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12 UNIVERSITY OF THE PACIFIC

13 UNITED STATES DISTRICT COURT
14 EASTERN DISTRICT OF CALIFORNIA

15 JANE DOE,

16 Plaintiff,

17 v.

18 UNIVERSITY OF THE PACIFIC,

19 Defendant.

Case No.: 2:09-CV-00764-FCD-KJM

**DEFENDANT UNIVERSITY OF THE
PACIFIC'S ANSWER TO COMPLAINT**

Complaint filed: March 18, 2009

MILLER LAW GROUP
A PROFESSIONAL CORPORATION
SAN FRANCISCO, CALIFORNIA

1 Defendant University of the Pacific (the "University") hereby answers Plaintiff
2 Jane Doe's ("Plaintiff") unverified Complaint as follows:

3 **RESPONSES TO ALLEGATIONS OF THE COMPLAINT**

4 1. The University admits the allegations set forth in paragraph nos. 1, 2, 3 and 4
5 of the Complaint.

6 2. The University denies the allegations set forth in paragraph nos. 5, 11, 20, 21,
7 32, 40, 43, 44, 45, 46, 47, 50, 51, 52, 53, 54, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66 and
8 67 of the Complaint.

9 3. The University is without sufficient information of the allegations set forth in
10 paragraph nos. 6, 10, 30, 34, 36, 37, 39, and 42, and thereupon denies said allegations of
11 the Complaint.

12 4. As to the following paragraphs of the Complaint, the University admits certain
13 of the allegations as set forth in the following sub-paragraphs, and denies the remainder of
14 the allegations:

15 (a) Paragraph 7: The University admits that in April 2008, employees of the
16 University learned that the Stockton Police Department ("Stockton
17 P.D.") was investigating an April 6, 2008 report of a sexual assault of a
18 non-student in the University's Townhouse apartment complex. The
19 University further admits that it learned from Stockton P.D. the alleged
20 location of the alleged assault within the complex, and the reported
21 race, height, and other physical attributes of the alleged assailants.

22 (b) Paragraph 8: The University admits that in April 2008, employees of the
23 University learned that Stockton P.D. was investigating an April 6, 2008
24 report of a sexual assault of a non-student in the University's
25 Townhouse apartment complex. The University further admits that it
26 learned from Stockton P.D. the location of the alleged assault within the
27 complex, and the reported race, height, and other physical attributes of
28 the alleged assailants. The victim did not identify the alleged

1 assailant(s) as University Basketball players. Upon the information
2 provided, the University prepared and disseminated a Campus Safety
3 Warning.

4 (c) Paragraph 9: The University admits that in April 2008, there were over
5 100 University students residing at the Townhouse complex. These
6 students were of diverse races (including but not limited to African-
7 American), and included students who participated in a variety of sports
8 programs, including Men's Basketball.

9 (d) Paragraph 12: The University admits that the Vice President of Student
10 Life and the Director of Public Safety discussed the April 6 incident
11 several times in April 2008.

12 (e) Paragraph 13: The University admits that Plaintiff testified at the
13 Judicial Hearing that on May 10, 2008, she attended on and off campus
14 parties, became intoxicated, and was driven to the Townhouse
15 apartment complex by a member of the Men's Basketball team.

16 (f) Paragraph 14: The University admits that Plaintiff's testimony at the
17 Judicial Hearing was consistent with the allegations of paragraph 14.

18 (g) Paragraph 15: The University admits that Plaintiff testified at the
19 Judicial Hearing that on May 10, 2008, three named individuals
20 engaged in sexual misconduct at the Townhouse apartment complex,
21 that each one was African-American, and that each was a member of
22 the University's Men's Basketball team. The University admits that
23 each of the three named students was found to have engaged in sexual
24 misconduct at the Townhouse complex on May 10, 2008.

25 (h) Paragraph 16: The University admits that Plaintiff testified at the
26 Judicial Hearing that on May 10, 2008, three named individuals
27 engaged in sexual misconduct at the Townhouse apartment complex,
28 that each one was African-American, and each was a member of the

1 University's Men's Basketball team. The University admits that each of
2 the three named students was found to have engaged in sexual
3 misconduct at the Townhouse complex on May 10, 2008.

4 (i) Paragraph 17: The University admits that Plaintiff and other students
5 testified at the Judicial Hearing consistent with the allegations in
6 paragraph 17.

7 (j) Paragraph 18: The University admits that on or about May 12, 2008,
8 students other than Plaintiff reported the statements of Plaintiff to an
9 assistant basketball coach employed by the University.

10 (k) Paragraph 19: The University admits that on or about May 13, 2008,
11 University officials attempted to speak by telephone with Plaintiff at her
12 home in Colorado, and instead spoke with Plaintiff's parents. The
13 University further admits that in that telephone call, University
14 employees inquired as to Plaintiff's health; offered Plaintiff sexual
15 assault victim resources, including in-person or telephone counseling
16 services; recommended Plaintiff immediately schedule a physical
17 examination (and rape kit); and urged Plaintiff's parents to report the
18 incident and provide the physical examination results to Stockton P.D.
19 as soon as possible. Plaintiff's parents, however, indicated they would
20 not decide whether to file any police report at that time. University
21 officials also advised Plaintiff's parents that, in order to afford all
22 students involved in the incident due process, the University was
23 compelled to convene a Judicial Hearing Board to consider Plaintiff's
24 serious allegations against Respondents. University officials provided
25 information regarding the University's judicial policies and procedures,
26 and suggested that Plaintiff take advantage of the University's
27 confidential victim advocate program. The University further admits that
28 University officials advised Plaintiff's parents that it was important to

1 maintain both Plaintiff and Respondents' privacy, and therefore
2 information regarding the alleged incident would be relayed to third
3 parties only on a need to know basis. Thereafter, almost daily
4 telephone calls, email correspondence, and/or faxes were exchanged
5 between University officials and Plaintiff and/or her parents, posing or
6 responding to questions about the incident and/or the upcoming judicial
7 proceedings.

