point go
to the ESI discovery that you provided. When
was it that you took your phone to be
forensically analyzed?
A. I'm not sure of the exact date.
Q. And at that time the phone that was
analyzed was not the actual phone you had in
October of 2015; is that correct?

EXHIBIT F

1 alcohol that wasn't even being provided at the
2 party.

3 Q. And how did you know she had been
4 drinking before the party?

5 A. She had told me.

6 Q. She told you at the party or at
7 sometime before?

8 A. If my memory is correct, she told me
9 sometime before that she was pregaming with her
10 friends, which would have been Hailey Sinclair and
11 Rachel Corbin.

12 Q. And what kind of alcohol did she have
13 with her?

14 A. Vodka, but I don't remember what kind,
15 brand, or type.

16 Q. And how did she -- how did you know it
17 was vodka?

18 A. I believe that she either told me or
19 it was also common to have a water bottle filled
20 with vodka to bring to parties that was often
21 crumpled up and put in a pocket or something. It
22 was very commonplace for girls to do that that
23 didn't like beer.

24 Q. Was Erin a girl that didn't like beer?

25 A. To my memory, no.

1 Q. No, she wasn't a girl that didn't like
2 beer, or she was a girl that didn't like beer?

3 A. She was a girl that didn't like beer,
4 to my memory.

5 Q. And she had a water bottle of vodka
6 crumpled up with her?

7 A. That is correct.

8 Q. And did you have a bottle of vodka
9 yourself?

10 A. I do remember having one. I believe
11 so, yes.

12 Q. And was it in a water bottle -- an
13 empty water bottle or in something else?

14 A. Empty water bottle.

15 Q. And so at this point when you see Erin
16 did you take any shots or drink with her at that
17 point?

18 A. I believe I did, yes.

19 Q. All right. What did you drink?

20 A. For me it was the vodka that I would
21 have had. Then she had her own as well.

22 Q. And did you take a swig?

23 A. I do not remember exactly how much it
24 was.

25 Q. And how about Erin?

1 A. I couldn't say for certain.

2 Q. But she drank from her water bottle?

3 A. That is correct.

4 Q. Once or more than once?

5 A. I do not recall that detail.

6 Q. Then what happened? Did you part
7 ways?

8 A. Yes, ma'am. I had told her that she
9 can go and have fun with her friends.

10 Q. Why didn't you stay with her at the
11 party?

12 A. She had come with a group of her
13 friends, and one of the first things that she did
14 was come to me. So I didn't see the need to stay
15 side by side. There wasn't a need for that.

16 Q. How did you know that the first thing
17 she did was come to see you at the party? Did you
18 see her enter the party?

19 A. I did not see her enter the party, but
20 from the time that -- if I remember correctly,
21 from the time that we were texting, the timing of
22 it was pretty close from when she said that she
23 would have been on her way and to the point
24 whenever I saw her. So I'm assuming that it was
25 the first thing that she did.

1 her friends, right?

2 A. Yes, I do recall that.

3 Q. Now, can you turn to Page 73, and can
4 you read for me the testimony you provided --
5 well, let's first establish, is this your
6 testimony here on Lines 10 through 13?

7 A. Yes, ma'am, it is.

8 Q. Okay. Can you read for me the
9 testimony you provided on those lines?

10 A. We both had water bottles filled
11 with -- I had vodka, and hers -- I believe she had
12 vodka in hers, too, and we both took two sips from
13 our own bottles.

14 Q. Okay. And was your testimony accurate
15 then?

16 A. Yes, ma'am.

17 Q. Okay. Do you remember what you talked
18 about with Erin when you saw her at the party?

19 A. I do not recall that.

20 Q. Do you remember if she mentioned
21 anything about wishing Mr. Pampu a happy birthday?

22 A. I do -- I -- no, not at all.

23 Q. Was it Mr. Pampu's birthday that
24 night?

25 A. Yes.

EXHIBIT G

●●○○ Sprint LTE

11:30 AM

🔒 96% 🔋

from [REDACTED]

< Messages (4)

Details

Mon, Oct 26, 2:48 PM

[REDACTED] showed me what was sent to the group me by **John Doe**

What was it

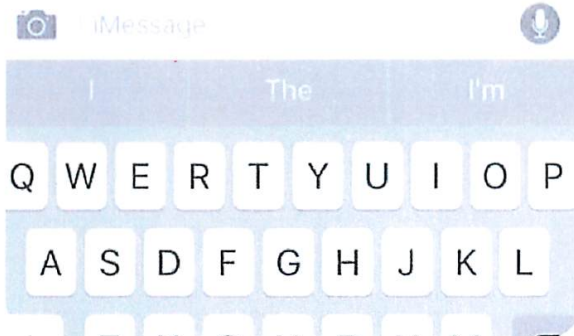
it on your birthday

I fucked a chick by the garbage thing behind chipotle so I think I definitely did with thay alone. Thanks tho my man, thanks for contributing for tonight In a huge way

Are you fucking serious

Hahahahahahahaha

Delivered



he was texting his friend and this is what got sent.

What..



EXHIBIT H

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
ANDERSON DIVISION**

-----X

JOHN DOE,	:	
	:	Civil Action No. _____
Plaintiff,	:	
	:	<u>COMPLAINT</u>
-against-	:	
	:	
CLEMSON UNIVERSITY, CLEMSON	:	
UNIVERSITY BOARD OF TRUSTEES,	:	(Jury Trial Demanded)
JAMES P. CLEMENTS, individually and	:	
as agent for Clemson University,	:	
ALMEDA JACKS, individually and as	:	
agent for Clemson University, ALESIA	:	
SMITH, individually and as agent for	:	
Clemson University, SUZANNE PRICE,	:	
individually and as agent for Clemson	:	
University, LORETO JACKSON,	:	
individually and as agent for	:	
Clemson University and DAVID	:	
FROCK, individually and as agent for	:	
Clemson University,	:	
	:	
Defendants.	:	

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Plaintiff John Doe¹, (hereinafter referred to as “Plaintiff” or “John Doe”), by his attorneys Schmutz & Schmutz PA, David Aylor Law Offices and Nesenoff & Miltenberg, LLP as and for his Complaint, respectfully alleges as follows:

¹ Plaintiff herewith files a motion to proceed pseudonymously.

THE NATURE OF THIS ACTION

1. This case arises out of the actions taken and procedures employed by Defendants Clemson University (“Clemson” or the “University”), Clemson University Board of Trustees (“Defendant Board of Trustees”), James P. Clements (“Defendant Clements”), Almeda Jacks (“Defendant Jacks”), Alesia Smith (“Defendant Smith”), Suzanne Price (“Defendant Price”) Loreto Jackson (“Defendant Jackson”) and David Frock (“Defendant Frock”)(collectively, “Defendants”) concerning allegations made against Plaintiff, a male freshman student at Clemson as a result of false allegations of nonconsensual sexual activity with fellow Clemson student Jane Doe.

2. The allegations involving Jane Doe purportedly refer to what was clearly consensual sexual activity that occurred on the evening of October 24-25, 2015 (the “Incident”).

3. On October 26, 2015, Jane Doe’s roommate, C.F., who was not an eyewitness to the encounter and only learned of the alleged incident from Jane Doe after the fact, reported to a friend of a friend’s Resident Advisor that Jane Doe had been the victim of sexual misconduct. The R.A. in turn reported this alleged incident to Clemson’s Office of Community and Equitable Standards (“OCES”).

4. On November 11, 2015, after encouragement by OCES and Clemson's Counseling and Psychological Services, Jane Doe submitted a formal Title IX complaint to Defendant Alesia Smith.

5. On February 4, 2016, investigators Suzanne Price and Loreto Jackson issued the Investigation Report, which included a recommendation that the matter against John Doe proceed to a formal hearing.

6. On February 18, 2016, John Doe was notified that the case was being handled according to Clemson's Administrative Hearing procedures. A hearing was scheduled to take place at 8:30 a.m. on February 26, 2016.

7. After an unreasonably delayed investigation process, on February 26, 2016, John Doe appeared before an Administrative Hearing Board (the "Hearing") on the alleged violations against him; namely: (i) alcohol; (ii) disorderly conduct; (iii) harm to person; and (iv) sexual misconduct.

8. Ultimately, on February 29, 2016, Chairperson David Frock issued a decision letter (the "Decision Letter") finding John Doe responsible for all four charges (the "Decision"). As a result, Defendants imposed the following sanctions: (i) suspension from the University until August 1, 2016; (ii) disciplinary probation for the remainder of John Doe's time at Clemson; (iii) eviction from University housing; (iv) no contact order for the duration of his time at Clemson; (v) entrance into a counseling program with Clemson University Counseling and Psychological

Services; and (vi) in kind restitution by completion of an approved Sexual Assault Awareness course prior to re-enrollment (collectively, the “Sanction”).

9. John Doe timely submitted an appeal of the Administrative Hearing Board’s Decision to Vice President Dr. Almeda Jacks on March 4, 2016. He was subsequently notified that Jane Doe had submitted a cross-appeal to Vice President Jacks, on March 7, 2016.

10. On March 23, 2016, Dr. Jacks issued a decision upholding the Decision and the Sanction.

11. On March 30, 2016 John Doe submitted an appeal of Vice President Jacks’ decision to President James P. Clements. John Doe requested that the erroneous and baseless Decision finding him responsible for all four charges be reversed.

12. On March 31, 2016 Jane Doe submitted a cross-appeal of Vice President Jacks’ decision to President Clements, requesting that the Sanction be enlarged and that John Doe be expelled.

13. On April 18, 2016, while both appeals to President Clements remained pending, John Doe received notice from Phi Delta Theta Director of Chapter Services Michael Wahba that Province President Ron Johnson was suspending John Doe from the fraternity, and recommended expulsion.

14. On May 27, 2016, Chief of Staff Max Allen issued a decision on John Doe's appeal to President Clements, upholding the Decision. However, Mr. Allen egregiously and unilaterally increased the Sanction's suspension length by one year, imposing a suspension on John Doe until August 1, 2017.

15. John Doe has sustained tremendous damages to his future education and career prospects as a result of the Decision and Sanction.

16. Throughout the investigative process, Defendants failed to abide by Clemson's own guidelines and regulations and acted in direct violation of federal and/or state law.

17. A non-exhaustive list of Defendants' wrongful actions include the following: (i) Defendants failed to conduct a thorough and impartial investigation; (ii) Defendants improperly advised and advocated on behalf of Jane Doe; (iii) Defendants evidenced a gender bias against John Doe as the male accused throughout the investigative and hearing process; (iv) Defendants made assessments of credibility and evidentiary weight with respect to each party without any logical basis or rationale; (v) Defendants denied John Doe of the opportunity to present and question all relevant witnesses; (vi) Defendants failed to afford John Doe the requisite presumption of innocence required by a preponderance of the evidence standard; and (vii) the unwarranted Sanction was unilaterally and arbitrarily increased, all of which demonstrated substantial

procedural errors in violation of Title IX, the Fourteenth Amendment and other federal and/or state laws.

18. When Defendants subjected John Doe to disciplinary action, they did so in an arbitrary and capricious way, and in discrimination against him on the basis of his male sex. Defendants failed to adhere to Clemson's own guidelines and regulations, and the guidelines and regulations themselves are inherently discriminatory and insufficient to protect the rights of male students. The Decision reached was discriminatory; given the evidence (or lack thereof), a discriminatory bias against males and the underlying motive to protect Clemson's reputation and financial wellbeing was required for a conclusion of sexual misconduct to be reached.

19. John Doe has been greatly damaged by the actions of Defendants: his education and career prospects have been severely compromised as he will be unable to gain admission to a graduate school or obtain employment with a disciplinary mark on his academic record. Additionally, as a result of Defendants' actions and inactions, John Doe has suffered physical, psychological, emotional and reputational damages, economic injuries and the loss of educational and career opportunities.

20. John Doe therefore brings this action to obtain relief based on causes of action for, among other things, violation of Title IX of the Education

Amendments of 1972, violation of the 14th Amendment Procedural Due Process, breach of contract and other state law causes of action.

THE PARTIES

21. Plaintiff is a natural person, citizen of the United States and resident of the State of South Carolina. During the events described herein, Plaintiff was a student at Clemson University and resided in a dormitory on Clemson's campus in Clemson, South Carolina.

22. Upon information and belief, Clemson University is a public science and engineering-oriented research university located in Clemson, South Carolina.

23. Upon information and belief, the Clemson University Board of Trustees is the governing body of Clemson University. It is composed of 13 members, including six elected by the state legislature and seven successor members. Upon information and belief, it is responsible for setting policy and approving budgets and expenditures.

24. Upon information and belief, Dr. James P. Clements is a resident of the State of South Carolina and was the President of Clemson University at all relevant times herein.

25. Upon information and belief, Dr. Almeda Jacks is a resident of the State of South Carolina and was the Vice President of Student Affairs at Clemson University at all relevant times herein.

26. Upon information and belief, Alesia Smith is a resident of the State of South Carolina and was Associate Dean of Students and Deputy Title IX Coordinator at Clemson University at all relevant times herein.

27. Upon information and belief, Suzanne Price is a resident of the State of South Carolina and was the Director for Residential Learning at Clemson University at all relevant times herein.

28. Upon information and belief, Loreto Jackson is a resident of the State of South Carolina and was the Associate Athletic Director at Clemson University at all relevant times herein.

29. Upon information and belief, David Frock is a resident of the State of South Carolina and was the Executive Director of Campus Recreation at Clemson University at all relevant times herein.

30. John Doe and Defendants Clemson University, Clemson University Board of Trustees, Clements, Jacks, Smith, Price, Jackson and Frock are sometimes hereinafter collectively referred to as the “Parties.”

JURISDICTION AND VENUE

31. This Court has federal question and supplemental jurisdiction pursuant to 28 U.S.C. § 1331 and 28 U.S.C. § 1367 because: (i) the federal law claims arise under the constitution and statutes of the United States; and (ii) the

state law claims are so closely related to the federal law claims as to form the same case or controversy under Article III of the United States Constitution.

32. This Court has personal jurisdiction over Defendant Clemson on the grounds that it is conducting business within the State of South Carolina.

33. This Court has personal jurisdiction over Defendant Board of Trustees on the grounds that it is conducting business within the State of South Carolina and is the governing body of Clemson University.

34. This Court has personal jurisdiction over Defendant Clements on the grounds that he was acting as an agent of Clemson at all relevant times herein.

35. This Court has personal jurisdiction over Defendant Jacks on the grounds that she was acting as an agent of Clemson at all relevant times herein.

36. This Court has personal jurisdiction over Defendant Smith on the grounds that she was acting as an agent of Clemson at all relevant times herein.

37. This Court has personal jurisdiction over Defendant Price on the grounds that she was acting as an agent of Clemson at all relevant times herein.

38. This Court has personal jurisdiction over Defendant Jackson on the grounds that she was acting as an agent of Clemson at all relevant times herein.

39. This Court has personal jurisdiction over Defendant Frock on the grounds that he was acting as an agent of Clemson at all relevant times herein.

40. Venue for this action properly lies in this district pursuant to 28 U.S.C. §1391 because Clemson is considered to reside in this judicial district and a substantial part of the events or omissions giving rise to the claim occurred in this judicial district.

FACTUAL ALLEGATIONS COMMON TO ALL CLAIMS

I. Agreements, Representations, Covenants & Warranties Between Plaintiff and Clemson

41. Plaintiff graduated from a private high school in Charleston, South Carolina in 2015 where he achieved a 3.85 GPA, placing him in the top 15% of his class. He was a member of the National Honors Society, an active member of the Student Senate, participated in the Big Brother Big Sister mentoring program and received varsity scholar athlete awards in baseball, hockey, football and track, in addition to other prestigious awards granted to student athletes.

42. Setting his sights on a leading liberal arts education in his home state, John Doe applied to Clemson University, for admission to the class of 2019.

43. Upon his acceptance, Clemson provided John Doe with copies of its school policies, including Clemson's Anti-Harassment and Non-Discrimination Policy ("Non-Discrimination Policy") and the Clemson University Student Code of Conduct ("Code of Conduct")(collectively, the "Policies"), current copies of which are available on Clemson's internet website.

44. With respect to cases involving allegations of sexual discrimination, sexual harassment, and sexual assault, Clemson's Non-Discrimination Policy provides as follows:

This document defines Clemson University's policy regarding harassment/discrimination. Clemson University is committed to an educational and work environment in which all individuals are treated with respect and dignity, free from harassment and/or discrimination. Accordingly, it is the policy of Clemson University that harassment/discrimination as defined in this policy, by employees, students or nonemployees will not be tolerated. It is also the policy of Clemson University that retaliation against any person who has filed a complaint of harassment/discrimination or who has assisted or participated in any manner in the investigation and resolution of a complaint of harassment/discrimination is prohibited and subject to disciplinary action.

Clemson University will respond promptly to all complaints of harassment, discrimination, and retaliation. Immediate and appropriate corrective action will be taken when it is determined that harassment has occurred.

....

The policy is intended to meet Clemson University's responsibilities under Titles VI and VII of the Civil Rights Act 1964, the Pregnancy Discrimination Act of 1978, Title IX of the Education Amendments of 1972, Sections 503 and 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, the Age Discrimination in Employments Act of 1967, the Age Discrimination Act of 1975, the Vietnam Veterans Readjustment Assistance Act of 1974, the Genetic Information Nondiscrimination Act of 2008, the Violence Against Women Act, and applicable provisions of the South Carolina Human Affairs Law.

45. The Office of Community and Ethical Standards is responsible for resolving student conduct issues. The Code of Conduct provides the process by which students who have been accused of violating one or more of the enumerated sexual misconduct policies are investigated, heard and disciplined.

46. Clemson's Code of Conduct provides that anyone may initiate a complaint against a student for misconduct. The complaint shall be submitted in writing and directed to the OCES. The Director of OCES is responsible for coordination of disciplinary proceedings. The Director has authority to determine appropriateness of a complaint, accept a student's admission to a violation, impose sanctions, and hear cases involving alleged violations of student regulations.

47. In cases where the contemplated sanction may include eviction from University Housing, suspension or expulsion, an Administrative Hearing Board will be appointed. The Associate Vice President for Student Affairs or his or her designee will serve as Chairperson of the Board, along with two students, one faculty member and one staff member.

48. The rights afforded to a complainant and respondent under Clemson's Code of Conduct are inexplicably disparate. In fact, the only right afforded to both parties is the right to choose an advisor to accompany the party to a hearing. The respondent is afforded the following rights:

- the right to remain silent;

- pending action on alleged violations will not alter the status of a student, nor shall the right to be present on campus to attend classes be suspended, except when an interim suspension has been imposed;
- the University may process a student's case separately from any action taken by the criminal justice system;
- prior cases of discipline will not be used against a student in determining whether the action is a violation of a student regulation; however, prior discipline can be used in determining a sanction;
- a university official shall inform students in writing of the reasons for any proposed disciplinary action in sufficient time to ensure that student has opportunity to prepare for a hearing;
- the student is responsible for contacting witnesses on his own behalf.

49. Contrarily, the complainant is afforded the following rights which ensure greater protection of the student's fundamental rights:

- the right to be informed of the discipline process prior to any disciplinary action;
- the right to attend the hearing and the option to provide testimony regarding the incident;
- to be informed in writing of the outcome of the disciplinary hearing;
- to be informed of any appeals filed by respondent;
- the right to appeal the finding of the disciplinary panel.

50. Evidently, while the rights afforded to a complainant ensure the basic procedural rights of notice and an opportunity to be heard, the same such rights are not guaranteed to a respondent under Clemson's Code of Conduct.

51. Upon receipt of an incident report or written complaint, the Director of OCES will review the report and contact the respondent by letter, phone, or email to schedule an appointment for a discipline conference.

52. During this conference, the alleged violations and disciplinary process will be discussed. Respondent will then be given an opportunity to review the information describing the alleged violation and respond to such allegations.

53. If the facts and/or sanctions concerning the alleged violation cannot be agreed upon by OCES and the respondent, OCES will offer the following options to the respondent: (1) he may plead no contest, accept sanctions imposed and waive his opportunity for an administrative hearing; or (2) he may request a hearing before the administrative hearing board.

54. When an administrative hearing is requested, or the contemplated sanction is eviction from University housing, suspension or dismissal, the Director or Associate Director of OCES will notify the respondent of the hearing in writing a minimum of five business days prior to the date of the hearing. Such notice shall include the following information: (i) a statement of the specific regulations allegedly violated; (ii) a description of the incident; (iii) the names of possible

witnesses; (iv) a copy of any documents in possession of OCES that will be presented to the Administrative Hearing Board; (v) the possible sanctions to be imposed; and (vi) the time, date and location of the hearing.

55. The hearing shall be recorded and kept in the OCES office for 6 months; the respondent may request a transcript of the recording, however it will be produced at his own expense.

56. Demonstrating a process that is not impartial in either appearance or practice, on behalf of the University or at the request of the complainant, the facts, circumstances and evidence will be presented by the Director of OCES to the administrative hearing board.

57. Further, OCES staff will contact and request the presence of witnesses deemed necessary to appear, on behalf of the University or complainant. Any witnesses contacted by OCES are required to appear.

58. Contrarily, respondents are charged with the task of contacting and requesting the appearance of their own witnesses, despite the lack of any authority to compel the appearance of one who refuses to appear voluntarily.

59. Both students must be permitted the opportunity to present and examine statements, facts and any relevant information, present and question their own witnesses and present questions for other witnesses to the Chairperson, in order to refute or respond to testimony.

60. After all information has been presented, the administrative hearing board will go into closed deliberations to determine whether the student has violated each section of the Code of Conduct which the student is charged with violating. The decision will be made based on a preponderance of the evidence standard.

61. The Chairperson is responsible for rendering a decision in writing to the respondent. The decision shall include a summary of the findings and the sanctions imposed. The complainant will also be notified of the outcome in cases where the complainant is a “victim of violence.”

62. In cases where the sanction involves suspension or dismissal, the decision of the administrative hearing board may be appealed to the Vice President of Student Affairs within five business days. In cases involving sexual misconduct, either party may file an appeal, thus subjecting the respondent to a form of double jeopardy. Appeals must be based on at least one of the following four grounds: (i) a procedural error so substantial that the student did not receive a fair hearing; (ii) significant information or evidence has become available that was not available previously; (iii) the sanction was arbitrary or grossly disproportionate to the offense; or (iv) the decision was completely unsupported by the evidence.

63. In decisions resulting in suspension or dismissal, based on an allegation of sexual misconduct, both parties may thereafter appeal the decision of

the Vice President of Student Affairs to the President of the University, within five business days. Such appeals must be based on one of the four above-mentioned criteria. Thus, a complainant is permitted *three* opportunities to pursue a finding of responsibility against a respondent.

64. Notably, Clemson's Policies do not indicate a timeline for completion of an OCES investigation, in violation of Title IX's requirement that investigations be completed within sixty (60) days.

65. Curiously, in an attempt to validate any anticipated procedural missteps, the Code of Conduct notes that "deviation from prescribed procedures will not necessarily invalidate a decision or proceeding unless significant prejudice to the referred student is shown to have resulted."

II. The Night of October 24, 2015 (the "Incident")

66. October 24, 2015 started off as an enjoyable day for John Doe. His fraternity, Phi Delta Theta, was planning to host a party that evening, which also happened to be his birthday. He was looking forward to spending the evening with his fraternity brothers at his new home.

67. Around 8:00 p.m., John Doe began to celebrate his birthday alongside some of his pledge brothers. He consumed approximately five beers and 1 to 2 shots of Fireball over a period of approximately two and a half hours.

68. At approximately the same time, Jane Doe attended a “pregame” with friends in her dorm room. She self-reported that she consumed an implausible 9 shots before Jane Doe and her friends headed to the party at the Phi Delta Theta fraternity house.

69. When they left her dormitory, Jane Doe brought a water bottle filled with vodka along with her. On the way to the Compound, an off campus house, Jane Doe clearly told her friends that she wanted to find the birthday boy, John Doe, and give him a birthday kiss.

70. Jane Doe and her friends arrived to the off-campus party at John Doe’s fraternity house at about 10:30 p.m. Upon her arrival, Jane Doe spoke with C.G., her close friend with whom she has had a sporadic physical and romantic relationship. C.G. told Jane Doe to “go have a good time,” which visibly upset Jane Doe given she was interested in pursuing a relationship with him. Thereafter, Jane Doe told her friends that she was going to look for John Doe.

71. John Doe and Jane Doe were friends who had engaged in one physical encounter a few weeks prior. Subsequent to the encounter, Jane Doe repeatedly initiated contact with John Doe, during September and October of 2015, while also continuing to seek a relationship with C.G.

72. Jane Doe approached B.Z., who was speaking with R.C., and asked about the whereabouts of John Doe. After about 15 minutes, B.Z. agreed to help

Jane Doe locate John Doe, who they observed exiting one of the houses on the Compound. Jane Doe went up to John Doe and gave him a hug and a kiss on the lips, in front of several people.

73. At the time Jane Doe first approached him, John Doe was rather intoxicated, estimated by B.Z. to be a 7.5 or 8 on a scale of 1-10, with 10 being the most intoxicated.

74. Jane Doe was undoubtedly intent on engaging in sexual activity with John Doe that evening; she sought him out at the party; aggressively initiated a kiss, in front of numerous witnesses; and told him “if you don’t kiss me now, you won’t have sex with me tonight.”

75. Though taken aback by Jane Doe’s overt statement, John Doe complied and began to kiss her. While John Doe generally avoided such public displays of affection, his inhibitions were lowered as a result of his intoxicated state.

76. They engaged in mutual kissing for approximately ten minutes. The encounter escalated quickly and John Doe asked Jane Doe if she would give him a birthday blowjob.

77. Jane Doe agreed and they mutually agreed to leave the party to find somewhere more private.

78. As they began to walk away from the party, Jane Doe did not display any signs of intoxication; despite the darkness, she did not stumble, did not slur her words and engaged in intelligible and cognizant conversation with John Doe.

79. After walking and talking for approximately twenty minutes, John Doe and Jane Doe located an area behind a house in a small covered building that seemed to be very private, where they could continue their intimacy. They each took a sip of vodka from Jane Doe's water bottle and as they resumed kissing, Jane Doe started to undress herself and removed her pants, on her own volition. John Doe questioned what she was doing as he understood that Jane Doe was only going to give him oral sex.

80. Jane Doe unequivocally responded that she wanted to have sexual intercourse with him. Though he was rather intoxicated, and despite the fact that Jane Doe was the initiator of all physical contact between them, John Doe was still aware of the need to ensure that Jane Doe was coherent and was fully consenting to engaging in sexual intercourse.

81. As such, John Doe asked her repeatedly if she was sure she wanted to have sexual intercourse with him. Jane Doe consistently responded that she knew what she was doing, and that it was fine to proceed.

82. John Doe asked Jane Doe whether he should use the condom in his wallet, which he was required to carry at all times as a pledge of a fraternity. Jane Doe agreed that he should use it, so John Doe complied and put on the condom.

83. They thereafter engaged in consensual sexual intercourse, during which Jane Doe was an active and willing participant.

84. Subsequently, they began to walk back to the fraternity house. John Doe noticed that Jane Doe suddenly began to have some difficulty walking. As they each began to feel the effect of the alcohol, they walked arm in arm.

85. Jane Doe gradually became agitated and very emotional about her past boyfriends, including on again/off again boyfriend, and pledge brother of John Doe's, C.G. Jane Doe discussed how terribly her past boyfriends had treated her and commented on how kind John Doe had been to her.

86. John Doe was not aware that C.G. had ignored Jane Doe earlier in the evening, prior to Jane Doe seeking out John Doe.

87. When they returned to the house, approximately one hour later, Jane Doe reunited with her girlfriends and B.Z. Knowing that it was John Doe's birthday, B.Z. advised him to return to the party and stated he would make sure that the girls got a safe ride home with the designated sober driver, J.S. Notably, OCES never interviewed J.S. during the investigation.

88. Jane Doe then sat on the front porch where she began to cry, while talking about C.G. and asking why he didn't love her. Jane Doe and her friends eventually got into the car with J.S., who drove them back to Jane Doe's dorm.

89. Upon information and belief, after returning to her dorm room, Jane Doe discovered that she did not have the key to her room. She recalled that her key might be with John Doe, evidencing a recollection of who she had spent time with that evening.

90. Eventually, Resident Advisor L.S., who lived next door to Jane Doe, obtained a temporary key and let the girls into Jane Doe's room. Though L.S. was interviewed by the OCES investigators, she was not called to testify at the Hearing. Significantly, L.S. did not express any concern about Jane Doe's condition upon observing her in the early morning of October 25, and stated Jane Doe was not slurring her words.

91. Upon information and belief, prior to going to sleep that evening, Jane Doe exchanged numerous hostile text messages with C.G.; these text messages were never produced to the investigators.

92. The following morning, John Doe woke up to a text message from Jane Doe, which he received at 10:45 a.m. Jane Doe first asked whether he had seen the key to her dorm room. Demonstrating a clear recollection of the events from the previous evening, Jane Doe also instructed John Doe to not tell C.G.

about what had happened between them the night before. Significantly, Jane Doe would later omit these text messages from her submission to the OCES Investigators. When John Doe identified this critical piece of information, the Investigators arbitrarily chose to ignore this piece of evidence and did not investigate it further.

93. Also that morning, Jane Doe told her close friend J.H., that she had engaged in sexual intercourse with John Doe the previous evening.

94. Notwithstanding that Jane Doe discussed the sexual encounter with both John Doe and J.H. the following morning, Jane Doe would later claim that she did not learn that she had engaged in sexual intercourse with John Doe until C.G. confronted her about it later that day, October 25, around 5:30 p.m.

95. Apparently, C.G. advised Jane Doe that he had seen a group text message, within which John Doe stated he had sex with a girl on his birthday, the night before. This text message was initially sent to J.S. alone; yet, J.S. subsequently copied and pasted John Doe's text message into a group chat, of which C.G. was a member. Putting two and two together, C.G. learned that the girl referred to by John Doe was Jane Doe.

96. Given Jane Doe's primary concern was salvaging her relationship with C.G., Jane Doe readily embraced C.G.'s assumption that Jane Doe must not

have been capable of consenting to the sexual activity with John Doe and therefore, John Doe had raped her.

97. Later that same day, John Doe received a message from C.G. accusing him of raping Jane Doe. John Doe was utterly shocked by these false and hurtful allegations, as the sexual encounter had been completely consensual, confirmed by Jane Doe's repeated verbal agreement. Moreover, if either party had been unable to consent due to incapacitation, it would have been John Doe.

98. Curiously, Jane Doe subsequently developed selective amnesia. She claimed that she had no memory of what had occurred between her and John Doe, notwithstanding her 10:45 a.m. text message to John Doe in which she specifically advised John Doe not to tell C.G. about it.

99. On October 26, 2015, Jane Doe's roommate C.F., who was not an eyewitness to the encounter and only learned of the alleged incident from Jane Doe after the fact, reported to a friend of a friend's R.A. that Jane Doe had been the victim of sexual misconduct. Curiously, C.F. did not contact Jane Doe's Resident Advisor and neighbor, L.S., who had observed Jane Doe on the evening in question.

100. The R.A. in turn reported the alleged incident to OCES. Notwithstanding that C.F. was the original complainant, OCES did not question C.F. at any time during the investigation or adjudication process.

101. Upon information and belief, on October 28, 2015, Jane Doe's mother arrived to Clemson.

102. On October 29, 2015, Jane Doe reported the alleged incident to Chrystal Anderson ("Ms. Anderson"), a counselor at the university's Counseling and Psychological Services ("CAPS").

103. Nonetheless, Jane Doe voluntarily attended events at the Compound the following two weekends: during the weekend of October 30, 2015 she attended a Halloween party and on the weekend of November 6, 2015, Jane Doe attended another party at the Compound.

104. Upon information and belief, on November 6, 2015, Jane Doe sought treatment at a local hospital for a concussion resulting from a fall that occurred while she was intoxicated.

105. On November 11, 2015, Jane Doe submitted a formal Title IX complaint to Defendant Smith. John Doe subsequently received a Notice of Investigation and No Contact Order advising him that an "impartial investigation of this complaint" would be conducted.

106. The Notice of Investigation letter falsely indicated that a "sexual assaulted occurred on October 2, 2015 at an off-campus location" (sic). The Notice of Investigation did not identify the provisions of Clemson's Policies that John Doe allegedly violated, and did not correctly identify the date of the consensual

encounter between the parties. Evidently, Defendant Smith initiated the investigation based solely upon her interview with Jane Doe.

107. Thereafter, Defendant Smith appointed two investigators from a list of internal colleagues who had volunteered for the position, Director for Residential Learning Suzanne Price and Associate Athletic Director Loreto Jackson (the “Investigators”).

108. Upon information and belief, neither Defendant Smith nor Defendant Jackson has received the requisite training related to the investigation of Title IX complaints.

109. On December 1, 2015, the Investigators met with Defendant Smith to review the information gathered to date.

110. On December 3, 2015, more than three weeks after the complaint had been filed, Jane Doe met with the Investigators for the first time.

111. On December 10, 2015, subsequent to the Investigators’ interview of witness C.G., John Doe met with Investigators along with his advisor John Fix. John Doe was questioned by the Investigators notwithstanding that he had not been made aware of the exact nature of the allegations against him or the provisions he was charged with violating.

112. At some point between December 10, 2015 and January 13, 2016, Jane Doe appeared for a second interview. John Doe thereafter appeared for his second interview, on January 13, 2016.

113. On January 15, 2016, Defendant Price notified John Doe by email that she would not be able to provide him with a copy of the Investigation Report as there “may be additional information related to the Title IX case that may need to be part of the report.” John Doe was not made aware of such new information.

114. On January 21, 2016, Ms. Anderson submitted an affidavit to OCES in which she diagnosed Jane Doe as suffering from Post-Traumatic Stress Disorder. Significantly, upon information and belief, Ms. Anderson holds an M.A. in Education and is an LPC/1. This designation is for a counselor who has completed the educational and examination requirements to become a licensed counselor but has not completed supervised practice.

115. Notwithstanding, Ms. Anderson falsely identified herself as a “licensed counselor” and presented her findings as being based on her “professional assessment and treatment of [Jane Doe].” Ms. Anderson justified Jane Doe’s failure to report the incident herself, concluding that “she, like many others impacted by trauma, indicated a desire to move on from the situation immediately rather than having to put time and energy into focusing on the

endured traumatic event... This again is a defense against the vulnerability involved.”

116. Upon information and belief, Ms. Anderson does not have the clinical experience to qualify as someone licensed to provide psychotherapy according to the National Center for PTSD. This “diagnosis” was in fact opinion and not a professional evaluation by a licensed psychiatrist or physician to be considered as evidence.

117. Further, Ms. Anderson ultimately served as both a witness and an advisor to Jane Doe during the investigation process, after encouraging her to report the alleged incident as a Title IX complaint.

118. Upon information and belief, C.G. attended every one of Jane Doe’s counseling sessions with Ms. Anderson.

119. On January 27, 2016, Defendant Smith notified John Doe that the original restrictions imposed on November 12, 2015 were being amended. The following additional interim measures were imposed: John Doe was restricted from attending University recognized fraternity events not hosted by his fraternity; he was only allowed to attend official events sponsored by Phi Delta Theta; in the event he did attend any non-recognized events or programs and Jane Doe was in attendance, either on or off campus, he would need to leave the area immediately; he was restricted from using the second floor of the Cooper Library; and he was

restricted from entering Harcomb Dining Hall at any time. Such measures were to remain in effect until the student conduct process was concluded. Notably, John Doe still had not been made aware of the exact nature of the charges against him.

120. On January 28, 2016, Jane Doe's personal attorney submitted additional evidence in support of her complaint.

121. On February 4, 2016, the Investigators issued the Investigation Report, with recommendations that the matter proceed to a formal hearing.

122. Upon completion of the investigation, Defendant Smith reviewed and published the final Investigation Report. Defendant Smith, unsurprisingly, accepted without question the recommendation of the Investigators she had appointed, and made a determination that there was sufficient evidence to require an administrative hearing.

123. On February 11, 2016, Defendant Smith notified John Doe that a disciplinary meeting would take place on February 11, 2016 at 4:30 p.m. The notice of Hearing incorrectly identified the date of the alleged incident as October 26, 2015. Despite the fact that three months had passed since the filing of Jane Doe's formal complaint, this was the first date on which John Doe was notified of the provisions he was alleged to have violated: (i) alcohol; (ii) disorderly conduct; (iii) harm to person; and (iv) sexual misconduct.

124. Clemson's Policies define Drug and Alcohol misconduct as follows:

- a. No student shall unlawfully manufacture, use, possess, distribute or dispense alcohol or any controlled substance or illegal drug or misuse any legal substance for the purpose of intoxication.
- b. No student under legal age shall possess, sell, purchase or consume alcoholic liquor, beer or wine.
- c. No student of legal age shall purchase for or sell or provide to a person under legal age any alcoholic liquor, beer or wine.
- d. No student of legal age shall possess or consume alcoholic liquor, beer or wine except in areas designated by the University.
- e. No student shall violate any provisions of the University Drug and Alcohol Policy.

125. Disorderly Conduct is defined in relevant part as follows:

No student shall take any action which is disorderly, lewd or indecent or be found in a grossly intoxicated condition...

No student shall take any action which intentionally interferes with or disrupts normal University or University-sponsored activities including, but not limited to, teaching, service, research or administration.

126. Harm to Person is defined as follows:

No student shall cause physical harm or threaten to cause physical harm to another person, nor shall any student take any action which creates a danger to any person's health, safety or personal well-being.

127. Sexual Misconduct is defined as:

Any other nonconsensual conduct of a sexual nature including but not limited to touching, fondling, kissing, groping, indecent exposure, sex-based cyber-harassment, peeping or other voyeurism, forcing others to view sexual activity, and/or the non-consensual photography, video or audio taping of sexual activity.

128. Consent is defined as follows:

Consent requires speech of conduct indicating a freely given, un-coerced agreement to engage in sexual contact. Consent may not be

inferred from silence or passivity alone and a current or previous relationship is not sufficient to constitute consent. Consent may be withdrawn at any time prior to or during a specific sexual act by either person. To be valid, the person giving consent must be physically and mentally able to:

- (1) understand the circumstances and implication of the sexual act;
- (2) make a reasonable decision concerning the sexual act; and
- (3) communicate that decision in an unambiguous manner.

In the absence of mutually understandable words or actions, it is the responsibility of the initiator, or the person who wants to engage in the specific sexual activity, to make sure that he/she has the consent from his/her partner(s) prior to initiating sexual activity....There are a number of factors which may limit or negate a person's ability to consent to a sexual act. These include but are not limited to age, impairment due to the influence of alcohol or drugs....In order to find no consent under one of these circumstances, there must be a finding that the complainant was unable to consent and a finding that the respondent knew or had reason to know the complainant was unable to consent. Intoxication of the respondent is not an excuse for failure to obtain consent or failure to know of the complainant's inability to consent.

