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13 **UNITED STATES DISTRICT COURT**
14 **EASTERN DISTRICT OF CALIFORNIA**

15 JANE DOE,

16 Plaintiff,

17 vs.
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19 UNIVERSITY OF THE PACIFIC,
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21 Defendant.
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Case No

COMPLAINT

1 Plaintiff (“Plaintiff”), for her Complaint against Defendant, University of the Pacific,
2 (“Defendant UOP”) states as follows:

3 **PARTIES**

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5 1. Plaintiff is a citizen of the County of Arapahoe, State of Colorado, and a former
6 full-scholarship student-athlete at the UNIVERSITY OF THE PACIFIC (“UOP”). Plaintiff was
7 a recruited freshman in the women’s basketball program in the 2007-2008 academic year.

8 2. Defendant, UNIVERSITY OF THE PACIFIC (UOP), is a nonprofit public benefit
9 corporation in the state of California, operating in the City of Stockton, County of San Joaquin,
10 which receives federal financial assistance and is subject to Title IX of the Education
11 Amendments of 1972, 20 USC § 1681(a). Defendant UOP operates as a roughly 3,500 student
12 four-year undergraduate University.

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14 **JURISDICTION**

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16 3. The Court has jurisdiction over this action under 28 U.S.C. §§ 1331, 1367(a).

17 4. Venue is proper in this Court under 28 U.S.C. § 1391(b)(2) and (3).

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19 **GENERAL ALLEGATIONS**

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21 5. For several years, Defendant UOP has had an increasing number of reports of
22 sexual offenses on its campus. In the academic year of 2007-2008 alone, not less than seven
23 reports of on campus sexual offenses were forwarded to Defendant UOP.

24 6. Defendant UOP has a memorandum of understanding (“MOU”) that grants the
25 Stockton Police Department primary authority to investigate allegations of sexual assault on
26 Defendant UOP’s campus.

1 **THE APRIL 7, 2008 PRIOR SEXUAL ASSAULT AT THE TOWNHOUSES**

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3 7. In April 2008, Defendant UOP learned of a report of a sexual assault occurring in
4 campus housing known as the Townhouses. Defendant UOP learned from that report both the
5 purported location of the assault within the Townhouses and a rough physical description of the
6 offenders.

7 8. Additionally, the University had information that the alleged assault occurred at a
8 party held at the Townhouses and that a female victim was assaulted by at least two male
9 suspects. The victim indicated that these men were basketball players at the University of the
10 Pacific. The Defendant UOP described these individuals in a federally mandated Campus Safety
11 Notification as “Suspect #1: African-American male age 19-20, 6’3”, thin build, shaved head
12 wearing a white tank top. Suspect #2: African-American male, age 19-20, 5’6”, thin build with
13 shaved head.”

14 9. At the time of the April 7, 2008 assault, Defendant UOP also was aware that three
15 African-American members of the UOP men’s basketball team were residents of the
16 Townhouses.

17 10. Two of those three individuals roughly matched the physical description given in
18 the April 7 report of sexual assault.

19 11. In late April, UOP Director of Public Safety Mike Belcher responded to a
20 disturbance at a party held at the Townhouses where he contacted one of the three men’s
21 basketball players. At this point, Mike Belcher suspected that the men contacted at the party
22 may have been the suspects in the April 7 sexual assault. Belcher later relayed this suspicion to
23 Plaintiff’s father in a phone conversation.

24 12. On information and belief, Mike Belcher and the Vice President of Student Life
25 (VPSL), Elizabeth Griego, met once in April to discuss the April 7 assault. Aside from
26 discussing possible media issues, no further action was taken regarding the investigation or
27 discipline of the members of the men’s basketball team.

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SEXUAL ASSAULT OF PLAINTIFF

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13. On May 10, 2008, Plaintiff attended a party at the Townhouses. Around 10:30 p.m., Plaintiff and her friends went to another party with the soccer team from UOP. Plaintiff became intoxicated at that party. When her friends left the soccer party, Plaintiff was separated from her friends. Plaintiff was offered a ride back to the Townhouses by two members of the men's basketball team. The two men indicated that they would drive her back to the Townhouses as that was "where everyone was going."

14. Upon arriving at the Townhouses, the two men led Plaintiff up the stairs and into their apartment. Plaintiff did not see any of her other friends at the Townhouses.

15. Immediately upon entering their apartment, the two men sexually assaulted Plaintiff by forcing her into both vaginal and oral penetration. Before the two men completed their assault, a third member of the men's basketball team entered the room. As the first two men left the room, the third man committed additional sexual assault on Plaintiff by forcing her to perform oral sex on him.

16. Similar to the April 7 assault, each of these three men were 1) members of the University of the Pacific men's basketball program; 2) African American in race; and 3) residents of the Townhouses campus apartments.