8 (l) Paragraph 22: On May 24, 2008, the University requested that the
9 victim of the April 6 assault review on-line photos of all members of the
10 Men's Basketball team, in an attempt to identify her alleged assailants.
11 The victim did not respond to the request. The University admits that
12 on June 14, 2008, the April 6 victim was again provided with photos of
13 members of the Men's Basketball team, and asked if she could identify
14 any as her alleged assailants. The April 6 victim again failed to
15 respond. The University further admits that on or about June 14, 2008,
16 University officials asked the April 6 victim to provide testimony, if
17 relevant, at the upcoming judicial hearing regarding the May 10
18 incident. The April 6 victim indicated she was hesitant to do so
19 because she was uncertain of the identity of her assailant(s), and
20 ultimately refused to appear at the hearing.

21 (m) Paragraph 23: The University admits that in mid-June 2008, pursuant to
22 the University's judicial affairs procedures and guidelines, a Judicial
23 Hearing Board (the "Board") was convened to hear testimony regarding
24 the alleged May 10, 2008 assault on Plaintiff, for the purpose of
25 adjudicating and determining Plaintiff's allegations of student
26 misconduct. The Board was comprised of one faculty member, one
27 administrator, and three students.

28 ///

1 (n) Paragraph 24: The University admits that a presentation to the Board
2 by an independent consultant on issues regarding sexual assault was
3 raised as a possibility by authorized University employees, but that it
4 ultimately was decided not to retain a consultant.

5 (o) Paragraph 25: The University admits that Plaintiff testified at the
6 Judicial Hearing on June 18, 2008, and that she was advised that the
7 alleged victim of the April 6, 2008 assault had recently informed the
8 University that she would not testify at the hearing. The University
9 further admits that in light of this recent development, the Board was
10 advised that no evidence would be received at the Hearing regarding
11 that prior incident.

12 (p) Paragraph 26: the University admits that on June 24, 2008, prior to
13 receiving the Board's decision, Plaintiff telephoned Vice President for
14 Student Life ("VPSL") Elizabeth Griego. In that telephone call, Plaintiff
15 stated that she would not return to the University if the Respondents
16 were not expelled. Dr. Griego reminded Plaintiff that it was her choice
17 whether to return to the University following receipt of the Board's
18 decision. During that telephone conversation, Dr. Griego responded to
19 all questions posed by Plaintiff. The University further admits that
20 Dr. Griego also acknowledged to Plaintiff that given the testimony of all
21 witnesses questioned (which Plaintiff had refused to listen to) there
22 might be "competing truths", as it appeared from third party witnesses
23 and Respondents' testimony, that two of the Respondents believed they
24 had Plaintiff's consent to engage in the conduct alleged.

25 (q) Paragraph 27: The University admits that Plaintiff did not attend all or
26 part of the summer session at the University in 2008.

27 (r) Paragraph 28: The University admits that on or about June 25, 2008,
28 the Board issued written findings and sanction recommendations as to

1 each of the three Respondent students, which included, among other
2 disciplinary measures, one dismissal and two suspensions. Judicial
3 Affairs Director Heather Dunn Carlton faxed the Board's findings to
4 Plaintiff and her parents on June 25, and upon Plaintiff's parents'
5 request, agreed that Dr. Griego would be available by telephone to
6 respond to any questions Plaintiff or her parents might have following
7 receipt of the Board's findings. Plaintiff's parents responded by email:

8
9 "Great thank you Heather. We know this has been difficult for
10 you. **We truly appreciate your efforts and hard work.**"
(Emphasis added.)

11 (s) Paragraph 29: The University admits that on June 27, 2008, Plaintiff
12 and her parents spoke by telephone with VPSL Griego and Judicial
13 Affairs Director Dunn Carlton. During this conversation, Plaintiff's father
14 stated his belief that if the Respondents or their "agents" contacted
15 Plaintiff, or any of the other witnesses, that it should be "immediate
16 dismissal" for them. The University further admits that when asked by
17 Plaintiff's mother whether Dr. Griego changed or overruled any of the
18 Board's decisions, Dr. Griego stated that she declined to discuss
19 internal judicial process, but stated that, in light of the Board's findings,
20 she supported the Board's disciplinary recommendations. The
21 University admits that later that day, Dr. Griego received an email from
22 Plaintiff's father inquiring with whom he could speak regarding the
23 identification of the alleged assailants in the April 6 incident. The
24 University further admits that Dr. Griego, sensing that Plaintiff's parents
25 had becoming increasingly hostile and that litigation was likely,
26 responded that it was her understanding that the attorneys for both
27 Plaintiff and the University had agreed to serve as the "exclusive
28 communication channel" for their clients, and thus requested that

1 Plaintiff's father transmit his questions regarding the April 6 assault to
2 the University through his attorney.

3 (t) Paragraph 31: The University admits that on July 11, 2008, Plaintiff
4 and her mother met with VPSL Griego and Judicial Affairs Director
5 Dunn Carlton to discuss the final sanctions imposed against the
6 Respondents.

7 (u) Paragraph 33: The University admits that in late July 2008, given the
8 number of Men's and Women's Basketball players who had been in
9 attendance at the two parties that preceded the May 10 incident and,
10 thus, had been called as witnesses during the Judicial Hearing process,
11 the University determined that, in order to reduce tension between
12 members of the two teams, decrease the potential of further student
13 misconduct, and in keeping with the University's responsibility to
14 maintain and manage a safe and productive educational environment
15 for all of its students, the Athletic Director would direct that the Men and
16 Women's Basketball coaches request that all male and female student-
17 athletes of each team limit un-chaperoned social activities with
18 members of the respective teams for some period of time.

19 (v) Paragraph 35: Plaintiff makes allegations of privileged and confidential
20 communications between attorneys for the parties, which is protected
21 from disclosure under Rule 408 of the Federal Rules of Evidence.

