

**IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

JASON SCHAUMLEFFEL)
5345 GLENWOOD DRIVE)
NASHPORT, OHIO 43830)

PLAINTIFF,)

v.)

MUSKINGUM UNIVERSITY)
163 STORMONT STREET)
NEW CONCORD, OHIO 43762)

MACEY ZAMBORI)
51641 RILEY ROAD)
ST CLAIRSVILLE, OHIO 43950)

MACKENZIE DICKERSON)
2130 HAMILTON ROAD)
LEBANON, OHIO 45036)

MARK K. NEAL)
6005 SHALA CIRCLE)
NASHPORT, OHIO 43830)

and DOES 1-5,)
DEFENDANTS.)

Case No. 2:17-cv-463

JUDGE

JURY TRIAL DEMANDED

COMPLAINT

Plaintiff Jason Schaumleffel (“Plaintiff” or “Mr. Schaumleffel”), by and through his attorneys, complains as follows against Defendants Muskingum University (“Muskingum”), Macey Zambori (“Ms. Zambori”), Mackenzie Dickerson (“Ms. Dickerson”), Mark K. Neal (“Mr. Neal”) and Does 1-5. Among other things, Defendants violated Mr. Schaumleffel’s Title IX rights

by discriminating against Mr. Schaumleffel on the basis of his male gender as detailed in part by the direct and Indirect Evidence of Gender Bias¹ detailed in this Complaint.

Nature of this Action

1. Ms. Zambori made false allegations of sexual misconduct against Mr. Schaumleffel after they engaged in consensual sexual activity in February of 2016.

2. Ms. Dickerson made false allegations of sexual misconduct against Mr. Schaumleffel after they engaged in consensual sexual activity in late November and early December, 2016.

3. Muskingum conducted a biased and unfair investigation into the allegations of Ms. Zambori and Ms. Dickerson; and, as a result, Muskingum improperly and unlawfully expelled Mr. Schaumleffel.

4. As detailed more fully below, Muskingum's gender bias violated Muskingum's Policies² and Mr. Schaumleffel's Title IX rights in part by erroneously disciplining Mr. Schaumleffel even though Muskingum knew Ms. Zambori and Ms. Dickerson falsely accused Mr. Schaumleffel of engaging in sexual misconduct.

¹ The terms "Indirect Evidence of Gender Bias," "Indirect Gender Bias Manifestations" and/or "Indirect Gender Bias Motivations" are used in this Complaint to refer to statements and/or conduct from which at least the following inferences can be drawn: (1) a primary advocacy on behalf of females who allege males engaged in sexual misconduct; (2) minimal or no advocacy on behalf of males who are alleged to have engaged in sexual misconduct towards females; (3) minimal or no advocacy for protecting females from sexual misconduct perpetrated by other females; and/or (4) minimal or no advocacy for protecting males from sexual misconduct perpetrated by females.

² "Muskingum Policies" include, but are not limited to, its policies and procedures as outlined in its official publications, including, but not limited to, its Student Handbook, its Code of Student Conduct, and other relevant policies, including those not specifically mentioned in this Complaint.

5. Does 1-5 are individuals including, upon information and belief,³ Muskingum students and/or employees who disclosed the nature of the false allegations made by Ms. Zambori and Ms. Dickerson and/or Muskingum's findings and discipline in response to those charges to Mark Neal ("Neal"), who is Superintendent of Tri-Valley Local Schools and/or other third parties. These unlawful disclosures by Does 1-5 caused Superintendent Neal and certain members of the Board of Education of Tri-Valley Local Schools to further distribute the information disclosed by Does 1-5 in an effort to force Mr. Schaumleffel to resign as a member of the Board of Education of Tri-Valley Local Schools.

6. By obtaining information about Ms. Zambori's and Ms. Dickerson's false allegations and Muskingum's findings and discipline in response to those charges and then distributing that information in an effort to force Mr. Schaumleffel to resign from the Tri-Valley Local Schools Board of Education, Neal engaged in actions or omissions that are manifestly outside the scope of his employment and his acts or omissions were malicious, in bad faith, or wanton or reckless.