129. On February 18, 2016, John Doe was notified by Defendant Smith that a hearing on the four charges was scheduled to take place on February 26, 2016 at 8:30 a.m. Defendant Smith identified the witnesses that would possibly appear at the Hearing as Jane Doe, C.G, O.P., Z.B., H.S. and L.S. Defendant Smith advised John Doe that if he would like additional witnesses to attend, he would need to procure their appearance on his own and provide Defendant Smith with a list of such witnesses within four days, by February 22, 2016.

130. The notification of hearing failed to comply with Clemson's Policies as it did not identify the complainant, did not include a description of the incident, did not identify the documents in possession of OCES that would be presented to the Administrative Hearing Board and did not identify the possible sanctions to be imposed.

131. On February 20, 2016, John Doe attempted to file an incident report form against C.G. based on his violation of the OCES policies against confidentiality and retaliation. Despite assurances from OCES that Jane Doe, as well as all students interviewed during the investigation process, were forbidden from speaking publicly about the investigation pursuant to the rules set forth by OCES, C.G. openly discussed the alleged incident and referred to John Doe as a "rapist" around Clemson's campus, as heard by at least seven students.

132. On February 20, 2016 John Doe also attempted to file a complaint against Jane Doe on the grounds that she engaged in sexual activity with John Doe without his consent and engaged in subsequent harassing and retaliatory behavior, in conspiracy with her boyfriend C.G.

133. However, Defendant Smith informed John Doe that if he filed the foregoing complaints, they would be considered retaliatory and would result in his immediate expulsion. Defendant Smith thereby precluded John Doe from exercising his rights under Clemson's Policies and pursuing his meritorious

complaints against Jane Doe and C.G. As such, Defendants failed to consider or take any action with respect to John Doe's complaints.

134. On February 22, 2016, John Doe submitted to Defendant Smith his list of witnesses for the Hearing; the witnesses identified included his mother, his father, A.R., R.C., B.Z., C.C., S.H., J.H., G.P., J.W., C.K., and C.F.

135. Among the witnesses identified by John Doe was J.H., a witness critical to the veracity of Jane Doe's testimony and the exculpation of John Doe. Inexplicably, Defendants failed to identify J.H. as a relevant witness. Thus, John Doe was left to contact J.H. on his own and request her voluntary appearance. However, as J.H. refused to appear, John Doe was left with no means by which to compel her crucial testimony at the Hearing.

136. On February 26, 2016, John Doe appeared before an Administrative Hearing Board on the charges against him. The Administrative Hearing Board was composed of faculty member Dr. Neil Burton, staff member Fredda Owens, and students Fred Tugas and Marisa Covington (the "Board"). Executive Director of Campus Recreation David Frock served as the Administrative Hearing Chairperson. The Hearing was also attended by Jane Doe, Defendant Jackson and Defendant Smith, who served as Hearing Officer.

137. The Board determined that there was a preponderance of the evidence to suggest that John Doe should have known Jane Doe was incapacitated during

the incident and was unable to give consent, notwithstanding that conclusive evidence of incapacitation was never established during the investigation or the Hearing, and conflicting testimony came from every witness as to what, when, where and how much alcohol Jane Doe drank on the day of the alleged Incident.

138. Nevertheless, on February 29, 2016, Defendant Frock issued a Decision Letter finding John Doe responsible for all four charges.

139. Defendant Smith recommended that John Doe be expelled from the University, on the grounds that the encounter occurred in what she viewed as a “public location”, notwithstanding that, according to the Investigation Report, the secluded location was chosen together by Jane Doe and John Doe.

140. Defendant Frock instead issued an unwarranted one semester suspension, along with numerous conditions including disciplinary probation, eviction from University housing, imposition of a continuing no contact order, completion of approved counseling and in-kind restitution.

141. The Decision Letter failed to provide any rationale for the Decision or the weight afforded to each piece of evidence and testimony, vaguely stating; “in reviewing all the information in this case, there was no suggestion of force used by the respondent. When reviewing all credible witness information, there is a preponderance of the evidence to suggest the complainant was incapacitated during the incident and unable to give consent.”

142. At no time during or after the Hearing did Defendants Smith or Frock advise John Doe about the appeal process. Instead, John Doe fortuitously crossed paths with Defendant Smith upon moving out of his dorm room at which point John Doe's advisor inquired about the appeal process. Defendant Smith notified John Doe that he was permitted to appeal the Decision within five business days.

143. The Decision Letter of February 29, 2016 similarly advised that an appeal of the Board's Decision could be submitted within five business days to Defendant Jacks, by March 4, 2016. However, Defendants' nebulous rationale for the Decision and Defendant Smith's intentional obstruction of the release of the Hearing transcript denied John Doe of a meaningful opportunity to appeal.

144. Thereafter, C.G. and Jane Doe engaged in repeated acts of harassment and retaliation against John Doe.

145. For instance, on February 27, 2016, C.G. posted to social media website Snapchat a message stating "Goodbye" with a hand waving this gesture.

146. On February 28, 2016, C.G. taunted John Doe and his fraternity brothers as they awaited entrance into the Senate Chambers for their chapter meeting. C.G., a former pledge of the fraternity was well aware of the time and location of such meetings. C.G. mocked approximately 60 members of the fraternity, including John Doe, when he stated "haha it is too bad you are all down one person now," clearly in reference to John Doe. When John Doe identified

himself and indicated that they were not down on person, C.G. proceeded to repeatedly ask John Doe why he was still there. C.G. then proceeded to shout and cuss at John Doe, in front of his fraternity brothers, resulting in several brothers asking him to leave.

147. On February 29, 2016, John Doe was leaving the library with a friend, from a location permitted by the No Contact Order, when he noticed C.G. and Jane Doe were glaring, watching him intently as he exited the area.

148. Despite John Doe's request that OCES conduct a thorough and comprehensive investigation concerning the underlying incident, and subsequent acts of harassment and retaliation arising therefrom, Defendants failed to take appropriate steps to ensure resolution of the foregoing in a fair, impartial and timely manner.

149. On March 1, 2016, John Doe received an email from OCES, requesting that he attend a meeting with Defendant Smith the following day, March 2, to discuss an incident recently reported to their office.

150. At this meeting, Defendant Smith reprimanded John Doe, dismissing his complaint on the grounds that he had not come forward sooner. Yet, contrarily, Defendant Smith accepted Ms. Anderson's explanation for Jane Doe's failure to personally file her Complaint immediately after the Incident, on the grounds that she had been traumatized.

151. Incredibly, rather than conducting a thorough and impartial assessment of John Doe's complaint against C.G., on March 2, 2016, Defendant Smith imposed an additional No Contact Order against John Doe, with respect to C.G.

152. Thereafter, John Doe timely submitted an appeal of the Board's Decision to Defendant Jacks on March 4, 2016. His appeal was based on the following grounds: a procedural error so substantial that he did not receive a fair hearing and the Decision was completely unsupported by the evidence.

153. On March 7, 2016, John Doe was notified that Jane Doe had submitted a cross-appeal of the Board's Decision to Defendant Jacks.

154. On March 10, 2016, Defendant Smith issued a No Contact Order with respect to Jane Doe as against the entire Phi Delta Theta fraternity, based on the February 28 incident.

155. On March 23, 2016, Defendant Jacks issued a decision upholding the findings and sanction of the Hearing Board. Defendant Jacks' decision letter was perfunctory in that it failed to provide any rationale for her decision or explain the basis for her conclusion, vaguely stating "After carefully reviewing your disciplinary case, I am upholding the decision rendered by the hearing board on February 26, 2016." The failure to provide any explanation for her conclusion again deprived John Doe of a meaningful opportunity to appeal.

156. On March 24, 2016, John Doe received an email from Clemson's University Housing and Dining, which indicated as follows: "University Housing & Dining has been notified that you have submitted an official university withdrawal. Due to your withdrawal from the University, you are required to check out of University Housing. You have 48 hours from 3/24/2016 to check out with your community staff."

157. In fact, John Doe did not submit an official university withdrawal. When John Doe followed up with Karen Gibson from University Housing, Ms. Gibson provided John Doe with a copy of the form they had received concerning his "judicial withdrawal." The form was authorized by Dean Jeffrey Appling on March 24, and made effective as of February 26, 2016, the date of the Hearing.

158. Subsequently, Associate Dean for Curriculum Jeffrey Appling admitted the university initiated withdrawal was his error - he prematurely pulled the trigger on John Doe, without considering that John Doe's appeal was still pending before Defendant Clements. This outrageous misstep further evidenced the procedural incompetence and irregularities in Clemson's disciplinary process.

159. On March 30, 2016 John Doe submitted an appeal of Defendant Jacks' decision, on the same grounds as his initial appeal: the existence of procedural errors so substantial that he did not receive a fair hearing and the decision was unsupported by the evidence. John Doe requested once again that the

erroneous and unsubstantiated decision finding him responsible for all four charges be reversed.

160. On March 31, 2016 Jane Doe submitted a cross-appeal of Defendant Jacks' decision to Defendant Clements requesting that the sanction be enlarged and that John Doe be expelled. Jane Doe asserted the sanction was disproportionate to the offense and deprived her of access to education at Clemson, in violation of Title IX.

161. On April 18, 2016, while both appeals to Defendant Clements remained pending, John Doe received notice from Phi Delta Theta Director of Chapter Services Michael Wahba that Province President Ron Johnson suspended John Doe from the fraternity, and recommended expulsion. The cause for this discipline was identified as "Title XVI, Section 155, of the Code of Phi Delta Theta- "conduct unworthy of a member of Phi Delta Theta and violations of the Bond, the constitution of the fraternity." The suspension was effective immediately.

162. Upon information and belief, this notice from the fraternity was prompted by its receipt of the confidential Decision Letter dated February 29, 2016.

163. Upon information and belief, given the limited number of individuals with access to the Decision Letter, either Jane Doe or C.G. improperly disclosed

this confidential document to a third-party, the Phi Delta Theta headquarters, notwithstanding the pending appeal and a final determination on the charges.

164. When John Doe raised this significant procedural and privacy violation with OCES, Defendant Smith erroneously and ignorantly advised him that Jane Doe was permitted to disclose this information to a third party under Title IX and the Clery Act.

165. On May 27, 2016, Chief of Staff Max Allen issued a decision on John Doe's appeal to Defendant Clements, upholding the Decision of the Board. Mr. Allen unilaterally increased the original sanction by one year, finding "the appropriate sanction is a suspension from Clemson University through August 1, 2017." Mr. Allen further instructed that all other sanctions outlined in the February 29, 2016 Decision Letter will remain in place; if such sanctions are successfully adhered to, John Doe will be eligible to re-enroll for the 2017 fall semester. Effectively, compliance with all conditions of the suspension still will not guarantee re-admission for John Doe.

III. Failure to Conduct a Thorough and Impartial Investigation

166. Clemson's Policies provide: "Clemson University is committed to an educational and work environment in which all individuals are treated with respect and dignity, free from harassment and/or discrimination." Further, "Clemson

University will respond promptly to all complaints of harassment, discrimination, and retaliation.”

167. Notwithstanding, Defendants performed a one sided and biased investigation in favor of Jane Doe’s allegations of sexual misconduct.

168. Here, the report of alleged misconduct was not initiated by Jane Doe, but by her roommate, C.F., who was not with Jane Doe on the subject evening. C.F. reported the alleged misconduct to a friend of a friend’s Resident Advisor, rather than to Jane Doe’s own R.A. and neighbor, L.S., who observed Jane Doe on the subject evening. This R.A. ultimately made a report to the OCES on behalf of Jane Doe.

169. Thereafter, OCES contacted Jane Doe and urged her to meet with a counselor from Counseling and Psychological Services. At Defendants’ insistence, Jane Doe met with Ms. Anderson from CAPS, who ultimately persuaded Jane Doe to submit a formal Title IX complaint.

170. An investigation of the complaint began three weeks later by the Investigators. Upon information and belief, neither of these two university employees had professional experience as a trained investigator, nor the requisite level of experience to ensure a fair, thorough and impartial investigation of the allegations against John Doe.

171. The lack of experience or training on the part of either Defendant Price or Defendant Jackson resulted in a procedurally flawed and superficial investigation process. Under the direction of Defendant Smith, and in response to both internal institutional pressure and external pressure from the United States Department of Education, the Investigators pursued an investigation calculated to lead to the foregone conclusion that John Doe was guilty of the misconduct alleged.

172. For instance, though multiple witnesses reported that Jane Doe sought out John Doe on the subject evening, approached him to give him a birthday kiss, voluntarily walked over to Chipotle with John Doe, removed her own pants and told John Doe she wanted to have sex with him, and both parties were intoxicated to some degree, John Doe was nonetheless found responsible for all four charges.

173. Moreover, despite their assurances that witnesses would receive a copy of their own interview testimony prior to the Hearing, the Investigators failed to provide the witnesses with copies of their own statements, to verify the summary of their testimony as transcribed. As such, when questioned about this failure at the Hearing, Defendant Jackson claimed lack of knowledge regarding why witness testimony provided at the hearing was inconsistent with the witness summaries included within the Investigation Report.

174. Evidently, the Investigators presented unsubstantiated information as fact to the Board.

175. Moreover, while credibility of the parties is key in determining what actually occurred in a he said/she said situation such as this one, the Investigators failed to call critical witnesses to testify at the Hearing.

176. For instance, Defendants never interviewed Witness C.F., the individual who initiated the complaint against John Doe, and did not require the appearance of L.S. at the Hearing, one of the last individuals to observe Jane Doe's condition at the end of the subject evening.

177. Additionally, Defendants failed to request the appearance of Witness J.H. at the Hearing, notwithstanding the she was the first person to speak with Jane Doe the day after the alleged Incident. According to Witness J.H.'s statement to Investigators, Jane Doe told her early the following morning that she had engaged in sexual intercourse with John Doe, prior to ever speaking with C.G. Given Jane Doe's claims that she did not recall the encounter and only learned of it through C.G. later that day, J.H.'s testimony was critical to establishing the veracity of Jane Doe's claims and demonstrating the credibility of each party under a preponderance of the evidence standard.

178. Clemson's Code of Conduct provides that OCES staff will contact and request the appearance of witnesses deemed necessary to appear, "on behalf of the

University”—in essence, on behalf of the complainant. Contrarily, accused students are charged with the task of contacting and requesting the appearance of witnesses in support of their defense.

179. While witnesses contacted by OCES are obligated to appear for a hearing, a respondent is left without any authority to compel the appearance of a witness he deems necessary, should they fail to comply.

180. Thus, because J.H. was not identified by the Investigators as a witness for the University to present, John Doe was required to procure her appearance on his own. As J.H. refused to appear voluntarily, John Doe was left without recourse to compel her appearance; while OCES could have required J.H. to testify, it intentionally declined to do so, aware that her testimony could exonerate John Doe.

181. Furthermore, while Defendants Price and Jackson were designated as co-investigators of the investigation, Defendant Price acted as Primary Investigator.

182. Yet, inexplicably, OCES selected Defendant Jackson to testify at the Hearing about the findings in the Investigation Report. Investigator Price did not even appear, depriving John Doe of the opportunity to question this crucial witness and critically damaging the fairness and full disclosure necessary for a fair hearing.

183. Indeed, Defendant Jackson, who did not conduct any of the interviews personally, was unable to verify testimony collected or explain why witness

statements at the Hearing differed from, and directly contradicted, those presented within the Investigation Report.

184. Further, when Defendant Jackson was questioned about certain items within the Investigative Report, she was unable to provide straight answers; stating either she did not “recall” or “it was a long time ago, we wrote down what we were told.” She further stated that her role as investigator was only to present the factual evidence and not to make any judgments. However, she certainly made judgments when the Investigative Report included hers and Defendant Price’s recommendation that Clemson move forward to a hearing on the charges against John Doe. Nonetheless, the Board accepted the Investigation Report as fact.

185. Moreover, during the Hearing, Defendant Frock demonstrated an inherent bias against John Doe as the male accused when he arbitrarily rejected a number of key questions posed by John Doe, while accepting almost all of Jane Doe’s submitted questions.

186. Further evidencing the inadequacy of the Hearing, members of the Board were inefficiently qualified. Defendant Frock lacked the requisite training to preside over the Hearing, and was unfamiliar with the proper protocol. When uncertain about how to proceed, he repeatedly conferred with Defendant Smith, as if she were the judge of the proceedings, to make a ruling.

187. While Clemson's Code of Conduct requires that all procedural questions are subject to the final decision of the chairperson at a hearing, Defendant Smith guided the proceeding by clarifying Defendant Frock's instructions, advising Defendant Frock as to how to resolve certain issues, cross-examining John Doe and correcting Defendant Frock's numerous missteps- for instance, omitting an explanation of the burden of proof and misrepresenting the parties' ability to appeal.

188. In fact, notwithstanding that such responsibility was outside the scope of Defendant Smith's role as OCES Director, Defendant Frock repeatedly turned to Defendant Smith to inquire as to the proper procedures.

189. Undoubtedly, Defendant Frock was a mere figurehead while Defendant Smith in actuality steered the entire adjudication. Notably, Clemson's Policies do not identify the responsibilities of the Hearing Officer, thus allowing Defendant Smith unfettered discretion to act in any manner she chose.

190. By appointing herself to multiple roles including prosecutor, judge and witness for Jane Doe, Defendant Smith utilized her various positions to assure a finding of responsibility against John Doe.

191. In fact, Defendant Smith also appeared as a witness and testified in support of Jane Doe. Defendant Smith addressed the Board to advocate that it impose the maximum sanction of expulsion of the Plaintiff, notwithstanding that

the Code does not permit a witness to address the panel to recommend sanctions. This further allowed Defendant Smith to assert her authority in numerous capacities by inserting herself into the Hearing, creating a conflict of interest.

192. In response to the selected questions of John Doe's which were allowed by Defendant Frock, Jane Doe made numerous contradictory statements and provided an account of events that changed with each retelling. For instance, while she was able to detail selective quotes from date of the alleged incident that supported her claims, she was unable to remember much of anything else.

193. Although evidence of incapacitation was not established, the Investigation Report did include an unsubstantiated diagnosis of PTSD (Post Traumatic Stress Disorder) submitted by Jane Doe. The OCES improperly allowed witness testimony and a signed affidavit from Ms. Anderson to support this conclusion.

194. Upon information and belief, Ms. Anderson holds an M.A. in Education and is an LPC/1. This designation is for a counselor who has completed the educational and examination requirements to become a licensed counselor but has not completed supervised practice. Ms. Anderson did not have the clinical experience to qualify as someone licensed to provide psychotherapy according to the National Center for PTSD. This "diagnosis" was in fact opinion and not a

professional evaluation by a licensed psychiatrist or physician to be considered as evidence.

195. As such, the Board improperly placed substantial weight on the testimony of Ms. Anderson.

196. While serving as Jane Doe's advisor, Ms. Anderson also testified during the Hearing that in her "clinical and professional" assessment the PTSD experienced by the Jane Doe due the alleged incident would perpetuate if the complainant feared a risk of encounter with John Doe. Despite the lack of experience or proper qualifications, Ms. Anderson was allowed to advise the Board of the appropriate sanction for her "patient."

197. Further, the investigation was replete with administrative errors demonstrating the inadequacy and haphazard state of Clemson's Title IX department. For instance, Defendants incorrectly identified the date of the alleged incident in various critical documents: the Notice of Investigation letter listed October 2, 2015 as the date of alleged incident; the Notice of Hearing letter indicated October 24, 2015 as the date of alleged incident, and the Notice of Charges letter identified October 26, 2015 as the date of alleged incident, none of which were accurate.

IV. Failure to Avoid Conflicts of Interest

198. The U.S. Department of Education's 2011 Dear Colleague Letter outlines the responsibilities of the Title IX Coordinator.

199. Specifically, the Dear Colleague Letter advises that the Title IX coordinator should not have other job responsibilities that may create a conflict of interest.

200. The coordinator's responsibilities include overseeing all Title IX complaints and identifying and addressing any patterns or systemic problems that arise during the review of such complaints and reviewing the recipient's disciplinary procedures to ensure that the procedures comply with the prompt and equitable requirements of Title IX.

201. Notwithstanding, Clemson's Code of Conduct provides that the Director of Community and Ethical Standards and his/her designee may present the facts, circumstances and evidence on behalf of the University or on behalf of the complainant to the hearing board, creating a clear conflict of interest when the University is essentially permitted to act as complainant.

202. Moreover, the Code of Conduct requires a student suspended as a result of a disciplinary hearing to petition for admission through the director of Community and Ethical Standards or his/her designee. This is a certain conflict of interest when the very person who issued the decision to suspend an accused

student is also the individual who determines whether he should be readmitted to the University. Fair process would require the petition for re-admission be considered by a neutral party unfamiliar with the underlying disciplinary investigation.

203. Significantly, the Director of the Office of Access & Equity at Clemson is also the University's Title IX Coordinator, Jerry Knighton. Similarly, the Director of the Office of Community and Ethical Standards is also Deputy Title IX Coordinator, Alesia Smith. The combination of these roles, rather than appointment of an independent third party to act as Title IX Coordinator, presented substantial conflicts of interest. Certainly, Defendant Smith had a predisposition towards finding accused students responsible for misconduct given the significant pressure imposed on schools to handle sexual misconduct complaints aggressively.

204. Defendant Smith's personal bias against John Doe as the male student accused of misconduct was evident throughout the investigation and adjudication process. She acted as witness, prosecutor and judge to steer the process from the initial report made to OCES through and including the Decision and Sanction to determine the outcome of responsibility against John Doe.

205. Not only did Defendant Smith select the investigators from among a list of internal colleagues at the University who had volunteered for the position, but upon completion of the investigation, she also reviewed and published the final

Investigation Report, and made the determination that there was sufficient evidence to require an administrative hearing.

206. The hostile environment promoted by Defendant Smith during the Hearing unduly influenced the Board against John Doe.

207. Notably, Defendant Smith is currently under scrutiny for her involvement in the investigation of a recent incident at Clemson in which an African-American banner on campus was defaced on April 11, 2016.

208. Upon information and belief, Defendant Smith was recused from any OCES proceedings related to the investigation of the “#Clemson5”, a group of Clemson students who were arrested following their refusal to leave a sit-in which arose in response to the seemingly racially motivated incident.

209. In an attempt to identify the responsible individuals, students submitted multiple Freedom of Information Act requests to various Clemson administrators, including Defendant Smith.

210. Upon information and belief, Defendant Smith’s son was one of the students arrested, as part of the #Clemson5.

211. Upon information and belief, Defendant Smith attempted to prevent the investigation of these students for violations of Clemson’s Code of Conduct, declining to identify one of the arrested students as her son.

212. Evidently, Defendant Smith intentionally overlooked her own son's potential violations of the Code of Conduct, choosing to selectively bring charges against different students.

213. Upon information and belief, Defendant Smith was ultimately recused from such investigation by the OCES.

214. The foregoing demonstrates the ongoing unprofessional behavior exhibited by Defendant Smith in her role as Clemson's Title IX Coordinator.

V. Gender Bias Against Plaintiff as the Male Accused

215. Pursuant to the U.S. Department of Education Office for Civil Rights' Guidelines, Clemson was required to conduct an impartial and unbiased investigation process.

216. Upon information and belief, there are no reported incidents of male complainants against female students for sexual assault and/or there are no reports of female accused students being disciplined for sexual misconduct by male complainants at Clemson.

217. Upon information and belief, Defendants are knowledgeable of the fact that complaints of sexual misconduct are disproportionately lodged by females against males.

218. Upon information and belief, Defendants have recognized the increased pressure, both internally, and from the United States government to

aggressively discipline male students accused of sexual misconduct, under threat of rescission of federal funds.

219. Defendants' response to this pressure is evident from a review of Clemson University's recent Annual Fire Safety & Security Reports (the "Clery Reports"). Indeed, Clemson's Clery Reports reveal that the number of forcible sex offenses reported on Clemson's campus has increased considerably, from only 2 reported instances in 2012 to 12 reports in 2014.

220. Furthermore, Clemson University has recognized the disparate number of complaints filed by female students versus male students; during the 2013-2014 academic year, the number of male students investigated for misconduct was 1292 while the number of female students investigated for misconduct was 527. Similarly, the number of male students investigated during the 2014-2015 school year was 1301 while the number of female students was 534.

221. In addition, the number of students investigated for allegations of the particular charges made against John Doe (alcohol, disorderly conduct, harm to person and sexual harassment) increased considerably from the 2013-2014 school year to the 2014-2015 school year: the number of alcohol violations increased 28%, disorderly conduct 38%, harm to person 50% and sexual misconduct by 67%.

222. Defendants demonstrated a gender bias against John Doe as the male student accused of sexual misconduct when they found Jane Doe to be more credible despite her inconsistent and varying account of the events.

223. Clemson's Policies are inherently discriminatory against respondents, who are invariably male.

224. Clemson's guidelines and regulations are set up to disproportionately affect the male student population as a result of the higher incidence of female complainants of sexual misconduct against male complainants of sexual misconduct.

225. For instance, the rights afforded to a complainant and respondent under Clemson's Code of Conduct are inexplicably disparate. In fact, the only right afforded to both parties is the right to choose an advisor to accompany the party to a hearing. The respondent is afforded the following rights:

- the right to remain silent;
- pending action on alleged violations will not alter the status of a student, nor shall the right to be present on campus to attend classes be suspended, except when an interim suspension has been imposed;
- the University may process a student's case separately from any action taken by the criminal justice system;
- prior cases of discipline will not be used against a student in determining whether the action is a violation of a student regulation; however, prior discipline can be used in determining a sanction;

- a university official shall inform students in writing of the reasons for any proposed disciplinary action in sufficient time to ensure that student has opportunity to prepare for a hearing;
- the student is responsible for contacting witnesses on his own behalf .

226. Contrarily, the complainant is afforded the following rights which ensure greater protection of fundamental rights:

- the right to be informed of the discipline process prior to any disciplinary action;
- the right to attend the hearing and the option to provide testimony regarding the incident;
- to be informed in writing of the outcome of the disciplinary hearing;
- to be informed of any appeals filed by respondent;
- the right to appeal the finding of the disciplinary panel.

227. Evidently, while the rights afforded to a complainant ensure the fundamental rights of notice and an opportunity to be heard, the same such rights are not guaranteed to a respondent under Clemson's Code of Conduct.

228. Additionally, Clemson's Code of Conduct permits a complainant *three* opportunities to pursue a finding of responsibility against respondent, by allowing two levels of appeal. In essence, Clemson's Policies permit a form of triple jeopardy, affording the University three chances to find an accused student

responsible for the charges, and requiring a respondent to defend himself on three different occasions.

229. Furthermore, Clemson's Code of Conduct provides that the director of Community and Ethical Standards and his/her designee may present the facts, circumstances and evidence on behalf of the University *or on behalf of the complainant* to the hearing board. Permitting the University to take on the role, or act on behalf of, the complainant creates a clear conflict of interest as the University is highly unlikely to reach a decision unfavorable to itself.

230. Finally, while Clemson pursued the complaint filed by Jane Doe, conducted an investigation, prepared an Investigation Report and referred the matter to a Hearing, Defendants failed to pursue the same course of action with respect to John Doe's complaints against Jane Doe and Witness C.G.

231. Though both parties were admittedly intoxicated at the time of the sexual encounter, Defendants failed to consider the effect of John Doe's incapacitation on his ability to affirmatively consent to the physical contact initiated by Jane Doe.

232. In fact, within its definition of "Consent," Clemson's Code of Conduct specifically carves out respondent's intoxication as a factor to consider, stating "intoxication of the respondent is not an excuse for failure to obtain consent or failure to know of the complainant's inability to consent."

233. Significantly, while Defendants found John Doe responsible for an alcohol violation, Defendants failed to similarly penalize Jane Doe for her admitted violations of Clemson's alcohol policy.

234. Based on the foregoing, Defendants evidenced a clear gender bias against Plaintiff as the male accused throughout the investigation and hearing process, in violation of Title IX and his rights to fair process.

VI. Failure to utilize the requisite preponderance of the evidence standard.

235. The U.S. Department of Education Office for Civil Rights and Clemson's Policies require that a preponderance of the evidence standard be used to evaluate allegations of sexual misconduct. The Code of Conduct defines preponderance of the evidence as: "whether it is more likely than not that the referred student violated the Student Code of Conduct."

236. The preponderance of the evidence standard does not equate to judging the accused as guilty until proven innocent. In fact, nowhere in the Department of Education's guidelines or Clemson's policies is such a standard referenced. However, Clemson's investigation process demonstrated a clear gender bias, which resulted in a Decision that did not afford Plaintiff the requisite presumption of innocence.

237. Specifically, Defendants improperly placed the burden of proof on John Doe to establish that Jane Doe had consented to the sexual activity, when it

accepted at face value Jane Doe's allegations, notwithstanding her inconsistent statements and contradictory evidence.

238. Throughout the investigation and hearing process, Defendants discriminated against John Doe as the male accused of misconduct.

239. A fair reading of the evidence reveals that Jane Doe's account of the events lacked any corroboration or reliability:

- While Jane Doe claimed she had no recollection of the subject evening, H.S. and O.P. testified that Jane Doe texted her friends the following morning to thank them for taking care of her the night before.
- Resident Advisor L.S., who observed Jane Doe in the early morning of October 25 after returning home for the night was not concerned about Jane Doe's condition, indicated she was not slurring her words, and was clearly upset about her boyfriend standing her up.
- At 10:45 a.m. on October 25, prior to communicating with C.G., Jane Doe texted John Doe concerning the previous evening, and pleaded that he not say anything to C.G. about what had occurred between them.
- Jane Doe failed to submit to the Investigators the text message she sent to John Doe at 10:45 a.m., claiming she did not wake up again until 11:00 a.m. on the morning after the Incident. Conveniently, Jane Doe omitted this text message from her submission of evidence to OCES, as this would have refuted her testimony in which she stated she did not learn that she had engaged in sexual intercourse with John Doe until C.G. told her about it at 5:30 p.m. that evening.
- Her text message to John Doe time stamped at 10:45 a.m. also revealed that Jane Doe recalled being with John Doe the

previous evening and that he may have had the keys to her room.

- Thereafter, at 12:00 p.m. on October 25, Jane Doe told R.H. she had sexual intercourse with John Doe; Jane Doe indicated she was upset about C.G. having ignored her the previous evening and not being interested in pursuing a relationship with her.
- The text messages from the morning after the alleged Incident reveal that at no time did anyone inform Jane Doe that she had engaged in sexual intercourse with John Doe the previous evening; to the contrary, Jane Doe was well aware of what had occurred.
- Upon learning that C.G. found out about the encounter between her and John Doe, Jane Doe texted J.H. to tell her that C.G. discovered she had engaged in sexual intercourse with John Doe.
- Only after C.G. discovered that Jane Doe and John Doe had engaged in sexual intercourse and confronted her about it at approximately 5:30 p.m. on Sunday, October 25 did Jane Doe's account evolve.
- After speaking with C.G. about the alleged Incident, Jane Doe claimed for the first time that she did not recall anything from the previous evening and did not consent to the sexual encounter with John Doe.
- Upon information and belief, Jane Doe returned to the Phi Delta Theta fraternity house for a party the weekend following the alleged Incident. Jane Doe was met at the door by the Plaintiff, who said hello to her, and she continued on through the door to enter the house and stayed to attend the party.
- Notably absent from the Investigation Report was any mention of the alleged Incident to Clemson University Campus Safety. There also was no record of a report of the alleged Incident

made to the city of Clemson, South Carolina's police department.

- Jane Doe did not seek medical attention after the alleged sexual assault and there was therefore no medical record of evidence to suggest a sexual assault had ever occurred.
- Upon information and belief, two weeks after the alleged incident, Jane Doe sought medical treatment at for a concussion resulting from a fall when she was intoxicated.
- Jane Doe returned to the same off campus fraternity house, the following two weekends.
- Jane Doe should have been deemed less credible given the statements provided to the Investigators were inconsistent with her live testimony at the Hearing. For instance, she selectively recalled portions of the subject evening, at times recalling specific details including direct quotes at the time of the sexual encounter, while at other times she claimed to recall nothing at all about the alleged incident.

240. The evidence undoubtedly demonstrates that Jane Doe not only recalled what happened between her and John Doe, but was upset because she did not want to hurt C.G. with her actions. Indeed, her account of alleged misconduct did not evolve until C.G. discovered what had occurred and confronted Jane Doe about it.

241. Additionally, testimony of various witnesses reveals that the fact Jane Doe had engaged in sexual intercourse with John Doe did not become an issue until Jane Doe became aware of the anonymous OCES report, filed on her behalf. In fact, on October 25, 2015, when R.C. questioned Jane Doe about the encounter,

she “nonchalantly” replied that she had had sexual intercourse with John Doe behind Chipotle. Also of note, Jane Doe returned to John Doe’s fraternity house the following two weekends.

242. Moreover, L.S., as the only representative of Clemson to have direct contact with Jane Doe in the final moments of the subject evening, was a witness critical to the subject investigation. Indeed, she could have provided an unbiased and objective opinion as to Jane Doe’s state of mind subsequent to the Incident. Nonetheless, Defendants neither interviewed her nor requested her appearance and testimony at the Hearing.

243. Evidently, the investigators intentionally overlooked any evidence tending to diminish Jane Doe’s credibility and/or exculpate John Doe.

244. Accordingly, Defendants failed to utilize the requisite preponderance of the evidence standard when they found third-party witnesses to be more credible than John Doe despite the lack of any corroborating evidence, wholly discounted all exculpatory evidence, and presumed John Doe guilty from the outset.

Defendants conducted an investigation designed to reach a predetermined result.

AS AND FOR A FIRST CAUSE OF ACTION
Violation of Title IX of the Education Amendments of 1972

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

246. 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.”

247. 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.

248. Upon information and belief, Defendant Clemson receives federal funding for research and development.

249. Both the Department of Education and the Department of Justice have promulgated regulations under Title IX that 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. 34 C.F.R. § 106.8(b) (Dep’t of Education); 28 C.F.R. § 54.135(b) (Dep’t of Justice) (*emphasis added*). Such prohibited actions include all forms of sexual harassment, including sexual intercourse, sexual assault, and rape.²

² See generally U.S. Dep’t of Education, Office for Civil Rights, *Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties -- Title IX* (2001) at 19-20, 21 & nn.98-101.

250. The procedures adopted by a school covered by Title IX must not only “ensure the Title IX rights of the complainant,” but must also “[*accord*] *due process to both parties involved...*”³

251. The “prompt and equitable” procedures that a school must implement to “accord due process to both parties involved” must include, at a minimum:

- “Notice . . . of the procedure, including where complaints may be filed”;
- “Application of the procedure to complaints alleging [sexual] harassment...”;
- “Adequate, reliable, and impartial investigation of complaints, including the opportunity to present witnesses and other evidence”;
- “Designated and reasonably prompt timeframes for the major stages of the complaint process”; and
- “Notice to the parties of the outcome of the complaint.....”⁴

252. A school also 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.”⁵

³ *Id.* at 22 (emphasis added).

⁴ *Id.* at 20.

⁵ *Id.* at 21.

253. Based on the foregoing, *supra*, at ¶¶ 166-244 Defendant Clemson deprived Plaintiff, on the basis of his sex, of his rights to due process and equal protection through the improper administration of and/or the existence, in its current state, of Defendant Clemson's guidelines and regulations.

254. Based on the foregoing, *supra*, at ¶¶ 166-244 Defendant Clemson failed to conduct an adequate, reliable, and impartial investigation when it conducted its investigation of the Incident and subsequent adjudication in a manner that was biased against Plaintiff.

255. Clemson has created an environment where an accused male student is fundamentally denied due process by being prosecuted through the conduct process under a presumption of guilt. Such a one-sided process deprived John Doe, as a male student, of educational opportunities at Clemson on the basis of his sex.

256. Defendant Clemson had no intention of following its own policies and procedures for John Doe as the male accused of sexual misconduct when it erroneously found John Doe responsible for sexual misconduct despite the absence of any reliable or credible evidence.

257. Clemson applied its stated policies and procedures and gender-biased practices in a manner that discriminated against Plaintiff on the basis of his sex and led to an erroneous and adverse outcome. Specifically:

- Defendants found Jane Doe to be more credible despite her inconsistent and varying account of the events, as presented within the Investigation Report and at the Hearing.
- Defendants enforced their inherently discriminatory policies against John Doe, for instance, by permitting Jane Doe to submit two appeals and thus subjecting John Doe to a form of double and triple jeopardy.
- Defendants violated John Doe's right against self-incrimination when they coerced him into providing a statement.
- Defendants precluded John Doe from exercising his rights under Clemson's policies when Defendant Smith threatened that if he filed complaints against Jane Doe and C.G., it would be considered retaliatory and grounds for his expulsion.
- Defendants lured John Doe into a false sense of security when they falsely assured him it would be in his best interests to cooperate and tell them everything.
- Defendants failed to afford John Doe a presumption of innocence when they overlooked all potentially exculpatory evidence and presumed John Doe guilty from the outset.
- Defendants failed to adequately consider and investigate John Doe's complaint against Jane Doe, in which he submitted that Jane Doe engaged in sexual activity with John Doe without his consent and engaged in subsequent harassing and retaliatory behavior.
- Defendants failed to require the appearance of J.H. at the Hearing; given her testimony in the Investigation Report directly contradicted Jane Doe's claims, she was a crucial witness concerning Jane Doe's credibility.
- During the Hearing, Defendant Frock demonstrated an inherent bias and partiality against John Doe as the male accused when he arbitrarily rejected a number of key questions posed by John

Doe, while accepting almost all of Jane Doe's submitted questions.

258. Upon information and belief, Clemson possesses communications evidencing Defendants' inclination to favor female students alleging sexual misconduct over male students who are accused of sexual misconduct.

259. Upon information and belief, Clemson has demonstrated a pattern of inherent and systematic gender bias and discrimination against male students accused of misconduct.

260. Upon information and belief, all students that have been suspended from Clemson for sexual misconduct have been male.

261. Upon information and belief, Clemson's mishandling of Plaintiff's investigation was informed by internal institutional pressure as well as external pressure from the United States Department of Education, under a threat of rescission of federal funds.

262. Upon information and belief, in 2012, a Presidentially appointed task force was created at Clemson University in an effort to reduce the rates of sexual victimization and related negative consequences.

263. As outlined above, the outcome was predetermined and simply a motion into a biased, prejudiced and implicitly unfair process, calculated to reach the conclusion that Plaintiff was responsible for the misconduct alleged.

264. Based on the foregoing, Defendant Clemson imposed an unwarranted and excessive sanction on Plaintiff as a result of an erroneous outcome reached by a flawed investigation.