22 (w) Paragraph 38: the University admits that Plaintiff was in Stockton on
23 February 21, 2009, and attended a Women's Basketball game and
24 booster event. The University further admits that University employees
25 became aware from Stockton P.D. later that evening that Plaintiff was
26 involved in an incident with an unknown woman while entering an-off
27 campus hotel.

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1 (x) Paragraph 49: The University admits that on or about June 25, 2008,
2 the Board issued written findings and sanction recommendations as to
3 each of the three Respondents, and that on or about July 10, 2008, the
4 Judicial Affairs Appeals Committee affirmed those findings and
5 recommendations.

6
7 **ALLEGATIONS OF THE UNIVERSITY**

8 The University affirmatively alleges as follows:

9
10 **ACTIONS BY THE UNIVERSITY AFTER LEARNING FROM THE STOCKTON POLICE**
11 **DEPARTMENT OF AN INCIDENT AT THE TOWNHOUSE APARTMENTS ON OR ABOUT**
12 **APRIL 6, 2008.**

13 5. Stockton P.D. has jurisdiction to investigate reports of crimes within the City of
14 Stockton.

15 6. The University campus in which Plaintiff was enrolled is within the city limits of
16 Stockton, California. The Townhouse apartments are on the University campus, and are
17 within the geographical limits of the City of Stockton.

18 7. At all times relevant to this action, a Memorandum of Understanding (“MOU”)
19 between the City of Stockton and the University was in place, which appoints City of
20 Stockton Peace Officers at the University (hereafter referred to as “University Peace
21 Officers.”) All University Peace Officers are employed by the University’s Department of
22 Public Safety. The assignment of University Peace Officers is to prevent and detect crime,
23 and generally enforce state and local laws, and City ordinances in the interest of securing
24 the safety of the residences of the University. The MOU provides that:

25
26 Minor crimes will normally be investigated by [University] Peace
27 Officers. Major crimes, which are clearly beyond the scope and
28 resources available to [University] Peace Officers, shall be
investigated by the City of Stockton Police Department.

1 8. On or about April 6, 2008, the Stockton P.D. informed the University
2 Department of Public Safety, that Stockton P.D. had received a report from a former female
3 University student that in the early hours of April 6, 2008, the woman was sexually assaulted
4 at a party at the Townhouse Apartments. The April 6 victim did not identify her alleged
5 assailant(s) as University Basketball players.

6 9. The next day, April 7, 2008, authorized officials of the University prepared and
7 widely disseminated a campus-wide Safety Warning alerting the campus community of the
8 reported sexual assault. The Safety Warning included information regarding the physical
9 description of the alleged assailants, and the reported location of the crime. The notice
10 further stated that, "**It is currently not known whether the suspects are Pacific**
11 **students**" and, "**Neither suspect has been identified.**" (Emphasis added.)

12 10. That same evening, University employees, including the University's Public
13 Safety Chief, held a Town Hall Meeting at the Townhouse apartment complex to answer
14 questions and respond to community concerns regarding the reported assault.

15 11. In accordance with the MOU, and because a police report had been made by
16 the alleged victim, Stockton P.D. was the entity primarily responsible for the criminal
17 investigation of this incident. However, because the University is committed to securing the
18 safety of its students and guests on campus, the University fully cooperated with the
19 Stockton P.D. by assisting in the investigation.

20 12. On or about April 7, 2008, the University learned that Stockton P.D. had taken
21 the April 6 victim back to the Townhouse apartment complex for the purpose of identifying
22 the location of the incident. The University was advised by Stockton P.D. that the April 6
23 victim identified the specific apartment in which she was assaulted. The Stockton P.D.
24 provided this information to University officials for the purpose of fact gathering.

25 13. Pursuant to University policy, all parties where alcohol is served must be
26 registered in advance with the office of University Residence Life. The registration must
27 include the names of all attendees.

28 ///

1 14. On or about April 8, 2008, the University determined that the apartment
2 identified by the April 6 victim to the Stockton P.D. had registered an April 5th party with
3 University Residence Life. The University also determined through its records that this was
4 the only registered party at the Townhouse complex that weekend.

5 15. The apartment identified as the location of the April 6 assault was not the
6 apartment of any of the Respondents involved in the May 10 incident.

7 16. The University secured a list of the attendees' names of the registered party in
8 order to determine whether attendees were University students or nonstudents. The
9 University then obtained and examined student photographs of student attendees in an
10 effort to help identify persons whose physical appearance was similar to the appearance of
11 the alleged assailants. University officials interviewed the host and numerous guests of the
12 registered party to learn whether anyone could identify the alleged assailant(s). The host
13 and guests confirmed that there was only one African-American guest at the party, and that
14 he was a student of the University. University officials conducted an in-person interview of
15 this student, and determined that this student did not match the physical description of the
16 alleged assailant(s), as described by the victim.

17 17. Beginning on or about April 8, 2008, and continuing to May 20, 2008, the
18 University continued to engage in efforts to identify the assailant(s) responsible for the
19 April 6, 2008 incident, and cooperated with Stockton P.D. as requested.

20 18. The University learned that the Stockton P.D. was suspending its investigation
21 into the April 6 incident because the victim refused to cooperate in the investigation and
22 would not press charges.

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1 **AS TO THE POLICIES AND PROCEDURES OF THE UNIVERSITY THAT GOVERN**
2 **ADJUDICATION OF THE UNIVERSITY'S PROSCRIPTIONS AGAINST SEXUAL**
3 **MISCONDUCT BY STUDENTS.**

4 19. The University maintains written student conduct policies, prohibiting
5 University students from engaging in sexual misconduct (including but not limited to sexual
6 assault) on University premises and/or on premises adjacent to the University.

7 20. The University maintains written student sexual assault policies that identify
8 and define sexual misconduct (including but not limited to sexual assault) and authorizes
9 severe sanctions, up to and including dismissal from the University for such misconduct.

10 21. The University maintains written student judicial procedure policies that
11 identify campus judicial procedures for prosecuting, adjudicating and determining
12 allegations of student misconduct (including but not limited to sexual assault); for
13 determination of sanctions; and for appeal of such sanctions.