7. Muskingum's unlawful discipline of Mr. Schaumleffel based on his gender is part of a troubling trend among American universities which force male students to pursue litigation to clear their names and continue to pursue their educational and life goals.⁴ Although some females

³ It should be noted, the "information and belief" allegations in the Complaint are based on at least the following two factors: (1) the evidence referenced and/or exhibits attached to the Complaint which provide a plausible basis for Doe's "information and belief" allegations; and (2) Doe believes Defendants are in possession and/or control of additional evidence supporting Doe's "information and belief" allegations and Doe believes he will obtain this evidence in discovery.

⁴ See generally, *Stop Abusive and Violent Environments' Oct. 2016 Special Report: Victim-Centered Investigations: New Liability Risk for Colleges and Universities* (detailing how thirty lawsuits filed by plaintiffs accused of sexual misconduct resulted in judicial decisions which at least partially favored the plaintiffs in claims against their universities). Available at <http://www.saveservices.org/wp-content/uploads/Victim-Centered-Investigations-and-Liability->

making false allegations of sexual assault are criminally prosecuted,⁵America's universities rarely discipline females who bring these types of false allegations.

8. Lawsuits seeking to remedy a university's gender-biased application of Title IX policies sometimes come too late. For example, the parents of a male student who committed suicide recently filed suit against the university their son attended for mishandling a Title IX proceeding. *See, Ashe Schow, Texas student commits suicide after Title IX Kangaroo Court, TexasBureauWatchdog.org, <http://watchdog.org/292821/maleaccusedstudentcommitssuicideschoolrailroading/> (accessed 5/22/17).*

9. The lawsuits filed by male students often trigger hostile reactions which *Brown Univ.* discussed by noting:

“ the Court is an independent body . . . [that] cannot be swayed by emotion or public opinion. After issuing the preliminary injunction this Court was deluged with emails resulting from an organized campaign to influence the outcome. These tactics, while perhaps appropriate and effective in influencing legislators or officials in the executive branch, have no place in the judicial process. This is basic civics, and one would think students and others affiliated with a prestigious Ivy League institution would know this. Moreover, having read a few of the emails, it is abundantly clear that the writers, while passionate, were woefully ignorant about the issues before the Court. Hopefully, they will read this decision and be educated.” *Doe v. Brown Univ.*, Case No. 16-017 S, 2016 WL 5409241 (D.R.I. Sept. 28, 2016).

10. Like the male students who came before him, Defendants have left Mr. Schaumleffel no other option but to seek damages and declaratory relief to remedy emotional,

Risk.pdf. (assessed 4/12/17).

⁵*See e.g., Joshua Miller, Teen Charged with Lying about being raped by college football player, New York Post, <http://nypost.com/2017/02/22/teen-charged-with-lying-about-being-raped-by-college-football-players/> (accessed 5/22/17).*

mental and economic harm caused by Muskingum and Does 1-5. Mr. Schaumleffel's causes of action include: defamation; breach of contract; violations of Title IX of the Educational Amendments of 1972, declaratory judgment, promissory estoppel, negligence, intentional infliction of emotional distress, negligent infliction of emotional distress, breach of the implied covenant of good faith and fair dealing, false light invasion of privacy and unreasonable public disclosure of private facts.

11. Muskingum violated Title IX by creating a gender biased hostile environment against males, like Mr. Schaumleffel, based in part on Muskingum's pattern and practice of disciplining male students who engage in consensual sexual activity with female students.

12. Muskingum also violated Muskingum's Policies by improperly and unlawfully applying and/or breaching Muskingum Policies and/or the implied covenant of good faith and fair dealing inherent in Muskingum Policies.