265. Based on the foregoing, male respondents accused of sexual misconduct at Clemson are discriminated against solely on the basis of sex. They are invariably found guilty, regardless of the evidence, or lack thereof.

266. Based on the foregoing, Plaintiff was subjected to a biased, prejudiced and explicitly unfair process in violation of Title IX.

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

268. 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.

AS AND FOR A SECOND CAUSE OF ACTION
Violation of the Fourteenth Amendment of the United States Constitution
Procedural Due Process

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

270. 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.”

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

272. 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.

273. Plaintiff’s constitutionally protected property interest in his continued enrollment at Clemson and to be free from arbitrary dismissal arises from the policies, courses of conduct, practices and understandings established by Clemson.

274. Plaintiff’s constitutionally protected property interest further arises from the express and implied contractual relationship between Clemson and Plaintiff.

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

276. Thus, a person who has been admitted to a university, and who has paid tuition to that 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.

277. As a result, if Plaintiff as a Clemson 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 Clemson used.

278. Clemson, as a public university, has an absolute duty to provide its students equal protection and due process of law by and through any and all policies and procedures set forth by the University.

279. Under both federal and state law, Plaintiff had a constitutionally protected property interest in continuing his education at Clemson.

280. Plaintiff was entitled to 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, and are quasi-criminal in nature.

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

282. In the course of such investigation and adjudication, Clemson flagrantly violated Plaintiff's clearly established rights under the Due Process

Clause of the Fourteenth Amendment through its repeated acts of gender bias and of deprivation of the minimal requirements of procedural fairness.

283. Upon information and belief, Clemson was pressured by the Department of Education into complying with the Title IX investigative and adjudicatory process mandated by the 2011 Dear Colleague Letter and by subsequent federal actions, statements, and directives.

284. Defendants deprived Plaintiff of his liberty and property interests without affording him basic due process, including, but not limited to, his right to a fair adjudication, his right to be informed of the exact charges against him, 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. Rather than investigate what occurred on October 24, 2015, Defendants conducted a superficial investigation biased against Plaintiff as a male accused of sexual misconduct.

285. 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.

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

287. Defendants all agreed to, approved, and ratified this unconstitutional conduct.

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

289. Accordingly, Defendants are liable to Plaintiff for violations of the Due Process Clause of the Fourteenth Amendment, and for all damages arising therefrom.

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

291. 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.

AS AND FOR A THIRD CAUSE OF ACTION
Breach of Contract

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

293. Based on the foregoing, Clemson created express and implied contracts when Plaintiff accepted an offer of admission to Clemson and paid the tuition and fees.

294. Based on the aforementioned facts and circumstances, Defendant Clemson breached express and/or implied agreement(s) with Plaintiff.

295. Defendant Clemson committed several breaches of its agreements with Plaintiff during the investigation and hearing process. A non-exhaustive list of Clemson's breaches include the following:

Alteration of John Doe's Status During Appeal.

296. Clemson's Policies provide that "pending action on alleged violations of University regulations or pending final disposition of any appeal, the status of a student shall not be altered..."

297. Notwithstanding, Clemson erroneously altered John Doe's student status when Associate Dean Appling improperly submitted to University Housing and Dining an official university withdrawal on behalf of John Doe on March 24, 2016.

298. As this University initiated withdrawal was submitted without John Doe's consent or knowledge, and while John Doe's appeal to Defendant Clements' was still pending, upon inquiry by John Doe, Dean Appling admitted that he had prematurely altered John Doe's student status.

299. This event further evidenced the procedural incompetence and irregularities in Clemson's disciplinary process.

300. Clemson breached its obligation to refrain from altering John Doe's student status during the pendency of his appeal, in violation of its own policies.

Denial of the right to present relevant information.

301. Clemson's Policies provide that "the referred student and complainant shall have the opportunity to present and examine statements, facts and any relevant information regarding the case."

302. Nonetheless, John Doe was deprived of the opportunity to present information relevant to the case when Defendants failed to call Witness J.H. to testify at the Hearing.

303. As the first person Jane Doe spoke with the morning following the alleged Incident, J.H.'s testimony was critical to establishing the veracity of Jane Doe's claims and demonstrating the credibility of each party under a preponderance of the evidence standard.

304. While witnesses contacted by OCES are obligated to appear for a hearing, a respondent is left without any authority to compel the appearance of a witness he deems necessary, should they fail to comply.

305. As such, because J.H. was not identified by the Investigators as a witness for the University to present, John Doe was required to procure her appearance on his own.

306. However, as J.H. refused to appear voluntarily, and given his trepidation to communicate further with J.H. for fear of violating the No Contact Order, John Doe was left without recourse to compel her appearance; while OCES could have required J.H. to testify, it intentionally declined to do so, aware that her testimony would likely be exculpatory as to John Doe.

307. Given J.H.'s testimony in the Investigation Report contradicted Jane Doe's testimony and was therefore directly relevant to her credibility, J.H. was a crucial witness that Defendants were required to identify.

308. Accordingly, Defendants' failure to require the appearance and testimony of J.H. at the Hearing, combined with the limitations imposed on John Doe by the No Contact Order deprived John Doe of the opportunity to present information critical to his defense.

309. Moreover, while Defendant Price acted as Primary Investigator, OCES inexplicably selected Defendant Jackson to testify at the Hearing about the findings in the Investigation Report. As she did not conduct any of the interviews personally, she was unable to explain why witness statements at the Hearing

contradicted those within the Investigation Report, and was unable to provide direct answers when questioned about the investigation.

310. Defendants' failure to require the appearance of Investigator Price thus denied John Doe of the opportunity to question this critical witness, critically damaging the fairness and full disclosure necessary for a fair hearing.

311. Therefore, Defendants violated their obligation to afford John Doe the opportunity to present and examine all statements, facts and relevant information regarding the case.

Failure to keep disciplinary records confidential.

312. Clemson's Policies provide that "All student disciplinary records are kept confidential to the extent allowed by applicable state and federal laws. Generally, student conduct records requested by external institutions, agencies or individuals are available only upon the signed consent of the student..."

313. Notwithstanding, Defendants allowed the disclosure of John Doe's confidential disciplinary records to the headquarters of John Doe's national fraternity.

314. Specifically, on April 18, 2016 while both appeals to Defendant Clements remained pending, John Doe received notice from Phi Delta Theta Director of Chapter Services Michael Wahba that Province President Ron Johnson suspended John Doe from the fraternity, and recommended expulsion.

315. Upon information and belief, this notice from the fraternity was prompted by the receipt of the confidential Decision Letter dated February 29, 2016, which was misrepresented as final.

316. Upon information and belief, given the limited number of individuals with access to the Decision Letter, either Jane Doe, C.G. or a member of Clemson's administration disclosed this confidential document to a third-party, the Phi Delta Theta national headquarters, notwithstanding the pending appeal and a final determination.

317. Thus, Defendants breached their contract with John Doe when they failed to maintain the confidentiality and privacy of his disciplinary record.

Failure to ensure procedural questions resolved by Chairperson.

318. Clemson's Policies provide that during an administrative hearing, "All procedural questions are subject to the final decision of the chairperson."

319. Yet, given Defendant Frock's evident lack of training and unfamiliarity with the proper protocol, he repeatedly deferred to Defendant Smith, as if she were the judge of the proceedings, to make a final ruling.

320. While Clemson's Code of Conduct requires that all procedural questions are subject to the final decision of the chairperson at a hearing, Defendant Smith guided the proceeding by clarifying Defendant Frock's instructions, advising Defendant Frock as to how to resolve certain issues and

correcting Defendant Frock's numerous missteps- for instance, omitting an explanation of the burden of proof and misrepresenting the parties' ability to appeal.

321. Accordingly, Defendants breached the contract with John Doe when all procedural questions at the Hearing were resolved by an individual who was excessively immersed in, and ultimately guided, the entire investigation process and findings against John Doe.

322. Plaintiff is entitled to recover damages for Defendant Clemson's breach of the express and/or implied contractual obligations described above.

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

324. 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.

AS AND FOR A FOURTH CAUSE OF ACTION
Breach of the Covenant of Good Faith and Fair Dealing

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

326. Based on the aforementioned facts and circumstances, Defendant Clemson acted in bad faith when it meted out an erroneous Decision and disproportionate Sanction notwithstanding the flawed investigative process and lack of evidence in support of Jane Doe's allegations of sexual misconduct.

327. Based on the aforementioned facts and circumstances, Defendant Clemson breached and violated a covenant of good faith and fair dealing implied in the agreement(s) with Plaintiff.

328. As a direct and foreseeable consequence of these breaches, Plaintiff sustained tremendous damages, including, without limitation, emotional distress, loss of educational and career opportunities, economic injuries and other direct and consequential damages.

329. Plaintiff is entitled to recover damages for Defendant Clemson's breach of the express and/or implied contractual obligations described above.

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

331. 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.

AS AND FOR A FIFTH CAUSE OF ACTION

Negligence

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

333. Defendants owed a duty of care to Plaintiff, arising from the obligations delineated in Clemson's Policies, and directives issued by the U.S. Department of Education's Office for Civil Rights. Such duties included, without limitation, a duty of reasonable care to allow Plaintiff an equal opportunity to present information and witnesses in support of his defense; a duty of care to conduct an impartial and thorough investigation of the allegations of sexual misconduct against him; and a duty of care to utilize the preponderance of the evidence standard in reaching a determination.

334. Based on the foregoing, Defendants breached their duties owed to Plaintiff.

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

336. 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.

AS AND FOR A SIXTH CAUSE OF ACTION
Promissory Estoppel

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

338. Clemson's Policies constitute unambiguous representations and promises that Clemson should have reasonably expected to induce action or forbearance on the part of Plaintiff.

339. Clemson expected or should have expected Plaintiff to accept its offer of admission, incur tuition and fees expenses, and choose not to attend other colleges based on its express and implied promises that Clemson would not tolerate, and Plaintiff would not suffer, discrimination or harassment by fellow students or faculty members and would not deny Plaintiff his procedural rights should he be accused of a violation of Clemson's policies.

340. Plaintiff reasonably and foreseeably relied to his detriment on these express and implied promises and representations made by Clemson, by choosing to attend Clemson rather than other schools of equal caliber and paying the required tuition and fees.

341. These express and implied promises and representations made by Clemson must be enforced to prevent substantial injustice to Plaintiff.

342. Based on the foregoing, Clemson is liable to Plaintiff based on Promissory Estoppel.

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

344. 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.

AS AND FOR A SEVENTH CAUSE OF ACTION
Declaratory Judgment

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

346. Clemson has committed numerous violations of the Parties' contracts and of federal and state law.

347. Plaintiff's future educational and career prospects have been severely damaged. Without appropriate redress, the unfair outcome will continue to cause irreversible damages to Plaintiff's future educational and employment prospects, with no end in sight.

348. As a result of the foregoing, there exists a justiciable controversy between the Parties with respect to the outcome, permanency, and future handling of Plaintiff's formal student record at Clemson.

349. By reason of the foregoing, Plaintiff requests, pursuant to 28 U.S.C. § 2201, a declaration that: (i) the outcome and findings made by Clemson be reversed; (ii) Plaintiff's reputation be restored; (iii) Plaintiff's disciplinary record be expunged; (iv) the record of Plaintiff's suspension from Clemson be removed from his education file; (v) any record of the complaint against Plaintiff be permanently destroyed; (vi) Plaintiff be readmitted to Clemson for the Fall 2016 semester; and (vii) Clemson's rules, regulations and guidelines are unconstitutional as applied.

PRAYER FOR RELIEF

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

(i) on the first cause of action for violation of Title IX of the Education Amendments of 1972, a judgment awarding John Doe 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 career opportunities, and loss of future career prospects, plus prejudgment interest, attorneys' fees, expenses, costs and disbursements;

(ii) on the second cause of action for violation of the Fourteenth Amendment of the United States Constitution Procedural Due Process, a

judgment awarding John Doe 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 career opportunities, and loss of future career prospects, plus prejudgment interest, attorneys' fees, expenses, costs and disbursement;

(iii) on the third cause of action for breach of contract, a judgment awarding John Doe 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 career opportunities, and loss of future career prospects, plus prejudgment interest, attorneys' fees, expenses, costs and disbursements;

(iv) on the fourth cause of action for breach of the covenant of good faith and fair dealing, a judgment awarding John Doe 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 career opportunities, and loss of future career prospects, plus prejudgment interest, attorneys' fees, expenses, costs and disbursements;

(v) on the fifth cause of action for negligence, a judgment awarding John Doe 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 career opportunities, and loss of future career prospects, plus prejudgment interest, attorneys' fees, expenses, costs and disbursements;

(vi) on the sixth cause of action for promissory estoppel, a judgment awarding John Doe 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 career opportunities, and loss of future career prospects, plus prejudgment interest, attorneys' fees, expenses, costs and disbursements;

(vii) on the seventh cause of action for declaratory judgment, a judicial declaration that (i) the outcome and findings made by Clemson be reversed; (ii) Plaintiff's reputation be restored; (iii) Plaintiff's disciplinary record be expunged; (iv) the record of Plaintiff's suspension from Clemson be removed from his education file; (v) any record of the complaint against Plaintiff be permanently destroyed; (vi) Plaintiff be readmitted to Clemson for the Fall 2016 semester; and (vii) Clemson's rules, regulations and guidelines are unconstitutional as applied; and

(viii) awarding Plaintiff such other and further relief as the Court deems just, equitable and proper.

JURY DEMAND

John Doe herein demands a trial by jury of all triable issues in the present matter.

Dated: June 15, 2016

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EXHIBIT I

STATE OF SOUTH CAROLINA

COUNTY OF PICKENS

JOHN DOE,

Plaintiff(s)

vs.

JANE DOE, CHARLES DOE, AND RICHARD
DOE,

Defendant(s)

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2017-CP - 39- _____

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NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

- ☒ JURY TRIAL demanded in complaint. ☐ NON-JURY TRIAL demanded in complaint.
☐ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☒ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

Contracts

- ☐ Constructions (100)
☐ Debt Collection (110)
☐ General (130)
☐ Breach of Contract (140)
☐ Fraud/Bad Faith (150)
☐ Failure to Deliver/
Warranty (160)
☐ Employment Discrim (170)
☐ Employment (180)
☐ Other (199) _____

Torts - Professional Malpractice

- ☐ Dental Malpractice (200)
☐ Legal Malpractice (210)
☐ Medical Malpractice (220)
Previous Notice of Intent Case #
20 ____ -NI- ____
☐ Notice/ File Med Mal (230)
☐ Other (299) _____

Torts - Personal Injury

- ☐ Conversion (310)
☐ Motor Vehicle Accident (320)
☐ Premises Liability (330)
☐ Products Liability (340)
☐ Personal Injury (350)
☐ Wrongful Death (360)
☐ Assault/Battery (370)
☐ Slander/Libel (380)
☒ Other (399) Defamation et al

Real Property

- ☐ Claim & Delivery (400)
☐ Condemnation (410)
☐ Foreclosure (420)
☐ Mechanic's Lien (430)
☐ Partition (440)
☐ Possession (450)
☐ Building Code Violation (460)
☐ Other (499) _____

Inmate Petitions

- ☐ PCR (500)
☐ Mandamus (520)
☐ Habeas Corpus (530)
☐ Other (599) _____

Administrative Law/Relief

- ☐ Reinstate Drv. License (800)
☐ Judicial Review (810)
☐ Relief (820)
☐ Permanent Injunction (830)
☐ Forfeiture-Petition (840)
☐ Forfeiture-Consent Order (850)
☐ Other (899) _____

Judgments/Settlements

- ☐ Death Settlement (700)
☐ Foreign Judgment (710)
☐ Magistrate's Judgment (720)
☐ Minor Settlement (730)
☐ Transcript Judgment (740)
☐ Lis Pendens (750)
☐ Transfer of Structured
Settlement Payment Rights
Application (760)
☐ Confession of Judgment (770)
☐ Petition for Workers
Compensation Settlement
Approval (780)
☐ Other (799) _____

Appeals

- ☐ Arbitration (900)
☐ Magistrate-Civil (910)
☐ Magistrate-Criminal (920)
☐ Municipal (930)
☐ Probate Court (940)
☐ SCDOT (950)
☐ Worker's Comp (960)
☐ Zoning Board (970)
☐ Public Service Comm. (990)
☐ Employment Security Comm (991)
☐ Other (999) _____

Special/Complex /Other

- ☐ Environmental (600)
☐ Automobile Arb. (610)
☐ Medical (620)
☐ Other (699) _____
☐ Sexual Predator (510)
☐ Permanent Restraining Order (680)
☐ Pharmaceuticals (630)
☐ Unfair Trade Practices (640)
☐ Out-of State Depositions (650)
☐ Motion to Quash Subpoena in
an Out-of-County Action (660)
☐ Pre-Suit Discovery (670)

Submitting Party Signature: _____

Date: 6/14/17

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCF, Rule 11, and the South Carolina Frivolous
SCCA / 234 (03/2016)

Record on Appeal

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Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

Effective January 1, 2016, Alternative Dispute Resolution (ADR) is mandatory in all counties, pursuant to Supreme Court Order dated November 12, 2015.

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

Pursuant to the ADR Rules, you are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs.
4. Cases are exempt from ADR only upon the following grounds:
 - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
 - b. Requests for temporary relief;
 - c. Appeals
 - d. Post Conviction relief matters;
 - e. Contempt of Court proceedings;
 - f. Forfeiture proceedings brought by governmental entities;
 - g. Mortgage foreclosures; and
 - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

**Please Note: You must comply with the Supreme Court Rules regarding ADR.
Failure to do so may affect your case or may result in sanctions.**

STATE OF SOUTH CAROLINA

**IN THE COURT OF COMMON
PLEAS**

COUNTY OF PICKENS

C.A. No. 2017-CP-39-

JOHN DOE,

Plaintiff,

-against-

**JANE DOE, CHARLES DOE, and
RICHARD DOE,**

Defendants.

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Civil Action No._____

COMPLAINT

(Jury Trial Demanded)

Plaintiff John Doe¹, (hereinafter referred to as “Plaintiff” or “John Doe”), by his attorneys Nesenoff & Miltenberg, LLP, David Aylor Law Offices and Schmutz & Schmutz, P.A., as and for his Complaint, respectfully alleges as follows:

THE NATURE OF THIS ACTION

1. This case arises out of the actions taken by Defendants Jane Doe and Charles Doe, freshman students at Clemson University (“Clemson”) during the incidents described herein, to defame, harass, abuse and punish Plaintiff John Doe, also a freshman student at Clemson during the incidents described herein, after Plaintiff and Defendant Jane Doe engaged in a consensual sexual encounter. Thereafter, Defendants Jane Doe, Charles Doe, and Richard Doe (Jane Doe’s father) conspired to target John Doe in furtherance of their own prurient interests,

¹ Plaintiff herewith files a motion to proceed pseudonymously.

and in retaliation for John Doe's interactions with Jane Doe, Charles Doe's "on-again/off-again" girlfriend.

2. After pursuing John Doe for more than a month, actively seeking him out at his birthday while he was intoxicated, seducing and initiating sexual activity with him, Jane Doe pleaded with John Doe to keep their encounter a secret from Defendant Charles Doe.

3. Notwithstanding, upon learning of the interactions between John Doe and Jane Doe, Defendant Charles Doe sought revenge against John Doe, his former fraternity pledge brother, by persuading Jane Doe that she must have been raped by John Doe.

4. Defendants Jane Doe and Charles Doe thereafter colluded to defame, harass and retaliate against John Doe through their use of Clemson's inherently biased and exceedingly deficient Title IX process, after a non-witness Resident Advisor made a fraudulent complaint of sexual misconduct against John Doe on Jane Doe's behalf.

5. Defendants Jane Doe and Charles Doe strategically utilized Clemson's Title IX investigation process to further their malicious vendetta against John Doe. Despite Jane Doe's inconsistent and varying accounts of the events, witness statements disproving Jane Doe's allegations, and significant exculpatory evidence, John Doe was ultimately found responsible for nonconsensual sexual

activity with Jane Doe and suspended from Clemson University through August 1, 2017, among other sanctions.

6. While John Doe's appeal was pending, and prior to the issuance of a final decision on the charges against John Doe, Defendant Richard Doe sent a copy of the confidential "pending" Decision Letter dated February 29, 2016 to the national headquarters of John Doe's fraternity, in violation of the Family Educational Rights and Privacy Act.

7. John Doe has been greatly damaged by the actions of Defendants: not only has John Doe suffered physical, psychological, emotional and reputational damages, but he has also suffered, and will continue to suffer, economic injuries, the loss of educational and career opportunities, and loss of future potential earnings as a result of the suspension, corresponding disciplinary mark on his academic record, and ever-present and very real potential of malicious or accidental public disclosure of the false allegations and flawed findings against John Doe as a sexual assault perpetrator.

8. John Doe therefore brings this action to obtain relief from Defendants Jane Doe, Charles Doe, and Richard Doe based on various state law claims.

THE PARTIES

9. Plaintiff is a natural person, citizen of the United States and resident of the County of Berkeley, State of South Carolina. During the events described

herein, Plaintiff was a student at Clemson University and resided in a dormitory on Clemson's campus in Clemson, South Carolina.

10. Upon information and belief, Defendant Jane Doe is a resident of the State of Connecticut. During the events described herein, Jane Doe was a student at Clemson University.

11. Upon information and belief, Defendant Charles Doe is a resident of the State of South Carolina. During the events described herein, Charles Doe was a student at Clemson University.

12. Upon information and belief, Defendant Richard Doe is a resident of the State of Connecticut and the father of Defendant Jane Doe.

JURISDICTION AND VENUE

13. This action is brought for damages and other appropriate relief pursuant to the statutory and common law of the State of South Carolina.

14. Venue is appropriate in this jurisdictional circuit pursuant to the *S.C. Code Ann.* § 15-7-30 (G) (1) and (2).

15. Jurisdiction is proper in this Court because Charles Doe is a resident of the State of South Carolina and the acts complained of are tortious acts committed in whole or in part in this State thus giving rise to jurisdiction pursuant to South Carolina Code § 36-2-803 (A) (3).

FACTUAL ALLEGATIONS COMMON TO ALL CLAIMS

Defendant Jane Doe's Pursuit of John Doe²

16. Defendant Jane Doe's pursuit of John Doe began well before the encounter which precipitated John Doe's suspension from Clemson.

17. Since as early as September 10, 2015, Jane Doe became preoccupied with John Doe when they first kissed. John Doe met Jane Doe for the first time on this day while at Charles Doe's dorm. John Doe gave Jane Doe a ride back to the high-rises on his moped, and a kiss was mutually initiated.

18. The following morning, September 11, 2015, Jane Doe sent a text message to John Doe, stating "don't hate me if I tell [Charles Doe] okay? I feel so guilty...sober me won't [tell him]. Drunk me tends to just speak so I'm going to try not to because I figure it's not worth it but I can't guarantee anything." Jane Doe went on to state "I just felt guilty because I was worried he was mad I didn't stay [at his dorm] but we're good so I don't feel bad anymore."

19. Despite her alleged feelings of guilt, as reflected in text messages between Jane Doe and her friend J.H., and Charles Doe and J.H., held in the investigative file maintained by Clemson University, Jane Doe continuously and persistently initiated contact with John Doe over the next month and a half,

² The factual allegations in this Complaint are based on Plaintiff's on-going investigation and the most current information available to him.

unbeknownst to Charles Doe, in a manner that demonstrated she sought to be more than friends with him. Indeed, Jane Doe actively sought to engage in a sexual encounter with John Doe, and continued to pursue him until the opportunity to lure him in arose.

20. Concurrently, Jane Doe also engaged in an “open relationship” with Charles Doe, one of John Doe’s pledge brothers, and engaged in sexual encounters with other male students at Clemson.

The Evening of October 24, 2015

21. On the evening of October 24, 2015, John Doe’s birthday, his fraternity Phi Delta Theta planned to host a party at the Compound, an off campus house.

22. Though neither she nor her friends received an invitation from John Doe, Jane Doe and her friends decided to attend.

23. John Doe and Jane Doe were friends who had engaged in one physical encounter a few weeks prior. Subsequent to the encounter, Jane Doe repeatedly initiated contact with John Doe, during September and October of 2015, while also continuing to seek a relationship with Charles Doe.

24. Around 8:00 p.m., John Doe began to celebrate his birthday alongside some of his pledge brothers. He consumed approximately five beers and 1 to 2 shots of Fireball over a period of approximately two and a half hours.

25. At approximately the same time, Jane Doe attended a “pregame” with friends in her dorm room. She self-reported that she consumed an implausible 9 shots before Jane Doe and her friends headed to the party at the Phi Delta Theta fraternity house. Jane Doe and her friends walked to the Compound without incident.

26. On the way to the Compound, and prior to arriving at the party, Jane Doe told at least three of her friends that she wanted to find the birthday boy, John Doe, and give him a birthday kiss.

27. Jane Doe and her friends arrived at the off-campus party at John Doe’s fraternity house at approximately 11:30 p.m. Upon her arrival, Jane Doe spoke with Charles Doe, who brushed Jane Doe off, telling her to “find someone else” and “go have a good time.” Given the prior nature of their relationship, this comment visibly upset Jane Doe and solidified her desire to engage in sexual activity with John Doe that evening.

28. Thereafter, Jane Doe was determined to pursue a sexual encounter with John Doe. Her fixation on finding John Doe was apparent to several witnesses who spoke with Jane Doe and observed her attempts to locate him.

29. Jane Doe approached B.Z., who was speaking with R.C., and asked about the whereabouts of John Doe. After about 15 minutes, B.Z. agreed to help Jane Doe locate John Doe, who they observed exiting one of the houses on the

Compound. Jane Doe went up to John Doe and gave him a hug and a kiss on the lips, in front of several people.

30. Jane Doe was evidently intent on engaging in sexual activity with John Doe; she pursued him for more than a month, discussed her desire to kiss John Doe with at least several friends prior to the party, pursued him at the party, aggressively and forcefully touched him, initiated a kiss on his lips, hugged him in front of numerous witnesses, and told him “if you don’t kiss me now, you won’t have sex with me tonight.”

31. Though taken aback by Jane Doe’s overt statement, John Doe succumbed to her forcefully kissing, hugging, and touching him. While John Doe generally avoided such public displays of affection, his inhibitions were lowered as a result of his intoxicated state.

32. Over the next forty-five minutes to an hour, as their sexual encounter escalated, John Doe asked Jane Doe playfully if she would give him a birthday blowjob. To his surprise, she responded yes, propositioning him further, and they began to discuss where to go. Ultimately, they mutually decided to leave the party to find somewhere more private.

33. As they began to walk away from the party, Jane Doe, walking unassisted, did not display any signs of intoxication; despite the darkness, she did

not stumble, did not slur her words and engaged in intelligible and conscious conversation with John Doe.

34. After walking and talking for approximately twenty minutes, John Doe and Jane Doe located an area near a shed that was situated behind a church and some apartments where they could continue their intimacy. In an effort to further bait him into engaging in sexual activity with her, Jane Doe provided John Doe with vodka from a water bottle she had brought to the party, from which they each took a sip. Notably, at no point in the evening did John Doe offer any alcohol to Jane Doe.

35. As they resumed kissing, Jane Doe unilaterally escalated the encounter when she started to undress herself and removed her pants, on her own volition. John Doe questioned what she was doing as he understood that Jane Doe was only going to give him oral sex. Surprised and caught off guard by this behavior, John Doe questioned why she was removing her pants, to which Jane Doe unequivocally responded “so we can have sex.”

36. Though he was intoxicated, and despite the fact that Jane Doe was the initiator of all physical contact between them and took off her own clothing, John Doe was still aware of the need to ensure that Jane Doe was coherent and was fully consenting to engaging in sexual intercourse.

37. As such, John Doe asked her repeatedly if she was sure she wanted to have sexual intercourse with him. Jane Doe consistently responded that she knew

what she was doing, and indicated on at least five separate occasions, both verbally and non-verbally, that it was fine to proceed.

38. John Doe asked Jane Doe whether he should use the condom in his wallet, which he was required to carry at all times as a pledge of a fraternity. Jane Doe told John Doe that he should use a condom, so John Doe complied and put on the condom.

39. Thereafter, John Doe surrendered to Jane Doe's seduction, which she had initiated and orchestrated, and they engaged in consensual sexual intercourse, an encounter entirely initiated by Jane Doe, and during which she was an active and willing participant.

40. Subsequently, they walked arm in arm back to the house. While conversing during their walk to the house, Jane Doe gradually became agitated and emotional about her past boyfriends, and specifically her on again/off again boyfriend, Defendant Charles Doe. Jane Doe discussed how terribly her past boyfriends had treated her and commented on how kind John Doe had been to her.

41. John Doe was not aware that Charles Doe had shunned and ignored Jane Doe earlier in the evening, prior to Jane Doe seeking out John Doe.

42. When they returned to the house, approximately thirty to forty minutes later, Jane Doe texted her friends, accurately reporting her location and ultimately reuniting with her girlfriends and B.Z. As they sat on the front porch, Jane Doe began

to cry, asking her friends why Charles Doe didn't love her or want to be with her. Jane Doe also texted Charles Doe, who had left the Compound.

43. Upon information and belief, after returning to her dorm room, Jane Doe discovered that she did not have the key to her room. She recalled that her key might be with John Doe, evidencing a recollection of who she had spent time with that evening.

44. Resident Advisor L.S., who lived next door to Jane Doe, obtained a temporary key and let the girls into Jane Doe's room. When providing Jane Doe with a key to her room, in the early morning hours of October 25, L.S. did not express any concern about Jane Doe's condition or level of intoxication. In fact, despite being a mandated reporter for Clemson University, L.S. did not observe anything that caused concern, sufficient to warrant the filing of a Title IX or alcohol related report.

45. L.S. later noted, during the investigation, that Jane Doe was not slurring her words, and was crying about being stood up by her boyfriend. At no time did she indicate that Jane Doe claimed she had been sexually assaulted, nor by her observation did it appear that was the case. At no time did L.S., in her capacity as a Resident Advisor, believe that it was necessary to invoke Clemson's alcohol amnesty rules to seek help for Jane Doe.

46. L.S. was sober throughout her interactions with Jane Doe. Yet, Clemson University ultimately gave greater weight to the testimony of the “drunk” witnesses during their investigation of Jane Doe’s false allegations.

47. Upon information and belief, prior to going to sleep that evening, Jane Doe exchanged numerous hostile text messages with Charles Doe, concerning the events of the night. Though a girlfriend of Jane Doe’s initially deleted the messages at the insistence of Charles Doe because of what he had said in those messages, Jane Doe later admitted that she was able to retrieve the messages from her iCloud.

Jane Doe’s Recollection of the Evening of October 25 and Subsequent Selective Memory

48. Demonstrating a clear recollection of their sexual encounter the previous evening, on October 25, 2015 at 10:45 a.m., prior to speaking with Charles Doe, Jane Doe sent a text message to John Doe, pleading “don’t tell [Charles Doe] what happened.” Significantly, her concerns focused solely on Charles Doe finding out that she had engaged in sexual intercourse with John Doe; she did not express any concern that the encounter was not consensual.

49. Yet, Jane Doe subsequently told investigators from Clemson’s Office of Community and Ethical Standards (“OCES”) that she did not awaken until 11:00 a.m. that day in an effort to cover up her “don’t tell [Charles Doe] what happened” text message sent to John Doe.

50. Further evidencing her recollection of the prior night's events, Jane Doe also asked John Doe via text message if he had seen her keys, recalling that they may have gotten lost during their sexual encounter.

51. However, Jane Doe would later omit these exculpatory text messages from her submission to the investigators from OCES. Yet, when John Doe identified this critical piece of information, the Investigators arbitrarily chose to ignore this piece of evidence and did not investigate it further. In fact, Jane Doe later claimed that she did not wake up until approximately 11:00 a.m., despite direct documentary evidence to the contrary.

52. Shortly after 11:00 a.m. on October 25, 2015, prior to speaking with Charles Doe, Jane Doe told her close friend J.H. that she had engaged in sexual intercourse with John Doe the previous evening. J.H. understood Jane Doe to be very concerned that Charles Doe would find out about the sexual encounter. She did not indicate that the encounter was non-consensual, or that she did not recall what transpired, but instead stated she was upset about Charles Doe having ignored her the previous evening and not being interested in pursuing a relationship with her.

53. At approximately 2:00 p.m. on October 25, 2015, prior to speaking with Charles Doe, Jane Doe also told her friends H.S. and O.P. that she engaged in sexual intercourse with John Doe the previous evening.

54. Despite Jane Doe's apparent attempts to keep this information a secret from Charles Doe, he nonetheless learned about the encounter between John Doe and Jane Doe when he received a text message within a group chat, wherein John Doe stated he had sex with a girl on his birthday, the night before. This text message was initially sent to J.S. alone; yet, J.S. subsequently copied and pasted John Doe's text message into a group chat, of which Charles Doe was a member, without John Doe's knowledge. Putting two and two together, Charles Doe deduced that the girl referred to by John Doe was Jane Doe given her promiscuous track record, her past indiscretions, their arguments prior to the party, and Jane Doe's text messages after the party.

55. Upon discovering that Jane Doe had engaged in sexual intercourse with John Doe, at approximately 5:30 p.m. on Sunday, October 25, Charles Doe confronted Jane Doe about their interaction. When questioned by Charles Doe as to whether she recalled the sexual encounter, she claimed that she did not, in direct contrast to her prior conversations with John Doe and J.H.

56. Incredibly, nearly seven hours after she instructed John Doe not to disclose this information to Charles Doe, Jane Doe's recollection changed. In an effort to maintain her relationship with Charles Doe and save face with her peers, Jane Doe fabricated a claim that she could not recall the events of the prior evening. In response, Defendant Charles Doe insisted, then "it is rape" and

willingly went along with Jane Doe's fictitious claim knowing it to be false so that they could maintain their unconventional relationship.

57. Yet, while continuing to suggest to Charles Doe that she could not recall the events of the prior evening and adopting Charles Doe's theory that her encounter with John Doe was "rape," which ultimately became their mantra, Jane Doe also texted J.H. to tell her that Charles Doe discovered she had engaged in sexual intercourse with John Doe.

58. Clearly, Jane Doe feigned ignorance of the events on the evening of October 24, 2015 and early morning hours of October 25, 2015 and fabricated her entire story with Charles Doe. They then conspired to set up John Doe and maliciously harm him using Clemson's Title IX policies and procedures to extract revenge.

59. On October 25, 2015 at 5:46 p.m., Charles Doe sent a text message to John Doe stating "whether it was your birthday or not. Not too proud of you for taking advantage of [Jane Doe] like you did last night. The poor girl doesn't even remember it." Yet, Jane Doe's own text messages to John Doe earlier that day had already confirmed that she recalled exactly what happened between her and John Doe.

60. John Doe was utterly shocked and dismayed by these false and hurtful allegations, as the sexual encounter had been completely consensual, confirmed by Jane Doe's initiation, active participation and repeated verbal agreement.

61. At 6:38 p.m., John Doe relayed this information to Jane Doe who curiously could no longer recall what had transpired the previous evening. Aligning with Charles Doe's beliefs as to what must have occurred, Jane Doe inexplicably revised her narrative, claiming "[Charles Doe]'s right, I don't remember it. I'm sorry. Not all of it at least." Upon information and belief, Charles Doe was present during this conversation between John Doe and Jane Doe and either influenced what Jane Doe texted to John Doe or sent the text messages himself, using Jane Doe's phone.

62. Curiously, Jane Doe quickly and conveniently developed selective amnesia. She claimed that she had no memory of what had occurred between her and John Doe, notwithstanding her 10:45 a.m. text message to John Doe in which she specifically advised John Doe not to tell Charles Doe about it and her subsequent statements to her friends that she had engaged in sexual intercourse with John Doe the previous day.

63. Moreover, a few days later, Jane Doe told her friend H.S. that everyone, including Charles Doe, was mad at her because she had engaged in sexual intercourse with John Doe; H.S. reported "[Jane Doe] did not think a big

deal of the sex and was dismissive of the event.” Indeed, H.S. stated in her interview with Clemson investigators, that it was “not until her meeting with OCES....that [Jane Doe] claimed she was raped...”

64. Similarly, later in the evening on October 25, 2015, on the way to their sorority meeting, Jane Doe told her friend R.C. “nonchalantly” that she had had consensual sex with John Doe the previous night. Given she and Jane Doe were close friends, R.C. later told investigators if anything improper had occurred between John Doe and Jane Doe, Jane Doe would have told her.

65. Further, analogous to H.S.’s statement, R.C. testified that the sexual encounter between John Doe and Jane Doe did not become an “issue” with Jane Doe “until she became aware of the anonymous report to OCES.” R.C. indicated that all of their friends were confused as to why it had now become an issue, and noted Jane Doe was upset that someone had chosen to file the anonymous report.

66. Given Jane Doe’s primary concern was salvaging her tumultuous relationship with Charles Doe, Jane Doe discarded the truth and readily embraced Charles Doe’s assumption that Jane Doe must not have been capable of consenting to the sexual activity with John Doe and accepted Charles Doe’s theory that “it is rape.” In so doing, Jane Doe threw John Doe under the proverbial “bus.”

The Ensuing Investigation and Defendants' Efforts to Defame, Harass and Punish John Doe

67. On October 26, 2015, Jane Doe's roommate C.F., who was not an eyewitness to the encounter and only learned of the alleged incident from Jane Doe after the fact, reported to a friend of a friend's Resident Advisor that Jane Doe had been the victim of sexual misconduct. Curiously, C.F. did not contact Jane Doe's Resident Advisor and neighbor, L.S., who had observed Jane Doe on the evening in question, but instead sought out someone with no personal knowledge of the facts to relay the report to OCES.

68. L.S. was sober during her observations and communications with Jane Doe on the day of the events at issue, and had a responsibility as a Resident Advisor to take action if she deemed it necessary to do so. Yet, L.S. did not take any action to report the incident.

69. Moreover, L.S. had recently reported Jane Doe for a minor in possession offense, and their relationship was described by others as strained as a result. L.S. was thus aware of Jane Doe's pattern of misbehavior, and Jane Doe knew that L.S. would not be easy to manipulate into reporting a false allegation to Clemson's OCES.

70. Thus, a friend of a friend's Resident Advisor, Y.S., ultimately reported the alleged incident to Clemson's OCES.

71. On October 29, 2015, Jane Doe reported the alleged incident to Chrystal Anderson (“Ms. Anderson”), a counselor at Clemson’s Counseling and Psychological Services, further perpetuating the false allegations against John Doe. Upon information and belief, Defendant Charles Doe attended every one of Jane Doe’s counseling sessions with Ms. Anderson and actively participated in spreading the false allegations that John Doe had raped Jane Doe.