17. Following these assaults, Plaintiff left the Townhouses. She called two of her close friends who came and picked her up. At this point, Plaintiff was crying hysterically. Plaintiff returned to her room where she showered, vomited and proceeded to tell her friends what had just happened to her. One of her friends secretly audio taped her description of the assault on a cellular telephone.

18. On May 12, 2008, Plaintiff's friends reported the assault to an assistant basketball coach and played the audio recording.

1 **DEFENDANT UOP'S RESPONSE TO THE SEXUAL ASSAULT OF PLAINTIFF**

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3 19. On May 15, 2008, Plaintiff and her parents received a phone call from the
4 Athletic Director, Lynn King, and Vice President of Student Life, Elizabeth Griego, indicating
5 that they had been notified of the assault and that, based on the information presented to the
6 school, they were compelled to initiate disciplinary sanctions against the three offenders. Both
7 Elizabeth Griego and the Director of Judicial Affairs sought the assistance of Plaintiff in that
8 disciplinary process and assured her that her involvement would remain confidential.

9 20. In late May, 2008, Plaintiff and her parents were notified by both VPSL Griego
10 and the Director of Judicial Affairs of the April 7, 2008, sexual assault and that they had reason
11 to believe that both sexual assaults were committed by the same individuals. At that time,
12 Plaintiff's parents questioned Defendant UOP as to why the school had done nothing in response
13 to the prior allegation. Defendant UOP replied that they did nothing because the victim in that
14 case was no longer a UOP student.

15 21. Plaintiff agreed to cooperate with Defendant UOP and their disciplinary
16 proceedings after being informed that it would be next to impossible for the school to dismiss the
17 three offenders without her cooperation.

18 22. On June 14, 2008, the victim of the April 7 sex assault agreed to come forward
19 and attempt to identify her assailants. Plaintiff's father asked the VPSL Griego if the April 7
20 victim identified the same assailants to which she replied, "It was even stronger than that."

21 23. In mid-June a judicial panel was assembled to hear the disciplinary action. That
22 board was made up of three students and two faculty members, including Plaintiff's Resident
23 Advisor.

24 24. Although the school had planned to have an independent consultant educate the
25 judicial panel on the issues of Sexual Assault prior to the hearing, that consultant was cancelled
26 at the direction of the school's private counsel.

27 25. On June 18, 2008, Plaintiff testified at UOP in front of the disciplinary board.
28 Plaintiff was informed that the victim of the April 7, 2008 rape decided not testify at the

1 proceeding and further that the VSPL Griego was not going to allow the disciplinary board to
2 hear anything regarding that assault.

3 26. While awaiting the results of the board's decision, Plaintiff called VSPL Griego
4 feeling frustrated that the board has not yet reached a decision. VPSL Griego made several
5 victim-blaming remarks and indicated her belief that the offenders were not aware that she did
6 not consent to the sexual penetration, and that the offenders are very popular and do not need to
7 force anyone to have sex with them. Plaintiff informed VPSL Griego that she could not imagine
8 how she could return to campus after this if the offenders were still there.

9 27. Plaintiff forgoes attending the previously scheduled second summer session due
10 to the unresolved status of the UOP judicial proceedings.

11 28. On June 25, 2008, the University disciplinary board handed down its decision.
12 All three men were found to have violated the school's code of conduct prohibiting sexual
13 assault and harassment. However, only one individual was dismissed from the University as the
14 other two were given suspensions – one until December 2008 and the other until May 2009.
15 There was no provision barring the offenders from campus during these suspensions.

16 29. On June 27, 2008, Plaintiff and her parents spoke with VPSL Griego and the
17 Director of Judicial Affairs. Plaintiff and her parents asked VPSL Griego to use her authority
18 under the school's express judicial procedures to remove the other two offenders. In a heated
19 discussion, VPSL Griego declined to use that discretionary authority and indicated to Plaintiff
20 that the disciplined basketball players "are victims as well." By email the following day, VPSL
21 Griego indicated she would no longer speak with Plaintiff directly about any matter pertaining to
22 the assault.

23 30. On July 6, 2008, Plaintiff reluctantly returned to UOP for the third summer
24 session. Plaintiff was informed by her girlfriends that everyone on the men's and women's team
25 knew about the assault.

26 31. On July 11, 2008, following the UOP appeal procedures, Plaintiff met with VSLP
27 Griego and the Director of Judicial Affairs who informed her that the sanctions imposed would
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1 not be changed. Plaintiff asked that the men be restricted from campus at least during their
2 suspensions but VPSL Griego refused to impose that condition.

3 32. Plaintiff felt unsafe and unwanted at the University. Later that same day, Plaintiff
4 attempted to speak to the President of UOP who refused to speak with her.