13. In finding Mr. Schaumleffel responsible for sexual harassment and expelling Mr. Schaumleffel, Muskingum ignored or dismissed evidence which established Ms. Zambori and Ms. Dickerson voluntarily initiated and/or consented to all physical contact with Mr. Schaumleffel. This evidence included, but was not limited to:

- a. The results of Mr. Schaumleffel's polygraph test,⁶ which proved Ms. Zambori and Ms. Dickerson voluntarily initiated and/or consented to all physical contact with Mr. Schaumleffel; and
- b. Text messages submitted by Mr. Schaumleffel to Muskingum's investigators during the course of their investigation and prior their issuance of their Investigation Report, which proved that Ms. Dickerson initiated and/or consented

⁶ A copy of Mr. Schaumleffel's April 23, 2017, polygraph examination report and his letter to Muskingum asking that Muskingum reconsider its findings on that basis are attached as Exhibit 1.

to her sexual interactions with Mr. Schaumleffel.⁷ These text messages included, but are not limited to, Ms. Dickerson's text message stating:

“After I suck your cock I want you to take my panties off, feel how wet they are, how wet you had made me, then go between my thighs and start eating me out, I want you to see how good I taste, make my legs shake and go weak, make me moan, I'll pull your hair from how much pleasure your bringing me, make me have to pull on the sheets, then make me cum, and lick up the mess you made.” *Exhibit 1*, p.12.

14. Nevertheless, Muskingum ignored overwhelming evidence of Mr. Schaumleffel's innocence in favor of conducting a gender-biased investigation in violation of Muskingum Policies to establish Muskingum's pre-determined goal of finding male students like Mr. Schaumleffel guilty of misconduct.

15. Upon information and belief, Ms. Zambori falsely told numerous third-parties that Mr. Schaumleffel engaged in non-consensual contact with her.

16. Upon information and belief, Ms. Dickerson falsely told Muskingum that Mr. Schaumleffel engaged in non-consensual sexual contact after having reported such information to her friends and to the Emergency Room staff at Genesis Hospital in order to obtain the “morning after” pill. Ms. Dickerson wanted to obtain the morning after pill because Mr. Schaumleffel's condom had come off during sexual intercourse, not because she had been the victim of sexual assault.

17. It should be noted, Muskingum's legitimate goal of preventing sexual assault is *not* the issue in, nor is it the basis for, this Complaint. Rather, this Complaint addresses how Muskingum's unlawful discipline of Mr. Schaumleffel was motivated by the anti-male gender bias detailed in herein.

⁷ Copies of these text messages, including emoticons, are attached as Exhibit 2.

The Parties, Venue and Jurisdiction

18. Mr. Schaumleffel is a male residing in Ohio. He attended Muskingum prior to his expulsion.

19. Ms. Zambori, upon information and belief, is currently a student at Muskingum and a resident of Ohio.

20. Ms. Dickerson, upon information and belief, is a former student at Muskingum and a current resident of Ohio.

21. Muskingum, upon information and belief, is an Ohio corporation with a principal place of operation in New Concord, Ohio.

22. Does 1-5 are individuals including, upon information and belief, Muskingum students and/or employees who disclosed the nature of the false allegations made by Ms. Zambori and Ms. Dickerson and Muskingum's findings and discipline in response to those charges to Neal – the Superintendent of Tri-Valley Local Schools - and/or other third parties.

23. This action arises under Ohio common law and under Title IX of the Educational Amendments of 1972, 20 U.S.C. § 1681, *et seq.* This Court has jurisdiction over this action by virtue of federal question jurisdiction pursuant to 28 U.S.C. § 1331 because the claims herein arise under the laws of the United States. The Court has supplemental jurisdiction pursuant to 28 U.S.C. § 1367(a) for any non-federal claims alleged herein.

24. This Court has personal jurisdiction over Defendants because they reside and/or conducted business in Ohio.

25. Venue rests with this Court pursuant to 28 U.S.C. § 1391 because a substantial part of the events or omissions giving rise to Mr. Schaumleffel's claims occurred in New Concord, Ohio.

Ms. Dickerson's Consensual Sexual Encounter with Mr. Schaumleffel

26. Mr. Schaumleffel met Ms. Dickerson in November of 2016 through an app called Tinder, around election time.

27. Mr. Schaumleffel and Ms. Dickerson exchanged several text messages on Tinder to get to know each other, leading to the following exchange at a point when Mr. Schaumleffel was at a conference in New York and Ms. Dickerson was on campus:

Mr. Schaumleffel: Are you one to go to parties or rather chill with a guy watching movies in your room?