72. Ms. Anderson later referred to Charles Doe as an “unstable” person.

73. Demonstrating a lack of any fear or distress, Jane Doe voluntarily attended events at the Compound the following two weekends: during the weekend of October 30, 2015 she attended a Halloween party and on the weekend of November 6, 2015, Jane Doe attended another party at the Compound.

74. On November 8, 2015, Defendant Charles Doe withdrew from pledging the fraternity, in response to alleged encouragement from the brothers regarding his failure to fulfill fraternity and pledge brother duties just like everyone else in his pledge class. He subsequently saw text messages sent by his former pledge brothers, expressing their delight that Charles Doe was no longer a member of the pledge class, which served to further intensify his disdain toward John Doe, who was still a member.

75. Indeed, Defendant Charles Doe admitted to Clemson’s Title IX investigators that despite his intention to rush for a new fraternity in the spring, he

was concerned that he would be labeled as “that guy” who got a fellow pledge brother in trouble, precluding him from gaining access to any fraternity.

76. On November 11, 2015, after pressure from OCES and Clemson’s Counseling and Psychological Services, Jane Doe submitted a formal Title IX complaint to OCES Director Alesia Smith (“Ms. Smith”). Consequently, as a result of Defendants’ collusion and intention to punish and defame John Doe, a formal investigation commenced.

77. Charles Doe was interviewed by OCES on December 3, 2015. Shortly thereafter, while the investigation was ongoing, John Doe learned that Charles Doe was discussing the investigation and the incident in question, and publicly referring to John Doe as a “rapist” around campus.

78. John Doe learned that Charles Doe made these statements to at least ten members of the Clemson community including L.S., R.H., J.S., J.Sm., J.A., P.O’D., A.G., J.H., R.H., and C.K.

79. In response to Defendant Jane Doe’s false allegations, on January 27, 2016, Ms. Smith imposed the following interim measures: John Doe was restricted from attending University recognized fraternity events not hosted by his fraternity; he was only allowed to attend official events sponsored by Phi Delta Theta; in the event he did attend any non-recognized events or programs and Jane Doe was in attendance, either on or off campus, he would need to leave the area immediately;

he was restricted from using the second floor of the Cooper Library; and he was restricted from entering Harcomb Dining Hall at any time. Such measures were to remain in effect until the student conduct process was concluded.

80. On February 4, 2016, investigators Suzanne Price and Loreto Jackson issued the Investigation Report, which included a recommendation that the matter against John Doe proceed to a formal hearing. A hearing was scheduled to take place at 8:30 a.m. on February 26, 2016.

81. On February 20, 2016, John Doe attempted to file an incident report form against Charles Doe based on his violation of the OCES policies against confidentiality and retaliation. Despite assurances from OCES that Jane Doe, as well as all students interviewed during the investigation process, were forbidden from speaking publicly about the investigation pursuant to the rules set forth by OCES, Charles Doe openly discussed the alleged incident and referred to John Doe as a “rapist” around Clemson’s campus, as heard by at least seven students, despite his knowledge of the falsity of this statement.

82. On February 20, 2016 John Doe also attempted to file a complaint against Jane Doe on the grounds that she engaged in sexual activity with John Doe without his consent and engaged in subsequent harassing and retaliatory behavior, in conspiracy with her boyfriend Charles Doe.

83. However, Ms. Smith assisted in perpetuating Defendants' campaign of harassment against John Doe when she informed John Doe that if he filed the foregoing complaints, they would be considered retaliatory and would result in his immediate expulsion. Ms. Smith thereby precluded John Doe from exercising his rights under Clemson's Policies and pursuing his meritorious complaints against Jane Doe and Charles Doe. As such, Clemson failed to consider or take any action with respect to John Doe's complaints, as intended by Defendants Jane Doe and Charles Doe to cover up and distract from Jane Doe's repeated acts of predatory sexual misconduct.

84. Thereafter, Charles Doe and Jane Doe engaged in repeated acts of harassment and retaliation against John Doe.

85. On February 26, 2016, John Doe appeared before an Administrative Hearing Board on the alleged violations against him; namely: (i) alcohol; (ii) disorderly conduct; (iii) harm to person; and (iv) sexual misconduct.

86. On February 27, 2016, Charles Doe posted to social media website Snapchat a message stating "Goodbye" with a hand waving this gesture.

87. On February 28, 2016, Charles Doe taunted John Doe and his fraternity brothers as they awaited entrance into their chapter meeting. Charles Doe mocked approximately 60 members of the fraternity, including John Doe, when he stated "haha it is too bad you are all down one person now," clearly in reference to

John Doe. When John Doe identified himself and indicated that they were not down one person, Charles Doe repeatedly asked John Doe why he was still there. Charles Doe then proceeded to shout and cuss at John Doe, in front of his fraternity brothers.

88. On February 29, 2016, John Doe was leaving the library with a friend, when he noticed Defendants were glaring, watching him intently as he exited the area, causing him to feel discomfort and anxiety.

89. John Doe reported each of the incidents on February 27, 28, and 29, 2016 to the OCES Director Alesia Smith.

90. Ultimately, on February 29, 2016, Chairperson David Frock issued a decision letter (the “Decision Letter”) finding John Doe responsible for all four charges (the “Decision”). As a result, the following sanctions were imposed on John Doe: (i) suspension from the University for one semester; (ii) disciplinary probation for the remainder of John Doe’s time at Clemson; (iii) eviction from University housing; (iv) no contact order for the duration of his time at Clemson; (v) entrance into a counseling program with Clemson University Counseling and Psychological Services; and (vi) in kind restitution by completion of an approved Sexual Assault Awareness course prior to re-enrollment (collectively, the “Sanction”).

91. On multiple occasions, including on March 30, 2016, April 1, 2016, and April 4, 2016, Charles Doe intentionally showed up during the middle of John Doe's workouts in an effort to bait him into engaging in further conflict.

92. Similarly, Jane Doe went out of her way to bait John Doe. On April 4, 2016, for example, Jane Doe arrived at the Greek Week Karaoke event at Tillman Auditorium with a friend approximately 20-30 minutes after the start of the event. Jane Doe arrived long after John Doe had selected his seat. Jane Doe intentionally sat four rows in front of John Doe and his fraternity brothers despite there being many empty seats in the auditorium. Jane Doe went out of her way to make eye contact with John Doe and spent most of the performance glaring at John Doe in an effort to make him feel uncomfortable and in violation of the no contact order. Witnesses to the incident include: C.C., C.R., A.J., Z.Q., S.R., B.G., R.P., D.T., M.A., C.H., and M.W.

93. Incredibly, rather than conducting a thorough and impartial assessment of John Doe's complaint against Charles Doe, on March 2, 2016, Ms. Smith imposed an additional No Contact Order against John Doe, and the entire Phi Delta Theta Fraternity, with respect to Charles Doe.

94. Subsequently, both John Doe and Jane Doe appealed the Decision and Sanction, through Clemson's OCES process.

95. On April 18, 2016, while both appeals to President Clements remained pending, John Doe received notice from Phi Delta Theta Director of Chapter Services Michael Wahba that Province President Ron Johnson was suspending John Doe from the fraternity, and recommended expulsion. The cause for this discipline was identified as “Title XVI, Section 155, of the Code of Phi Delta Theta- conduct unworthy of a member of Phi Delta Theta and violations of the Bond, the constitution of the fraternity.” The suspension was effective immediately.

96. This notice from the fraternity was prompted by the fraternity’s national headquarters’ receipt of the confidential “pending” Decision Letter dated February 29, 2016.

97. The Decision Letter was sent to the fraternity’s national headquarters by Jane Doe’s father, Richard Doe, on his own volition and/or at the urging of Jane Doe and Charles Doe as a further act of revenge.

98. Richard Doe’s actions violated the Family Educational Rights and Privacy Act (“FERPA”), as the Decision Letter was a private educational record.

99. Richard Doe sent the letter to the fraternity’s national headquarters knowing that it was inaccurate, still subject to Clemson’s appeal process, and a FERPA violation.

100. The Decision Letter was not final because it was under appeal and was not subject to disclosure to third-parties, including Richard Doe or the fraternity's national headquarters.

101. The disclosure of the Decision Letter to Richard Doe by Jane Doe or Charles Doe, and the subsequent forwarding of the Decision Letter to the fraternity's national headquarters was improper, done without authorization, and in violation of FERPA.

102. The disclosure of the Decision Letter further perpetuated the false allegation to a third-party, the Phi Delta Theta national headquarters, notwithstanding the pending appeal and a final determination on the charges, intentionally and prematurely indicting Plaintiff for the alleged wrongdoing.

103. Upon information and belief, Richard Doe individually, and at the urging of Jane Doe and Charles Doe published this defamatory and confidential information, knowing it concerned a false allegation and finding of sexual misconduct that they had in fact propagated, to an unprivileged third party.

104. Ultimately, Defendants were successful in utilizing Clemson's inherently biased and procedurally flawed Title IX process to further their personal and malicious vendetta of retaliation, harassment, and defamation against John Doe; on May 27, 2016, Chief of Staff Max Allen upheld the Decision, and egregiously

and unilaterally increased the Sanction's suspension length by one year, imposing a suspension on John Doe until August 1, 2017.

105. On or about December 2, 2016, Jane Doe continued to disseminate her lies by making a public presentation regarding sexual assault to members of the campus community at a Clemson sponsored event. At the conclusion of that presentation she publicly and falsely stated that she had been sexually assaulted on October 24, 2015.

106. Jane Doe provided sufficient detail during her presentation, including the date of the assault (which the Clemson community knew was John Doe's birthday), for attendees to identify John Doe as the perpetrator.

107. Jane Doe profited from her further defamation of John Doe when she was awarded a cash prize from Clemson University for her presentation.

108. Jane Doe's presentation was subsequently posted on the Internet and remains available to the public for viewing on various social media platforms including YouTube, Facebook and Twitter.

109. Since Chief of Staff Allen's decision, Defendants' lies have begun to unravel.

110. In January 2017, for example, Charles Doe sent a text message to John Doe in which he admitted that he had conspired with Jane Doe to pursue a false claim of rape against John Doe.

111. Charles Doe stated in those text messages he lied during the hearing regarding the rape allegations and admitted that John Doe was innocent of the charges stating “You’re innocent. I lied in that hearing. [Jane Doe] wanted to have sex that night. Get your brothers away from me and never touch your life again and I’ll come through with the truth that she lied. I deleted the texts from that night to prove she was f***** crazy. You’re innocent. Just pull your f***** boys off me and never touch me again. It’s sad that you were like a brother to me and this happened You’re innocent. Send this to your lawyer. Just don’t call me into the hearing and leave me alone. You’re welcome. That’s all I ask. You’re innocent bud.”

112. In that same text message exchange, Charles Doe forwarded to John Doe screen shots of a text message exchange between Charles Doe and Chrystal Anderson, who was sharing data with Jane Doe’s father. In that text message exchange, Charles Doe told Chrystal Anderson that Jane Doe lied about being raped and that John Doe was innocent, stating, among other things, “She destroyed my life. She deserves, Everything she gets. She lied about to everything. She don’t get raped. The sex with [John Doe] was consensual.”

113. Charles Doe further stated that Chrystal Anderson should relay to Jane Doe’s father “Good luck in court. Like I said, I’ll destroy your life Mr. [Doe]. If

you see this, Your daughter is a slut and you've been wasting your time with [c]. Because [John Doe] is innocent and I hope to see him back. Good f***** luck."

AS AND FOR A FIRST CAUSE OF ACTION
Defamation Against All Defendants

114. Plaintiff John Doe repeats and realleges each and every allegation hereinabove as though fully set forth herein.

115. Defendants Jane Doe and Charles Doe made false and defamatory statements about John Doe to administrators at Clemson University, to the national headquarters of John Doe's fraternity, as well as to fellow students.

116. Richard Doe's statements to the national headquarters of John Doe's fraternity were based on confidential and incomplete findings, which only served to breed further acts of defamation and harassment.

117. Similarly, Jane Doe's statements at the public speaking competition were defamatory and further perpetuated Defendants' acts of defamation and harassment.

118. Defendants' statements were made with actual malice.

119. Defendants' statements during the Title IX proceedings were defamatory and are not protected by "privilege" because Defendants made those statements knowing they were false.

120. Defendants cannot rely on the findings in the Title IX proceeding because those findings were made based on Defendants' false statements and fraudulent conduct.

121. Defendants Jane Doe and Charles Doe made non-privileged defamatory false statements that were culpably published and that were damaging.

122. The specific statements accusing Plaintiff John Doe of engaging in non-consensual sexual contact are factual: the language used and context in which the language appeared made clear that Jane Doe and Charles Doe were factually accusing John Doe of engaging in sexual assault.

123. Defendants falsely accused John Doe of sexual misconduct, and defamed his name and reputation when Jane Doe knowingly pursued a false complaint of misconduct with Clemson's OCES, at the urging of Charles Doe.

124. Jane Doe knowingly pursued a false report of sexual misconduct against John Doe; though claiming that she could not consent to the encounter with John Doe as a result of her intoxication level, and did not recall the sexual activity with John Doe, this claim was directly refuted by her own text messages sent to John Doe at 10:45 a.m. the following morning, statements made to her friends, as well as the statements of numerous witnesses.

125. Specifically, at 10:45 a.m. on October 25, prior to communicating with Charles Doe, Jane Doe texted John Doe concerning the previous events and,

demonstrating a clear recollection of their encounter, instructed that he not say anything about the incident to Charles Doe.

126. Only after Charles Doe discovered that Jane Doe and John Doe had engaged in sexual intercourse, and confronted her about it, did Jane Doe's account begin to evolve.

127. Notwithstanding, Jane Doe proceeded with this false report of misconduct, colluding with Charles Doe, who had convinced her that the encounter must have been a rape.

128. Defendants thereafter colluded and conspired to defame, harass and retaliate against John Doe by pursuing a false complaint with Clemson's OCES, knowing full well that such an allegation was false.

129. Defendants strategically utilized Clemson's deficient and biased Title IX process to pursue a false report against John Doe and further promulgate their lies in an effort to harass and defame John Doe, minimize Charles Doe's humiliation with the fraternity, and continue their open relationship.

130. Defendants published this false allegation to numerous administrators in Clemson's OCES when they pursued a false claim of sexual misconduct.

131. Defendants published this false allegation to the Clemson community when Defendant Charles Doe referred to John Doe as a "rapist" around Clemson's

campus, as heard by at least seven students, including, L.S., R.H., J.S., J.A., P. O'D., A.G., and C.K.

132. Defendant Richard Doe further published this false allegation when he sent a copy of the pending "Decision Letter" to the national headquarters of the Phi Delta Theta fraternity, in violation of John Doe's rights under FERPA.

133. Publication of this false and defamatory statement is also actionable because it has resulted in special harm, in the form of economic losses, including but not limited to the lifelong business and social relationships that would have been developed through his membership in the fraternity.

134. On or about December 2, 2016, Jane Doe continued to disseminate her lies by making a public presentation regarding sexual assault to members of the campus community at a Clemson sponsored event. At the conclusion of that presentation she publicly and falsely stated that she had been sexually assaulted on October 24, 2015. Jane Doe profited from this defamation of John Doe when she was awarded a cash prize from Clemson University for her presentation.

135. Defendants' statements were not privileged in that they acted with malice in knowingly filing and pursuing a false report of rape.

136. Defendants intentionally and knowingly published a false report of misconduct against John Doe, and are therefore at fault for such publication.

137. Publication of this false and defamatory statement was actionable per se as it concerned a crime of moral turpitude; namely, rape.

138. The aforesaid statement was defamatory because it imputed conduct which injuriously affected John Doe's reputation and/or degraded him in society and/or brought him into public contempt while causing emotional and psychological damages.

139. There was never a criminal investigation of Jane Doe's claims because there was no factual information to support her selective amnesia.

140. Defendants cannot rely on the Administrative Hearing Board's decision as a defense to John Doe's defamation claim because the testimony upon which the decision is based was based on the same false and defamatory statements that John Doe was a "rapist."

141. Based on the foregoing, Defendants are liable to Plaintiff for defamation.

142. As a direct and proximate result of the above conduct, Plaintiff sustained tremendous damages, including, without limitation, emotional distress, damage to reputation, loss of educational and career opportunities, loss of future earning capacity, economic injuries, emotional and psychological damages, and other direct and consequential damages.

143. 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.

AS AND FOR A SECOND CAUSE OF ACTION
Abuse of Process Against Jane Doe and Charles Doe

144. Plaintiff John Doe repeats and realleges each and every allegation hereinabove as though fully set forth herein.

145. Defendants Jane Doe and Charles Doe strategically utilized Clemson's Title IX process for an illegitimate objective; that is, to further harass, defame, retaliate against, and punish John Doe.

146. Defendants pursued the investigation through Clemson's Title IX process with an ulterior purpose, and one for which neither Clemson's OCES process nor Title IX was intended.

147. Defendants acted knowingly and willfully when they pursued the investigative process for nearly seven months, knowing the charge precipitating the process was false.

148. The use of Clemson's Title IX process for the purpose of seeking revenge or pursuing a personal vendetta against another individual was improper.

149. Defendants' primary motive in proceeding with Clemson's Title IX process was to defame, harass and punish John Doe, despite their knowledge that the allegation of misconduct was false.

150. Based on the foregoing, Defendants are liable to Plaintiff for abuse of process.

151. As a direct and proximate result of the above conduct, Plaintiff sustained tremendous damages, including, without limitation, emotional distress, damage to reputation, loss of educational and career opportunities, loss of future earning capacity, economic injuries, emotional and psychological damages, and other direct and consequential damages.

152. 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.

AS AND FOR A THIRD CAUSE OF ACTION
Intentional Infliction of Emotional Distress Against All Defendants

153. Plaintiff John Doe repeats and realleges each and every allegation hereinabove as though fully set forth herein.

154. Defendants intentionally inflicted severe emotional distress upon Plaintiff when they knowingly and willfully pursued a false complaint of sexual misconduct against John Doe.

155. Defendant Charles Doe feigned continued friendship and support of John Doe while simultaneously playing both sides in an effort to further damage John Doe.

156. Defendants Jane Doe and Charles Doe intentionally inflicted severe emotional distress upon Plaintiff when they participated in the investigation of a complaint of sexual misconduct against Plaintiff conducted by Clemson's OCES, knowing such a serious charge could result in a sanction of suspension, or worse, in addition to severe emotional damage.

157. Defendants were substantially certain such distress would result from their conduct, as Defendants utilized Clemson's Title IX process for the very purpose of harassing and retaliating against John Doe.

158. Defendant Richard Doe intentionally inflicted severe emotional distress upon Plaintiff when he sent a copy of the confidential "pending" Decision Letter dated February 29, 2016 to the national headquarters of John Doe's fraternity while John Doe's appeal was pending, knowing that such a decision was not final and that such disclosure was a violation of John Doe's rights under FERPA.

159. Defendant Richard Doe was certain such distress would result from this conduct as Plaintiff was ultimately expelled from the fraternity, which was the very intention of such disclosure.

160. Defendants' conduct was so extreme and outrageous as to exceed all possible bounds of decency and must be regarded as atrocious and utterly intolerable in a civilized community.

161. Defendants' actions directly caused severe emotional distress to Plaintiff, including but not limited to post-traumatic stress disorder, as their false reporting of a charge of rape against Plaintiff ultimately led to his suspension from school, removal from his fraternity, damage to his name and reputation, ostracism from his peers and severe emotional damage.

162. The distress suffered by Plaintiff as a result of Defendants' actions was so severe that no reasonable person should be expected to endure it.

163. Based on the foregoing, Defendants are liable to Plaintiff for intentional infliction of emotional distress.

164. As a direct and proximate result of the above conduct, Plaintiff sustained tremendous damages, including, without limitation, emotional distress, damage to reputation, loss of educational and career opportunities, loss of future earning capacity, economic injuries, emotional and psychological damages, and other direct and consequential damages.

165. 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.

AS AND FOR A FOURTH CAUSE OF ACTION
Civil Conspiracy Against All Defendants

166. Plaintiff John Doe repeats and realleges each and every allegation hereinabove as though fully set forth herein.

167. Jane Doe, Charles Doe, and Richard Doe acted in concert with the common purpose to defame and injure John Doe emotionally, reputationally and economically by engaging in the acts outlined above, including but not limited to the false reporting to Clemson, John Doe's fraternity, and other individuals that John Doe had "raped" Jane Doe.

168. It was foreseeable that the actions undertaken by Defendants would result in John Doe being injured and were undertaken by the Defendants for that express purpose.

169. John Doe has suffered as a direct and proximate result of the above conduct, tremendous damages, including, without limitation, emotional distress, damage to reputation, loss of educational and career opportunities, loss of future earning capacity, economic injuries, emotional and psychological damages, and other direct and consequential damages actions.

170. Defendants are equally and vicariously liable for their actions to defame and injure John Doe.

171. John Doe suffered and incurred Special Damages, which were foreseeable and were exacerbated and magnified as a result of the Defendants' conspiracy to defame.

172. John Doe's injuries were exacerbated and magnified because the defamatory statements were published on the Internet and in multiple jurisdictions, including South Carolina, Ohio, and Connecticut as a result of the conspiracy.

173. 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.

PRAYER FOR RELIEF

WHEREFORE, for the foregoing reasons, Plaintiff John Doe demands judgment against Defendants Jane Doe and Charles Doe as follows:

(i) on the first cause of action, a declaration that Defendants Jane Doe and Charles Doe defamed John Doe and an award of compensatory and punitive 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 career opportunities, and loss of future career prospects, plus prejudgment interest, attorneys' fees, expenses, costs and disbursements;

(ii) on the second cause of action for abuse of process, a judgment awarding John Doe an award of compensatory and punitive 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 career opportunities, and loss of future career prospects, plus prejudgment interest, attorneys' fees, expenses, costs and disbursements;

(iii) on the third cause of action for intentional infliction of emotional distress, a judgment awarding John Doe an award of compensatory and punitive 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 career opportunities, and loss of future career prospects, plus prejudgment interest, attorneys' fees, expenses, costs and disbursements;

(iv) on the fourth cause of action for civil conspiracy, a judgment awarding John Doe damages including but not limited to special damages; and

(v) awarding Plaintiff such other and further relief as the Court deems just, equitable and proper.

JURY DEMAND

John Doe herein demands a trial by jury of all triable issues in the present matter.

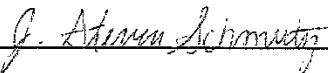
Dated: Charleston, South Carolina
June 14, 2017

DAVID AYLOR LAW OFFICES

By: _____

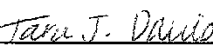
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Attorneys for Plaintiff John Doe

EXHIBIT J



November 11, 2015

John Doe

PERSONAL AND CONFIDENTIAL

**COMMUNITY AND
ETHICAL STANDARDS**

Division of Student Affairs
Clemson University
912 University Union
Clemson, SC
29634-4011

P 864-656-0510
F 864-656-0525

Regarding Case Number: 2015065502

Dear **John Doe**

On November 11, 2015, Alesia Smith, Deputy Title IX Coordinator, received a complaint alleging that a sexual assault occurred on October 2, 2015 at an off-campus location. This letter serves as notice that we will be conducting an impartial investigation of this complaint according to the procedures detailed in the Student Handbook available at: <http://www.clemson.edu/administration/student-affairs/student-handbook/>. The relevant investigation and resolution procedures are also included as an attachment.

Because of the seriousness of the charges, you are being temporarily restricted from being in Manning Hall until further notice.

During the investigation, you are required to have no contact with [REDACTED], her friends or any witnesses until further notice. The no contact order includes but is not limited to verbal, written, electronic, cellular, physical, or social contact. You are not to have contact with them through any second or third parties, and you are not to allow others to make any contacts on your behalf. Please understand that if you in any way violate this official University request, you may be subject to disciplinary action.

Retaliation

This letter also serves as a reminder that institutional policy prohibits retaliation, which is defined as: "No student shall retaliate against members of the University community who make reports regarding potential University-related violations of laws, regulations or University policies. Retaliation is any conduct causing any interference, coercion, restraint or reprisal against a person making a complaint or against a person assisting in any way in the investigation and resolution of the complaint."

Retaliation exists when an individual harasses, intimidates or takes other adverse actions against a person because of the person's participation in an investigation of discrimination or sexual misconduct or their support of someone involved in an investigation of discrimination or sexual misconduct.

Retaliatory actions include, but are not limited to, threats or actual violence against the person or their property, adverse educational or employment consequences, ridicule, intimidation, bullying, or ostracism. The University will impose sanctions on any faculty,

www.clemson.edu/student-affairs

student or staff member found to be engaging in retaliation.

If you experience any retaliation or if you have any questions or concerns, please contact me at 864-656-0510 or alesias@clemsn.edu.

Sincerely,

Alesia Smith
Associate Dean of Students/Director/Deputy Title IX Coordinator



February 18, 2016

Andrew Pampu
2405 Daniel Island D
Daniel Island, SC 29492-8281

**COMMUNITY AND
ETHICAL STANDARDS**

Division of Student Affairs
Clemson University
912 University Union
Clemson, SC
29634-4011

P 864-656-0510
F 864-656-0525

Regarding Case Number: 2015065502

Dear Mr. Pampu,

Information has been received by this office from the Title IX investigators alleging your involvement in an incident that occurred on October 24, 2015 when you were reported to have sex without consent. Therefore, this case is being handled according to Administrative Hearing procedures and you are being charged with violation of the following student regulations:

1. Alcohol

- a. No student shall unlawfully manufacture, use, possess, distribute, or dispense alcohol or any controlled substance, or illegal drug; or misuse of any legal substance for the purpose of intoxication.
- b. No student under legal age shall possess, sell, purchase, or consume alcoholic liquor, beer, or wine.
- c. No student of legal age shall purchase for or sell or provide to a person under legal age any alcoholic liquor, beer, or wine.
- d. No student of legal age shall possess or consume alcoholic liquor, beer, or wine except in areas designated by the University.
- e. No student shall violate any provisions of the University Drug and Alcohol Police (see Drug and Alcohol Policy).

2. Disorderly Conduct -

- a. No student shall take any action, which, is disorderly, lewd, or indecent, or be found in a grossly intoxicated condition.
- b. No student shall take any action that creates hazardous conditions including, but not limited to, actions such as dropping, throwing, or causing objects to fall from windows, doors, ledges, balconies, or roofs.
- c. No student shall take any action, which intentionally interferes with or disrupts normal University or University-sponsored activities including, but not limited to, teaching, service, research, or administration

3. Harm to Person -

No student shall cause physical harm or threaten to cause physical harm to another

person, nor shall any student take any action, which creates a danger to any person's health, safety, or personal well-being. Physical assaults may result in suspension from the University.

4. Sexual Misconduct -

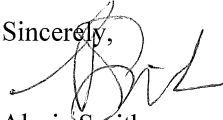
No student shall commit or attempt to commit sexual misconduct. (See Anti-Harassment and Non-Discrimination Policy).

Due to the seriousness of the allegations and the possibility that sanctions may include separation from the University, if found in violation, an administrative hearing is being scheduled to review. David Frock, Executive Director of Campus Recreation, will serve as the administrative hearing chairperson.

Your administrative hearing is scheduled for 8:30 AM on February 26, 2016 in 912 University Union. The evidence to be presented at the hearing consists of the investigators report that contains text messages, witnesses accounts and other documents. Witnesses may include Erin Wingo, CJ Gahagan, Olivia Pescatore, Ben Zboray, Hayley Sinclair and Leslie Schneider. If you would like for additional witnesses to attend, you will need to contact them to attend on your behalf and provide me with the additional names by noon on Monday, February 22, 2016. The administrative hearing process may be found online at <http://www.clemson.edu/studentaffairs/oces/>

If you have any questions regarding the content of this letter, please call me at (864) 656-0510.

Sincerely,



Alesia Smith

Associate Dean of Students/Director/Deputy Title IX Coordinator

CC: Erin Wingo, student

EXHIBIT K



February 29, 2016

John Doe

Dear John Doe

On Friday, February 26, 2016 an administrative hearing was held to consider your alleged involvement in an incident occurring on October 24th, 2015 which resulted with you being charged with violating the following Clemson University General Student Regulations:

**COMMUNITY AND
ETHICAL STANDARDS**

Division of Student Affairs
Clemson University
912 University Union
Clemson, SC
29634-4011

P 864-656-0510
F 864-656-0525

1. Alcohol

No student shall unlawfully manufacture, use, possess, distribute or dispense alcohol or any controlled substance or illegal drug or misuse any legal substance for the purpose of intoxication. No student under legal age shall possess, sell, purchase or consume alcoholic liquor, beer or wine. No student of legal age shall purchase for or sell or provide to a person under legal age any alcoholic liquor, beer or wine. No student of legal age shall possess or consume alcoholic liquor, beer or wine except in areas designated by the University. No student shall violate any provisions of the University Drug and Alcohol Policy (see Drug and Alcohol Policy).

2. Disorderly Conduct

No student shall take any action which is disorderly, lewd or indecent or be found in a grossly intoxicated condition. No student shall take any action which intentionally interferes with or disrupts normal University or University-sponsored activities including, but not limited to, teaching, service, research or administration.

3. Harm to Person

No student shall cause physical harm or threaten to cause physical harm to another person, nor shall any student take any action which creates a danger to any person's health, safety or personal well-being. Physical assaults may result in suspension from the University.

4. Sexual Misconduct

No student shall commit or attempt to commit sexual misconduct. (See Anti-Harassment and Non-Discrimination Policy).

Based on the information presented the hearing board found that the complainant was incapacitated and unable to give consent which you should have reasonably known, therefore you were found in violation of all four charges and as a result, the following sanctions were imposed:

- **Suspension from the University until August 1, 2016.** This suspension is to begin immediately or at the conclusion of any appeals that are filed that result in you remaining at Clemson University throughout the appeal process. Suspension is the denial of enrollment, attendance and other privileges at the University for a specified period of time. During the period of suspension you will be denied all privileges and access to classes, program and services granted to students in good standing. Permission to

www.clemson.edu/oces

apply for reenrollment upon the termination of the period may be granted with or without conditions/restrictions. The student must receive clearance for re-enrollment from the Office of Community and Ethical Standards. A student who has been issued a suspension sanction is deemed "not eligible to return" to the University during the suspension period. If your suspension beings immediately, you are eligible to re-enroll for the 2016 Fall semester.

- **Disciplinary Probation:** You will be placed on Disciplinary Probation for the remainder of your time as a student at Clemson University. Disciplinary Probation constitutes a specified period of review and adjustment during which a student is under an official warning that his/her violation was very serious. While on disciplinary probation, a student will be considered to be "not in good standing" with the University and may face specific restrictions on his/her behavior and/or University privileges. Students involved in similar or additional disciplinary incidents while on probation may be recommended for immediate suspension or dismissal.
- **Eviction:** You are hereby evicted from University Housing. Eviction from University Housing without a refund if the student is currently residing in a residence hall or an on-campus apartment. **You will need to vacate your housing assignment by 4:30 pm on March 4, 2016.**
- **No Contact Order:** You are to have no contact in any manner with [REDACTED] during your suspension period, or upon your reenrollment at the University. The no contact order is in place for the duration of both your and [REDACTED]'s time as a Clemson University student. An order of no contact with any individuals who are complainants, victims or witnesses in the student conduct process. This includes, but is not limited to, verbal, written, electronic, cellular, physical or social contact, second or third parties, or allowing others to make any contacts on the referred student's behalf.
- **Counseling:** During your suspension, you must enter a counseling program that is approved by Clemson University Counseling and Psychological Services. Prior to re-enrollment, you must present satisfactory documentation that you have either successfully completed the approved counseling program and/or progressed suitably enough to be considered for re-enrollment at Clemson University. This counseling is to be geared towards a greater understanding of consent, capacity and impact as it relates to sexual activities and interactions.
- **In-Kind Restitution:** Prior to re-enrollment, you are required to complete an approved course in Sexual Assault Awareness to be confirmed as satisfactory by the Office of Community and Ethical Standards.

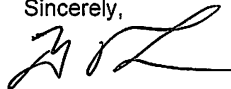
A hold will be placed on your registration during your suspension period and will not be removed until all conditions have been met and the last day to register for any of the summer sessions has expired.

As a result of the hearing, you may appeal the hearing board's decision by following the procedures outlined in the Administrative Disciplinary Procedures. Should you decide to appeal, you must deliver a letter of appeal to the Office of Community and Ethical Standards and to the Vice President of Student Affairs, Dr. Almeda Jacks, in 202 Sikes Hall. The appeal should be addressed to Vice President Jacks. This letter must be received no later than 4:30 p.m. on the fifth business day after your hearing, which is Friday, March 4, 2016.

In the event there is appeal regarding this case from either you or the complainant, [REDACTED] the sanctions will not be implemented until the appeals process has been completed.

For any additional information, please go on-line to
<http://www.clemson.edu/administration/student-affairs/student-handbook/index.html>

Sincerely,



Dave Frock
Administrative Hearing Chairperson

Board members were:

Faculty: Neil Burton

Staff: Fredda Owens

Students: [REDACTED] and [REDACTED]

Cc: Dr. Almeda Jacks, Vice President for Student Affairs and
Dr. Chris Miller, Interim Associate Vice President/Dean of Students
Eric Hendricks, CU Chief of Police
Alesia Smith, Director – Office of Community and Ethical Standards/Associate Dean
of Students/Deputy Title IX Coordinator
Dr. Jeff Appling, Associate Dean for Curriculum
Debra Sparacino, Registrar
Jerry Knighton, Title IX Coordinator
Dr. Raquel Contreras, Director, Counseling and Psychological Services
[REDACTED], student

EXHIBIT L

RECEIVED

MAR - 4 2016

My name is **John Doe** and I wish to appeal my Administrative Hearing.

CLEMSON UNIVERSITY
VIOLENCE AGAINST WOMEN AFFAIRS

I know that two criteria were met which should validate my appeal. The criteria follows:

1. A procedural error so substantial that the student did not receive a fair hearing.

&

4. The decision was completely unsupported by the evidence.

In regards to #1:

A. The OCES initially called Loreto Jackson to testify. Ms. Jackson stated several items within her testimony that were completely incorrect. Furthermore, she omitted several important factors related to the case. Her testimony was extremely slanted in favor of the complainant as well.

Several times when being questioned Ms. Jackson did not directly answer the questions she was asked. She claimed several times that she did not "recall" certain items mentioned and refused to review her own report which was in her hand during the testimony. Multiple times issues came up where other witnesses stated the information in the investigator report was incorrect and she gave no explanation as to why inconsistent statements were present in the report. She simply stated, "it was a long time ago, we wrote down what we were told." She also stated that her position was only to present the evidence and that she made no judgments. This is completely false though considering she and Ms. Price most definitely had to make a judgment when they made a recommendation to OCES as to whether or not I was responsible for the alleged actions.

Finally, after continued questioning, Ms. Jackson admitted that she didn't conduct any of the interviews directly herself as it was her counterpart, Suzanne Price. The fact that Ms. Price conducted ALL of the interviews directly yet wasn't present to testify is a complete failure to the system. Ms. Price would be the appropriate witness since she completed the investigation and conducted all of the interviews. Ms. Jackson easily skated from answering several questions by claiming lack of knowledge which Ms. Price could have answered. This critically damaged the fairness and full disclosure necessary for a fair hearing.

B. The OCES failed to call a crucial witness. The report shows that [REDACTED] was the first person that the complainant Ms. [REDACTED] spoke with after the night in question. I attempted to have [REDACTED] appear but she refused to and would only sign a copy of her statement to verify it. I had no further power to force her appearance.

However, the OCES could have called her at which time her appearance would have been mandatory. They refused to do this. [REDACTED]'s testimony would show that Ms. [REDACTED] is dishonest in her account of the evening in question. She claimed in the report that she "did not remember" sexual intercourse with me until [REDACTED] informed her of the incident. This is completely incorrect. Per [REDACTED]'s testimony, via the report, Ms. [REDACTED] told her early the next morning prior to her even speaking with [REDACTED]. This would go directly to her credibility regarding the entire claim that she was incoherent or incapacitated at the time of the incident. Her credibility is 100% a crucial part of the investigation as a whole and the failure to bring forth a witness to corroborate or disprove her own statements is an injustice to the process and specifically the hearing.

C. The chairperson rejected several key questions I posed based on relevance. However, he rarely would reject questions posed by Ms. [REDACTED] for any reason. He was completely imbalanced in his rulings and blatantly gave Ms. [REDACTED] the opportunity to almost ask anything she wanted regardless of the subject matter. At times he was unsure of whether a question posed should go through he turned to the OCES Director as if she was the judge of the proceedings and would make a ruling. If you listen to the recording or read the transcript which I pray you do it will be blatantly obvious.

D. The chairperson was very much unfamiliar with the rules of the hearing. At several times throughout the hearing he had to either go back and correct himself or was corrected by the OCES Director. He did not efficiently conduct the hearing in a non-biased and impartial way throughout and several times it was directly related to his lack of following the proper steps.

E. The OCES director that conducted the hearing was extremely biased in her statements. She literally made rebuttal statements on behalf of the complainant explaining away certain issues with her account. She served as judge, prosecutor and witness for the complainant several times throughout the process. She instructed the uninformed chairperson at times exactly what he should do with certain decisions which was completely out of the scope of her role as OCES director. She personally made multiple efforts to ensure that a decision was made against me in regards to the allegations. Her actions show a major bias and on their own created a hostile and unfair hearing for me.

F. The investigators never gave the witnesses a copy of their statements. Per the investigation, the witnesses were to receive copies of their statements to approve what was recorded by the investigator. The investigators at no time complied with this process and therefore reported unsubstantiated facts to the panel. Multiple times witnesses denied making statements that were in the report. This reflects the sloppy and haphazard manner the investigation was done which led to major errors within the hearing. The process was corrupt and incompetently handled from the beginning all the way through the final decision within the hearing.

I can't imagine a more biased, flawed process than the hearing I was forced to endure only to receive a decision that was clearly already made before I walked in the door.

#4. The decision was completely unsupported by the evidence.

A. Throughout the hearing Ms. [REDACTED]'s account changed. She remembered different parts of the incident at different times. She could remember some specific detail at times down to even quotes at the time of the sexual encounter; then, at other times, couldn't recall much of anything. She was caught in dishonest and contradicting statements throughout the hearing that she tried to explain away. Her credibility was completely broken and therefore her account shouldn't be considered evidence.

B. Conflicting testimony came from several witnesses as to what Ms. [REDACTED] drank, when she drank it and at what points she appeared intoxicated. No testimony given coincided with another witnesses testimony. Conclusive evidence to when and where she was intoxicated much less incoherent was never established.

C. The evidence provided by the investigator that appeared was incorrect and her report conflicted with live testimony of the same individuals that had been interviewed. This goes directly to the evidence and lack of any certainty in regards to what could be corroborated to any level.