14 22. The University's student conduct policies, student sexual assault conduct
15 policies, and student judicial procedure policies (herein called "student adjudication
16 policies") are published widely on campus, and are implemented by authorized University
17 personnel who are assigned to supervise the administration of the policies.

18 23. The University's student adjudication policies apply to sexual misconduct
19 (including sexual assault) that is committed by students of the University, and which occurs
20 within the jurisdiction of the University as defined by University policies.

21 24. The University's Director of Judicial Affairs reviews reports of the occurrence
22 of student sexual misconduct (including sexual assault). If she determines by evidence
23 submitted, that there exists cause to believe that such misconduct has occurred, she may
24 prepare Judicial Charges and Notice of Hearings. University-authorized representatives
25 supervise the conduct of judicial hearings on said charges. Judicial hearings ("Hearings")
26 are held before the Judicial Hearing Board (the "Board"). The parties to the Hearing are
27 given notice to attend; witnesses testify; documents are offered into evidence; and
28 argument is made. Upon the conclusion of the Hearings, the Board determines findings and

1 may recommend sanctions.

2 25. In those cases where the Board recommends suspension or dismissal of
3 University students, the VPSL reviews the Board's findings and proposed sanctions, and
4 determines the matter.

5 26. A respondent may appeal the sanctions imposed by the VPSL by submitting a
6 written appeal to the Judicial Appeals Committee (the "Appeals Committee"). The Appeals
7 Committee reviews the appeal, documents and records of the hearing, the determination of
8 the Board, the outcome letters, and the policies of the University, and makes
9 recommendations to the VPSL as to the validity of the appeal.

10
11 **AS TO ACTIONS BY THE UNIVERSITY IN RESPONSE TO THE FIRST NOTICE TO THE**
12 **UNIVERSITY OF THE MAY 10 INCIDENT OF SEXUAL MISCONDUCT**
13 **INVOLVING PLAINTIFF.**

14 27. The first notice to University officials of the May 10, 2008 incident involving
15 Plaintiff occurred on the evening of May 12, 2008. Against Plaintiff's wishes, four of
16 Plaintiff's friends, also University students, informed the Women's Assistant Basketball
17 coach of the alleged assault on Plaintiff. This Assistant Coach immediately informed her
18 direct supervisor, the Women's Basketball coach, who in turn contacted the Athletic
19 Director. The Athletic Director responded to the call within hours.

20 28. The next morning, on May 13, 2008, University officials met to discuss the
21 reported assault. They immediately initiated contact with the students who reported the
22 incident, and promptly interviewed those students.

23 29. On May 13, 2008, University officials attempted to speak with Plaintiff by
24 telephone at her home in Colorado. Plaintiff's parents refused to allow the University to
25 speak directly to Plaintiff. In that telephone call, University employees inquired as to
26 Plaintiff's health; offered Plaintiff sexual assault victim resources, including in-person or
27 telephone counseling services; recommended Plaintiff immediately schedule a physical
28 examination (and rape kit); and urged Plaintiff's parents to report the incident and provide

1 the physical examination results to Stockton P.D. as soon as possible. Plaintiff's parents,
2 however, indicated they would not decide whether to file any police report at that time, and
3 to this date have refused to do so. University officials also advised Plaintiff's parents that, in
4 order to afford all students involved in the incident due process, the University was
5 compelled to convene a Judicial Hearing Board to consider Plaintiff's serious allegations
6 against Respondents. University officials provided information regarding the University's
7 judicial policies and procedures, and suggested Plaintiff take advantage of the University's
8 victim advocate program. University officials also advised Plaintiff's parents that it was
9 important to maintain both Plaintiff and Respondents' privacy, and therefore information
10 regarding the alleged incident would be relayed to third parties only on a need to know
11 basis.

12 30. Thereafter, almost daily telephone calls, email correspondence, and/or faxes
13 were exchanged between Plaintiff and/or her parents, and University officials regarding
14 questions about the incident and/or upcoming judicial proceedings.

15 31. On or about May 13, 2008, University officials reported the incident to the
16 Stockton P.D., and thereafter disseminated a campus-wide Safety Warning of possible
17 sexual assault.

18 32. Thereafter, on or about May 14, 2008, University officials transmitted
19 correspondence to Plaintiff and her parents to provide written information on University
20 actions to date, and to involve them in the University next steps. That letter stated in part:

21
22 I am writing, as I mentioned in our phone conference earlier
23 today, to confirm our conversation and to indicate what next
24 steps we intend to take at the University. You know that all of us
25 who have spoken with you extend our empathy to the three of
26 you and to your family and that you are very much in our
27 thoughts. You know also that we wish to be of any assistance to
28 you that we can and that you are assured a direct line of
communication to me as the University Vice President of Student
Life by email and phone.

As you know, Athletics Director Lynn King and I learned on the
morning of Tuesday, May 13, that students who had attended a
party with [Plaintiff] on the night of Saturday May 10th, had
reported to the assistant basketball coach the previous evening

1 that sexual assaults against [Plaintiff] had been described to
2 them by [Plaintiff] on May 10th and May 11th. [Plaintiff] left to fly
3 home after her final exam on May 12th. Since then, we have
4 been gathering additional information and have been in contact
5 with [Plaintiff] through you in several telephone calls.

6 As further indicated, we believe that this information is of
7 sufficient import that we have been in contact with the Stockton
8 Police Department both on Tuesday, May 13 and again today.
9 We will file a report of a possible crime with the Stockton Police
10 Department, the authority that would have jurisdiction over any
11 sexual assault on campus. I have advised you of [Plaintiff's]
12 option to file a report as well, and we expect that the Stockton
13 police will likely ask us for [Plaintiff's] name and contact
14 information for a statement ...

15 Based on the reports of the students mentioned earlier in this
16 letter, it is virtually certain that campus judicial procedures will be
17 convened to address the incident, preferably after the police
18 authorities have had the opportunity to do their work.