Ms. Dickerson: See, I'm up for whatever. Tonight I partied because it's been a long week, but I also love chilling and watching movies

Mr. Schaumleffel: So you're the go out and party, come back and cuddle kinda girl

Ms. Dickerson: Definitely, I'm always down for cuddling

Mr. Schaumleffel: See that's the way to my heart

Ms. Dickerson: Now that's what I like to hear

Mr. Schaumleffel: Good long late night cuddles are the best

Mr. Schaumleffel: I'm glad I matched you on here [Tinder]

Ms. Dickerson: And why is that?

Mr. Schaumleffel: You seem like a great down to earth girl with a big heart

Ms. Dickerson: Well, I'm not going to deny that

Mr. Schaumleffel: see exactly, making me jelly I'm not there to hang out with you and cuddle with you

Ms. Dickerson: Hahah well you're in New York, that's WAY better than cuddling

Mr. Schaumleffel: I'd rather have you in New York cuddling with me but then again I'm laying in bed in boxers watching Hulu so I'd have to put pants on if you were here

Ms. Dickerson: I mean that's true, pants are a great thing

Mr. Schaumleffel: true, but when cuddling they become a interference stopping body heat

Ms. Dickerson: That is very very true

Mr. Schaumleffel: plus makes cuddling way more sexy

Ms. Dickerson: Hahah I can't deny that one

Mr. Schaumleffel: wrapping my arms around you, pulling you in closer when you're only in your bra and panties feeling our skin touch and our bodies share heat as we cuddle

Ms. Dickerson: Ohhhh so you're planning on me being only in my bra and underwear??

Mr. Schaumleffel: no im planning on you being in only your underwear bras are so unhealthy to wear to bed silly

Ms. Dickerson: Silly me, I knew that

Mr. Schaumleffel: don't worry I'll keep them warm plus my kisses will keep you distracted

Ms. Dickerson: Well I'll definitely count on that

Mr. Schaumleffel: you don't want to know what comes next lol

Ms. Dickerson: Mmmm I'm kind of curious not gonna lie

Mr. Schaumleffel: not going to reveal my secrets, let's just say it involves some kissing you'll never forget

Mr. Schaumleffel: Depends how adventurous you are

Ms. Dickerson: I would say I'm pretty adventurous

Mr. Schaumleffel: Oh are you now

Mr. Schaumleffel: well normally we start by making out while I have my hands on your hips. Then I'd start kissing your neck while moving my hands over your back lightly to lighten you up

Mr. Schaumleffel: Depends how far you want me to kiss lol

Ms. Dickerson: Mhmmm, that sounds like a great time not gonna lie

Mr. Schaumleffel: just wait till I start kissing down lower, you won't be able to control yourself

Ms. Dickerson: Ohhh is that so?

Mr. Schaumleffel: only if you want of course

Ms. Dickerson: It's a possibility

Mr. Schaumleffel: I like those od[d]s

Mr. Schaumleffel: What would you be doing

Ms. Dickerson: I guess you'll have to find out

Mr. Schaumleffel: oh come on give me a hint

Ms. Dickerson: But where's the fun in that??

Mr. Schaumleffel: oh come on a little tease never hurt anyone [emoticon] you're up at 2am texting a boy, obviously you're very interested

Ms. Schaumleffel: Someone fell asleep I think

Ms. Dickerson: Noooo I didn't fall asleep buuuut if you're up a 2 am texting a girl you must be somewhat interested then

Mr. Schaumleffel: I am very interested. Girls like you are hard to find, and girls like you at Muskingum are impossible to find [emoticon] you're the reason I'm staying up so late now lol

Ms. Dickerson: I wouldn't say impossible to find

Ms. Dickerson: I'm actually honored you're staying up late for me

Mr. Schaumleffel: I found you didn't I

Mr. Schaumleffel: I'm glad you're honored

Mr. Schaumleffel: wish you could come lay in my arms and talk I'd love to get to know you better