The bottom line is this, the evidence that was presented was flawed and due to that reason it shouldn't have been considered as valid and reliable. The decision is not supported by the true evidence which was what my side provided and showed even in some of the questioning we had with their witnesses.

In closing, I stand behind all of the above appeals. I believe them to be factual and accurate. I hope and pray that they are thoroughly vetted and finally some sensibility, truth and most importantly fairness will win out within this process. Sadly though, I doubt that will happen. I imagine my appeal will fall on deaf ears. No valid points made will even be considered. The appeal will be denied and I will have one shot left with the President or his designee. I truly hope that person doesn't just "rubber stamp" a denial of my claims and demands for justice and equality within the investigation but they probably will. At that point I'll have no choice but to file a Federal Lawsuit against the University I love. It will be a courtroom and a Judge that gives me the due process I deserve to get my name and my life back. I know this will be a long journey but I'm going to give everything I can to this so that others aren't put in the same unfair and imbalance system my family and I have had to endure. I never in my wildest dreams thought this would be my college experience. Just a few months ago I had no clue what discrimination was much less violations of one's civil rights; was just an 18 year old kid excited about my freshman year at Clemson. Now not only do I know what discrimination and

violation of one's civil rights is, I've experienced it firsthand. I just hope my journey no matter where it ends helps someone else in the future from going through this

EXHIBIT M



March 22, 2016

John Doe

Dear **John Doe**

**VICE PRESIDENT
FOR STUDENT AFFAIRS**

Clemson University
202 Sikes Hall
Clemson, SC
29634-4001

P 864-656-2161

In response to your appeal of the decision rendered by Dr. Dave Frock, Executive Director of Campus Recreation, and the hearing board involving charges against you resulting from alleged violations of student regulations as outlined in a February 29, 2016 letter from Dr. Frock, my decision is as follows:

- *After carefully reviewing your disciplinary case, I am upholding the decision rendered by the hearing board on February 26, 2016. You are suspended from Clemson University through August 1, 2016. All other sanctions remain in place, including the no contact order.*

Should you decide to appeal my decision, a complete description of the Administrative Hearing Appeals process can be found online. Click on the Student Code of Conduct link at <http://www.clemson.edu/administration/student-affairs/student-handbook> for details on the appeals process. Know that an appeal must be made within 5 business days of notification of my decision regarding your case.

Sincerely,

A handwritten signature in cursive script, appearing to read "Almeda R. Jacks".

Almeda R. Jacks, Ph.D.
Vice President for Student Affairs

.cc: Jim Clements Max Allen
 Eric Hendricks Alesia Smith
 Jeff Appling Debra Sparacino
 Chris Miller Kathy Hobgood
 Jerry Knighton Raquel Contreras

www.clemson.edu/student-affairs

EXHIBIT N

Laura Clay

From: John Doe [REDACTED]@g.clemson.edu>
Sent: Wednesday, March 30, 2016 4:13 PM
To: Alesia Smith
Cc: President Clements; Elizabeth M. Hart; Beth Crocker; URSULA JO WALKER; Laura Clay
Subject: Appeal to President Clements
Attachments: Clemson John Doe hrg.pdf

To Whom It May Concern:

My name is John Doe and I wish to for my appeal to be heard by President Clements.

I know that two criteria were met which should validate my final appeal. They are as follows:

1. A procedural error so substantial that the student did not receive a fair hearing.

&

4. The decision was completely unsupported by the evidence.

In regards to #1:

A. The OCES initially called Loreto Jackson to testify. Ms. Jackson stated several items within her testimony that were completely incorrect. Furthermore, she omitted several important factors related to the case. Her testimony was extremely slanted in favor of the complainant as well.

Several times when being questioned Ms. Jackson did not directly answer the questions she was asked. She claimed several times that she did not "recall" certain items mentioned and refused to review her own report which was in her hand during the testimony. Multiple times issues came up where other witnesses stated the information in the investigator report was incorrect and she gave no explanation as to why inconsistent statements were present in the report. She simply stated, "it was a long time ago, we wrote down what we were told." She also stated that her position was only to present the evidence and that she made no judgments. This is completely false though considering she and Ms. Price most definitely had to make a judgement when they made a recommendation to OCES as to whether or not I was responsible for the alleged actions.

Finally, after continued questioning, Ms. Jackson admitted that she didn't conduct any of the interviews directly herself as it was her counterpart, Suzanne Price. The fact that Ms. Price conducted ALL of the interviews directly yet wasn't present to testify is a complete failure to the system. Ms. Price would be the appropriate witness since she completed the investigation and conducted all of the interviews. Ms. Jackson easily skated from answering several questions by claiming lack of knowledge which Ms. Price could have answered. This critically damaged the fairness and full disclosure necessary for a fair hearing.

See Transcript: Page 15, Lines 15-20

Page 20 through Page 30
Page 233, Lines 2-10

B. The OCES failed to call a crucial witness. The report shows that [REDACTED] was the first person that the complainant Ms. [REDACTED] spoke with after the night in question. I attempted to have [REDACTED] appear but she refused to and would only sign a copy of her statement to verify it. I had no further power to force her appearance.

However, the OCES could have called her at which time her appearance would have been mandatory. They refused to do this. [REDACTED]'s testimony would show that Ms. [REDACTED] is dishonest in her account of the evening in question. She claimed in the report that she "did not remember" sexual intercourse with me until [REDACTED] informed her of the incident. This is completely incorrect. Per [REDACTED]'s testimony, via the report, Ms. [REDACTED] told her early the next morning prior to her even speaking with [REDACTED]. This would go directly to her credibility regarding the entire claim that she was incoherent or incapacitated at the time of the incident. Her credibility is 100% a crucial part of the investigation as a whole and the failure to bring forth a witness to corroborate or disprove her own statements is an injustice to the process and specifically the hearing.

See Transcript: Page 43, Lines 12-17

Page 46, Lines 3-24

C. The chairperson rejected several key questions I posed based on relevance. However, he rarely would reject questions posed by [REDACTED] for any reason. He was completely imbalanced in his rulings and blatantly gave [REDACTED] the opportunity to almost ask anything she wanted regardless of the subject matter. At times he was unsure of whether a question posed should go through he turned to the OCES Director as if she was the judge of the proceedings and would make a ruling. If you listen to the recording or read the transcript which I pray you do it will be blatantly obvious.

See Transcript: Page 67, Lines 6-10

Page 202, Line 21 through Page 205, Line 25

Page 206, Line 21 through Page 207, line 22

D. The chairperson was very much unfamiliar with the rules of the hearing. At several times throughout the hearing he had to either go back and correct himself or was corrected by the OCES Director. He did not efficiently conduct the hearing in a non-biased and impartial way throughout and several times it was directly related to his lack of following the proper steps.

See Transcript: Page 168, Line 14 through Page 169, Line 19

Page 183, Line 23 through Page 184, Line 3

Page 224, line 24 through Page 228, Line 7

E. The OCES director that conducted the hearing was extremely biased in her statements. She literally made rebuttal statements on behalf of the complainant explaining away certain issues with her account. She served as judge, prosecutor and witness for the complainant several times throughout the process. She instructed the uninformed chairperson at times exactly what he should do with certain decisions which was completely out of the scope of her role as OCES director. She personally made multiple efforts to ensure that a decision was made against me in regards to the allegations. Her actions show a major bias and on their own created a hostile and unfair hearing for me.

See Transcript: Page 189, Lines 1-11

Page 194, Lines 13-18

Page 197, Line 24 through Page 198, Line 5

Page 233, Line 22 through Page 234, Line 1

F. The investigators never gave the witnesses a copy of their statements. Per the investigation, the witnesses were to receive copies of their statements to approve what was recorded by the investigator. The investigators at no time complied with this process and therefore reported unsubstantiated facts to the panel. Multiple times witnesses denied making statements that were in the report. This reflects the sloppy and haphazard manner the investigation was done which led to major errors within the hearing. The process was corrupt and incompetently handled from the beginning all the way through the final decision within the hearing.

See Transcript: Page 194, Lines 2-10

I can't imagine a more biased, flawed process than the hearing I was forced to endure only to receive a decision that was clearly already made before I walked in the door.

#4. The decision was completely unsupported by the evidence.

A. Throughout the hearing [REDACTED] account changed. She remembered different parts of the incident at different times. She could remember some specific detail at times down to even quotes at the time of the sexual encounter; then, at other times, couldn't recall much of anything. She was caught in dishonest and contradicting statements throughout the hearing that she tried to explain away. Her credibility was completely broken and therefore her account shouldn't be considered evidence.

See Transcript: Page 224, Line 24 through page 228, Line 7

B. Conflicting testimony came from several witnesses as to what [REDACTED] drank, when she drank it and at what points she appeared intoxicated. No testimony given coincided with another witnesses testimony. Conclusive evidence to when and where she was intoxicated much less incoherent was never established.

See Transcript: Page 117, Lines 3-6

Page 129, Line 7 through Page 130, Line 25

Page 142, Line 20 through Page 143, Line 6

Page 172, Lines 17-25

C. The evidence provided by the investigator that appeared was incorrect and her report conflicted with live testimony of the same individuals that had been interviewed. This goes directly to the evidence and lack of any certainty in regards to what could be corroborated to any level.

See Transcript: Page 194, Lines 2-10

The bottom line is this, the evidence that was presented was flawed and due to that reason it shouldn't have been considered as valid and reliable. The decision is not supported by the true evidence which was what my side provided and showed even in some of the questioning we had with their witnesses.

Sincerely,
John Doe

EXHIBIT O



May 27, 2016

Andrew Pampu
2405 Daniel Island Drive
Daniel Island, SC 29492-8281

Dear Andrew,

In response to your appeal to President Clements of the decision rendered by Dr. Dave Frock, Executive Director of Campus Recreation and upheld by Dr. Almeda Jacks, Vice President of Student Affairs on March 22, 2016 involving charges against you resulting from alleged violations of student regulations as outlined in a February 29, 2016 letter from Dr. Frock, my decision is as follows:

After carefully reviewing all information regarding your disciplinary case, I uphold the findings of the hearing panel that the complainant was unable to give consent and that you knew or should have known of her inability to do so. Based on my review of the record, I find that the appropriate sanction is a suspension from Clemson University through August 1, 2017. Your suspension is effective immediately and all other sanctions remain in place, including the no contact order. If you successfully adhere to all of the other sanctions rendered in the February 29, 2016 letter, you will be eligible to re-enroll for the 2017 fall semester.

This decision is final.

Sincerely,

Max Allen
Chief of Staff

cc: Jim Clements Almeda Jacks
Eric Hendricks Alesia Smith
Jeff Appling Debra Sparacino
Chris Miller Kathy Hobgood
Jerry Knighton Raquel Contreras
Erin Wingo

OFFICE OF THE PRESIDENT
Max Allen
Chief of Staff

Clemson University
201 Sikes Hall
Clemson, South Carolina
29634-5002

P 864-656-3413
F 864-656-4676

EXHIBIT P

Filed Under Seal

EXHIBIT R

Filed Under Seal

EXHIBIT S

Clemson University Student Code of Conduct

I. Purpose

Academic institutions exist for the transmission of knowledge, the pursuit of truth, the development of students and the general well-being of society. Free inquiry and free expression are indispensable to the attainment of these goals. A Clemson student is expected at all times to show respect for civility, community and the rights of others and to exemplify the Clemson University Core Values of Integrity, Honesty and Respect.

Clemson University supports the concept of education. When a student is not a danger to the University community or when the repetition of misconduct is unlikely, the University will make an effort to educate the student through a sanction; but should the student demonstrate an unwillingness to obey the rules governing conduct, he/she may be separated from the University.

II. Board of Trustees Policy

The Board of Trustees recognizes that there is a valid function performed by faculty, staff and the student body alike in considering and supporting any and all issues, controversial or noncontroversial, within the framework of orderly, peaceful and lawful decorum, demeanor and processes. The Board encourages freedom of speech, including constructive criticism, expression of grievances or petition for redress of wrongs, real or fancied, so long as those rights are exercised in a lawful and peaceful manner.

The Board of Trustees is charged by law with the responsibility of making rules and regulations for the University and establishing policy governing the conduct of the University, its employees and its student body. The president of the University is elected by the Board of Trustees to serve at its pleasure. The president is the chief executive officer entrusted by the Board of Trustees with the execution of its policies and the internal government and administration of the University. The Board of Trustees orders and directs the president of the University to administer and enforce its policies as herein announced. In carrying out this responsibility, the president is vested with authority to take such disciplinary action as in his/her judgment the circumstances warrant. The president has delegated this function to the vice president for Student Affairs.

III. Responsibilities of the Administration

The Board of Trustees reserves for the administration the right to retain any case from the jurisdiction of the student body in which the following exist:

1. There is an alleged violation of a student regulation where University property has been damaged or destroyed.

2. There is an alleged violation of a student regulation where the action in question may threaten the safety of any member of the University community or any University property.
3. There is an alleged violation of a student regulation where the action in question would disrupt the educational process and/or orderly operation of the University.
4. There is an alleged violation of a student regulation where a federal, state or local law may have been violated.

IV. Responsibilities of the Student Body

The Board of Trustees delegates the following responsibilities regarding Community and Ethical Standards to the student body of Clemson University:

1. To recommend rules that regulate, control and dictate conduct of students attending Clemson University.
2. To create student peer review boards to hear cases, not retained by the administration, of alleged violations of student regulations by Clemson University students and to interpret student regulations.
3. To enact procedural rules for student judicial and governmental activities.
4. To enact rules of evidence for the student judicial boards.
5. To recommend to the administration sanctions for students who violate student regulations.

V. Jurisdiction Statement

Sanctions may be imposed against a student or student organization for the violation of any student regulations that occur on or off campus when the alleged conduct would, if true, impair, interfere with or obstruct the missions, processes or functions of the University or when the alleged conduct would, if true, endanger the health, safety or welfare of the student or others or would endanger any University property. Student conduct associated with computer networks and online environments are included in this jurisdiction.

VI. Referrals

Anyone may initiate a complaint against any student or student organization for misconduct. The complaint shall be submitted in writing and directed to the Office of Community and Ethical Standards. In cases alleging a violation of a Student Housing regulation or occurring in the residence halls or apartment areas, the initial incident report shall be submitted to a Residential Life staff member, who in turn, will submit the completed case to the Office of Community and Ethical Standards.

VII. Pending Criminal or Civil Action

For the protection of the University's interest as an academic community, the University must act promptly to address an issue of misconduct. Therefore, student

discipline proceedings and actions are not subject to challenge or postponement on the grounds that criminal or civil charges involving the same incident have been dismissed, reduced or are pending in civil or criminal court.

VIII. Standard of Proof

Student and student organization disciplinary cases will be decided on the standard of a preponderance of the evidence. In other words, the determination shall be made on the basis of whether it is more likely than not that the referred student violated the Student Code of Conduct.

IX. Community and Ethical Standards

A. General Student Regulations

This section establishes the rules and regulations for all students and student organizations of Clemson University. Students are expected to abide by these regulations, and administrators are expected to enforce them. Through the setting of high standards of community and ethical standards and scholarship and through the regulation of the use of University facilities, these regulations are intended to protect the educational purposes of Clemson University. Clemson University believes students are the product of their own experiences, and they should assume certain responsibilities for their own conduct and that of their fellow students. These regulations are not designed to define prohibited conduct in exhaustive terms and, therefore, should be interpreted broadly. Also, because Clemson University cannot foresee each and every circumstance that may arise, all may not be included herein. As such, a student may be subject to disciplinary action when such behavior is deemed detrimental or disruptive to the mission, purposes and/or goals of the University and may not be provided for herein.

NOTE: For the purpose of this policy a “student” is defined as any person who is admitted, enrolled or registered for study at Clemson University for any academic period, irrespective of whether they are on campus or not. Persons who are not officially enrolled for a particular term but who have a continuing student relationship with Clemson University are considered students. A person shall be considered a student during any period, which follows the end of either the spring or fall semester, which the student has completed until the last day for registration for the following semester. A person shall be considered a student during any period while the student is under suspension from the institution or when the person is attending or participating in any activity preparatory to the beginning of school including, but not limited to, the Bridge to Clemson program, fraternity or sorority rush, orientation, placement testing and residence hall check-in.

Attempting, abetting or being an accessory to any act prohibited by the General Student Regulations shall be considered the same as a completed violation.

1. Arson and Fire Hazards

No student shall start a fire or create a fire hazard on University-owned or -operated property. Willful damage to property by fire shall be prosecuted as arson when appropriate.

2. Computer Misuse

- a. No student shall allow any person to use his/her ID and/or password; create access into the computing network in such a way that will bypass University security systems; attempt unauthorized access and use other computing resources or data; violate software licenses or copyrights while using University equipment; or use computing services in any way which may violate federal, state or local law.
- b. No student shall send abusive, obscene or threatening messages by use of computing facilities and services; attempt to read, delete, copy or modify electronic communication or files of others without authorization; falsify the identity of the source of electronic communication or send, without official University authorization, for-profit messages or other unsolicited communication.

3. Contempt

No student shall fail to comply with sanctions, orders and rules set forth by the Office of Community and Ethical Standards, hearing or appeals officials, student judicial board or administrative hearing board without proper excuse or justification as deemed by University student conduct officials.

4. Damage to Property

No student shall take any action, which willfully or accidentally damages or has the potential to damage public or private property.

5. Disorderly Conduct

- a. No student shall take any action which is disorderly, lewd or indecent or be found in a grossly intoxicated condition.
- b. No student shall take any action that creates hazardous conditions including, but not limited to, actions such as dropping, throwing or causing objects to fall from windows, doors, ledges, balconies or roofs.
- c. No student shall take any action which intentionally interferes with or disrupts normal University or University-sponsored activities including, but not limited to, teaching, service, research or administration.

6. Disruption of Community and Ethical Standards Process

- a. No student shall willfully show disrespect or provide false and/or misleading information to any University student conduct official, student judicial board, or administrative hearing board.
- b. No student shall disrupt the University student conduct process.

7. Drugs and Alcohol

- a. No student shall unlawfully manufacture, use, possess, distribute or dispense alcohol or any controlled substance or illegal drug or misuse any legal substance for the purpose of intoxication.

- b. No student under legal age shall possess, sell, purchase or consume alcoholic liquor, beer or wine.
- c. No student of legal age shall purchase for or sell or provide to a person under legal age any alcoholic liquor, beer or wine.
- d. No student of legal age shall possess or consume alcoholic liquor, beer or wine except in areas designated by the University.
- e. No student shall violate any provisions of the University Drug and Alcohol Policy (see Drug and Alcohol Policy).

8. Failure to Comply with Official Request

- a. No student shall fail to comply with any reasonable and lawful request (verbal, written or other) of University officials including, but not limited to, police officers, fire or paramedic personnel, Department of Housing and Residence Life staff, maintenance personnel, security officers and other administrators or University officials acting in the performance of their official duties.
- b. No student shall fail to appear before any University student conduct official, student judicial board or administrative hearing board as summoned without proper excuse or justification as deemed by the University student conduct officials.

9. Fire Alarms and Safety Equipment

- a. No student shall make, or cause to be made, a false fire alarm or emergency report of any kind.
- b. No student shall tamper with, damage, disable or misuse fire safety equipment.

10. Fraud

- a. No student shall misrepresent himself/herself in, or with regard to, any transaction with the University, whether oral, written or by other means.
- b. No student shall alter, misuse or intend to misuse University documents, records or identification cards.

11. Harassment

No student shall commit any act, verbal or physical, which has the intent or effect of unreasonably interfering with an individual's or group's educational or work performance at Clemson University or which creates an intimidating, hostile or offensive educational, work or living environment.

12. Harm to Person

No student shall cause physical harm or threaten to cause physical harm to another person, nor shall any student take any action which creates a danger to any person's health, safety or personal well-being. *Physical assaults may result in suspension from the University.*

13. Hazing

No student shall engage in hazing (See Hazing Policy).

14. Retaliation

No student shall retaliate against members of the University community who make reports regarding potential University-related violations of laws, regulations or University policies. Retaliation is any conduct causing any interference, coercion, restraint or reprisal against a person making a complaint or against a person assisting in any way in the investigation and resolution of the complaint.

15. Sale of Instructional Materials

No student shall sell or attempt to sell any information provided by any University member in any course of study offered at Clemson University.

16. Sexual Misconduct

No student shall commit or attempt to commit sexual misconduct. (See Anti-Harassment and Non-Discrimination Policy).

17. Skateboards/Bicycles/Motorcycles/Rollerblades

No student shall utilize skateboards, bicycles, rollerblades or any motor vehicle in unauthorized areas or in a manner that threatens physical safety, damages University or personal property, disrupts University classes or activities or disrupts normal pedestrian or vehicular traffic flow.

18. Stalking

No student shall engage in conduct that may cause a person to fear for his/her safety due to a pattern of behavior that is unwanted and/or an emotional/mental disruption of his/her daily life. Such acts may include, but are not limited to, following another person, telephone calls, electronic communication, meeting at classes or places of residence and written notes or letters.

19. Stealing

- a. No student shall steal or attempt to steal public or private property.
- b. No student shall be in possession of stolen property.
- c. No student shall appropriate or attempt to appropriate public or private property without the consent of the owner or the person legally responsible.
- d. No student shall steal or attempt to steal the intellectual property of any person or the University.
- e. No student shall knowingly give assistance or information to aid in the action of theft.

20. Student Housing

- a. No student shall violate the terms of the Student Housing Contract.
- b. No student shall violate any residence hall regulations. Students living in residence halls shall be held responsible for the actions of their guests.

21. Student Organization Alcohol

- a. No University funds, including those raised by a student organization, may be used either directly or indirectly for the purchase of alcoholic beverages.
- b. No student organization shall sell alcoholic beverages.
- c. At any event sponsored by a student organization involving alcoholic beverages, that student organization is responsible for verification of the ages of guests and will be held responsible for ensuring that any alcoholic beverages are legally dispensed.
- d. At an event sponsored by a student organization involving alcoholic beverages, the cost of the alcoholic beverages may not be included in any admission, meal or entertainment charge.
- e. No student organization shall collect a cover charge, donation or admission fee, which entitles a guest to alcoholic beverages.
- f. No student organization may utilize alcoholic beverages as contest prizes.
- g. No student organization shall participate in any activity or promotion with an establishment whose primary business function is the selling of alcoholic beverages.
- h. No student organization shall enter into an agreement with said establishment with regard to the sale or distribution of alcoholic beverages. This shall include, but is not limited to, any of the following arrangements:
 1. The student organization sells or otherwise shares a profit from the sale of alcohol or serves as a cosponsor of an event involving alcohol with an establishment whose primary business is the selling of alcoholic beverages.
 2. The student organization advertises or distributes advertising for programs or activities sponsored by an establishment whose primary business function is the selling of alcoholic beverages.
 3. The student organization receives free or discounted room rental rates or other goods or services in exchange for holding an event with alcohol or meeting a bar receipt minimum.

22. Student Organization Conduct

- a. No unrecognized student organization shall use the rights and privileges of recognized groups as defined in the *Student Handbook* under Student Organization Legislation.
- b. No recognized student organization shall act in a manner that does not promote or uphold the outstanding image of Clemson University as defined by the vice president for Student Affairs or the vice president's designee(s).
- c. All student organizations which sponsor a period of new member education, prior to full admittance into membership, must adhere to the following provisions:
 1. All new member education programs must be completed two weeks prior to the beginning of the final examination period as listed in the Academic Calendar each semester.
 2. New member education may not be carried over to the following semester.
 3. With prior written permission from the Center for Student Involvement, the formal initiation ceremony may be held the following semester.

4. New member education includes, but is not limited to: new member education classes/activities, final votes, final initiation preparation weeks and any and all activities that could cause a new member to be released and not initiated into full membership.

23. Trespassing/Unauthorized Entry

- a. No student shall gain access to any University facility in a forcible or unauthorized manner.
- b. No student shall occupy any University facility that has not been reserved through the appropriate University offices.

24. University Facilities

No student shall take any action that violates the rules relating to the use of University-operated, -owned and/or -approved grounds, properties, facilities and services.

25. University ID Card

- a. No student shall fail to present his/her student identification to a University official upon request. Clemson University ID cards are nontransferable, and students may not lend their ID cards or use the ID cards of other students.
- b. No student shall fail to carry his/her student identification at all times when within reason.

26. University Keys

- a. No student shall use or possess any University key without proper authorization.
- b. No student is allowed under any condition to have a University key duplicated

27. University Policies

No student shall take any action that violates any published University policies or procedures.

28. University Posting

No student or student organization shall post flyers, posters, banners or any other material without prior approval from a University official. (See University Posting Policy).

29. Vandalism

No student shall engage in willful or malicious destruction or defacement of property owned or operated by the University, students, faculty, staff or administration. This includes, but is not limited to, physical destruction using paint or sidewalk chalk or damage created by skateboards or rollerblades.

30. Violation of Federal, State or Local Law

No student shall violate any federal, state or local law wherein the conduct in question impairs, interferes with or obstructs the missions, processes or functions of the University.

31. Weapons, Firearms and Explosive Materials

- a. No student shall unlawfully possess or use firearms, explosive devices or weapons of any kind. Such weapons may include, but are not limited to, guns, BB guns, air pistols, rifles, knives with at least a 2 1/2-inch blade, martial art devices and bows.
- b. No student shall use a weapon or instrument to simulate a weapon in acts that endanger or threaten any person.

B. Sanctions

A student admitted, enrolled or registered at Clemson University accepts the responsibility to uphold all Clemson University rules and regulations. Failure to meet this obligation will justify appropriate disciplinary sanctions. Failure to satisfactorily complete a disciplinary sanction may result in more severe sanctions. The sanctions are listed in ascending order of severity. The following sanction(s) (or any combination thereof) may be imposed upon any student found to have violated any Student Regulation:

1. **Written Reprimand:** An official written statement to the student explaining that he/she has violated a student regulation. This statement will remain on file with OCES for six years from the date of the reprimand. It is intended to communicate most strongly both the disapproval and the reprimand of the University community.
2. **In-Kind Restitution (may include but is not limited to):** An order may be issued to make restitution when a student has engaged in conduct including, but not limited to: physical harm to any person resulting in injury; damage to or destruction of University property or property of any person; the theft or misappropriation of property; or fraudulent behavior.

Restitution may be in the form of financial payment, appropriate service to the University, relocation of the student within University Housing facilities, required attendance of the student to the appropriate educational programs based on the circumstances of the case or other special activities designated by the hearing officer.

3. **Restriction of Privileges:** The restriction of University privileges for a specified period of time. These restrictions may include, but are not limited to, the following:
 - a. Denial of the privilege to live in University Housing.
 - b. Denial of the privilege to attend or participate in nonacademic University functions and activities, including regular priority in obtaining tickets to athletic events.

- c. Denial of the privilege to participate, be elected or appointed as a member or officer of Undergraduate or Graduate Student Government or any registered student organization.
 - d. Denial of parking privileges.
 - e. Denial of the use of University facilities.
 - f. Denial of the privilege to represent the University to anyone outside the University community in any way, including representing the University at any official function, intercollegiate athletics or any forms of intercollegiate competition or representation.
 - g. Denial of residence hall visitation.
 - h. Restriction of room and/or roommate choice in room assignment within University Housing.
 - i. Denial of the use of University funds allocated by the Undergraduate or Graduate Student Government.
 - j. Denial of the use of University vehicles.
 - k. Denial of the privilege to vote in University-held elections.
- 4. No Contact Order:** An order of no contact with any individuals who are complainants, victims or witnesses in the student conduct process. This includes, but is not limited to, verbal, written, electronic, cellular, physical or social contact, second or third parties, or allowing others to make any contacts on the referred student's behalf. This can also be issued as an interim sanction prior to the completion of the disciplinary process.
- 5. Monetary Penalty:** An order of financial payment when a student has engaged in conduct including, but not limited to: damage to property, fraudulent behavior, threat to fire safety, repeat violations of alcohol and/or drug or University Housing policies. Additional monetary penalties for other violations may be assessed as a punitive measure.
- 6. Disciplinary Probation:** A specified period of review and adjustment during which a student is under an official warning that his/her violation was very serious. While on disciplinary probation, a student will be considered to be "not in good standing" with the University and may face specific restrictions on his/her behavior and/or University privileges. Students involved in similar or additional disciplinary incidents while on probation may be recommended for immediate suspension or dismissal.
- 7. Eviction:** Eviction from University Housing without a refund if the student is currently residing in a residence hall or an on-campus apartment.
- 8. Suspension:** The denial of enrollment, attendance and other privileges at the University for a specified period of time. Permission to apply for readmission upon the termination of the period may be granted with or without conditions/restrictions. The student must receive clearance for re-enrollment from the Office of Community

and Ethical Standards. A student who has been issued a suspension sanction is deemed “not eligible to return” to the University during the suspension period.

9. **Dismissal:** The dismissal of a student from the University without the ability to apply for re-enrollment. A student who has been dismissed is deemed “not eligible to return” to the University.
10. **Interim Sanctions:** Interim sanctions may be imposed, by the vice president for Student Affairs or his/her designee, prior to the beginning of the administrative student conduct process. This action may be taken to protect parties or witnesses to the investigation. Interim sanctions may include but are not limited to separating the parties, reassignment, alternative academic, work or student housing arrangements, providing an escort to ensure that the complainant can move safely between classes and activities, restriction of privileges or other types of temporary measures. Interim measures may become permanent depending on the outcome of the investigation.
11. **Interim Suspension:** An interim suspension may be imposed, by the vice president for Student Affairs or his/her designee, prior to the beginning of the administrative process. The interim suspension may be imposed in cases where the alleged action of a student(s) may pose a threat to the well-being of the University, any of its members or him/herself, or there is substantial evidence that the continued presence of the student(s) on the campus will disrupt the University. Prior to imposing an interim suspension, every effort will be made by the vice president for Student Affairs or his/her designee to give the student an opportunity to respond to the charge(s). Following the imposition of an interim suspension, the opportunity for an administrative hearing as described above will be provided as expeditiously as possible but no later than 10 University working days after the interim suspension unless the student waives his time deadline or extenuating circumstances.

X. Community and Ethical Standards Procedures

A. Purpose

Clemson University has a duty to develop policies and procedures which provide an environment that is conducive to learning and promotes a sense of community. These policies and procedures are developed within the framework of general standards of conduct with the broadest possible participation of the members of the University community and are consistent with the principles of due process of the law applicable to state land grant universities. The time requirements and deadlines stated in this Code and the enabling procedures are intended to ensure the prompt resolution of situations involving student conduct. Notwithstanding the time requirements and deadlines mentioned, the University reserves the right to convene special hearing boards and/or to waive or extend any deadline provided such action does not unduly prejudice the affected

student (e.g., a deadline may be extended to account for a holiday break when school is not in session).

B. Administration

The director of Community and Ethical Standards is responsible for the coordination of discipline programs and proceedings. The director and his/her designee have the authority to determine the appropriateness of a referral, accept a student's admission(s) to a violation(s) and impose sanction(s) and hear cases involving alleged violations of the general student regulations as well as alleged violations by student organizations. The director and his/her designee may present the facts, circumstances and evidence on behalf of the University or on behalf of the complainant to the various hearing boards. Further, students who have been suspended from the University must petition for readmission through the director or his/her designee. Readmission may be granted with conditions or restrictions and a period of disciplinary probation may be imposed at the time of return.

C. Hearing Authorities

1. University Hearing Officers

Staff members deemed appropriate have the authority to hear cases involving alleged violation(s) of the student code. In addition to the director and associate/assistant director(s) of Community and Ethical Standards, staff members may be the associate vice presidents for Student Affairs, Residential Life staff and Graduate Assistants.

2. Administrative Hearing Board

The associate vice president for Student Affairs or his/her designee will serve as the chairperson of the Administrative Hearing Board for cases in which the contemplated sanction for an alleged violation may include eviction from University Housing, suspension or expulsion from the University. Two students, one faculty member and one staff member will also serve on the Administrative Hearing Board unless the student waives this option or extenuating circumstances occur. The chairperson shall exercise control over the hearing to prevent the harassment or intimidation of participants.

D. Rights and Responsibilities of Referred Student

1. In investigating alleged violations of student regulations, University hearing officials, student judicial board members or administrative hearing board members shall respect the right of individuals to remain silent.
2. Pending action on alleged violations of University regulations or pending final disposition of any appeal, the status of a student shall not be altered, nor shall the right to be present on the campus to attend classes be suspended, except when an interim suspension has been imposed.
3. Students who are alleged to violate public law may have also violated a student regulation and will be subject to dual jurisdiction, which means the University can process a student's case separately from any action taken by the criminal justice system.

4. In cases of alleged violations of student regulations, students are required to meet with a University hearing official, the student judicial board, or an administrative hearing board to facilitate the resolution of the case. Prior cases of discipline cannot be used against a student in determining whether the action is a violation of a student regulation; however, prior discipline can be used in determining the sanction if found in violation of a student regulation. Failure to meet with a University official will result in an additional charge of Failure to Comply and may result in forfeiture of certain procedural rights.
5. A University hearing official shall inform students in writing of the reasons for any proposed disciplinary action in sufficient time to ensure that the student has an opportunity to prepare for a hearing, if applicable.
6. To assist in preparing for a disciplinary hearing and to assist the student at such a hearing, a student may choose one adviser. This adviser may be a member of the University staff or student body or other individual of the student's choosing. The adviser's role is limited to communicating directly with the student, and the adviser may not directly participate in the hearing or ask questions of the student or witnesses.
7. The student is responsible for contacting any witnesses on his/her behalf.

E. Rights of Victims of Violence

1. The victim has the right to be informed of the discipline process prior to any disciplinary action involving his/her incident. He/she has the option of discontinuing the process if the evidence is based solely on the victim's testimony. In cases of sexual misconduct, if the victim decides to discontinue the process, the matter will be referred to the Title IX Coordinator in the Office of Access and Equity for further review.
2. The victim has the right to attend the hearing involving the referred student. The victim will have the option of providing testimony regarding the incident. The Office of Community and Ethical Standards will attempt to make special accommodations when deemed necessary. The victim will be listened to and treated with respect.
3. The victim is entitled to bring one adviser to be present during testimony at the hearing. The adviser's role is limited to communicating directly with the victim, and the adviser may not directly participate in the hearing or ask questions of the student or witnesses.
4. The victim shall be informed in writing of the outcome of the disciplinary hearing. In the event the referred student appeals the decision, the Director or his/her designee will keep the victim informed of the status of those appeals.
5. In cases of sexual misconduct, including sexual harassment, the victim has the right to appeal the finding of the disciplinary hearing.

F. Student Conduct Procedures

The student conduct process is initiated when an incident report, police report or other written complaint is received by a hearing authority as outlined above. The Office of Community and Ethical Standards staff will determine the appropriate type of hearing body to be designated after consideration of a number of variables including, but not limited to: the type of alleged offense, the student's prior conduct record and/or the location of the incident. The following section delineates the types of hearing bodies and the processes utilized by each.

1. The Office of Community and Ethical Standards

Upon receipt of an incident report, police report or written complaint from the complainant, the director or his/her designees will review the report and initiate the following procedures in cases retained by the administration:

- a. The student(s) will be contacted by a staff member via letter, telephone, or email and schedule an appointment for a discipline conference, when possible, to discuss the alleged violation(s) of student regulation(s) and the disciplinary process.
- b. During the discipline conference, the student(s) will be given an opportunity to review the information describing the alleged violation and respond to the allegations.
- c. If the facts and/or sanctions concerning the alleged violation(s) cannot be agreed upon by the staff member and the referred student, the staff member will provide the following options to the student:
- d. If the contemplated sanction does not include eviction from University housing, suspension, or dismissal from the University:
 1. The student(s) may plead no contest and have the staff member impose sanctions, or,
 2. The student(s) may appeal to the student conduct code review committee.
- e. If the contemplated sanction includes eviction from University Housing, suspension or dismissal from the University:
 1. The student(s) may plead no contest, have the staff member impose sanctions and waive his/her opportunity for an administrative hearing; or
 2. The student(s) may request a hearing before the administrative hearing board so that a broader exploration of the facts and circumstances may occur.
 3. If a referred student or students fail to appear at a scheduled discipline conference, an additional charge of failure to comply with an official request will be added and the staff member may render a decision in the absence of the student(s).

2. University Housing

Upon receipt of an incident report the Residential Life staff member or his/her designee will review the report. Depending upon the severity of the incident and the prior conduct report of the alleged student they will either retain the case locally or the incident report will be sent directly to the Office of Community and Ethical Standards. If retaining they will initiate the following procedures:

- a. A discipline conference will be scheduled to discuss the alleged violation(s) of student regulation(s) and the disciplinary process.
- b. During the discipline conference, the student will be given an opportunity to review the report describing the alleged violation and respond to the allegations.
- c. If the facts and/or sanctions concerning the alleged violation(s) can be agreed upon by the staff member and the referred student, a sanction(s) may be imposed. If the referred student does not agree with the facts or the sanction(s), then the case will be referred to the Office of Community and Ethical Standards for further review. If a referred student fails to appear at a scheduled discipline conference, an additional charge of failure to comply with official request will be added and the staff member may render a decision in the student's absence.
- d. Upon completion of the discipline case in University Housing, the case will be routed to the Office of Community and Ethical Standards. A staff member in the Office of Community and Ethical Standards will enter the case as a discipline record, review the case, formally apply the sanction(s) and notify the student by mail of the action.

3. Administrative Hearings

In cases where the contemplated sanction is eviction from University housing, suspension or dismissal from the University and the referred student requests an administrative hearing, the Director or Associate Director will initiate the following procedures:

- a. The referred student will be notified in writing a minimum of five business days prior to the date of the hearing unless the referred student waives this right or extenuating circumstances preclude this possibility. Such notice shall include the following:
 1. A statement of the specific regulation(s) which the referred student is being charged with violating.
 2. A description of the incident upon which the charge(s) are based.
 3. The names of the possible witnesses, except when their physical welfare may be in jeopardy as a result of this disclosure.
 4. A copy of any documents in the Office of Community and Ethical Standards possession that will be presented to the Administrative Hearing Board.
 5. The possible sanction(s) to be imposed if the charges are supported.
 6. The time, date and location of the hearing.
- b. The hearing shall be considered closed. All statements, information, or comments given during hearings shall be held in strictest confidence by administrative hearing board members, University staff and witnesses, before, during and after deliberations in keeping with the Family Educational Rights and Privacy Act (FERPA). Video, audio, stenographic, or photographic recording of hearing proceedings are prohibited, except as authorized by the Office of Community and Ethical Standards.
- c. The hearing shall be recorded. The recording shall be kept in the Office of Community and Ethical Standards for 6 months. No typed record of

the hearing shall be required. The referred student shall have the right, upon request, to listen to the recording in the presence of a staff member from the Office of Community and Ethical Standards or to request a transcript of the recording at the student's expense with FERPA-protected information regarding other students redacted from the transcript.