19 33. Between May 15 and May 19, 2008, University officials continued to gather
20 information about the May 10 incident, including contacting, scheduling and then completing
21 lengthy interviews of numerous witnesses, and preparing reports of information. University
22 officials then contacted, scheduled and completed lengthy interviews of the three students
23 who were allegedly involved in the May 10 incident (hereafter referred to "Respondents 1, 2
24 and 3"). University officials directed Respondents 1, 2 and 3 to maintain complete
25 confidentiality by refraining from discussing the incident with anyone except University
26 officials involved in the investigation. In addition, Respondents were directed to refrain from
27 any contacts with Plaintiff and/or her family members, all whom were then located in
28 Colorado. Respondents were instructed to remain off campus, except for judicial
proceedings, and as authorized by certain University officials.

34. Between May 15 and May 19, 2008, University officials provided information to
Plaintiff and/or her parents regarding actions of the University. University officials requested
that Plaintiff communicate directly with University officials. Plaintiff declined to do so.

35. On or about May 16, 2008, Plaintiff's parents transmitted an electronic mail
message to the University, stating:

1 **[W]e are all truly grateful for the time and efforts all of you**
2 **have made in supported [sic] our precious daughter ... [W]e**
3 offer our heartfelt thanks for everyone’s compassion, support
4 and understanding of the grave nature of this crime. We are
5 especially grateful to have the most unbelievable group of
6 coaches, whose depth of compassion and caring knows no
7 boundaries. Your support of [Plaintiff] has been deeply moving.
8 We can only imagine how this week has touched the depths of
9 your souls the way it has touched ours.

10 36. On or about May 20, 2008, Plaintiff sent via fax transmission, a direct
11 communication to the University that provided information about the incident.

12 37. After learning of the May 10, 2008 incident involving Plaintiff, University
13 employees speculated as to whether or not there may be a connection between the May 10
14 and the April 6 incidents.

15 38. On May 21, 2008, University officials attempted to contact the April 6 victim to
16 elicit information from her regarding the identity of her alleged assailants. The victim
17 responded to the University that “she was not interested in pressing charges or dealing with
18 this situation any further.” The victim informed the University that she would be amenable to
19 assisting in its investigation only through email or internet, and not to the extent it would
20 require her to come to Stockton or discuss the events over the phone.

21 39. On May 24, 2008, University officials emailed the April 6 victim a webpage link
22 of the University’s 2007-2008 Men’s Basketball team, and asked if she recognized anyone
23 as her alleged assailant(s). The victim did not respond.

24 40. On June 2, 2008, the University’s Director of Judicial Affairs, Heather Dunn
25 Carlton, received a telephone call from John Clune, Esq. of the Victim’s Justice Initiative. In
26 that telephone call, Mr. Clune advised Ms. Dunn Carlton that he and his organization were
27 retained to assist Plaintiff as a result of the May 10 incident. Mr. Clune emailed Ms. Dunn
28 Carlton that same day stating:

26 ///
27 ///
28 ///

1 Please know that our representation is solely limited to assisting
2 [Plaintiff] through this difficult stage **and not for litigation**
3 **purposes.** If we can be of any help to you in this process,
4 please don't hesitate to ask. (Emphasis added.)

4 41. As a result of Mr. Clune's representation, University officials spoke freely and
5 candidly to Mr. Clune and his staff. In many instances the University implemented Mr.
6 Clune's suggestions and/or demands regarding the judicial process, in order to ensure
7 Plaintiff's emotional well-being.

8 42. On June 10, 2008, after several attempts to speak directly with Plaintiff were
9 rebuffed by her parents, the University's Director of Judicial Affairs interviewed Plaintiff by
10 telephone regarding the incident.

11 43. On June 10, 2008, acting pursuant to University Judicial Affairs Policies, the
12 University's Director of Judicial Affairs filed charges of sexual misconduct against
13 Respondents 1, 2 and 3.

14 44. Between May 14 and June 10, 2008, Plaintiff was off campus, as classes for
15 the academic year had ended, and summer session had not yet begun. Plaintiff was known
16 by University officials to be in no harm or threatened harm from Respondents 1, 2, or 3, as
17 she was safe at home in Colorado, and her parents so reported to the University.

18 45. On or about June 12, 2008, Plaintiff prepared and transmitted to the University
19 a letter addressed to the April 6 victim, stating in part as follows:

20
21 I am reaching out to you in the hope that you might be able to
22 help me.

23 ...

24 My friends reported my assault to the university against my
25 wishes and now a hearing is scheduled for next week. So, I'm
26 asking for your help in coming forward in a very small way. I am
27 hoping you would at least identify the guys that attacked you
28 from some photos that the university can provide you.

...
///

1 If you would call Heather at the university, on her cell phone ...
2 before Monday, June 16th, it would really help me! She is very
3 nice and I was okay talking to her. ... **The school has been**
4 **very kind and compassionate to me.** I know they care very
much about you too, and just want to do what's right. (Emphasis
added.)

5 The University agreed to transmit Plaintiff's letter, and did transmit the letter to the reported
6 victim of the April 6 incident.

7 46. On or about June 14, 2008, after multiple efforts by the University to
8 communicate with the April 6 victim, the University finally received communication from her.
9 The University requested that she appear on June 18, 2008, to be interviewed by the Board
10 regarding her recollection of the April 6 incident, and potentially testify during the upcoming
11 judicial hearings.

12 47. On June 16, 2008, the University's Judicial Hearing Board began evidentiary
13 hearings (the "Hearings") on the charges of student misconduct against Respondents 1, 2
14 and 3. The Board consisted of one University faculty member, one administrator, and three
15 students. The Board was chosen with racial and gender diversity in mind, and no student
16 athletes were selected.