Ms. Dickerson: You definitely did find me and that would be ideal

Mr. Schaumleffel: of course you only being in underwear would be icing on the cake but seriously you seem like a great girl, I'm excited to meet you

Ms. Dickerson: I am pretty great, not gonna lie

Mr. Schaumleffel: And really cute as well glad I found you on here

Ms. Dickerson: Awww well thank you

Mr. Schaumleffel: you can thank me with a kiss

Ms. Dickerson: Will do

Mr. Schaumleffel: better be careful my kisses are addictive [emoticons] before you know it you'll be sitting on my lap making out, wondering how you've went without my kisses for so long

Ms. Dickerson: Listen, my kisses are very addictive too

Mr. Schaumleffel: oh god guess we better be careful don't want to get to crazy making out out [our] first time

Ms. Dickerson: We'll definitely have to be careful

Mr. Schaumleffel: unless you like it when guys grab your ass and take your clothes off

Ms. Dickerson: Depends on who the guy is

Mr. Schaumleffel: oh well there is this really sweet guy who I think likes you but he also finds you extremely intelligent and attractive maybe you know him lol

Mr. Schaumleffel: don't worry when I kiss your neck it's game over, you'll be under my spell

Ms. Dickerson: Ohhh is that so?

Mr. Schaumleffel: I'm not trying to brag but you'll be panting so hard you'll beg me not to stop [emoticons] I would say it's one of my talents

Ms. Dickerson: I'll be the judge of that one then

Mr. Schaumleffel: Oh dear you'll be too busy taking your clothes off for me [emoticon] trust me it's quite amazing

Mr. Schaumleffel: but you are also so breathtakingly beautiful

Ms. Dickerson: We'll see about that one but thank you

Mr. Schaumleffel: you can flirt back silly! I don't bite and of course, seriously you're incredible I'm excited to meet you in person

Ms. Dickerson: I'm glad you're excited

Mr. Schaumleffel: I am, I'm excited to see how things go for us

Mr. Schaumleffel: I just hope you're not one of those crazy girls lol

Ms. Dickerson: I'm definitely not crazy, don't worry

Mr. Schaumleffel: Okay good

Mr. Schaumleffel: Well I'm going to go to bed I literally can't keep my eyes open, but you should give me your number so I can text you

Ms. Dickerson: My number is 937-825-8989.

Exhibit 3 (Tinder messages between Ms. Dickerson and Mr. Schaumleffel).

28. After Ms. Dickerson gave Mr. Schaumleffel her cell phone number, they continued to exchange text messages.

29. During the next three weeks, they tried to meet but were unable to do so because Ms. Dickerson left campus early for Thanksgiving break for a family emergency and Ms. Schaumleffel was away at West-Point and then at a school board conference. Over these three weeks they texted and snap-chatted a lot they exchange nude photographs of themselves with each other. Mr. Schaumleffel sent her about 5-10 nude photographs of himself and Ms. Dickerson sent him about 15-20 nude photographs of herself.

30. During this three-week period, Ms. Dickerson and Mr. Schaumleffel exchanged numerous sexually explicit text messages as follows:⁸

[page 1]

Mr. Schaumleffel: How kinky or adventurous are you lol

Ms. Dickerson: I'm pretty adventurous

Mr. Schaumleffel: Tell me how

Ms. Dickerson: I like it very rough

Mr. Schaumleffel: Oh do you now

Mr. Schaumleffel: So someone's submissive lol

Ms. Dickerson: Hahah yeah

⁸ *Exhibit 2.*

Mr. Schaumleffel: Oh really how submissive

Ms. Dickerson: Guess you'll have to find out

[page 2]

Mr. Schaumleffel: Oh I'm sure you look amazing and no it's a great distraction
boo

Mr. Schaumleffel: When you say very very tough I feel like that isn't the pink
fluffy handcuff stuff

Mr. Schaumleffel: Rough*

[page 3]

Ms. Dickerson: You're right on that one

Mr. Schaumleffel: Do tell more

Mr. Schaumleffel: Like are you into bondage and all that?