- d. On behalf of the University, or at the request of the complainant, the facts, circumstances and evidence will be presented by the Director or his/her designee.
- e. On behalf of the University, OCES staff will contact and request the presence of witnesses deemed necessary to appear. University students and employees contacted by OCES are required to attend hearings unless compliance would result in significant and unavoidable personal hardship or substantial interference with normal University activities. Referred students are responsible for contacting and requesting witnesses to attend the hearing on his/her behalf and witnesses serving as character references are limited to three people.
- f. The University, Administrative Hearing Board members, the referred student and complainant shall have the opportunity to present and examine statements, facts and any relevant information regarding the case. The University, the referred student and the complainant, shall have the opportunity of presenting and questioning their own witnesses. The University, referred student and the complainant shall have the opportunity of presenting any questions for the witnesses (other than their own) to the chairperson of the administrative hearing board in order to refute or respond to the testimony.
- g. All procedural questions are subject to the final decision of the chairperson. The rules of evidence as used in the legal system will not be applied in this hearing. Repetitious or irrelevant evidence may be excluded from the hearing. Any person who disrupts the hearing will be asked to leave the hearing room.
- h. After all the information has been presented, the Administrative Hearing Board will go into closed deliberations to determine whether the student has violated each section of the Student Code, which the student is charged with violating.
- i. The determination shall be made on the basis of whether it is more likely than not that the referred student violated the Student Code. A referred student will be found in violation of a student regulation based on a majority decision of the Administrative Hearing Board members.
- j. The chairperson shall be responsible for rendering a decision in writing to the referred student. The decision shall include a summary of the findings and the sanctions imposed. In cases involving a victim of violence, the victim will also be notified of the outcome of the hearing.
- k. The decision of the administrative hearing board shall be final unless the decision is eviction from University Housing, suspension or dismissal from the University. In those cases, an appeal may be filed and heard by

the Vice president for Student Affairs. In cases involving allegations of sexual harassment, which includes sexual misconduct, the referred student or the victim may file an appeal to be heard by the Vice president for Student Affairs.

1. Deviation from prescribed procedures will not necessarily invalidate a decision or proceeding unless significant prejudice to the referred student is shown to have resulted.

4. Student Judiciary Discipline

A. Student Judicial Boards

The judicial powers of Student Government are vested in a Student Government judicial branch. The judicial branch has jurisdiction over the student body and student organizations in all cases involving violation of any student regulation except those retained by the administration. The Director of Community and Ethical Standards or his/her designee will determine the process of case referral to the Student Judicial Boards.

B. Student Judicial Board Procedures

In cases delegated to Student Judicial Boards for alleged violations of the Student Code, the following procedures will be initiated:

1. A staff member will notify the referred student within a minimum of three calendar days prior to the hearing unless the student waives this right or extenuating circumstances preclude this possibility. Such notice to the student shall include, in writing, the following:
 - a. A brief description of the action that is an alleged violation and the student regulation allegedly violated.
 - b. The time, date and location of the hearing.
2. The hearing shall be considered closed. All statements, information, or comments given during hearings shall be held in the strictest confidence by Student Judicial Board members in keeping with the Family Educational Rights and Privacy Act (FERPA).
3. A recording shall be maintained by the Student Attorney General for appeal purposes. Recordings will be erased after time for appeals has elapsed. All Student Judicial Board decisions will be transmitted by the Student Attorney General to the Director of Community and Ethical Standards or his/her designee for approval.
4. On behalf of the University, OCES staff will contact and request the presence of witnesses deemed necessary to appear. University students and employees contacted by OCES are required to attend hearings unless compliance would result in significant and unavoidable personal hardship or substantial interference with normal University activities. Referred students are responsible for contacting and requesting witnesses to attend the hearing on his/her behalf and witnesses serving as character references are limited to three people.
5. The referred student shall have the opportunity to present and examine statements, facts and any relevant information regarding the case. The referred student shall have the privilege of presenting any questions for witnesses to the Student Judicial Board when appropriate.

6. After all the information has been presented, the Student Judicial Board members will go into closed session to determine whether the student has violated each section of the Student Code which the student is charged with violating.
7. The determination shall be made on the basis of whether it is more likely than not that the referred student violated the Student Code.
8. The Student Judicial Boards will render the decision to the student as soon as the decision has been made.
9. In cases where the sanction(s) recommended are not eviction from University Housing suspension, or dismissal, the referred student may appeal the decision of the student judicial boards to the student supreme court.
10. In cases where the sanction(s) recommended are eviction from University Housing, suspension, or dismissal, the referred student will be referred to the administrative process.

G. The Appeals Process

Regardless of the type of hearing, one of four criteria must be met in order for an appeal process to begin:

1. A procedural error so substantial that the student did not receive a fair hearing.
2. Significant information or evidence has become available that was not available previously to the original administrative hearing.
3. The sanction was arbitrary or grossly disproportionate to the offense
4. The decision was completely unsupported by the evidence

1. Administrative Discipline Conference Appeals

- a. Administrative discipline conference decisions NOT resulting in eviction from University Housing, suspension, or dismissal may be appealed by the referred student to the Student Conduct Code Review Committee (SCCRC) within five business days of the receipt of the decision of the staff member.
- b. Members of the SCCRC will be responsible for reviewing appeals submitted by students found in violation during the administrative discipline process. Appeals of administrative conferences will be considered by a minimum of two students and one faculty or staff member. Whenever feasible, at least one undergraduate and one graduate student representative will be present.
- c. Such appeals must be in writing and delivered to the Office of Community and Ethical Standards. Failure to submit an appeal within the allotted time will render the original decision final and conclusive.
- d. Upon receipt of a properly filed appeal, the SCCRC may do one or more of the following:
 1. Review the record and render a written decision to the student.
 2. Request that the staff member clarify the original decision and then render a written decision to the student.
- e. The decision of the Student Conduct Code Review Committee shall be final.

2. Administrative Hearing Appeals

- a. Administrative Hearing Board decisions resulting in eviction from University Housing, suspension, or dismissal may be appealed by the referred student to the vice president for Student Affairs or his/her designee within five business days of the receipt of the decision of the administrative hearing board.
- b. In cases involving sexual harassment, which includes sexual misconduct, Administrative Hearing Board decisions may be appealed by the referred student or the victim of sexual misconduct. The written appeal must be delivered to the vice president for Student Affairs or his/her designee within five business days of the receipt of the decision of the administrative hearing board.
- c. Such appeals must be in writing and delivered to the Office of the Vice President for Student Affairs and the Office of Community and Ethical Standards. Failure to submit an appeal within the allotted time will render the original decision final and conclusive.
- d. Upon receipt of a properly filed appeal, the vice president for Student Affairs may do one or more of the following:
 1. Review the record and render a written decision to the student.
 2. Grant an appeals hearing and then render a written decision to the student.
 3. Request that the administrative hearing board clarify the original decision and then render a written decision to the student
 4. Remand the case to the Administrative Hearing Board for a rehearing. This action will be taken only when:
 - i. The student alleges that new evidence has been found that could materially affect the decision.
 - ii. The vice president for Student Affairs agrees that the new evidence could materially affect the decision.
 - iii. The vice president for Student Affairs is satisfied that the student was unable to present the new evidence at the original hearing through no fault of his or her own. If a rehearing is granted before the original Administrative Hearing Board, the student shall have the same right of appeal.
- e. The decision of the vice president for Student Affairs shall be final unless the decision is suspension or dismissal from the University and the referred student files an appeal. Sanctions by the Administrative Hearing Board may be upheld, dismissed, or amended by the vice president for Student Affairs. In cases involving sexual harassment, which includes, sexual misconduct, the victim or referred student may appeal the decision of the vice president for Student Affairs.
- f. Appeal decisions sustaining suspension or dismissal may be appealed to the president of the University or his/her designee within five business days of receipt of the decision of the vice president for Student Affairs. Such appeals must be in writing, based on the above conditions and delivered to the office of

the president. The president or his/her designee will render a written decision to the student and shall be final.

In cases involving sexual harassment, which includes sexual misconduct, Administrative Hearing Board decisions may be appealed by the referred student or the victim of sexual misconduct. The written appeal must be delivered to the president or his/her designee within five business days of the receipt of the decision of the vice president for Student Affairs. The decision of the president or his/her designee shall be final.

3. Student Judiciary Appeals

- a. Disciplinary hearing decisions by the Student Judicial Boards may be appealed by the referred student to the Student Supreme Court within five business days of notification of the decision. Such appeals must be in writing and delivered to the Office of Community and Ethical Standards.
- b. The Student Attorney General will determine if the appeal meets one of the four criteria.
- c. The Student Supreme Court may make one of the following decisions as the result of an appeal:
 1. The appeal may be denied.
 2. Sustain the decision of the Student Judicial Board, but alter the sanction.
 3. Remand the case to the original Student Judicial Board for further consideration on the specific issues.
 4. Reverse the decision of the Student Judicial Board.
- c. Decisions resulting in sanctions other than eviction from University Housing, suspension or dismissal are final after appeal to the Student Supreme Court.

H. Withdrawals/Completion of Semester with Pending Disciplinary Action

1. Should a referred student be academically dismissed or withdraw from Clemson University before pending disciplinary charges have been resolved, the Director or his/her designee may proceed with the administrative conference or hearing according to the procedures above. A disciplinary hold on the student's records, including future registration and the granting of a degree may be imposed until the case is resolved.
2. A student who has a disciplinary charge pending at the end of an academic semester term may have a disciplinary hold placed on his/her records, including the posting of grades and the granting of a degree until the disciplinary charge has been resolved and/or sanctions completed.
3. Furthermore, a student who has a disciplinary charge brought against him/her after the end of an academic semester or term, but prior to graduation, will have a disciplinary hold placed on his/her records, including the posting of grades and the granting of a degree until the disciplinary charge has been resolved and/or sanctions completed.

I. Student Conduct Records

All student disciplinary records are kept confidential to the extent allowed by applicable state and federal laws. Generally, student conduct records requested by external institutions, agencies or individuals are available only upon the signed consent of the student. However, there are exceptions to the signed consent requirement including but not limited to:

- Records requested pursuant to a properly filed court order or lawfully issued subpoena in the State of South Carolina.
- Disclosure to parents of "the student's violation of any Federal, State, or Local law, or of any rule or policy of the institution, governing the use or possession of alcohol or a controlled substance if (A) The institution determines that the student has committed a disciplinary violation with respect to that use or possession; and (B) The student is under the age of 21 at the time of the disclosure to the parent."
- The outcome of a discipline hearing for cases involving crimes of violence or a non-forcible sex offense can be disclosed to the victim.
- Records can be disclosed to an educational institution where the referred student seeks or intends to enroll.
- Notification of discipline action taken against a student may be disclosed to a Clemson University official if the official has a legitimate educational interest in the disciplinary record.
- Records may be disclosed to the parent of a dependent child.

In the case of suspension or dismissal, notification is sent to several University departments. In the case of suspension or dismissal, a notation is placed on the student's official transcript describing the suspension period or dismissal.

Clemson University's student conduct system is intended to be educational rather than punitive in nature. Therefore it is our policy that only disciplinary probation of more than one semester, suspension or dismissal is considered a permanent part of the student's record after graduation or leaving Clemson University for other reasons. Therefore, when responding to requests from other institutions for disciplinary records, Clemson University only comments if a student is either currently on disciplinary probation or received at any time more than one semester of disciplinary probation, suspension or dismissal.

XI. Conduct of Student Organizations

This policy sets forth the rules governing the conduct of student organizations and also sets forth the sanctions that may be imposed on student organizations for violations of University rules and regulations. The Office of Community and Ethical Standards is primarily responsible for the supervision and administration of the conduct of student organizations.

Individuals who join together as a student organization to share common interests and purposes also collectively share a responsibility to themselves, their organization and the University. The organization must ensure that members acting individually or as a group

reflect the Clemson Core Values to all members of the community in addition to all other outlined expectations within this document and within the organization's bi-law documentation. Organization leaders bear a special responsibility for ensuring that constituents recognize and embrace these values in carrying out the organization's mission. All University organizations accept responsibility for the actions of their members related to the organization. Organizations are not afforded the same rights and responsibilities as individual students.

As a guiding principle, groups will be held responsible for the acts of their members when those acts grow out of or are in any way related to group life. Isolated violations of individuals should not be chargeable to the group, but evidence of group conduct exists when:

- A. Members of the organization are acting together in violating a University regulation.
- B. A violation of a University regulation arises out of an organization-sponsored, financed, or endorsed event.
- C. An organization's leader(s) has knowledge of the potential for a violation of University regulations before it occurs and fails to take corrective action.
- D. A violation of a University regulation occurs on the premises owned, leased, or operated by the organization.
- E. A pattern of individual violations of University regulations is found to have existed without proper and appropriate organization control, remedy, or sanction.
- F. The organization, or members of the organization, provides the impetus for a violation of University regulations.

Cases involving student organizations are not considered confidential under the Family Educational Rights and Privacy Act (FERPA); therefore, the University does not protect the confidentiality of the disciplinary records regarding the conduct of student organizations.

A. Sanctions

The following disciplinary sanctions may be imposed upon student organizations when they have been found in violation of the Student Code. All sanctions may be imposed individually or in combination. Disciplinary sanctions are imposed for the purpose of holding student organizations accountable for their actions and the actions of their guest(s), whether on campus or at any organizational event. Failure to satisfactorily complete a disciplinary sanction may result in more severe sanctions.

1. **Reprimand:** An official statement to the student organization explaining that they have violated a University regulation. Any further misconduct could result in additional disciplinary action.
2. **Restitution:** When an organization has damaged or destroyed University or personally owned property the organization may be required to make restitution, or receive additional educational sanctions.

3. **Restriction of Privileges:** Restrictions placed upon a student organization which limits University privileges for a specified period of time. These limitations may include, but are not limited to, the following:
 - a. Denial to represent the University in any capacity.
 - b. Denial to maintain an office or other assigned space on University property.
 - c. Denial to receive or retain University funds.
 - d. Denial to participate in intramural sports.
 - e. Denial to sponsor, co-sponsor and/or participate in any social event or other activity.
 - f. Denial to sponsor any speaker or guest on campus.
 - g. Denial of rush or membership recruitment activities.
 - h. Denial of the request for block seating at University events.
 - i. Denial of the use of University vehicles.
 - j. Denial of the use of University facilities.
 - k. Denial of advertising on campus for organizational activities.
 - l. Denial of soliciting and/or selling any items on campus.

4. **Disciplinary Probation:** A specified period of review, observation and/or restrictions during which a student organization is under official warning that its misconduct was very serious. Subsequent violations of University rules, regulations, or policies could result in more severe sanctions, including suspension or dismissal of recognition. During the probationary period, a student organization is deemed “not in good standing” with the University and may be subject to specific limitations upon its behavior or University privileges.

5. **Suspension of Organizational Recognition:** The denial of privileges of a recognized organization for a designated period of time, which will be no less than one semester. Any organization whose recognition is suspended must:
 - a. Cease all organizational activities.
 - b. Vacate any appointed or elected office with that organization’s governing body for the duration of the organization’s period of suspension.
 - c. Surrender balances of all organizational funds granted by Student Government.
 - d. Vacate office or housing space assigned by the University from the date of the notice of suspension. Space vacated due to suspension may be reassigned to other eligible University organizations. In the case of housing, individual members will be reassigned provided space is available. There will be no University Housing contract cancellations.

6. **Dismissal of Organizational Recognition:** Permanently excludes the organization from the University without any recourse to reapply for recognition. Any organization whose recognition is permanently revoked must:
 - a. Cease all organizational activities.
 - b. Vacate any appointed or elected office.

- c. Surrender balances of all organizational funds granted by Student Government.
- d. Vacate office or housing space assigned by the University from the date of the notice of dismissal. Space vacated due to dismissal may be reassigned to other eligible University organizations. In the case of housing, individual members will be reassigned provided space is available. There will be no University Housing contract cancellations.

- 7. Interim Suspension of Organizational Recognition:** An interim suspension may be imposed, by the vice president for Student Affairs or his/her designee, prior to the beginning of the administrative process. The interim suspension may be imposed in cases where:
- a. The alleged action of the student organization may pose a threat to the well-being of the University or any of its members, or to preserve University property;
 - b. The student organization poses a threat of disruption or interference with the normal operations of the University.

During any interim suspension, the organization shall be required to discontinue with all organizational activities. The organization will be denied access to all University activities and privileges for which the organization might be eligible. In certain circumstances, organizational leadership may be restricted from communication with the organizational membership or students may be required to vacate organizational housing units.

Prior to imposing an interim suspension, every effort will be made to give the student organization an opportunity to respond to the charge(s). Following the imposition of an interim suspension, the opportunity for an administrative hearing as described above will be provided as expeditiously as possible but no later than fifteen university working days after the interim suspension unless the student organization waives the time deadline or there are extenuating circumstances.

B. Student Organization Discipline Procedures

The director of Community and Ethical Standards or his/her designee will investigate all allegations of student organization misconduct. The investigation will include interviewing those individuals with information about the incident and meeting with the appropriate officers of the organization. The director shall have the authority to do the following:

- 1. Institute all sanctions except suspension or dismissal.
- 2. Refer the student organization to an administrative hearing.
- 3. Schedule an administrative hearing for the referred student organization in cases where the contemplated sanction is suspension or dismissal of recognition, unless the student organization waives its right to a hearing. The notice of an administrative hearing, the procedure during an administrative hearing and the appeal process of an administrative hearing will follow the

same format as described in the section F. 3. Administrative Hearings. If the student organization waives its right to a hearing, the recommended sanction will be imposed.

C. Student Organization Major Incident Response Plan

In the event an incident occurs involving a student organization and it is necessary to meet with a large number of the student members, an emergency meeting will be scheduled and interviews will be held. In order to meet with the members in a timely manner, representatives from OCES, University Housing, Gantt Center for Student Life, Fike Recreation and/or the Dean of Students Office will be contacted to assist with the interviews. The types of incidents that may fall under this protocol include, but not limited to:

- Major Hazing Cases
- Major Alcohol Cases
- Major Disorderly Conduct Cases

An OCES staff member or designee will be responsible for coordinating the date, place and time and contacting the President and/or vice president of the student organization. It is the responsibility of the President and/or vice president to ensure that all members be in attendance unless there are extenuating circumstances.

OCES will also arrange to have staff members from Counseling and Psychological Services on call and/or present for incidents where student organizational members are experiencing a tragic or critical event and are in need of counseling.

XII. Student Conduct Code Review Committee

SCCRC will be responsible for reviewing annually, the Student Code of Conduct and recommending changes to the vice president for Student Affairs and may also review, upon written request of students or University entities, other University policies affecting students to determine if those policies are consistent with the philosophy and intent of the Student Code of Conduct. SCCRC will also review appeals submitted by students found in violation during the administrative discipline process.

1. The members of SCCRC shall be:
 - a. Two faculty members appointed by the Faculty Senate
 - b. Two staff members appointed by the Staff Senate
 - c. Five full time enrolled students in good standing appointed in the following manner:
 - i. One undergraduate student appointed by the Student Government President, one undergraduate student appointed by the Student Senate president and one undergraduate student appointed by the Student Attorney General.

- ii. One graduate student appointed by the Graduate Student Government President and one graduate student appointed by the Graduate Student Senate President.
2. The director of Community and Ethical Standards or his/her designee shall serve as the non-voting executive secretary to SCCRC. Faculty and staff members will be appointed for three-year staggered terms. Students will be appointed as needed.

EXHIBIT T



ANTI-HARASSMENT AND NON-DISCRIMINATION POLICY

I. Policy Statement

This document defines Clemson University's policy regarding harassment/discrimination. Clemson University is committed to an educational and work environment in which all individuals are treated with respect and dignity, free from harassment and/or discrimination. Accordingly, it is the policy of Clemson University that harassment/discrimination as defined in this policy, by employees, students or non-employees will not be tolerated. It is also the policy of Clemson University that retaliation against any person who has filed a complaint of harassment/discrimination or who has assisted or participated in any manner in the investigation and resolution of a complaint of harassment/discrimination is prohibited and subject to disciplinary action.

Clemson University will respond promptly to all complaints of harassment, discrimination, and retaliation. Immediate and appropriate corrective action will be taken when it is determined that harassment has occurred. The available complaint resolution processes are described below and differ depending on whether the person allegedly violating the policy is a student or non-student.

Violation of this policy can result in any disciplinary action that the University deems appropriate up to and including termination from employment (employees), dismissal from the University (students) or disassociation/removal from campus (visitors and other non-students). More information about possible sanctions can be found in section V of this policy.

The policy is intended to meet Clemson University's responsibilities under Titles VI and VII of the Civil Rights Act 1964, the Pregnancy Discrimination Act of 1978, Title IX of the Education Amendments of 1972, Sections 503 and 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, the Age Discrimination in Employments Act of 1967, the Age Discrimination Act of 1975, the Vietnam Veterans Readjustment Assistance Act of 1974, the Genetic Information Nondiscrimination Act of 2008, the Violence Against Women Act, and applicable provisions of the South Carolina Human Affairs Law.

II. Definitions

A. Discrimination

Discrimination is the denial or exclusion of an individual or group of individuals from participation in or receiving the benefits of any program or activity of the University. Discrimination based on race, color, religion, sex, sexual orientation, gender, pregnancy, national origin, age, disability, veteran's status, genetic information or protected activity (e.g. opposition to prohibited discrimination or participation in the statutory complaint process, etc.) is prohibited. Examples may include exclusion from employment, benefits, or access to academic programs and opportunities.

B. Harassment

In general, harassment is unwelcome verbal or physical conduct, based upon race, color, religion, sex, sexual orientation, gender, pregnancy, national origin, age, disability, status as a military veteran, genetic information or protected activity (e.g., opposition to prohibited discrimination or participation in the statutory complaint process), that unreasonably interferes with the person's work or educational performance or creates an intimidating or hostile work or educational environment. Examples may include, but are not limited to, epithets, slurs, jokes or other verbal, graphic or physical conduct.

C. Sexual Harassment

Sexual harassment is unwelcome conduct of a sexual nature. It includes unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature including sexual violence. Sexual violence is defined as sexual acts perpetrated against a person's will or where a person is incapable of giving consent (see definition of consent below). A number of different acts fall into the category of sexual violence and are defined as follows:

1. Sexual Assault and/or Battery: Any attempted or actual act of nonconsensual sexual intercourse, cunnilingus, fellatio, anal intercourse, or any intrusion, however slight, of any part of a person's body or of any other object into the oral, genital or anal openings of another person's body. This includes forcible or non-forcible sex offenses under the uniform crime reporting system of the Federal Bureau of Investigation:
 - Rape – The carnal knowledge of a person without the consent of the victim including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacitation;
 - Fondling – The touching of the private body parts of another person for the purpose of sexual gratification without the consent of the victim including instances where the victim is incapable of

giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacitation;

- Non-forcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law;
- Non-forcible sexual intercourse with a person who is under the statutory age of consent (In South Carolina the legal age of statutory consent is 16. However, individuals as young as 14 years old are able to consent to have sex with a partner who is 18 years old or younger.).

2. Sexual Coercion: The act of using pressure through threats, alcohol or drugs, or force to have sexual contact with someone against his or her will. Persistent attempts to have sexual contact with someone who has already refused is a type of sexual coercion.
3. Sexual Misconduct: Any other nonconsensual conduct of a sexual nature including but not limited to touching, fondling, kissing, groping, indecent exposure, sex-based cyber-harassment, peeping or other voyeurism, forcing others to view sexual activity, and/or the non-consensual photography, video or audio taping of sexual activity.
4. Dating/Relationship Violence: Dating/Relationship Violence is violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim where the existence of such relationship shall be based on a) the length of the relationship, b) the type of the relationship, and c) the frequency of interaction between the persons involved in the relationship. This includes sexual or physical abuse or the threat of such abuse.
5. Domestic Violence: A felony or misdemeanor crime of violence committed by:
 1. A current or former spouse or intimate partner of the victim;
 2. A person with whom the victim shares a child in common;
 3. A person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner.
 4. A person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred; or
 5. Any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred.

6. Stalking: Stalking is defined as a course of conduct¹ directed at a specific person that would cause a reasonable person² to -
- i. fear for the person's safety or the safety of others; or
 - ii. suffer substantial emotional distress^{3,4}.

D. Consent

Every member of the University community should be aware that all sexual contact or behavior on the campus and/or occurring with a member of the University community must be consensual. Consent requires speech or conduct indicating a freely given, un-coerced agreement to engage in sexual contact. Consent may not be inferred from silence or passivity alone and a current or previous relationship is not sufficient to constitute consent. Consent may be withdrawn at any time prior to or during a specific sexual act by either person.

To be valid, the person giving consent must be physically and mentally able to:

1. understand the circumstances and implication of the sexual act;
2. make a reasoned decision concerning the sexual act; and
3. communicate that decision in an unambiguous manner.

In the absence of mutually understandable words or actions, it is the responsibility of the initiator, or the person who wants to engage in the specific sexual activity, to make sure that he/she has the consent from his/her partner(s) prior to initiating sexual activity.

- Effective Consent is active, not passive.
- Effective Consent to one form of sexual activity is not Effective Consent to other forms of sexual activity.
- The person who is the object of sexual advances is not required to physically or otherwise resist.
- Silence, previous sexual relationships or experiences, and/or a current relationship may not, in themselves, be taken to imply consent.

Inability to Consent - There are a number of factors which may limit or negate a person's ability to consent to a sexual act. These include but are not limited to age, impairment due to the influence of alcohol or drugs (illegal or prescription), an intellectual or other disability, a person's temporary or permanent mental or physical impairment, unconsciousness, fear and/or coercion. In order to find no consent under one of these circumstances, there must be a finding that the

¹ Course of Conduct means two or more acts, including but not limited to, acts in which a stalker directly, indirectly, or through third parties, by any action, method, device, or means follows, monitors, observes, surveils, threatens, or communicates to or about, a person, or interferes with a person's property.

² Reasonable Person means a reasonable person under similar circumstances and with similar identities to the complainant.

³ Substantial Emotional Distress means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.

⁴ Stalking is not always directed at someone due to his/her gender/sex. Even if it is not related to sex or gender, it is prohibited and will be addressed through this policy and the appropriate procedures for handling complaints.

complainant was unable to consent and a finding that the respondent knew or had reason to know the complainant was unable to consent.

Intoxication of the respondent is not an excuse for failure to obtain consent or failure to know of the complainant's inability to consent.

E. Protective Measures

The following Protective Measures may be implemented by the University in Responding to Harassment/Discrimination Complaints:

1. **No-Contact Orders:** A no-contact order may be issued to the complainant, the respondent, witnesses or other individuals as appropriate under the circumstances.
2. **Interim Measures:** At any point during the process, interim actions may be taken to protect parties or witnesses to the investigation including but not limited to separating the parties, reassignment, alternative work or student housing arrangements, providing an escort to ensure that the complainant can move safely between classes and activities, or other types of temporary measures. Interim measures may become permanent depending on the outcome of the investigation.

F. Responsible Employee

A Responsible Employee is an employee who has the authority to take action to address sexual violence on campus under Title IX and who has been given the duty of reporting incidents of sexual violence or any other sexual misconduct to the Title IX Coordinator or Deputy Title IX Coordinator. **At Clemson University, Responsible Employees under Title IX are defined as: Clemson University faculty, staff who work directly with students, Student Affairs staff, advisors to recognized student organizations, community and graduate community directors, resident assistants, athletic coaches, managers, supervisors and administrators.** Exceptions to the definition of Responsible Employees are:

1. Confidential Resources (see paragraph IV of this policy)
2. Aspire Program Facilitators or other facilitators of sexual violence awareness or prevention programs such as Take Back the Night or others that may be developed.

G. Retaliation

Retaliation is conduct causing any interference, coercion, restraint or reprisal against a person initiating a complaint of harassment/discrimination or against a person assisting in any way in the investigation and resolution of the complaint. Retaliation is a violation of this policy and will not be tolerated. Appropriate sanctions/disciplinary actions shall be taken against any person found to have participated in any acts of retaliation.

G. Title IX Coordinator

Title IX of the Education Amendments of 1972 is a federal law that states “No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of or be subject to discrimination under any education program or activity receiving Federal financial assistance.” The Title IX Coordinator is the person(s) designated by Clemson University to oversee its Title IX compliance efforts, carry out the University’s responsibilities under Title IX, and investigate any complaints alleging actions prohibited by Title IX. Gender based discrimination is prohibited under Title IX and includes sexual harassment as defined above.

- The Director of the Office of Access & Equity is the University Title IX Coordinator - (864) 656-3181
- The Director of the Office of Community and Ethical Standards is the Deputy Title IX Coordinator - (864) 656-0510

III. Reporting Harassment/Discrimination

Clemson University will respond to and investigate all claims of harassment/discrimination and will take steps to ensure that no retaliation will be taken against any person making a complaint or participating in the investigation process, and that any person against whom an allegation is made is treated fairly. Reports of harassment/discrimination should be made as soon as possible to enable the University to more effectively investigate the allegations.

There are three options for reporting Harassment/Discrimination as described below. A criminal complaint and an on-campus complaint through the Office of Access & Equity or the Office of Community and Ethical Standards can be made simultaneously:

- A. Criminal Reporting** – If the alleged harassment/discrimination is a crime, a report should be made to the Clemson University Police Department or other appropriate law enforcement agency if the incident occurred off campus. Sexual assault, sexual battery, and other forms of sexual violence/misconduct are criminal acts and Clemson University encourages victims to meet with police officers as soon as possible in order to receive prompt medical attention and allow officers to gather information in a timely manner. The sooner law enforcement becomes involved, the greater the likelihood of identifying, arresting, and convicting the perpetrator. If a report is made to the Clemson University Police Department (CUPD), the department will provide an advocate to ensure that medical treatment and counseling services are offered, regardless of the person’s decision to pursue the matter criminally.

To make a report on campus, concerned persons should call 911 or (864) 656-2222 immediately to reach the Clemson University Police Department (CUPD). Away from campus, concerned persons should call 911.

In addition to the criminal process or for harassment/discrimination complaints that are not violations of criminal law, the following on campus reporting options are available:

- B. Alleged Perpetrator is a Student** – If the alleged perpetrator is a Clemson University student, a complaint may be filed with the Office of Community and Ethical Standards (OCES) which is responsible for resolving student conduct issues. The Student Code of Conduct extends to incidents that occur on University property, at University-sponsored activities; and off-campus.

If after submitting a complaint to OCES the complainant decides not to go through the student complaint process, the matter will be referred to the Title IX Coordinator in the Office of Access and Equity for further review.

Contact information for OCES is 912 University Union, telephone: 656-0510. Student complaint procedures can be found in the Student Code of Conduct at: <http://www.clemson.edu/administration/student-affairs/student-handbook/code-of-conduct/student-conduct.html>.

- C. Alleged Perpetrator is an Employee (faculty or staff) or other Non-Student** - If the alleged perpetrator is a Clemson University employee (faculty or staff), visitor to campus or other non-student, a complaint of harassment/discrimination may be filed with the Office of Access and Equity (A&E).

A&E is the office of the university's Title IX Coordinator.

Contact information for A & E is 110 Holtzendorff Hall, telephone: 656-3181 (voice) or 656-0899 (TDD).

A & E complaint procedures can be found at: <http://www.clemson.edu/campus-life/campus-services/access/procedure.html>.

IV. Confidentiality

The University recognizes that a complainant may desire confidentiality and may request that the University not investigate or pursue resolution of an allegation of harassment/discrimination. In such cases, the University will maintain confidentiality to the extent permitted by law and other safety and welfare considerations. However, the University may determine that it must investigate and pursue resolution of a report, and take whatever measures it deems necessary in response to an allegation of harassment/discrimination in order to protect the rights, interests and personal safety of the Clemson community. As such, the University may have to disclose the harassment allegation and the identity of the complainant to the accused, other University officials,

and others (to implement interim measures) as appropriate. Nevertheless, we will only share information on a limited basis and will keep information confidential to the extent permitted by law.

Confidentiality and Allegations of Sexual Violence

If a complainant alleging sexual violence requests that his/her name not be revealed to the alleged perpetrator or asks that the school not investigate or seek action against the alleged perpetrator, the complainant must understand that honoring this request may severely limit the ability to fully respond to the complaint, including pursuing disciplinary action against the alleged perpetrator. All such requests will be referred to and reviewed by the Title IX Coordinator (alleged perpetrator is non-student) or the Deputy Title IX Coordinator (alleged perpetrator is a student). A range of factors will be considered in evaluating these requests including by not limited to:

- Whether there have been other sexual violence complaints about the Respondent;
- Whether the Respondent threatened further violence against the Complainant or others;
- Whether the alleged sexual violence was perpetrated with a weapon;
- Whether the school possesses other means to obtain relevant evidence (e.g. security cameras, witnesses, physical evidence etc.)

If a complainant wishes to speak to a confidential resource, the following resources are available:

- A. **Crisis Counseling for Students:** Student victims of sexual violence can seek confidential crisis counseling services through Counseling and Psychological Services (CAPS). During normal business hours, CAPS can be contacted by calling 864-656-2451. After hours and on weekends, CAPS can be contacted by calling 864-656-2222 asking for the CAPS on-call counselor.
- B. **Employee Assistance Program:** The Office of Human Resources offers confidential, professional referral assistance to faculty and staff by contacting the Employee Assistance Program at 864-656-3360 or 864-656-2726.
- C. All victims of sexual violence may seek crisis counseling services through the Pickens Rape Crisis Council at 864-442-5500.

The University provides many other, non-confidential resources to students who have been victims of harassment/discrimination and sexual violence. Although the University encourages all students to seek help by means of speaking to someone, it is important to keep in mind that the University is required by law to review and attempt to resolve any allegation of sexual violence that is reported to any University official with the exception of those receiving parties that are confidential resources.

The University also has a duty to report sexual misconduct to the Clemson University Police Department for federal statistical reporting purposes (as dictated by the Clery Act). All personally identifiable information is kept confidential, but statistical information must be reported regarding the type of incident and its general location (on or off-campus, in the surrounding area, but no addresses are given) for publication in the annual Security and Fire Safety Report. This report helps to provide the community with a clear picture of the extent and nature of campus crime, to ensure greater community safety.

V. Sanctions

Persons found to be in violation of this policy will be subject to immediate and appropriate disciplinary action, proportional to the seriousness of the offense. In cases involving violations by students, sanctions will be determined in accordance with the Student Code of Conduct. Possible sanctions include but are not limited to reprimand, disciplinary probation, suspension, or dismissal. In cases involving violations by non-students, sanctions may include but are not limited to: oral or written reprimand, reassignment, demotion, suspension or termination of employment, and/or removal from campus.

VI. Filing with External Agencies

In addition to, or in lieu of, the procedures outlined above:

1. Students (either undergraduate or graduate) may file formal complaints with the following agency:

United States Department of Education, Office for Civil Rights
61 Forsyth St. S.W., Suite 19T70, Atlanta, GA 30303-3104
Telephone: 404-562-6350; TDD: 404-331-7236
(Must file within 180 calendar days from date of discrimination).

2. Employees may file formal complaints with the following agencies:

South Carolina Human Affairs Commission
2611 Forest Drive, Suite 200, Post Office Box 4490
Columbia, SC 29240
Telephone: (803) 737-7800; TDD: (803) 253-4125
(Must file within 180 calendar days from date of discrimination).

OR

U. S. Equal Employment Opportunity Commission
301 North Main Street, Suite 1402, Greenville, SC 29601
Telephone: (864) 241-4400; TDD: (864) 241-4403
(Must file within 300 calendar days from date of discriminatory act, or 30 days after receiving notice that the state or local agency has terminated its processing of the charge, whichever is earlier).

APPENDIX A

Resources for Students and Employees

On Campus Resources

A. Students:

1. **Title IX Coordinator:** The Clemson University Title IX Coordinator is Jerry Knighton who is also the Director of the Office of Access & Equity. Anyone can make a complaint about discrimination based on sex or gender or a complaint of sexual harassment including sexual violence to the Title IX Coordinator. However, matters involving a student who has allegedly committed the discrimination/harassment will be referred to the Office of Community and Ethical Standards (OCES) and addressed under the Student Code of Conduct by the Office. 864-656-3181 knightl@clemson.edu
2. **Deputy Title X Coordinator:** The Clemson University Deputy Title IX Coordinator is Alesia Smith who is also the Director of OCES. Complaints regarding students who have allegedly engaged in discrimination based on sex or gender or engaged in sexual harassment including sexual violence can be made to the Deputy Title IX Coordinator or to OCES. 864-656-0510 alesias@clemson.edu
3. **Dean of Students Office:** The Dean of Students Office provides care and support to any student at Clemson University on a variety of topics. Staff in the Dean of Students Office staff can assist students in identifying campus resources, and making complaints related to the Anti-Harassment and Non-Discrimination policy. . Shannon Finning is the Dean of Students. 864-656-0471 finning@clemson.edu
4. **Crisis Counseling:** Student victims of sexual violence can seek crisis counseling services through Counseling and Psychological Services (CAPS). During normal business hours, CAPS can be contacted by calling 864-656-2451. After hours and on weekends, CAPS can be contacted by calling 864-656-2222 asking for the CAPS on-call counselor. All victims of sexual violence may seek crisis counseling services through the Pickens Rape Crisis Council at 864-442-5500.
5. **CUPD Victim Assistance:** The Clemson University Police Department assists all campus crime victims with referrals, transportation, court familiarization and compensation. 864-656-2222

B. Employees:

1. **Title IX Coordinator:** The Clemson University Title IX Coordinator is Jerry Knighton who is also the Director of the Office of Access & Equity. Anyone can make a complaint under the Anti-Harassment and Non-Discrimination policy to the Title IX Coordinator. However, matters

involving a student who has allegedly violated the policy will be referred to OCES and addressed under the Student Code of Conduct by the Office. 864-656-3181 knightl@clemons.edu

2. **Employee Assistance Program:** The Office of Human Resources offers confidential, professional referral assistance to faculty and staff by contacting the Employee Assistance Program at 864-656-3360 or 864-656-2726. Assistance is available for personal problems (including depression, emotional problems and substance abuse) that may impact job performance. Initial counseling is generally provided through qualified state agencies at no charge.