17 48. Plaintiff elected not to hear testimony from any of the ten (10) witnesses
18 convened at the June 16 Hearing. The testimony presented at the hearing included
19 statements from witnesses, including several Men and Women's Basketball players, that
20 Plaintiff appeared to be flirting, was "very" flirtatious, and was an "extreme flirt" with at least
21 two of the Respondents during the evening of May 10. One witness on the Women's
22 Basketball team testified that Plaintiff's conduct at the first party that evening appeared to be
23 "promiscuous," and that she had engaged in "a lot of touching, whispering" and "a lot of
24 'sleazy behavior.'" This female witness testified that Plaintiff's conduct was directed, in part,
25 towards two of the Respondents, and that her conduct was "very sexual." This witness also
26 testified that Plaintiff had made comments such as "who is going to get laid tonight" to the
27 party guests that evening. Two other witnesses testified that they observed Plaintiff give
28 one of the Respondents a hug after the alleged sexual assault.

1 49. On June 17, 2008, the University gave written notice to Respondents 1, 2 and
2 3 of a possible appearance by the April 6 victim. The University advised the Respondents
3 and Board members that because the University had not received a written statement from
4 this individual, had not discussed the events with her, and had not met her in person, it was
5 uncertain as to the relevance of her testimony, and therefore could not discern whether her
6 information was reliable.

7 50. On the afternoon of June 18, 2008, the April 6 victim advised the University
8 that she would not appear at the hearing. Accordingly, the Judicial Affairs Director advised
9 the Respondents and the Board that neither this potential witness, nor any evidence related
10 to the April 6 incident, would be presented at the hearings. The Judicial Affairs Director
11 further advised the Board that for these reasons, the Board could not consider the
12 Respondents as responsible for the prior incident.

13 51. Plaintiff testified at the Hearing on June 18, 2008. She requested and was
14 granted a University appointed confidential victim advocate.

15 52. At the request of Plaintiff's parents, and in an attempt to further secure
16 Plaintiff's emotional well-being, the University arranged for Plaintiff to appear at the Hearing
17 in a building across campus from the Respondents. Plaintiff was accompanied to the
18 Hearing by a University Victim's Advocate, with whom Plaintiff had previously been in
19 contact. The Victim Advocate provided emotional support to Plaintiff during the judicial
20 proceeding process.

21 53. Plaintiff's participation at the Hearing was limited to answering questions from
22 the Board, and reading a short written statement. At Plaintiff's and/or her parents' request,
23 Plaintiff's testimony was not presented live to the Respondents, but instead was tape
24 recorded and played for the Respondents immediately following the completion of her
25 testimony. The University conceded to this arrangement to further insure Plaintiff's
26 emotional well-being.

27 54. At the conclusion of her testimony, Plaintiff left the Hearing, electing not to
28 hear testimony from any of the three Respondents, including testimony that Plaintiff was not

1 offered, but had requested a ride to the Townhouses from one of the Respondents; that
2 Plaintiff could have left the apartment complex when one of the other passengers decided to
3 do so, but instead Plaintiff willingly went upstairs with two of the Respondents; and that
4 Plaintiff willingly engaged in sexual conduct with at least two of the Respondents.

5 55. The Board heard over 15 hours of testimony, and received and examined all
6 evidence. Testimony was tape-recorded pursuant to University processes.

7 56. At the conclusion of the hearing, the Board deliberated for over 10 hours,
8 considering the evidence presented and University policies.

9 57. On or about June 25, 2008, the Board transmitted to University officials its
10 written report and recommended sanctions as to Respondents 1, 2 and 3. The Board's
11 recommended sanctions as to Respondent 1 were as follows:

12
13 The Board recommends that the sanction for [Respondent 1] be
14 suspension for one semester; reinstatement to the University
15 based on completion of such further education and training in
16 substance abuse and sexual assault awareness as determined
by the Vice President for Student Life; and return on probation
on terms set by the Vice President including restrictions on
contact and proximity to the female student.

17 The Board's recommended sanctions as to Respondent 2 were as follows:

18
19 The Board recommends that the sanction for [Respondent 2] be
20 suspension for two semesters; reinstatement to the University
21 based on completion of such further education and training in
22 substance abuse and sexual assault awareness as determined
by the Vice President for Student Life; and return on probation
on terms set by the Vice President including restrictions on
contact and proximity to the female student.

23 The Board's recommended sanctions as to Respondent 3 were as follows:

24 The Board recommends that the sanction for [Respondent 3] be
dismissal.

25
26 58. On June 25, 2008, the Director of Judicial Affairs provided Respondent 1 with
27 written notice of the Board's findings, and advised him that the University's Vice President
28 had adopted the Board's recommendation of suspension and all other sanctions. The

1 determination of the University as to Respondent 1 stated that in addition to the sanctions of
2 suspension of one semester and probation,

3 ...[C]ertain elements of such probation shall be in effect
4 immediately and during your suspension and absence and shall
include:

- 5 a. You shall engage in no violations of the Student Code of Conduct.
- 6 b. No contact. There shall be no communication or attempted
7 communication, with the female student and her family including, but
8 not limited to, personal, electronic or other means, directly or indirectly.
9 Upon your return, minimum physical distances and additional limitations
10 on contact with that female student will be imposed.
- 11 c. Effective today, any violation of these terms will be a violation of
12 probation and shall result in dismissal.

13 59. On June 25, 2008, the Director of Judicial Affairs provided Respondent 2 with
14 written notice of the Board's findings, and advised him that the University's Vice President
15 had adopted the Board's recommendation of suspension and all other sanctions. The
16 determination of the University as to Respondent 2 stated that in addition to the sanctions of
17 suspension of two semester and probation,

18 ...[C]ertain elements of such probation shall be in effect
19 immediately and during your suspension and absence and shall
include:

- 20 a. You shall engage in no violations of the Student Code of Conduct.
- 21 b. No contact. There shall be no communication or attempted
22 communication, with the female student and her family including, but
23 not limited to, personal, electronic or other means, directly or indirectly.
24 Upon your return, minimum physical distances and additional limitations
on contact with that female student will be imposed.
- 25 c. Effective today, any violation of these terms will be a violation of
26 probation and shall result in dismissal.

27 60. On June 25, 2008, the Director of Judicial Affairs provided Respondent 3 with
28 written notice of the Board's findings, and advised him that the University's Vice President
had adopted the Board's recommendation of dismissal.