5 33. On or about July 20, 2008, Plaintiff met with her coach, Lynn Roberts. Coach
6 Roberts informed her that she met with the head coach of the men's basketball team and that he
7 had decided that his team, including one of Plaintiff's closest friends, cannot have contact with
8 Plaintiff. Additionally, Plaintiff was informed that the men's and women's teams were no
9 longer permitted to socialize with each other and that if both teams end up at the same function,
10 the women's team must leave.

11 34. On or about July 20, 2008, Plaintiff was informed by friends that many of the
12 men's basketball players are now angry with her for what transpired.

13 35. Plaintiff, through counsel, addressed these issues with the school's private counsel
14 and requested that the University assist her in dealing with the hostility towards her in the
15 athletic department, including providing her the opportunity to address the basketball teams and
16 bringing in an outside educational expert on sexual assault to help explain the dynamics of what
17 has transpired. Plaintiff's requests were flatly rejected via letter by UOP's private counsel and
18 no alternatives were considered by UOP.

19 36. At the end of July, Plaintiff left the University of the Pacific and moved back to
20 Colorado.

21 37. The sexual assault has had a devastating effect on Plaintiff's life and education.
22 She has suffered from feelings of humiliation, loss of personal security and safety, and physical
23 and emotional violation. The hostility she felt from the University of the Pacific has caused her
24 to give up her school, her friends, her team, her sport, and her scholarship. She was forced to
25 start over at another school while two of her offenders were allowed to remain at the University
26 of the Pacific and participate in their basketball program. Plaintiff now attends another school
27 and has given up the sport of basketball. To this day Plaintiff struggles to recover from the
28 sexual assault at the University of Pacific.

1 38. On or about February 21, 2009, Plaintiff returned to Stockton, California to visit
2 her teammates and coaches for a weekend. Plaintiff attended two women's basketball games and
3 a booster event for the women's team. Following the booster event, while walking into the hotel
4 lobby with some friends and parents, Plaintiff was attacked and struck repeatedly by a young
5 woman unknown to Plaintiff.

6 39. Investigating police detective Robert Castillo of Stockton Police Department
7 indicated his belief that the assault was somehow related to and in retaliation for Plaintiff's
8 testimony against the three disciplined athletes. Detective Castillo also indicated that he would
9 be concerned for the Plaintiff's safety if she were to return to Stockton.

10 40. The rape of Plaintiff at the University of the Pacific and the Defendants'
11 deliberate indifference to the hostile educational environment created from the school's own
12 judicial proceedings constituted actionable sexual harassment, discrimination, and sexual assault
13 under Title IX of the Education Amendments.

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15 **FIRST CLAIM FOR RELIEF**

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17 **(VIOLATION OF TITLE IX – DELIBERATE INDIFFERENCE TO**
18 **APRIL 7, 2008 RAPE)**

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20 41. Plaintiff re-alleges each and every allegation set forth in paragraphs 1-40 as
21 though fully set forth herein.

22 42. For several years, Defendant UOP has had actual knowledge of known sexual
23 harassment and sexual assaults occurring on its campus against female students.

24 43. In addition, in April, 2008, Defendant UOP had actual knowledge of and was
25 deliberately indifferent to known sexual violence and harassment against females by members of
26 the men's basketball program at the Townhouses campus residence.

1 44. Defendant UOP had the authority to take remedial action to correct the ongoing
2 sexual harassment and assaults by these student-athletes, but failed to take any such action.
3 Defendant UOP's response, or lack thereof, was clearly unreasonable under the circumstances.

4 45. As a result, Plaintiff was subjected to physical sexual harassment, sexual assault
5 and sexual discrimination that was so severe, pervasive and objectively offensive that she was
6 denied access to educational opportunities and benefits.

7 46. In particular, as a direct and proximate result of the May 10, 2008, rape, Plaintiff
8 has suffered significant and ongoing emotional distress and mental anguish, and her education
9 and athletics have suffered substantially.

10 47. Plaintiff has suffered damages as a result of Defendant UOP's violations of Title
11 IX of the Education Amendments of 1972, 20 U.S.C. § 1681(a) as set forth above.

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13 **SECOND CLAIM FOR RELIEF**

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15 **(VIOLATION OF TITLE IX –DELIBERATE INDIFFERENCE TO HOSTILE**
16 **EDUCATIONAL ENVIRONMENT)**

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18 48. By reference hereto, Plaintiff hereby incorporates paragraphs 1-47.

19 49. Beginning in May 2008, Defendant UOP had actual knowledge of sexual assault,
20 harassment and discrimination inflicted upon Plaintiff. Furthermore, in July 2008, Defendant
21 UOP had indisputable knowledge of sexual assault, harassment and discrimination of Plaintiff
22 after their own Judicial Review Board found all three men to have violated the school's code of
23 conduct prohibiting sexual assault and harassment.