CUPD Victim Assistance: The Clemson University Police Department assists all campus crime victims with referrals, transportation, court familiarization and compensation. 864-656-2222

Off Campus Resources

- A. **Rape Crisis Council of Pickens County:** The mission of Rape Crisis Council of Pickens County is to provide optimum quality direct services to the victims of sexual assault and their families in Pickens County. The Rape Crisis Council of Pickens County aims to provide an advocate that can be there for any victim in their time of need, and to show each victim that someone does believe them and is on their side. 864-442-5500 <http://www.pickensrcc.org/>
- B. **Foothills Sexual Trauma Center (Anderson and Oconee Counties):** Foothills Alliance is a nonprofit agency that encompasses three programs: Sexual Trauma Center, Child Advocacy Center, and Prevent Child Abuse. The Sexual Trauma Center is a multi-services program responding to the needs of child and adult sexual trauma survivors in Anderson and Oconee counties. The center provides support for survivors, family members and others involved in the survivor's recovery. 1-800-585-8952 <http://foothillsalliance.org/>
- C. **MARYS House (Domestic and Relationship Violence):** MARYS House provides emergency shelter and services to families fleeing domestic violence. The MARYS House family (staff, volunteers, and Board of Directors) works toward the prevention and cessation of domestic violence through intervention, education, and outreach. 864-859-9191 <http://maryshouse.com/>
- D. **Safe Harbor (Domestic and Relationship Violence):** Safe Harbor is a organization that provides safe shelter, counseling and advocacy for victims of domestic violence as well as leadership for education and prevention efforts throughout its four-county area of Anderson, Greenville, Oconee and Pickens, South Carolina. Safe Harbor offers a continuum of services, providing safe

emergency shelter, counseling, legal advocacy, and transitional housing, as well as community outreach and teen dating violence education.
1-800-291-2139 <http://safeharborsc.org/>

E. South Carolina Coalition Against Domestic Violence and Sexual Assault:

SCCADVASA works to make the community aware of issues, problems, policy and legislation regarding Domestic Violence & Sexual Assault. SCCADVASA supports domestic violence and sexual assault member programs, provides education, and advocates for social reform to eradicate interpersonal violence in South Carolina.
1-803-256-2900 <http://www.sccadvasa.org/>

F. RAINN: Rape, Abuse & Incest National Network: RAINN is the nation's largest anti-sexual violence organization. RAINN created and operates the National Sexual Assault Hotline (800-656-HOPE and online.rainn.org). RAINN also carries out programs to prevent sexual violence, help victims and ensure that rapists are brought to justice.
1-800-656-4673 <http://www.rainn.org/>

G. National Coalition Against Domestic Violence: NCADV is comprised of people dealing with the concerns of battered women and their families. They represent both rural and urban areas. The Mission of the National Coalition Against Domestic Violence (NCADV) is to organize for collective power by advancing transformative work, thinking and leadership of communities and individuals working to end the violence in our lives.
Anonymous and Confidential Help 24/7 – 1-800-799.Safe (7233), 1-800-787-3224 (TTY) <http://www.ncadv.org/>

Additional Off-Campus Resources

Pickens County Sheriff's Office	216 C. David Stone Rd. Pickens, SC 29671	(864) 898-5500
Oconee County Sheriff's Office	300 S. Church St. Walhalla, SC 29691	(864) 638-4111
Anderson County Sheriff's Office	305 Camson Rd. Anderson, SC 29625	(864) 260-4400
Baptist Easley Hospital	200 Fleetwood Dr. Easley, SC 29640	(864) 442-7200
Oconee Medical Center	298 Memorial Dr. Seneca, SC 29672	(864) 482-3100
AnMed Health Medical Center	800 N. Fant St. Anderson, SC 29621	(864) 512-1000
Greenville Memorial Hospital	701 Grove Rd. Greenville, SC 29605	(864) 455-7000
Battered Women's Shelter		
Foothills Rape Crisis Center	216 E. Calhoun St. Anderson, SC 29621	(864) 231-7273

Pickens County Family Court (emergency order of protection)	214 E. Main St. Pickens, SC 29671	(864) 898-5598
Pickens County Magistrate	216 C. David Stone Rd. Pickens, SC 29671	(864) 898-5592
Pickens County Courthouse	214 E. Main St. Pickens, SC 29671	(864) 898-5598

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF PICKENS	)	Docket No.: 2017-CP-39-00709
ANDREW PAMPU,	)	
	)	
Plaintiff,	)	
	)	BRIEF IN SUPPORT OF MOTION
v.	)	FOR SUMMARY JUDGMENT ON
	)	BEHALF OF COLIN J. GAHAGAN
ERIN WINGO, DAVID WINGO AND	)	
COLIN J. GAHAGAN,	)	
	)	
Defendants.		

Andrew Pampu was found in February, 2016 to have engaged in non-consensual sex with Erin Wingo by the Clemson Office of Community and Ethical Standards (Exhibit 1). Notwithstanding this finding and Andrew Pampu's acknowledgement that he had sexual intercourse with Erin Wingo (Exhibit 2), he instituted suit for defamation and civil conspiracy against Erin Wingo, David Wingo and C.J. Gahagan based upon statements made regarding his interaction with Erin Wingo and the adverse findings against him by the Clemson Office of Community and Ethical Standards. Because he is bound by the findings of the Office of Community and Ethical Standards, his action for damages should be dismissed pursuant to summary judgment under the doctrine of collateral estoppel.

FACTUAL BACKGROUND

In 2015, Andrew Pampu, Erin Wingo and C.J. Gahagan were freshman at Clemson. Andrew Pampu and C.J. Gahagan were both pledged to the Phi Delta Theta fraternity and therefore were acquainted with one another. C.J. Gahagan was dating Erin Wingo, though not exclusively. C.J. Gahagan had introduced Erin Wingo to Andrew Pampu. On the evening of October 24, 2015, Phi Delta Theta held a party which was open to all Clemson students. October 24, 2015 also happened to be Andrew Pampu's birthday. Both Andrew Pampu and C.J. Gahagan were required to

be at that party since they were pledged to Phi Delta Theta. Erin Wingo came to the party later with friends, intending to meet C.J. Gahagan. However, when C.J. Gahagan indicated he did not want to spend time at the party with Erin Wingo, she sought out and eventually got together with Andrew Pampu, intending to give him a birthday kiss. However, because both had been drinking heavily, the initial birthday kiss soon progressed to sex behind a garage near the fraternity premises. While both Erin Wingo and Andrew Pampu acknowledge they had sexual intercourse (Exhibits 2 and 3), a question arose as to whether it was consensual based upon Erin Wingo's advanced state of intoxication.

Andrew Pampu has testified that immediately after having sex, Erin Wingo became very emotional, talking about past boyfriends and wanting to go back to the party to C.J. Gahagan (Exhibit 4). As they walked back to the fraternity party, she was stumbling (Exhibit 5) and making incoherent and incomplete sentences (Exhibit 5). Andrew Pampu has testified that he felt that Erin Wingo was intoxicated before she had sex but not incapacitated (Exhibit 6). He acknowledges, however, that he recognized that she was on the "back end of drunk" (Exhibit 4). Nonetheless, he left her when they had returned to the party. Texts from Erin Wingo to C.J. Gahagan when she was left at the party by Andrew Wingo appear to confirm this state of affairs:

C.J. Gahagan	Where are you	(4:40:51)
	Seriously....	(4:42:44)
...	Okay this is over	(4:44:21)
Erin Wingo:	Front steps	(5:00:22)
C.J. Gahagan:	Of?	(5:02:38)
Erin Wingo:	the compounds pls	(5:03:54)

C.J. Gahagan: You're getting a ride back
to manning to your own
bed you'll be okay (5:05:03)

C.J. Gahagan: One last chance. Tell the
driver to take you to cope
and maybe this can be
solved but at this point I
doubt it. (5:09:36)

Erin Wingo: pls. one to manning and I
can't make it OT to cop (5:11:45)

Erin Wingo: ^once (5:12:03)

(Exhibit 7) (There is a four-hour difference between the stamped time and the actual time.)

In a subsequent text from Erin Wingo to Andrew Pampu, she asks him if he knows where her dormitory room key is. She then goes on to request that Andrew Pampu not tell C.J. what happened (Exhibit 8). She later texts Andrew Pampu that she does not remember what occurred, at least not all of what occurred, (Exhibit 9) because she had too much to drink (Exhibit 10). Obviously, there was a factual issue as to whether Erin Pampu was too intoxicated to give her consent to have sex with Andrew Pampu.

The matter was ultimately referred to the Clemson Office of Community and Ethical Standards for investigation. Once that investigation was concluded, a hearing was held to resolve the issue of consent, at which Andrew Pampu was represented by counsel and allowed to examine witnesses and present evidence (Exhibit 11). The hearing, as noted, resulted in a finding that Andrew Pampu had non-consensual sex with Erin Wingo (Exhibit 12). That finding was subsequently upheld by the President of Clemson University (Exhibit 13). Plaintiff apparently opted not to pursue further appeals through the appellate courts. (Pursuant to section 1-23-380 (SC Cod 1976), a

party who has exhausted all administrative remedies and is aggrieved by a final decision in a contested case, is entitled to judicial review by The South Carolina Court of Appeals. The South Carolina Supreme Court further explained in Stinney v. Sumter School Dist., 391 S.C. 547, 707 S.E. 2d 397 (2011) that a circulation which arises out of an administrative hearing does not necessarily require an exhaustion of administrative remedies since the civil tort claim does not involve an administrative remedy which arises out of statute. However, the Stinney Court went on to recognize that a litigant in an administrative process has a right to collaterally attack the findings of an administrative body since res judicata, which includes collateral estoppel, still applies in the administrative setting. Such determinations as might be made by an administrative agency may, according to the Stinney Court, bar subsequent litigation. In this case Andrew Pampu was determined by an administrative agency to have engaged in non-consensual sex with Erin Wingo.). Notwithstanding the finding of non-consensual sex, Andrew Pampu has continued to assert that he was falsely accused and improperly found to have non-consensual sex. As a result, he contends that statements made by the defendants that he “raped” Erin Wingo were false and defamatory. He further asserts that the defendants Erin Wingo and C.J. Gahagan combined in a civil conspiracy to have him suspended from attending Clemson. Likewise, he contends that C.J. Gahagan and David Wingo conspired to have him expelled from the Phi Delta Theta fraternity.

COLLATERAL ESTOPPEL

Under South Carolina law, where a civil action arises out of the same factual scenario as one which has been the subject of an agency hearing, a finding by the state agency on any issue which is critical to recovery in the civil action is binding upon the parties of the civil action who were also the subject of the administrative hearing. Both Bennett v. South Carolina Dept. of Corrections, 305 S.C. 310, 408 S.E.2d 230 (1991) and Perry v. South Carolina Law Enforcement Div., 310 S.C. 558, 426 S.E.2d 334 (1992) stand for the proposition that an administrative finding constitutes collateral estoppel with regard to any issue for recovery in a civil proceeding, provided that the party had a full and fair opportunity to litigate the issue in the agency hearing. Collateral estoppel, or issue preclusion, prohibits a court from

adjudicating an issue which has previously been decided if the party being estopped had a full and fair opportunity to litigate the issue in the first action. St. Phillip's Episcopal Church v. South Carolina Alcoholic Beverage Comm., 285 S.C. 335, 329 S.E. 2d 454 (Ct. App. 1985); Zurcher v. Bilfore, 379 S.C. 132, 666 S.E.2d 224 (2008). In other words, where an issue of fact or law is actually litigated and determined by a valid and final judgment, and the determination is essential to the judgment, the determination is conclusive in any subsequent action, whether on the same or different claims. Lowe v. Clayton, 264 S.C. 75, 212 S.E.2d 582 (1975).

Based upon the above authorities, in order for collateral estoppel to be applicable, an initial determination must be made by a state agency conducting a contested case in which the party being estopped had a full and fair opportunity to participate and be heard in the administrative hearing. If the Clemson Office of Community and Ethical Standards is a state agency which conducted a fair hearing on the charges asserted against Andrew Pampu, then its factual findings are binding upon Andrew Pampu in this civil action under collateral estoppel.

The term "agency" is defined by section 15-78-30(a) of the South Carolina Code to include state schools, colleges and universities. Section 1-23-310 of the South Carolina Code also defines "agency" to include each state board, commission, department or offices, other than the legislature or courts, authorized by law to determine "contested cases". The term "contested case" is defined by section 1-23-310 to be a proceeding in which the legal rights, duties or privileges of a party are to be determined by an agency after an opportunity for a hearing.

Using these definitions, it is clear that Clemson University would constitute an "agency". The Clemson Office of Community and Ethical Standards is simply an arm of Clemson University, being a division of that school's student affairs office. (See Exhibits 14 and 1). According to Alesia Smith, the director for the Office of Community and Ethical Standards, the purpose of that office is to review and hear cases and impose sanctions (Exhibit 15). Moreover, under the South Carolina Campus Sexual Assault Information Act, as set forth in sections 59-105-10 to 59-105-

60 of the South Carolina Code, colleges and universities, such as Clemson, are to establish procedures for institutional disciplinary actions in cases of alleged sexual assaults. Pursuant to that act, Clemson has promulgated an Anti-Harassment and Non-Discrimination Policy (Exhibit 16). The Clemson Office of Community and Ethical Standards is charged with enforcement of that policy.

Pursuant to the South Carolina Campus Sexual Assault Information Act, the accused, in this case Andrew Pampu, has a right to notice of the accusations against him, a right to counsel, a right to participate in the hearing, and a right to be informed of the outcome of the proceeding. Andrew Pampu was accorded each of these rights, fully participated in the proceeding, presented witnesses and made statements regarding his position (Exhibits 14, 11). He was also given the right to appeal the final ruling (Exhibits 17, 18, 13).

Based upon the above, Andrew Pampu had a hearing before a state agency and was accorded a full and fair opportunity to participate in his hearing. Any issues or objections to the manner in which the hearing was conducted could have been and were the subject of an appeal. (The plaintiff appealed to the President of Clemson's office at which time the holding was affirmed. He could have appealed to the Court of Appeals but failed to do so.) Andrew Pampu, pursuant to the ruling of the Clemson Office of Community and Ethical Standards was, among other rulings, found to have engaged in non-consensual sex with Erin Wingo. As a result, he is now collaterally estopped from asserting that he actually engaged in consensual sex.

DEFAMATION

Andrew Pampu has alleged that Erin Wingo, David Wingo and C.J. Gahagan have made false and defamatory statements concerning whether he engaged in a sexual assault of Erin Wingo which constituted "rape".

On the evening of October 24, 2015, Erin Wingo went to the Phi Delta Theta fraternity party after having heavily imbibed alcoholic beverages with several of her friends. By the time she arrived at the party, she was intoxicated and apparently

became noticeably so as the evening wore on. As noted, she ended up with Andrew Pampu and engaged in sexual intercourse with him. The Clemson Office of Community and Ethical Standards determined that Erin Wingo had become so intoxicated as to be unable to give her informed consent to Andrew Pampu to have sex. The board further determined that Andrew Pampu, although he had also been drinking, had the wherewithal to determine if Erin Wingo could give informed consent.

It should be noted that the evidence clearly establishes that Andrew Pampu was fully aware of what he was doing. In fact, he bragged about his conquest the following day (Exhibit 19). The real factual issue for the Office of Community and Ethical Standards to decide was whether the sex was consensual on the part of Erin Wingo. Andrew Pampu was adamant that Erin Wingo had agreed to have sex with him (Exhibit 5). Erin Wingo had only a patchy memory of what occurred (Exhibit 3). It is clear, however, that immediately following the sex, she was crying, stumbling and apparently very drunk (Exhibit 5). Andrew Pampu left her on the steps of one of the fraternity buildings (Exhibit 20), at which time Erin Wingo attempted to text C.J. Gahagan (who had left the party), leaving non-sensical and confusing messages, indicating she was very intoxicated as noted above (Exhibit 7). The Office of Community and Ethical Standards determined that the evidence was sufficient to find that Andrew Pampu had engaged in non-consensual sex with Erin Wingo (Exhibit 1). This finding is, as noted before, binding upon Andrew Pampu. If the finding of non-consensual sex is correct and true then one of the essential elements of the tort of defamation, namely that the alleged defamatory statement is false, is missing. See Hubbard, F.P. and Felix, R.L., The South Carolina Law of Torts (2d Ed.) at p. 461).

Andrew Pampu has nonetheless persisted in asserting that he was slandered when the defendants repeated this holding and accused him of rape. The term “rape” is no longer used to describe a crime in South Carolina. Rather South Carolina utilizes the term “criminal sexual conduct” and divides the crime into three degrees.

The non-consensual act of Andrew Pampu would fall within section 16-3-654, which is criminal sexual conduct, third degree. It includes acts of sexual battery with no aggravated force or coercion but which does include situations in which the accused knows or has reason to know that the victim is mentally incapacitated. While South Carolina no longer uses the term “rape”, the brochure issued by Clemson University to its students setting forth its Anti-Harassment and Non-Discrimination Policy does (Exhibit 16). Pursuant to that document, “rape” is defined as “the carnal knowledge of a person without the consent of the victim including instances where the victim is incapable of giving consent because of ...his/her temporary... mental or physical incapacitation”. The document goes on to note that one of the factors which may limit the ability to grant consent is impairment due to the influence of alcohol. (Exhibit 16).

As previously noted, Andrew Pampu was found by the board of the Office of Community and Ethical Standards to have engaged in non-consensual sex because Erin Wingo was incapacitated and unable to give consent (Exhibit 1). It also found that Andrew Pampu knew or should have known of Erin Wingo’s condition, which meets the second condition of the Anti-Harassment and Non-Discrimination Policy (Exhibit 1).

Andrew Pampu may argue, however, that the board’s finding was with regard to sexual misconduct, which does not include “rape”, rather than sexual assault and battery, which does. However, this position misconstrues what admittedly occurred on the evening of October 24, 2015. The difference between “sexual assault and battery” and “sexual misconduct” is that the former requires oral, genital or anal penetration. Andrew Pampu has not only admitted that he had sexual intercourse, he bragged about it:

I fucked a chick by the garbage thing behind
Chipotle, so I think I definitely did [have a
good birthday] with thay [sic] alone.

(Exhibit 19).

By virtue of the fact that Andrew Pampu has admitted to sexual intercourse and the fact that he was found to have engaged in non-consensual sex with Erin Wingo, the two factors necessary for there to have been a rape as defined by the Anti-Harassment and Non-Discrimination Policy brochure, have been met.

Andrew Pampu has nonetheless asserted that he is not bound by the findings of the Clemson Office of Community and Ethical Standards board since those findings were based upon false testimony and fraudulent conduct of the defendants, specifically Erin Wingo and C.J. Gahagan. However, this position disregards the distinction between “intrinsic fraud” and “extrinsic fraud”. “Intrinsic fraud” refers to fraud which has been presented or considered by a jury or the authority making the decision or rendering the judgment. This would include perjury and forged documents. Rycroft v. Tanguay, 278 S.C. 76, 302 S.E.2d 327 (1983).

“Extrinsic fraud”, on the other hand, refers to collateral or external fraud to the matter tried, such as bribery or other acts, which prevent the movant from presenting all of his or her case or the opportunity to be heard. Hilton Head Center v. South Carolina Public Service Comm., 294 S.C. 9, 362 S.E. 2d 176 (1987).

Based on the Court’s reasoning in the Hilton Head Center case, intrinsic fraud cannot serve as a basis for reversing a decision or judgment, only extrinsic fraud can. Andrew Pampu asserts that Erin Wingo and C.J. Gahagan lied during the administrative hearing. Even if this were true, it would not serve to change the outcome since this would constitute “intrinsic fraud” and not “extrinsic fraud”. Accordingly, based upon Hilton Head Center v. South Carolina Public Service Comm., supra, there is no relief available for any alleged fraud in this case, since it was intrinsic in nature.

Finally, although C.J. Gahagan, David Wingo and Erin Wingo were not parties to the administrative hearing which led to Andrew Pampu being found to have engaged in non-consensual sex with Erin Wingo, non-mutual collateral estoppel serves to prevent re-litigation by Andrew Pampu of the board’s finding. All that is required under this doctrine is that the party to be estopped, in this instance Andrew

Pampu, have had a full and fair opportunity to contest the administrative hearing. See Wade v. Berkeley County, 330 S.C. 311, 498 S.E. 2d 684 (Ct. Apps. 1998). As noted above, Andrew Pampu fully participated in the administrative hearing, was able to examine and cross-examine witnesses, was represented by counsel, was allowed to make arguments in his favor and was allowed to appeal alleged errors. He was given a full and fair opportunity to contest the issues, in particular, whether he engaged in non-consensual sex. As a result, he is collaterally estopped and should not be allowed a second bite of the apple. Summary judgment should be granted on this cause of action.

CIVIL CONSPIRACY

Andrew Pampu has also asserted actions for civil conspiracy against Erin Wingo, David Wingo and C.J. Gahagan. His theory actually falls into two parts: (1) Erin Wingo and C.J. Gahagan conspired to defraud the Clemson Office of Community and Ethical Standards by giving false testimony so that it would find that Andrew Pampu had engaged in non-consensual sex with Erin Wingo, thereby having Andrew Pampu suspended from Clemson; (2) C.J. Gahagan and David Wingo acted in concert to have Andrew Pampu expelled from the Phi Delta Theta fraternity.

A plaintiff asserting a civil conspiracy claim must establish:

- (1) The combination or agreement of two or more persons
- (2) to commit an unlawful act or lawful act by unlawful reasons
- (3) together with the commission of an overt act in furtherance of the agreement
- (4) which results in damages to the plaintiff.

Paradis v. Charleston County School District, Op. No. 28030, S.C. Supreme Court (5/19/21).

With regard to the assertion that C.J. Gahagan and Erin Wingo conspired to commit perjury with the Clemson Office of Community and Ethical Standards so that Andrew Pampu would be found to have engaged in non-consensual sex with Erin Wingo, the plaintiff cannot establish the overt act to carry out the conspiracy. As

noted above, South Carolina does not permit a party to reopen litigation based upon intrinsic fraud. Hilton Head Center v. Public Service Comm., *supra*. With intrinsic fraud, a party is accused of presenting false testimony or evidence which is used to obtain an arguably tainted verdict or judgment. Andrew Pampu's action for civil conspiracy attempts to utilize the alleged perjured testimony of C.J. Gahagan and Erin Wingo to establish damages to himself. Yet this approach attempts to overturn the finding of the Clemson Office of Community and Ethical Standards in order to establish that its finding of non-consensual sex was incorrect and therefore the allegations of rape were false. However, as noted, a party is not allowed to reopen a litigated finding based upon alleged perjured testimony. Since he cannot use intrinsic fraud to reopen the finding of non-consensual sex, Andrew Pampu cannot establish an overt act or resulting damages for the alleged conspiracy. As a result, the allegations of civil conspiracy by Erin Wingo with C.J. Gahagan must fail.

The allegations of civil conspiracy by C.J. Gahagan in combination with David Wingo must also fail. David Wingo has acknowledged that he contacted the Phi Delta Theta fraternity about the non-consensual sex of one of its pledges (Andrew Pampu) with his daughter (Exhibit 21). Phi Delta Theta did eventually settle claims asserted against it with regard to the acts of Andrew Pampu and did decide to expel him from the fraternity. The action by Phi Delta Theta was appropriate to protect its interests. The activities of David Wingo in asserting a claim for his daughter for damages arising out of the acts of Andrew Pampu, a Phi Delta Theta pledge, were likewise appropriate.

As a result, there was no unlawful act or lawful act by unlawful means committed by David Wingo. Moreover, as David Wingo has testified, he did not act in concert with C.J. Gahagan in approaching the Phi Delta Theta fraternity. C.J. Gahagan did supply David Wingo with information relevant to the Title IV hearing before the Clemson Office of Community and Ethical Standards (Exhibit 22), but that information was not utilized by David Wingo in his interaction with the Phi Delta Theta fraternity (Exhibit 23). David Wingo did not otherwise involve C.J. Gahagan

in his dealings with the Phi Delta Theta fraternity. As a result, plaintiff has no proof of any unlawful act or lawful act by unlawful means. He also has no proof of a combination or agreement between David Wingo and C.J. Gahagan to harm Andrew Pampu. As a result, this assertion of civil conspiracy must also fail.

CONCLUSION

Plaintiff's actions for defamation and civil conspiracy should be dismissed by summary judgment. Plaintiff is collaterally estopped from denying he engaged in non-consensual sex with Erin Wingo. Since his acts meet the definition of "rape" as given by Clemson University to its incoming students, there is no evidence that any speech or publication by the defendants was false, thereby eliminating an essential element necessary to establish defamation. With regard to the action for civil conspiracy, testimony regarding joint perjury by Erin Wingo and C.J. Gahagan is blocked by the rule regarding intrinsic fraud. With regard to allegations that C.J. Gahagan and David Wingo conspired to have him expelled from his fraternity, there is no proof that they actually worked in concert to that end. For these reasons, summary judgment is appropriate.

Turner Padget Graham & Laney, P.A.

s/David L. Moore, Jr.

David L. Moore, Jr.

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ATTORNEYS FOR DEFENDANT

Greenville, South Carolina
September 22, 2021

Andrew Pampu v. Erin Wingo, David Wingo, and Colin J. Gahagan

Civil Action No.: 2017-CP-39-00709

1. Letter of February 29, 2016;
2. Pampu deposition; pg. 155;
3. Erin Wingo deposition; pgs. 92-96;
4. Pampu deposition; pg. 164;
5. Pampu deposition; pgs. 163, 203;
6. Pampu deposition; pgs. 173-174;
7. Texts from Erin Wingo to C.J. Gahagan;
8. Pampu deposition; pg. 197;
9. Pampu deposition; pg. 198;
10. Pampu deposition; pg. 199;
11. Pampu deposition; pgs. 243 – 254;
12. Pampu deposition; pg. 249;
13. Letter of May 27, 2016 to Pampu from Clemson Office of the President;
14. Letter of February 18, 2016;
15. Smith deposition; pg. 19;
16. Anti-Harassment and Non-Discrimination Policy;
17. Pampu deposition; pgs. 252, 255-257;
18. Smith deposition; pg. 76;
19. Email (text) October 25, 2015 / Pampu to Stoddard;
20. Pampu deposition; pg. 178;
21. David Wingo deposition; pg. 125;
22. Text Gahagan to D. Wingo; January 7, 2016;
23. David Wingo deposition; pgs. 131-136;

Letter from Dave Frock to Pampu Concerning Violation

**See Duplicate Exhibit* found at
ROA pages 345-347**

*To avoid unnecessary duplication of material in the Record on Appeal, Appellants and Respondents have agreed to include a single Record cite to material that was filed more than once.

1 A. Pampu

2 Q. And she put both of her hands on
3 the shed?

4 A. When we did finally start having
5 sex, yes.

6 Q. So you were having intercourse from
7 behind her?

8 A. Yes.

9 Q. What was she doing at this time?

10 A. Can you specify what you mean by
11 that.

12 Q. Was she saying anything? Was she
13 making any noises?

14 A. No, not anything to indicate that
15 she wasn't enjoying herself.

16 Q. Anything to indicate that she was
17 enjoying herself?

18 A. At some point in time there's I
19 mean some moaning. I don't know how to
20 describe it exactly.

21 Q. How about you? What were you
22 doing? Were you saying anything to her?

23 A. No. I mean.

24 Q. Were you making noises?

25 A. Yeah. I mean I was definitely

1 when you had several shots; right?

2 A. Correct.

3 Q. What happened after you met with Drew at
4 The Compound?

5 A. I don't remember. The next thing I
6 remember is being pushed up against a shed.

7 Q. Okay.

8 A. Oh, excuse me. I correct myself.

9 The next thing I remember is being pushed
10 up against a fence, and wondering why the two other
11 people that I saw in my line of sight weren't saying
12 something to Drew.

13 Q. What two other people? Did you know who
14 those two other people were?

15 A. No, ma'am.

16 Q. And where was this fence?

17 A. I think it was on the right side of the
18 dollhouse.

19 Q. Can you show me on the picture you drew?

20 A. (Indicating.)

21 Q. Okay. So right where your index finger
22 was?

23 A. Yes, ma'am.

24 Q. Okay.

25 MS. LAU: And just for the record, the

1 witness is referring to the upper right-hand corner
2 of the photograph to the right of the dollhouse.

3 BY MS. LAU:

4 Q. Okay. What else do you remember after
5 being pushed up against the fence, and seeing two
6 people?

7 A. I remember having the left side of -- well,
8 being bent over, and pushed up against a shed of
9 some kind.

10 Q. Are you reading your account from your
11 Clemson report?

12 A. No, ma'am.

13 Q. Okay. I'm going to ask you to provide your
14 independent recollection of that night without
15 looking at the document.

16 A. That is what I'm providing.

17 Q. Okay. So what else do you remember?

18 A. I remember being hit on my bare bottom. I
19 remember being pulled back up, and told to stand,
20 because he wasn't done. And then I remember sitting
21 on the ground with my pants around my ankles,
22 sitting in the dirt crying.

23 Q. Would you like to take a moment, Ms. Wingo?

24 A. No, ma'am. I'd like to continue, if that's
25 okay.

1 Q. Do you remember anything else?

2 A. I remember biting my arm so I wouldn't
3 scream. And I remember, after, Drew carrying me
4 back to The Compound, and him being on the phone
5 with CJ.

6 I remember Drew leaving me on the front
7 steps while I was still crying, and said, "Call me
8 if you need me."

9 Q. Did you fall down at all during your
10 interaction with Drew?

11 A. Yes, ma'am.

12 Q. How many times?

13 A. I believe once or twice. Maybe more.

14 Q. Do you remember how your pants came off?

15 A. No, ma'am.

16 Q. Was your shirt still on during your
17 interaction with Drew?

18 A. Yes, ma'am.

19 Q. Was your underwear off during your
20 interaction with Drew?

21 A. I believe so.

22 Q. And do you know who took that off?

23 A. No, ma'am.

24 Q. Do you know if you were holding onto
25 anything during your interaction with Drew?

1 A. I believe I was pushed up against a shed.
2 So holding onto the side of it.

3 Q. Were you pushed up against a shed or a
4 fence?

5 A. A shed.

6 Q. Were you pushed up against a fence at all
7 at any point during the interaction?

8 A. When I saw the two other people.

9 Q. When you say you were pushed up against the
10 fence, how was your body positioned?

11 A. My back was to the fence, and Drew was in
12 front of me.

13 Q. Were you kissing?

14 A. I don't recall.

15 Q. Were you touching him?

16 A. I believe so.

17 Q. Do you know where?

18 A. No, ma'am. I don't recall.

19 Q. Do you know if he was touching you?

20 A. I don't recall.

21 Q. Do you know if any clothing came off at
22 that point by either of you?

23 A. I don't believe so.

24 Q. When did you become pushed up against the
25 shed?

1 A. I couldn't say for sure. I was blackout
2 drunk.

3 Q. Was it sometime after you were -- you had
4 your back up to the fence?

5 A. Yes, ma'am.

6 Q. And how was your body positioned at that
7 point when you were pushed up against the shed?

8 A. I was bent over at the waist with my face
9 against the shed.

10 Q. Did you say anything during this
11 interaction with Drew?

12 A. I don't remember.

13 Q. When you were pushed up against the shed,
14 is this where your bottom half of your clothing came
15 off?

16 A. It was already off when I came to.

17 Q. But you don't remember who took it off?

18 A. No, ma'am.

19 Q. Do you know if Mr. Pampu had any clothing
20 on at that point?

21 A. No, ma'am, I don't know.

22 Q. At what point did you fall down?

23 A. After Mr. Pampu hit me.

24 Q. I'm sorry? I didn't hear you.

25 A. After Mr. Pampu hit me.

1 A. Pampu
2 so was I. Like I said, it was rocky terrain.
3 But I did end up holding her arm, and we kind
4 of walked together as, you know, she talked
5 about C.J. more.

6 Q. So at this point you had to help
7 her walk back to the compound?

8 A. I think we were kind of helping
9 each other, honestly. I mean four legs is
10 more than two.

11 Q. Well, you testified previously that
12 it was on the walk back that you realized
13 that she was on the bad end of drunk.

14 A. Yeah, and that's true. And, you
15 know, I wish I would have been able to
16 articulate myself better at the time. She
17 was upset and she was emotional. I'm not
18 sure why I didn't just say that, but that's
19 the truth.

20 Q. All right. Well, you've got an
21 opportunity now to explain what you mean by
22 that.

23 A. Yes, ma'am.

24 Q. What did you start to notice once
25 you had completed having sex with her?



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1 A. Pampu

2 A. I don't know how -- you know, I
3 don't know the time span. I just know that
4 after that we started walking back, and I
5 called C.J.

6 Q. You called him on his cell phone?

7 A. Yes, ma'am. On mine.

8 Q. On your cell phone?

9 A. Yes, ma'am.

10 Q. Did he answer?

11 A. I don't recall him answering.

12 Q. Did you leave him a message?

13 A. I don't remember.

14 Q. How long did it take you to walk
15 back to the compound?

16 A. Again, I don't know. It was
17 probably a lot quicker considering, you know,
18 our walk before, because we had to walk from
19 here through some pretty rocky terrain, and
20 then we got out into I guess Wigington, and
21 then we just walked right back along the
22 street to the compound.

23 Q. Did she have trouble walking at
24 this point?

25 A. She was stumbling a little bit, and



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1 A. Pampu
2 too drunk or that she was too drunk at that
3 point. It was just easier to describe.

4 Q. And you go on to say, "You were
5 making coherent and complete sentences, not
6 stumbling or leaning until we walked back,
7 and that's when I knew you weren't okay."

8 Are you changing your testimony
9 here today to further explain what you meant
10 when she was simply emotionally upset?

11 A. Yes.

12 MS. LAU: Objection.

13 A. Yes.

14 Q. "Also, I honest to God did ask for
15 consent and everything after every step after
16 leaving the compound."

17 Which steps after leaving the
18 compound did you ask her for consent?

19 A. Well, as far as steps go, I don't
20 think it was physical steps. I think it was
21 more just, you know, escalating to sex, and
22 that was anything from, you know, us kissing,
23 moving behind the doll house, continued
24 kissing, with the blowjob, do you want to
25 leave, do you want to -- I mean are you sure

1 A. Pampu
2 can stand. You do feel the effects of
3 alcohol, as I said earlier, when she first
4 greeted me at the party. But in no way,
5 shape, or form are you unable to consent.
6 Q. Okay. That's drunk?
7 A. Yes.
8 Q. Okay.
9 A. So at that time I was drunk. I
10 would assume she was drunk. I would assume
11 most people at the compound were.
12 Incapacitation, on the other hand, you don't
13 have that power over your own motor skills.
14 You are slurring words. You are stumbling.
15 You certainly can't operate a phone and text.
16 And the other, you know, the other aspect of
17 that is you're either doing that stuff or
18 you're passed out, you're asleep. That's
19 what I understand the difference between
20 incapacitation and drunk to mean.
21 Q. So incapacity means you cannot
22 control -- and I'm trying to clarify.
23 A. Yes, ma'am.
24 Q. Cannot control your bodily
25 functions?



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1 A. Pampu

2 A. That is correct.

3 Q. So that would include, or I'm
4 asking would that include stumbling?

5 A. That would.

6 Q. Unsteady on your feet?

7 A. Yes, but not walking through rough
8 terrain like we were.

9 Q. Would that include slurred speech?

10 A. It would.

11 Q. Would that include not making sense
12 in your answers or responses to other people?

13 A. Yes, it would.

14 Q. So difficulty texting or opening
15 doors?

16 A. Yes.

17 Q. Putting keys --

18 A. Yeah.

19 Q. -- in locks?

20 A. That all sounds like motor
21 functions to me. Yes, ma'am.

22 Q. Becoming physically ill?

23 A. Yeah. I mean I would assume so.

24 Q. Vomiting?

25 A. Yeah, I would assume so.



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 From: From: +12032169947 Erin Wingo
 Timestamp: 10/25/2015 3:26:59 AM(UTC+0)
 Source App: iMessage: +17327490079
 Body:
 *get

From: From: +17327490079 CJ Gahagan
 Timestamp: 10/25/2015 4:40:51 AM(UTC+0)
 Source App: iMessage: +17327490079
 Body:
 Where are you

From: From: +17327490079 CJ Gahagan
 Timestamp: 10/25/2015 4:42:44 AM(UTC+0)
 Source App: iMessage: +17327490079
 Body:
 Seriously....

From: From: +17327490079 CJ Gahagan
 Timestamp: 10/25/2015 4:44:21 AM(UTC+0)
 Source App: iMessage: +17327490079
 Body:
 Okay this is over

From: From: +17327490079 CJ Gahagan
 Timestamp: 10/25/2015 4:45:49 AM(UTC+0)
 Source App: iMessage: +17327490079
 Body:
 I'm going home to my own bed. The chance is gone

From: From: +17327490079 CJ Gahagan
 Timestamp: 10/25/2015 4:49:42 AM(UTC+0)
 Source App: iMessage: +17327490079
 Body:
 Done. Rachel told me to decide what I wanted and after this it's nothing

From: From: +17327490079 CJ Gahagan
 Timestamp: 10/25/2015 4:50:50 AM(UTC+0)
 Source App: iMessage: +17327490079
 Body:
 Have fun hooking up with whatever random guy it is this time.

From: From: +17327490079 CJ Gahagan
 Timestamp: 10/25/2015 4:56:27 AM(UTC+0)
 Source App: iMessage: +17327490079
 Body:
 If I ever see you in cope again it won't be pretty. Trust me when I say this that this

will never happen again. Stay away from cope. Stay away from the the compound. Stay away from me. I can't believe I bought you a birthday gift. I should known....

 From: From: +12032169947 Erin Wingo
 Timestamp: 10/25/2015 5:00:22 AM(UTC+0)
 Source App: iMessage: +17327490079
 Body:
 front steps

 From: From: +17327490079 CJ Gahagan
 Timestamp: 10/25/2015 5:02:39 AM(UTC+0)
 Source App: iMessage: +17327490079
 Body:
 Of?