1 61. On June 25, 2008, the Director of Judicial Affairs faxed the Board's findings to
2 Plaintiff, and upon Plaintiff's parents' request, agreed that Dr. Griego would be available by
3 telephone to respond to any questions Plaintiff or her parents might have following receipt of
4 the Board's findings. Plaintiff's parents responded by email:

5
6 Great thank you Heather. We know this has been difficult for
7 you. **We truly appreciate your efforts and hard work.**
(Emphasis added.)

8
9 62. Plaintiff's parents did not, however, place a call to Dr. Griego on June 25, but
10 instead tried reaching her on June 26 at approximately 4:00 p.m. Dr. Griego was out of her
11 office in a meeting, but upon her return, responded to Plaintiff's parents by email stating:

12 You know that Heather and I have always been available to you
13 by phone and email and we have always called you back as
14 soon as we could, I think within hours of when you have called
15 us. **We have always taken your calls when we were in our
16 offices, and when we were at home evenings and weekends.
17 We have responded to all of your emails and faxes. These
18 judicial proceedings have been our priority for the last six
19 weeks. . . .** I did wait for you for two hours in my office for you to
20 call after receiving your request last evening because Heather
21 forwarded to me your request that you speak to one of us. This
22 was not our requirement, as you mention below – **we are just
23 trying to be there for you during this time.** (Emphasis
24 added.)

25 Plaintiff's mother responded stating:

26 **[Y]es, you and Heather have made yourself available during
27 this process and we recognize that and appreciate that.**
(Emphasis added.)

28 63. On June 27, 2008, Plaintiff and her parents telephoned VPSL Griego and
Judicial Affairs Director Dunn Carlton. During this conversation, Plaintiff's father stated his
belief that if the Respondents or their "agents" contacted Plaintiff, or any of the other
witnesses, that it should be "immediate dismissal" for them.

 64. Later that day, Dr. Griego received an email from Plaintiff's father inquiring
with whom he could speak regarding the identification of the alleged assailants in the April 6

1 incident. Dr. Griego, sensing that Plaintiff’s parents had becoming increasingly hostile and
2 that litigation was likely, responded that it was her understanding that the attorneys for both
3 Plaintiff and the University had agreed to serve as the “exclusive communication channel”
4 for their clients, and thus requested that Plaintiff’s father transmit his questions about the
5 April 6 assault to the University through his attorney.

6 65. On July 1, 2008, University officials commenced other steps to obtain and
7 monitor compliance by Respondents, with the instruction that they were not to appear on
8 campus without advance written approval of University authorized officials, including but not
9 limited to alerts to Department of Public Safety, commitments from athletic coaches, and
10 other steps. Specifically, Respondents 1 and 2 were advised in writing that:

11
12 **[T]he No Contact provisions of [the sanctions] require that**
13 **there shall be no communication or attempted**
14 **communication, with the female student and her family**
15 **including, but not limited to, personal, electronic or other**
16 **means, directly or indirectly.** You are further reminded that you
17 have been directed not to discuss this incident or the judicial
18 proceedings; you are required to continue to keep all matters
highly confidential except for your conversations with your coach
advocates, judicial board members and officers, and ourselves in
order to protect the privacy of all concerned. Upon your return
from suspension, the Vice President for Student Life will require
and inform you of minimum physical distances and additional
limitation on contact with that female student.

19 **We believe that you have been cooperative thus far with**
20 **these terms and we appreciate that fact.** That said, since as a
21 result of your suspension, there is no allowable participation by
22 you in any University activity, **there is likewise no need for you**
23 **to visit campus, except as might be required to attend a**
24 **judicial appeal committee meeting. . . . You should defer**
25 **any visit to campus until and unless you receive explicit**
26 **permission from the [Athletic] Director confirmed in an**
27 **email.** These expectations are for the mutual benefit of you and
28 others involved in this process and are not intended to pre-
determine in any way the outcome of the appeals process.
Again, we are appreciative of your cooperation with
implementation of these sanctions and count on you to abide by
these expectations. (Emphasis added.)

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1 66. On or about July 1, 2008, in accordance with their rights under the University's
2 Judicial Appeals Procedures, Respondents 1, 2 and 3 appealed the sanctions imposed
3 against them by submitting a written request for appeal to the Director of Judicial Affairs.
4 Plaintiff also was permitted to submit a written statement in support of her belief that
5 sufficient sanctions had not been imposed.

6 67. On or about July 7, 2008, a Judicial Appeals Committee (the "Appeals
7 Committee") was convened to review each Respondent's appeal, documents and records of
8 the hearing; the determination of the Board; the outcome letters; the policies of the
9 University; and to make recommendations to the VPSL as to the validity of the appeals.

10 68. The Appeals Committee was comprised of one University faculty member, one
11 administrator, and three students, one of whom was a Senior Resident Assistant. This
12 student, however, did not serve as Plaintiff's own Resident Assistant, but rather was
13 responsible for supervision of Plaintiff's entire residence hall. This student did not know
14 Plaintiff, and had no prior knowledge of the incident. Committee members were selected in
15 an effort to ensure racial and gender diversity, and no student athletes were selected.

16 69. On July 10, 2008, the victim of the April 6 assault was accompanied by
17 Plaintiff to the University's Public Safety Department for the purpose of attempting to identify
18 the April 6 victim's assailant(s). The University is not aware of what conversations, if any,
19 occurred between Plaintiff and the April 6 victim during their car ride.

20 70. On July 10, 2008, University Department of Public Safety interviewed the
21 April 6 victim, and showed her a photo composite of seven potential assailants, which
22 included Respondents 1, 2, and 3. The reported victim stated her belief that she was
23 60-70% certain that three individuals from the composite were *present* in the room at the
24 time of the incident, but stated that *none* of the pictures were of her assailant(s). Two of the
25 photos the victim identified were Respondents 1 and 2. The victim further stated that she
26 remembered the name of one of the individuals in the room, and identified him by name as
27 Respondent 2, but when asked if any of the photos in the composite was Respondent 2,
28 she was unable to identify him.