24 50. Defendant UOP permitted a hostile education environment by allowing two of the
25 three men found to have sexually assaulted Plaintiff to return to the small school environment at
26 UOP. Furthermore, Defendant UOP was aware that both Plaintiff and the two returning
27 offenders were members of the roughly 300 person athletic department and that incidental
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1 contact would be frequent and unavoidable if the offenders remained in the men's basketball
2 program.

3 51. Defendant UOP's failure to institute any remedial measures for this hostile
4 environment, including failing to restrain the offenders from campus during their suspensions,
5 was clearly unreasonable in light of known circumstances and demonstrates a deliberate
6 indifference to known sexual discrimination.

7 52. As a result, Plaintiff was subjected to sexual harassment and sexual discrimination
8 that was so severe, pervasive and objectively offensive that she was denied access to educational
9 opportunities and benefits.

10 53. In particular, as a direct and proximate result of this discrimination, Plaintiff has
11 suffered significant and ongoing emotional distress and mental anguish, and her education and
12 athletics have suffered substantially.

13 54. Plaintiff has suffered damages as a result of Defendant UOP's violations of Title
14 IX of the Education Amendments of 1972, 20 U.S.C. § 1681(a) as set forth above.

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16 **THIRD CLAIM FOR RELIEF**

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18 **(VIOLATION OF TITLE IX – RETALIATION)**

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20 55. By reference hereto, Plaintiff hereby incorporates paragraphs 1-54.

21 56. Defendant UOP has retaliated against Plaintiff for reporting sexual harassment,
22 assault, and discrimination by informing Plaintiff that the men's basketball team was no longer
23 permitted to have any contact with her. Additionally, Defendant UOP informed Plaintiff that her
24 entire team was no longer able to socialize with the men's basketball team.

25 57. This retaliation prevented Plaintiff from association with her friends on the men's
26 basketball team and increased the hostile educational environment by punishing both teams for
27 her complaint of sexual assault.

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1 58. As a result, Plaintiff was subjected to sexual harassment and sexual discrimination
2 that was so severe, pervasive and objectively offensive that she was denied access to educational
3 opportunities and benefits.

4 59. In particular, as a direct and proximate result of this discrimination, Plaintiff has
5 suffered significant and ongoing emotional distress and mental anguish and her education and
6 athletics have suffered substantially.

7 60. Plaintiff has suffered damages as a result of Defendant UOP's violations of Title
8 IX of the Education Amendments of 1972, 20 U.S.C. § 1681(a) as set forth above.

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JURY TRIAL DEMAND

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Plaintiff hereby demands a jury trial.

WHEREFORE, Plaintiff seeks a judgment against Defendant as follows:

61. An Order enjoining Defendant UOP, including its Athletic Department and its basketball program , along with its agents, employees and those acting in concert therewith, from unlawful discrimination on the basis of sex, including the failure to address, prevent and/or remedy sexual harassment;

62. Injunctive relief requiring Defendant UOP to redress its violations of Title IX, including, (1) instituting, with the assistance of outside experts, and enforcing a comprehensive sexual harassment policy that encompasses the Athletic Department and the basketball program; (2) distributing written policies to basketball players describing prohibited activities and conduct and the consequences for violations; (3) enforcing their “zero tolerance policy” under which there is punishment proportional to the offense and procedures set forth for the protection of victims of sexual violence on campus, if the offenders are permitted to remain at the UOP; (4) providing for annual, independent review by the President’s office, with the participation of outside reviewers, of Athletic Department compliance with sexual harassment policies;

63. An award of damages against Defendant UOP to be determined at trial, including, without limitation, reimbursement of and prepayment for all of Plaintiff’s tuition or related expenses; payment of Plaintiff’s expenses incurred as a consequence of the sexual assault; damages for deprivations of the equal access to the education benefits and opportunities provided by University of the Pacific; and damages for past, present, and future emotional pain and suffering, ongoing and severe mental anguish, and loss of past, present and future earnings and enjoyment of life in an amount to be determined at trial by the jury;

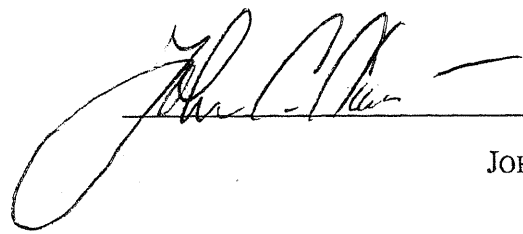
64. Punitive or exemplary damages against Defendant UOP;

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- 65. Statutory interest on all sums awarded;
- 66. An award of costs and attorney fees (pursuant to 42 U.S.C. § 1988(b)); and
- 67. Any other relief as is proper.

Dated this 11 day of March, 2009.

VICTIM JUSTICE INITIATIVE, PC



JOHN CLUNE

KERR & WAGSTAFFE, LLP



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