 From: From: +12032169947 Erin Wingo
 Timestamp: 10/25/2015 5:03:54 AM(UTC+0)
 Source App: iMessage: +17327490079
 Body:
 the compounds pls

 From: From: +17327490079 CJ Gahagan
 Timestamp: 10/25/2015 5:05:03 AM(UTC+0)
 Source App: iMessage: +17327490079
 Body:
 You're getting a ride back to manning to you're own bed you'll be okay

 From: From: +17327490079 CJ Gahagan
 Timestamp: 10/25/2015 5:09:36 AM(UTC+0)
 Source App: iMessage: +17327490079
 Body:
 One last chance. Tell the driver to take you to cope and maybe this can be solved but at this point I doubt it

 From: From: +12032169947 Erin Wingo
 Timestamp: 10/25/2015 5:11:44 AM(UTC+0)
 Source App: iMessage: +17327490079
 Body:
 pls. one to manning and I can't mam it oT to cop

 From: From: +12032169947 Erin Wingo
 Timestamp: 10/25/2015 5:12:03 AM(UTC+0)
 Source App: iMessage: +17327490079
 Body:
 ^ome

 From: From: +17327490079 CJ Gahagan
 Timestamp: 10/25/2015 5:12:22 AM(UTC+0)

Source App: iMessage: +17327490079

Body:

Im not so sure about that tonight

From: From: +12032169947 Erin Wingo

Timestamp: 10/25/2015 5:14:16 AM(UTC+0)

Source App: iMessage: +17327490079

Body:

pls

From: From: +17327490079 CJ Gahagan

Timestamp: 10/25/2015 5:14:33 AM(UTC+0)

Source App: iMessage: +17327490079

Body:

Saying please will not help at this point

From: From: +12032169947 Erin Wingo

Timestamp: 10/25/2015 5:17:55 AM(UTC+0)

Source App: iMessage: +17327490079

Body:

it's Hayley stop texting her

From: From: +12032169947 Erin Wingo

Timestamp: 10/25/2015 5:18:09 AM(UTC+0)

Source App: iMessage: +17327490079

Body:

do not come to her room tonight

From: From: +17327490079 CJ Gahagan

Timestamp: 10/25/2015 5:18:46 AM(UTC+0)

Source App: iMessage: +17327490079

Body:

I wasn't planning on it. If I'm really talking to Hayley tho just let her know that this is not okay

From: From: +12032169947 Erin Wingo

Timestamp: 10/25/2015 5:21:43 AM(UTC+0)

Source App: iMessage: +17327490079

Body:

she's not going to cope tonight

From: From: +17327490079 CJ Gahagan

Timestamp: 10/25/2015 5:22:05 AM(UTC+0)

Source App: iMessage: +17327490079

Body:

She shouldn't

From: From: +12032169947 Erin Wingo

Timestamp: 10/25/2015 5:26:08 AM(UTC+0)

Source App: iMessage: +17327490079

Body:

and forget whatever she said tonight

From: From: +17327490079 CJ Gahagan

Timestamp: 10/25/2015 5:28:39 AM(UTC+0)

Source App: iMessage: +17327490079

Body:

Okay. Please do me a favor and delete any recent messages to me off of her phone so she doesn't wake up in the morning and look back at them to know this happened

From: From: +12032169947 Erin Wingo

Timestamp: 10/25/2015 5:28:56 AM(UTC+0)

Source App: iMessage: +17327490079

Body:

are you going to be mad at her in the morning?

From: From: +12032169947 Erin Wingo

Timestamp: 10/25/2015 5:29:03 AM(UTC+0)

Source App: iMessage: +17327490079

Body:

because she is crying for you

From: From: +17327490079 CJ Gahagan

Timestamp: 10/25/2015 5:30:02 AM(UTC+0)

Source App: iMessage: +17327490079

Body:

She's drunk and Yes I am a little mad but I am also drunk. I'm just not too happy about what happened tonight

From: From: +12032169947 Erin Wingo

Timestamp: 10/25/2015 5:30:38 AM(UTC+0)

Source App: iMessage: +17327490079

Body:

alright well i am deleting these messages and you should too

From: From: +17327490079 CJ Gahagan

Timestamp: 10/25/2015 5:30:59 AM(UTC+0)

Source App: iMessage: +17327490079

Body:

I will. Thank you for doing that

From: From: +12032169947 Erin Wingo

Timestamp: 10/25/2015 5:35:40 AM(UTC+0)

Source App: iMessage: +17327490079

Body:

I am putting her in bed

1 A. Pampu

2 A. No, I did not.

3 Q. When was the first time you saw
4 that text?

5 A. First time I saw the text was when
6 I received Erin's text saying don't tell --
7 it's redacted, but C.J. what happened.

8 Q. All right. So you can confirm that
9 that is C.J. that's redacted there?

10 A. I can confirm that was C.J. that
11 was redacted.

12 Q. So on 10/25/2015 at 10:45 a.m. Erin
13 texts you, "Did you happen to see my key at
14 all? And do not tell C.J. what happened."
15 Is that correct?

16 A. Yeah, it looks correct here.

17 Q. And then you snapshot, or
18 screenshot, excuse me, a conversation between
19 you and C.J. back to Erin; is that correct?

20 A. Yes.

21 Q. And that shows the one a.m. text
22 message from C.J. to you asking why you had
23 called him; is that correct?

24 A. Yes, ma'am, it is.

25 Q. And then C.J. texted you below that



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1 A. Pampu
2 the following day at 5:48 p.m., so an hour
3 before you screenshot this to Erin, saying
4 "Whether it was your birthday or not, not too
5 proud of you for taking advantage of" -- and
6 it's redacted but understand it's Erin, "like
7 you did last night. The poor girl doesn't
8 remember it." Is that what he texted you?

9 A. Yes, that's correct.

10 Q. Now, you screenshotted this back to
11 Erin at 6:38 p.m. Was there any conversation
12 between this "Do not tell C.J." what happened
13 and then this screenshot that you recall?

14 A. I don't recall there being any
15 communication between us during that time.

16 Q. And then if you'll turn the page to
17 773, she responds, "Yeah, I know. He told
18 me," referring to C.J., "He told me he knew,
19 not that he texted me, and he's right, I
20 don't remember it. I'm sorry. Not all of it
21 at least." Is that what she responded to
22 you?

23 A. Yes, that's true. It just took me
24 my surprise because of her text saying don't
25 tell C.J. what happened.



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1 A. Pampu

2 Q. And she's saying there in this
3 follow-up she doesn't remember all of it;
4 correct?

5 A. That is correct.

6 Q. Okay. Let's turn the page to 774.
7 You ask her to clarify; correct?

8 A. Yes, that's correct.

9 Q. "You don't remember anything?" And
10 then she responds, No, I really don't
11 remember that at all. I had way too much to
12 drink last night"; is that correct?

13 A. Yeah, it's correct.

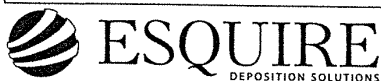
14 MS. LAU: Objection. I should have
15 noted my objection earlier. She didn't
16 read the full text.

17 MS. PORTER: Well, it's an exhibit.
18 It's attached to the deposition, so.

19 MS. LAU: I'm noting it for the
20 record.

21 MS. PORTER: Okay.

22 Q. And then, again, the substance of
23 these conversations between you and Erin at
24 this point are her saying, I really don't
25 remember, and you saying what occurred; is



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A. Pampu

Q. When did you retain counsel?

A. I'm not sure the exact date.

Q. Was it after you told your parents?

A. Chronologically that would make sense, yes.

Q. Was it before you left for Christmas break?

MS. LAU: Objection.

A. No, it was not.

Q. So it was after you returned but before the hearing?

A. That is correct.

Q. Did you have an attorney with you at the hearing?

A. I did.

Q. And who was that?

A. His name was David Aylor.

Q. How do you spell his last name?

A. Ayler is A-y-l-e-r or l-o-r I believe it is.

Q. And does he practice in South Carolina?

A. From my understanding, he does.

Q. Do you know where he's located? Is



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1 A. Pampu

2 he located in Upstate?

3 A. No, ma'am.

4 Q. He's located in the Lowcountry?

5 A. Lowcountry, yes, ma'am.

6 Q. And this hearing took place on
7 February 26, 2016; is that correct?

8 A. That looks correct, yes, ma'am.

9 Q. What did you do to prepare for the
10 hearing?

11 A. I met with my lawyers, I don't know
12 how many times, but I know I met with them.
13 I don't remember preparing a whole lot for
14 it.

15 Q. Did you meet with your SAFE
16 advocate?

17 A. Yeah. I met with him I only
18 remember once.

19 Q. Did he assist you in the hearing as
20 well?

21 A. No. I met with him sometime during
22 that fall semester. As far as preparation
23 goes for the hearing, he wasn't involved at
24 all.

25 Q. Did you and/or your attorney hire a



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1 A. Pampu

2 private investigator?

3 A. Yes, we did.

4 Q. And did he assist you in preparing
5 for the administrative hearing?

6 A. No, he didn't.

7 Q. Was he after the administrative
8 hearing?

9 A. I believe so.

10 Q. Did you contact individuals and
11 request information from them regarding what
12 they observed at the party in preparation for
13 the hearing?

14 A. Yes, I did.

15 Q. Did you recruit witnesses to come
16 and speak on your behalf?

17 A. Yes, ma'am. I was told by the
18 school I could.

19 Q. And did you discuss with those
20 witnesses what occurred at the event that was
21 the subject of the hearing?

22 A. I remember asking my witnesses if
23 they would help on my behalf and testify.

24 Q. What discussions did you have with
25 your pledge class about who were potential



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A. Pampu
witnesses?
A. It's a pretty vague question.
Q. Well, how did you know to approach
certain people because they were a witness?
A. I mean I'm sure at some point I
said does anyone remember seeing me with
Erin?
Q. Where and whom did you say that to?
A. I don't remember the context.
Q. You don't remember who you said it
to?
A. No.
Q. Did you put it out on the GroupMe,
by chance?
A. Sounds right.
Q. And, I'm sorry, you said your
attorney sat with you during the hearing; is
that correct?
A. Yes. David Aylor did.
Q. And he assisted with your
questioning of the witnesses? I know he
couldn't ask them directly, but he was there
and assisting you?
A. Yeah, he played a part, you know,



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1 A. Pampu
2 he wrote stuff down on cards and handed them
3 to me. That was the only communication we
4 were allowed to have.
5 Q. During the hearing?
6 A. During the actual -- yes.
7 Q. And who presided over that hearing?
8 A. I believe it was Alesia Smith was
9 the OCS coordinator. Dave Frock was -- I
10 don't remember the technical name, but Dave
11 Frock was, you know, directing things.
12 Q. And how many board members were
13 there?
14 A. I don't know exactly.
15 Q. Were there three other board
16 members Fred Tugas, Marisa Covington, and
17 Neil Burton?
18 A. I have no idea what their names
19 are.
20 Q. Does that sound right, though, that
21 there were five individuals?
22 A. I mean I have no idea, honestly.
23 Q. Well, you were present.
24 A. Yes, ma'am. But, again, it was
25 five, four years ago.



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A. Pampu

Q. Do you recall who testified at the hearing? Well, let me ask it this way. Did Loretta Jackson testify, if you recall?

A. I'm pretty sure it was just Susan, the co-investigator.

Q. So just one of the investigators and you believe it to be Suzanne Price testified?

A. I believe so.

Q. Did C.J. testify?

A. I think he did.

Q. Did Olivia Pescatori testify?

A. Yes.

Q. Did Leslie Schneider testify?

A. No.

Q. Did Haley Sinclair testify?

A. I'm not exactly sure.

Q. Did Rachel Corbin testify?

A. Yes, she did.

Q. Did Erin give a statement?

A. Yes, she did.

Q. And did you give a statement?

A. Yes, I did.

Q. And everyone that did testify, did



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1 A. Pampu
2 you have an opportunity to ask them
3 questions?

4 A. I know for some individuals I was
5 able to. I don't remember if that was true
6 for everyone.

7 Q. You were given the opportunity but
8 the hearing officer didn't necessarily ask
9 the question you requested. Is that fair?

10 A. I know there was a screening
11 process. It was asked, and then there's, you
12 know, a nonverbal approval or, you know, it
13 was either that, or it was verbally said
14 that, you know, you can't ask that.

15 Q. Okay.

16 A. That's all I remember.

17 Q. What was the outcome of that
18 hearing?

19 A. They found me guilty of four
20 different violations.

21 Q. And what were those violations?

22 A. Alcohol, which is something I pled
23 guilty to, disorderly conduct, harm to
24 person, and sexual misconduct.

25 Q. And that was told to you that day



1 A. Pampu

2 at the hearing?

3 A. Yes.

4 Q. And then did you receive a formal
5 notification of that on February 29th, 2016?

6 A. Yes, I did.

7 Q. And that's Exhibit 8. In that
8 letter from David Frock notifying you of the
9 outcome of that administrative hearing, the
10 paragraph on the first page that begins
11 "Based on information presented, the hearing
12 board found that the complainant was
13 incapacitated and unable to give consent,
14 which you should have reasonably known."

15 Is that your understanding of what
16 they found?

17 A. That is.

18 Q. All right. So five individuals on
19 a hearing panel found, determined that the
20 complainant, Erin Wingo, was incapacitated
21 and unable to give consent; is that correct?

22 A. Based on what was provided, yes,
23 that is correct, but they didn't call key
24 witnesses on my behalf.

25 Q. Okay. We're getting ready to get



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1 A. Pampu
2 to the appeals. What I'm asking is after
3 they received the investigative report and
4 attachments, which included the text messages
5 you provided, after questioning the
6 witnesses, this is the outcome that they came
7 up with; is that correct?

8 A. Yeah, ma'am, I agree with that.

9 Q. What's the standard of proof in a
10 Title IX administrative hearing for Clemson?

11 A. It was -- burden of proof was were
12 you more than 50 percent likely to have done
13 this or not.

14 Q. So preponderance of the evidence?

15 A. Yes.

16 Q. Okay. And then attached also is
17 your first appeal, which is where you
18 appealed to -- and I'm sorry, I'm looking.
19 I'm not quite sure. I believe you appealed
20 to David Frock; is that correct?

21 A. Down here it says on the bottom of
22 Page 2, "You must deliver a letter of appeal
23 to the Office of Community and Ethical
24 Standards and to Vice President of Student
25 Affairs, Dr. Almeda Jacks, 202 Sikes Hall.



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A. Pampu

Q. So you appealed and you appealed timely; is that correct?

A. Yes, ma'am.

Q. And if you'll look, which is Page 4 of Exhibit 8, is that your first appeal? It begins with "My name is Andrew Pampu and I wish to appeal my administrative hearing."

A. Yes, ma'am, that looks correct.

Q. If you'll go to the third paragraph -- I'm sorry. Excuse me. The third page.

A. Of that appeal?

Q. Of that appeal, under number 4, the third paragraph in Section C. That last paragraph about halfway down you state, "I truly hope that a person doesn't just rubber stamp a denial of my claim and demands for justice and equality within the investigation, but they probably will."

And then this is the sentence I'm interested in. "At that point I'll have no choice but to file a federal lawsuit against the university I love."

At this point have you already begun plans to file a federal lawsuit against



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1 A. Pampu

2 Clemson?

3 A. Formalized plans I'm not sure if at
4 that point in time were decided. What I do
5 know for certain is that at no point in my
6 life will I ever stand by these accusations,
7 because they're just simply not the truth.
8 So that sentence -- well, that is the
9 verbiage that was used.

10 Q. It's your appeal, you signed it;
11 right?

12 A. Yes, ma'am.

13 Q. Okay. And my question is, this was
14 sent -- it doesn't have a date on when it was
15 sent.

16 A. Yes, ma'am.

17 Q. Is it fair to say that it was sent
18 before the deadline, which was March 4th,
19 2016?

20 A. Yes, ma'am, it was, because I was
21 still in campus housing.

22 Q. Do you recall the day you sent it?

23 A. I don't recall the day I sent it.
24 I turned it in. I didn't send it in.

25 Q. You handed it in?



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1 A. Pampu

2 A. Yeah. They required a paper copy.

3 Q. So you handed in a copy on or
4 before March 4th, 2016?

5 A. That is correct.

6 Q. And at that time you had already
7 formulated a plan to sue Clemson if the
8 administrative hearing decision was not
9 overturned?

10 MS. LAU: Objection.

11 A. Like I said, we were going to fight
12 this thing until the truth came out.

13 Q. So that's a yes?

14 A. And it's still true today.

15 MS. LAU: Objection.

16 Q. So that's a yes?

17 A. I can't say for certain.

18 Q. Well, I'm reading what you wrote.

19 A. Yes, ma'am, I understand.

20 Q. "At that point I'll have no choice
21 but to file a federal lawsuit."

22 A. Yes, but that's not saying we have
23 already created or have plans been devised a
24 federal lawsuit.

25 Q. That shows --



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1 A. Pampu
2 you have an opportunity to ask them
3 questions?

4 A. I know for some individuals I was
5 able to. I don't remember if that was true
6 for everyone.

7 Q. You were given the opportunity but
8 the hearing officer didn't necessarily ask
9 the question you requested. Is that fair?

10 A. I know there was a screening
11 process. It was asked, and then there's, you
12 know, a nonverbal approval or, you know, it
13 was either that, or it was verbally said
14 that, you know, you can't ask that.

15 Q. Okay.

16 A. That's all I remember.

17 Q. What was the outcome of that
18 hearing?

19 A. They found me guilty of four
20 different violations.

21 Q. And what were those violations?

22 A. Alcohol, which is something I pled
23 guilty to, disorderly conduct, harm to
24 person, and sexual misconduct.

25 Q. And that was told to you that day



Administrative Hearing Appeal Response by Max Allen

**See Duplicate Exhibit* found at
ROA page 360**

*To avoid unnecessary duplication of material in the Record on Appeal, Appellants and Respondents have agreed to include a single Record cite to material that was filed more than once.

**Letter from Alesia Smith to Pampu Regarding Case Number:
2015065502**

**See Duplicate Exhibit* found at
ROA pages 342-343**

*To avoid unnecessary duplication of material in the Record on Appeal, Appellants and Respondents have agreed to include a single Record cite to material that was filed more than once.

1 Q. Is that good?

2 A. Okay.

3 Q. All right. Where I'd like to start is just
4 a general overview of the OCES or the Office of
5 Community and Ethical Standards Department.

6 A. Okay.

7 Q. For example, what exactly is the purpose of
8 OCES?

9 A. The purpose is to administer the Student
10 Code of Conduct so that is the office responsible for
11 reviewing, hearing cases, and imposing sanctions.

12 Q. So the Student Code of Conduct is an actual
13 document that is produced by OCES. Is that correct?

14 A. It's -- it's an actual document that OCES is
15 responsible for enforcing. The document --

16 Q. Who -- I'm sorry.

17 A. I'm sorry. The document is --

18 Q. I interrupted.

19 A. Yeah. It's -- it's -- it's -- the code is
20 enforced, however it didn't create the document. It
21 was something that was developed with a larger
22 community perspective and so that code had been
23 developed with input from various communities --
24 members of the community so it -- it was a community
25 effort. That was part of that process once the --



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**Clemson University Anti-Harassment and Non-Discrimination
Policy**

**See Duplicate Exhibit* found at
ROA pages 391-403**

*To avoid unnecessary duplication of material in the Record on Appeal, Appellants and Respondents have agreed to include a single Record cite to material that was filed more than once.

1 A. Pampu

2 Q. So you appealed and you appealed
3 timely; is that correct?

4 A. Yes, ma'am.

5 Q. And if you'll look, which is Page 4
6 of Exhibit 8, is that your first appeal? It
7 begins with "My name is Andrew Pampu and I
8 wish to appeal my administrative hearing."

9 A. Yes, ma'am, that looks correct.

10 Q. If you'll go to the third paragraph
11 -- I'm sorry. Excuse me. The third page.

12 A. Of that appeal?

13 Q. Of that appeal, under number 4, the
14 third paragraph in Section C. That last
15 paragraph about halfway down you state, "I
16 truly hope that a person doesn't just rubber
17 stamp a denial of my claim and demands for
18 justice and equality within the
19 investigation, but they probably will."

20 And then this is the sentence I'm
21 interested in. "At that point I'll have no
22 choice but to file a federal lawsuit against
23 the university I love."

24 At this point have you already
25 begun plans to file a federal lawsuit against



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1 A. Pampu

2 A. That was an ultimatum.

3 Q. -- your intent to sue? That was an
4 ultimatum that you gave?

5 A. Yeah, I mean it was --

6 MS. LAU: Objection.

7 A. It was what we were going to have
8 to do to clear my name.

9 Q. Okay. I'm just trying to establish
10 that that accurately depicts your intent to
11 sue if the appeal did not go in your favor.

12 A. Yes.

13 MR. FIGLIOZZI: Objection.

14 A. If I was falsely accused of this
15 and suspended, yes, we were going to fight it
16 whatever cost it took.

17 Q. At whatever cost?

18 A. Yes, ma'am.

19 Q. All right. And that appeal was not
20 successful; correct?

21 A. That is correct.

22 Q. And then if you'll turn to Page 8
23 of Exhibit 8 is your second appeal, this time
24 I believe it was to President Clements; is
25 that correct?



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1 A. Pampu

2 A. Yes, that is correct.

3 Q. And this is basically the same
4 language used in the appeal previously but
5 with references to the administrative hearing
6 transcript; is that correct?

7 A. Yeah. It was in response to just
8 the non-mentioned information, the
9 testimonies that were not included, pretty
10 essential evidence.

11 Q. So it's basically the same
12 information in the previous appeal with the
13 added references to the transcripts?

14 A. Yes.

15 Q. Except you took out that language
16 about suing Clemson federally; is that
17 correct?

18 A. It looks correct.

19 Q. And then the last page of this
20 exhibit is a letter dated May 27, 2016, which
21 is another denial of that appeal; is that
22 correct?

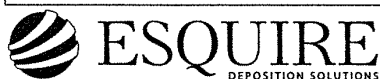
23 A. Yes, that is correct.

24 Q. So the administrative hearing panel
25 found by a preponderance of the evidence that



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1 A. Pampu
2 you were in violation of the code of conduct,
3 which was upheld by the vice president and --
4 the vice president of OCS and by the
5 president of Clemson; is that correct?
6 A. That is correct.
7 Q. And that letter came in May of
8 2016?
9 A. That is correct.
10 Q. May 27. So at this time when do
11 you file the federal lawsuit against Clemson?
12 A. I don't know the exact date.
13 Q. Shortly thereafter?
14 A. I don't know the exact date.
15 Q. Was it the same month?
16 A. I don't know the exact date.
17 Q. Did you also file a lawsuit against
18 Erin shortly thereafter?
19 A. I don't know the exact date.
20 Q. And did you also file a lawsuit
21 against C.J. Gahagan shortly thereafter?
22 A. I don't know the exact date.
23 Q. You don't know the dates that you
24 filed lawsuits?
25 A. No, ma'am, I don't recall.



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1 hearing I believe that the plaintiff, Mr. Pampu,
2 asked questions prior to Ms. Wingo being able to ask
3 questions.

4 A. Okay.

5 Q. Is that unusual?

6 A. It's not. Like I said, it just depends on
7 -- on how a hearing goes so you get -- sometimes the
8 respondent likes to go last or sometimes they want to
9 go before anybody else and so it just depends on how
10 the -- the hearing is going. We just have to make
11 sure that everybody has been given an opportunity to
12 answer the questions or ask questions.

13 Q. Okay. And in this particular hearing did
14 both parties and the board and the chairman have an
15 opportunity to ask questions of each witness that was
16 presented?

17 A. Yes.

18 Q. Did both parties, that being Mr. Pampu and
19 Ms. Wingo, did they both have an advocate with them?

20 A. They did, yes.

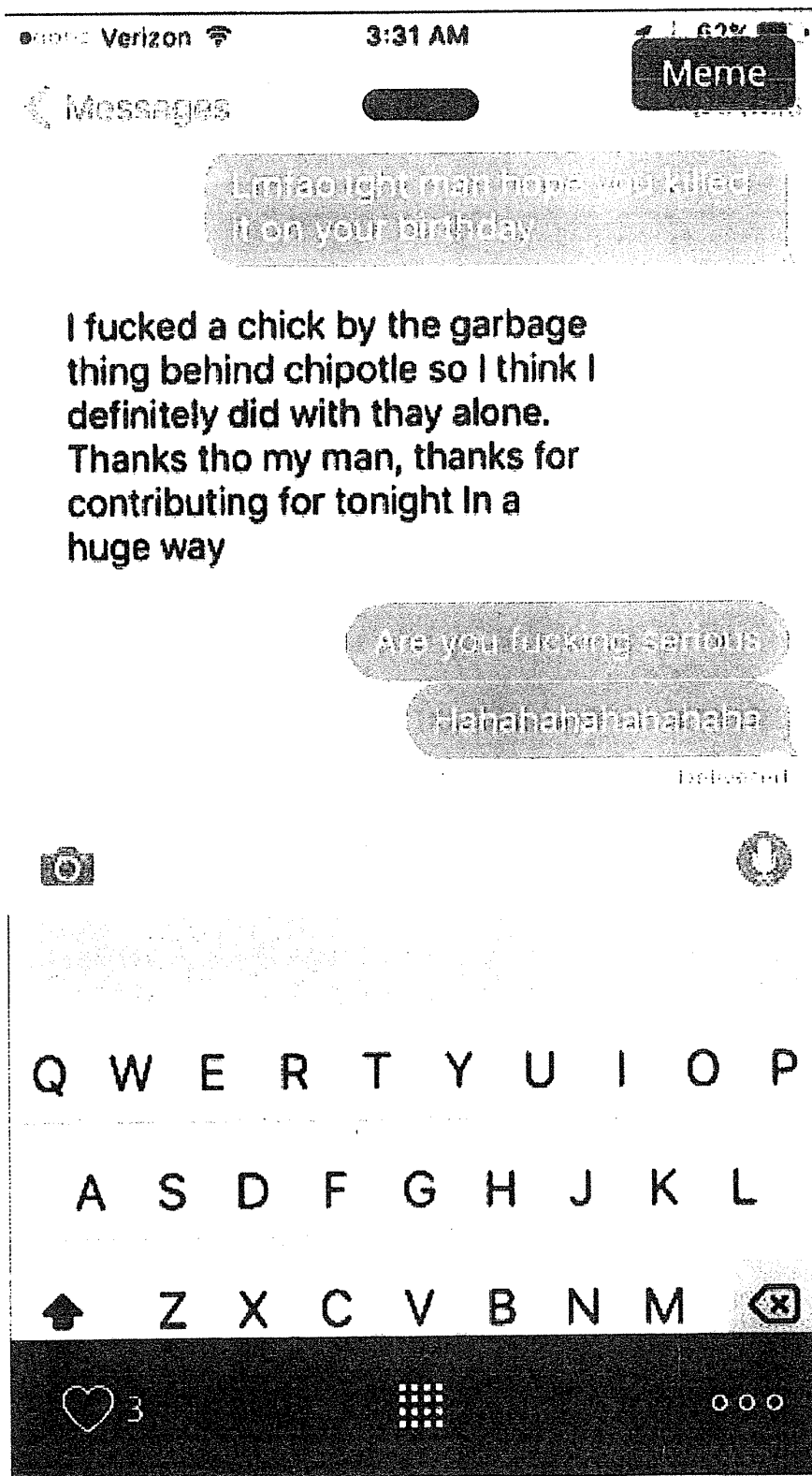
21 Q. And were both of their advocates licensed
22 attorneys?

23 A. They were.

24 Q. And were those advocates allowed to assist
25 each party throughout this process?



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EXHIBIT

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A. Pampu

A. He said he would call her a ride,
but it's not like I just left her right there
at that time. Yes, ma'am.

Q. You didn't walk off at that point?

A. No, ma'am.

Q. You stayed?

A. Yes, ma'am.

Q. And what did y'all discuss further?

A. Ben and I, nothing. But I did talk
with Erin. I'm like, hey, like, you know,
Ben's going to get you a ride home with
Rachel, you go find C.J., like if you call
anything -- I'm sorry, if you need anything,
call me. And I mean she was fine with that.

Q. Okay.

A. Yes, ma'am.

Q. And then you went back in the
party?

A. Yes, ma'am.

Q. Why did Ben need to help her get a
ride?

A. I don't know if he needed to. I
think he's -- he's a really nice guy. He's
just willing to help out. I think Rachel was



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18 - 121)

08-2400

Page 122

1 uncertainty on what aspect of the letter that we're
2 discussing, you should be reading from, you can
3 tell me that. But it is not proper for you to have
4 your lawyer tell you what to read.
5 A I apologize, Ms. Lau.
6 Q To your knowledge, did you read -- did you
7 learn of any document by Clemson, whether it's the
8 decision letter or the appeal letter, that stated
9 that Drew had sexual intercourse or carnal
10 knowledge of Erin without her consent? Did you
11 ever come across that information before?
12 A I'll have to read the particular
13 documents. I don't recall right now.
14 Q Okay. Do you think that Clemson made a
15 mistake by charging Mr. Pampu with sexual
16 misconduct instead of rape or sexual assault?
17 A No.
18 Q Do you remember what sanction Mr. Pampu
19 received for the charges?
20 A I believe he was, by memory, suspended for
21 a certain portion of time. He was -- can I refer
22 to the letter?
23 Q Absolutely.
24 A And that's the decision letter, right?
25 Q Yes.

Page 123

1 A Okay.
2 Q It should be at the bottom 1.
3 A I'm reading it to my myself. Thank you
4 very much. Instead of going through each, can I
5 just highlight the key --
6 Q Well, let me ask it this way. If I told
7 you it was a one semester suspension, would that
8 refresh your memory?
9 A I believe it was -- it says until August
10 1, 2016, but I believe, if my memory is correct,
11 that there was other conditions that had to be met
12 also.
13 Q Were you happy with the sanction he
14 received when you learned about it?
15 A I sat down -- are you asking me personally
16 or what? Because this was -- my view was I had to
17 focus on what Erin wanted, not what I wanted.
18 Q Personally, I'm asking whether you felt
19 you were satisfied with the sanction or happy about
20 it.
21 A In my position for how I would look at it,
22 I thought he should have been expelled.
23 Q Why?
24 A Because if this had happened in the
25 workplace, he would have been terminated.

Page 124

1 Q Did you assist Erin in writing -- strike
2 that.
3 Are you aware if Erin actually filed an
4 appeal with Clemson after this decision?
5 A Yes, I was aware that there was an appeal
6 that was made.
7 Q On both sides, right?
8 A I knew on her side, and subsequently I
9 heard on your side.
10 Q Did you assist Erin in writing her appeal
11 to Clemson?
12 A I think I possibly (inaudible).
13 THE REPORTER: I'm sorry, I think
14 possibly what?
15 THE WITNESS: -- read it over, but
16 I'm not a very good writer. So, I don't
17 remember giving her any advice on it, and
18 suggested that she work with Cari to put
19 together the appropriate appeal.
20 Q Did you make any recommendation other
21 than seeking a lawyer to -- did you make any
22 recommendation to Erin regarding the content of the
23 appeal?
24 A I thought Cari Simon and my daughter were
25 perfectly competent and be able to put the full

Page 125

1 appeal. If there was something that was lacking
2 when I read it to just -- I would raise the
3 question, but I don't remember if I did or when
4 that was.
5 Q Did you submit a claim to Phi Delta Theta
6 regarding the incident involving Mr. Pampu?
7 A I put forth a claim on behalf of my
8 daughter. Yes.
9 Q Did your daughter ask you to file that
10 claim?
11 A We agreed to go ahead and put forth
12 advisement of an incident, and then subsequently we
13 advised them of a claim after they came back to us
14 asking us to provide information.
15 Q Who thought of the idea to submit a claim
16 to Phi Delta Theta?
17 A I believe we both were in similar mind.
18 Q So you both thought of the idea at the
19 same time?
20 A Well, I had put forth a call to Phi Delt
21 to advise them of the incident to have them
22 investigate so that they would be able to address
23 any potential issues for other girls, etc., that
24 may come to their parties.
25 As I indicated in my email, it was a

32 (Pages 122 - 125)

Veritext Legal Solutions
www.veritext.com

516-608-2400

From: **Colin Gahagan** <cjgahagan16@gmail.com>

Date: Thu, Jan 7, 2016 at 11:20 PM

Subject: Screenshots for Erin's case

To: dave.wingo@terex.com

Mr. Wingo,

These are all the screenshots that I've given the investigators. I gave a brief description of the situation in which each text was sent.

Texts from before Erin showed up at the party:

texts between me and drew the morning after:

me trying to set up a meeting and him denying it:

after I dropped:

message I sent into my pledge class group me the day after everything and the response it got:

texts between drew and one of my pledge brothers that got sent into the group me:

I hope all of this helps

Thanks,

CJ

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Record on Appeal

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Page 130 1 from membership. I don't know to what extent they 2 had done anything about education. 3 Q Did you ever follow up to ask on that 4 point? 5 A I have not, no. But that's a good idea. 6 Q Did you ever follow up to ask what Phi 7 Delta Theta was doing to maintain a safe 8 environment? 9 A I believe that they need to make that 10 decision based on their protocols and their 11 information or how they want to conduct their 12 business. But I didn't go into that, no. 13 Q Did you ask what Phi Delta Theta was doing 14 to help calm down the brothers? 15 A I -- well, no, I did not. Because I don't 16 believe they would provide that information. 17 Q Were you disappointed in receiving only 18 \$25,000 from Phi Delta Theta when you asked for 19 \$100,000? 20 A The goal here was not to get any monetary 21 payment. So, to the extent I could get some for 22 Erin to get to any type of monetary payment to 23 offset the legal cost that we were incurring was -- 24 was nice. 25 Q And did all \$25,000 go to legal costs?	Page 132 1 to me. 2 Q What documents are you referring to? 3 A Right off the top of my head, I just took 4 them and dropped them in my drop folder. I didn't 5 look at them. 6 Q You don't remember what two documents you 7 asked for? 8 A I wanted to have a record of the Title IX 9 process. Being that I didn't know if those 10 additional texts would be a part of the documents, 11 I asked her to send those to me. And I might have 12 looked them over to prior to filing them, but I 13 didn't -- you know, other than that. I just asked 14 for them. 15 Q I think, if I heard you correctly, you 16 said that one of the documents was a series of text 17 messages? 18 A I don't believe that I said that, Ms. Lau. 19 Q Okay. So I don't think I understood what 20 documents you asked for. 21 A From what I understand, CJ provided 22 documents to the Title IX investigation. I don't 23 know what format those were in. So I asked my 24 daughter to ask CJ to provide those documents me. 25 He sent those. And mind you, I maybe -- I think it
Page 131 1 A They went to Ms. Simon, yes. As she 2 presented bills, we paid those bills from that 3 25,000. 4 Q Did CJ ever assist you in gathering 5 information for the Phi Delta Theta claim? 6 A Are you specifically asking if I asked him 7 for specific information to put forth to the Phi 8 Delt claim? 9 Q Yes. 10 A The answer is no, that I know of. 11 Q Did -- 12 A I did ask for some documents during the 13 Title IX, and there was other emails, etc., that CJ 14 provided for the Title IX investigation. 15 Q So you asked CJ for documents during the 16 Title IX process. Is that your testimony? 17 A There was two documents that he brought 18 forth during the Title IX process. And as a 19 result (inaudible). 20 THE REPORTER: I can't hear. As a 21 result? I didn't hear anything after 22 that. 23 THE WITNESS: As a result, I asked my 24 daughter to ask CJ to provide me those two 25 documents, and as a result of he sent them	Page 133 1 was an email that he sent those to me. I possibly 2 reviewed them and then put them in my Dropbox. 3 Q Do you remember the nature of those 4 documents, what they were? Were they text messages 5 or emails or something else? 6 A In looking at these, they seem to be texts 7 I believe. 8 Q Okay. 9 A They're blue and white and similar in 10 format to -- 11 Q And what are you referring to right now? 12 What document are you looking at? 13 A It's CJ's email to D -- myself and 14 attached that you provided. 15 Q Out of the CJ ESI exhibit? 16 A Yes. 17 MS. LAU: So why don't we mark that 18 as 9. 19 (Plaintiff's Exhibit 9: Marked) 20 Q And this is an email from CJ to you at 21 davewingo@terex.com on January 7, 2016, right? 22 A Correct. 23 Q It says, "Mr. Wingo, these are all the 24 screenshots that I've given the investigators. I 25 gave a brief description of the situation in which

34 (Pages 130 - 133)

Page 134 1 each text was sent. Texts from before Erin showed 2 up at the party; texts between me and drew the 3 morning after; me trying to set up a meeting and 4 him denying it; after I dropped; message I sent 5 into my pledge class group me the day after 6 everything and the response it got; texts between 7 drew and one of my pledge brothers that got sent 8 into the group me. I hope all of this helps. 9 Thanks, CJ." 10 This email was sent in response to your 11 request to Erin that CJ provide information to you? 12 A Correct. 13 Q How did you ask Erin to have CJ provide 14 this to you? Was that in person, by text, over 15 phone call? 16 A I don't remember. 17 Q Was this the only email that you've traded 18 with CJ? 19 A As far as I remember, yes. 20 Q So you didn't respond to this email -- 21 A I didn't think -- I'm sorry? 22 Q Sorry. You didn't respond to this when 23 you got it? 24 A I did not. I didn't think I needed to. 25 Q Did you ever speak to CJ on the phone?	Page 136 1 be -- when the booklet was issued, I think there 2 was a large book that was issued to Erin of the 3 Title IX proceedings, I put it in a drop file and 4 it's there. 5 Q Did you intend on using this information 6 for any other purpose? 7 A Of the Title IX? No. It was just to have 8 just in case, depending on how things were going to 9 evolve with the case. 10 Q Were you preparing any lawsuits at the 11 time? 12 A No. I keep my DUI file too. 13 Q So it was purely just for your own 14 records? 15 A Correct. 16 Q Did you provide the Title IX file to Phi 17 Delta Theta? 18 A No. 19 Q Did you provide these messages to Phi 20 Delta Theta from CJ? 21 A No. 22 Q How about the hearing decision, did you 23 provide that? 24 A I did. It was attached to, I believe, one 25 of the letters that I sent to them.
Page 135 1 A Possibly but I don't remember what or how. 2 Q Would you have called him after you 3 received this email on January 7, 2016? 4 A No, I wouldn't have. 5 Q And what did you use this information for? 6 A As I said, I put it in my file for the 7 lawsuit. 8 Q Against Phi Delta Theta? 9 A No. Against this -- under the Title IX 10 file. 11 Q I want to make sure that I understand you 12 correctly. You asked for these messages for the 13 Title IX file? 14 A I wanted to make sure that I had in the 15 Title IX file that was provided to me these text 16 messages. And Erin gave me the Title IX file that 17 she received from Clemson. 18 Q And the Title IX file did not contain 19 these messages from CJ? 20 A I didn't cross-check them. 21 Q And what were you -- what were you 22 collecting the Title IX file for? 23 A I wanted to have it for my daughter so 24 that she had a record of the Title IX proceedings. 25 Because I believed we were already were going to	Page 137 1 Q Did you provide any other documentary 2 evidence to Phi Delta Theta? 3 A No, not that I remember. The only -- the 4 only items that I believe I provided were the 5 documents that you have provided back concerning my 6 demand letter and the emails. I don't even know -- 7 I don't believe I even gave them copies of any 8 letters on the appeals. I just basically told them 9 that it was being appealed and possibly the 10 decision. 11 Q How did you get a copy of the hearing 12 board decision? 13 A From my daughter. 14 MS. LAU: Give me one second. We're 15 going to pull something up here. 16 Q Mr. Wingo, you mentioned earlier that 17 there was a phone call -- well, there were two 18 phone calls that you remember making to Phi Delta 19 Theta, but the second phone call is the one that we 20 have as an exhibit in this lawsuit, right? 21 A That's the one that you provided to me, 22 correct? 23 Q Yes. Have you listened to that voicemail? 24 A Yes. I'm sorry. 25 Q That's okay. I mean, can you authenticate

35 (Pages 134 - 137)