1 71. On July 10, 2008, after deliberating over a period of three (3) days, the
2 Appeals Committee denied Respondents' appeals, and upheld the determination of
3 sanctions imposed.

4 72. On July 10, 2008, VPSL Griego advised each of the Respondents in writing
5 that his appeal was denied, and that the sanctions recommended by the Board in its
6 determination of June 24, 2008 (and as confirmed in the June 25, 2008 letter from the
7 Director of Judicial Affairs) would stand.

8 73. In her July 10, 2008, letters to Respondents 1 and 2, VPSL Griego notified
9 them respectively that they were not to appear on campus without advance written approval
10 of the University authorized officials. The letters stated:

11 No Contact. There shall be no communication or attempted
12 communication, with the female student and her family including,
13 but not limited to, personal, electronic or other means, directly or
14 indirectly. Upon your return, minimum physical distances and
15 additional limitation on contact with that female student will be
16 imposed.

17 . . .

18 In addition to the above terms of probation, the following terms
19 are also effective immediately:

20 a. **Please remain off campus** until the end of your
21 suspension period. If you have any legitimate need to be on
22 campus to meet with University personnel, you are to contact the
23 Director of Athletics by email and if you are unable to reach him,
24 you may try to contact him through his assistant. You may not
25 visit the campus until and unless you receive explicit permission
26 from the Director of Athletics confirmed in an email. (Emphasis
27 added.)

28 b. In addition to the female student and her family, it would
be best if you have no contact with those persons whom you
believe made reports to the campus officials of the incident, to
prevent unnecessary conflict and promote resolution and healing
from the case.

Failure to meet the above sanctions and terms of probation will
result in further administrative action, including the possibility of
immediate dismissal from the University.

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1 74. On July 11, 2008, VPSL Griego and Judicial Affairs Director Dunn Carlton met
2 with Plaintiff and her mother to discuss the final sanctions imposed against the
3 Respondents. Plaintiff's mother became irate, screaming so loudly that she could be heard
4 outside Dr. Griego's closed door. Dr. Griego was compelled to ask Plaintiff's mother to
5 leave.

6 75. On July 21, 2008, VPSL Griego widely disseminated to the campus
7 community an email reminding the community to "consider the problem of sexual assault on
8 university campuses" and of the resources available to prevent and deal with sexual assault
9 issues when they arise.

10 76. Given the number of Men's and Women's Basketball players that had been in
11 attendance at the two parties that preceded the May 10 incident and, thus, had been called
12 as witnesses during the Judicial Hearing process, the University determined that, in order to
13 reduce tension between members of the two teams, decrease the potential of further
14 student misconduct, and in keeping with the University's responsibility to maintain and
15 manage a safe and productive educational environment for all of its students, the Athletic
16 Director would direct that the Men and Women's Basketball coaches request that all male
17 and female student-athletes of each team limit un-chaperoned social activities with
18 members of the respective teams for some period of time.

19 77. This directive was intended to address the emotional and physical well-being
20 of all student athletes on both teams.

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28

1 **COMMENCING WITH THE UNIVERSITY'S ACTIONS IN RESPONSE TO THE FIRST**
2 **NOTICE TO AUTHORIZED OFFICIALS OF THE MAY 10, 2008 INCIDENT, THERE HAS**
3 **BEEN NO REPORT OF ANY INSTANCE IN WHICH RESPONDENT 1, 2, OR 3**
4 **THEREAFTER VERBALLY, PHYSICALLY OR VISUALLY CONTACTED PLAINTIFF OR**
5 **IN WHICH ANY SEXUAL MISTREATMENT OF PLAINTIFF HAS OCCURRED.**

6 78. Beginning with the first notice to the University of the incident of sexual
7 misconduct involving Plaintiff on May 10, 2008, there has been no report to University
8 authorized officials of any subsequent instance where Respondent 1, 2 or 3, or any other
9 student of the University has engaged in any sexual misconduct toward Plaintiff, or has
10 verbally, physically or visually contacted Plaintiff.

11 79. The University is informed and believes that each of the Respondents has
12 heeded the University's directive to remain off campus for the duration of their suspension
13 and/or dismissal, unless otherwise authorized by University officials. The University is
14 further informed and believes that Respondents 1 and 2 returned to the University campus
15 on only two occasions during their suspension in October 2008, in order to attend
16 mandatory sexual assault and alcohol education pursuant to the Board's recommendations.
17 Respondent 1 returned on one other occasion in October 2008 to attend a mandatory
18 physical at the instruction of the Athletic Department. The University believes that
19 Respondent 3, who was dismissed, has never returned to the University campus.

20 80. The University is informed and believes that Plaintiff voluntarily returned to the
21 University in February 2009 to visit with University friends and teammates, and attended at
22 least one Women's Basketball game and booster event.

23 **AFFIRMATIVE DEFENSES OF THE UNIVERSITY**

24
25 81. The response of University officials to the April 6, 2008, incident was not
26 clearly unreasonable.

27 82. The University did not intentionally act with indifference with respect to the
28 April 6 incident, as the University made reasonable efforts to learn the identity of the alleged

1 assailants, and thus, cannot be said to have failed to respond to this incident.

2 83. There was no deliberate indifference as to the April 6 incident involving a non-
3 student of the University, and the University's response thereto does not state a basis for
4 Plaintiff's Title IX claim because there was no official decision to not remedy a known past
5 violation of Title IX.

6 84. The response of University officials to the May 10, 2008, incident was not
7 clearly unreasonable.

8 85. The University did not intentionally act with indifference with respect to the
9 May 10 incident.

10 86. The request of University officials to both female and male student-athletes to
11 limit socializing was not clearly unreasonable.

12 87. The request of University officials to both female and male student-athletes to
13 limit socializing was not a material change in Plaintiff's Doe's term and conditions of
14 matriculation.

15 Dated: May 26, 2009

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18 By: _____/s/
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