Mr. Schaumleffel: We really gotta work on your texting skills

Ms. Dickerson: I like it when I'm being thrown around, my hair being pulled,
my ass being slapped

Mr. Schaumleffel: Oh damn you are wild

Mr. Schaumleffel: I'm so turned on doing homework is impossible right now

Ms. Dickerson: I guess I am pretty wild

[page 4]

Mr. Schaumleffel: God I'm so horny

Ms. Dickerson: Sorry

Mr. Schaumleffel: I would literally do anything

Mr. Schaumleffel: I'll obey you

Mr. Schaumleffel: What are you doing you're slow at responding lol

Ms. Dickerson: My bad

Ms. Dickerson: You're wanting to obey me?

Mr. Schaumleffel: Yes mistress

Mr. Schaumleffel: Why you want to control me

Ms. Dickerson: I'm just surprised you're wanting me to control you

[page 5]

Ms. Dickerson: Why I couldn't make you do anything

Mr. Schaumleffel: How would you lol

Ms. Dickerson: I mean I do have that picture of you

Mr. Schaumleffel: You wouldn't do shit

Ms. Dickerson: You underestimate me big time

Mr. Schaumleffel: Why's that?

Ms. Dickerson: If I reeeeeally wanted to I could definitely do something with
that picture

Mr. Schaumleffel: You're funny boo

Ms. Dickerson: I mean yeah, I am hilarious

[page 6]

Ms. Dickerson: Maybe, but I might be going home tomorrow

Mr. Schaumleffel: Oh you are

Ms. Dickerson: Yes, I'm very excited about it

Mr. Schaumleffel: Aww why's that

Ms. Dickerson: Because my FYS is cancelled for Tuesday and Monday I
only have one class that I'll miss, so I'm just gonna go home early

Mr. Schaumleffel: Oh

Ms. Dickerson: Yeah, plus there's a family emergency

Mr. Schaumleffel: Oh I'm sorry, guess we will have to wait to hang out

Ms. Dickerson: After Thanksgiving break

[page 7]

Ms. Dickerson: I bet the next eleven days are going to drive you crazy
thinking about how you want to control me, how it would feel to have my
lips on your cock, wondering what I taste like, wanting to be able to touch
me however you want to

Mr. Schaumleffel: Holy f—k Mackenzie

Ms. Dickerson: Bet you want to know how wet you make me too to hear my
moans and gasps, to see how much you turn me on

Mr. Schaumleffel: umm yes I do

Mr. Schaumleffel: God you're making me so horny

Ms. Dickerson: Good

[page 8]

Mr. Schaumleffel: you wouldn't even know how to use me

Mr. Schaumleffel: Having me cock locked up, me obeying your every
command

Mr. Schaumleffel: I want you so badly

Ms. Dickerson: Maybe if you're good I'll unlock your cock and let you f__k
me.

Ms. Dickerson: Ohhh you like that don't you?

Mr. Schaumleffel: is it bad if I do

Ms. Dickerson: Not at all

Mr. Schaumleffel: you should Facetime me

[page 9]

Ms. Dickerson: She wouldn't have to know

Mr. Schaumleffel: She'll hear you moaning

Ms. Dickerson: You'll have me moaning that loud?

Mr. Schaumleffel: whops

Ms. Dickerson: Oh well, guess she'll have to hear

Mr. Schaumleffel: Lol the sad part is you'll scream louder when I f__k you

Ms. Dickerson: I won't be the only one screaming, I can guarantee that

Mr. Schaumleffel: Oh really?

Ms. Dickerson: Yes really, you'll be moaning and screaming my name all
night long

[page 10]

Mr. Schaumleffel: And to think I was going to send you a few pics

Ms. Dickerson: Ohhh I don't think you were

Mr. Schaumleffel: I am literally naked

Ms. Dickerson: Oh you are?

Mr. Schaumleffel: yes

Ms. Dickerson: If only I were there, I would be sucking your cock, doing
whatever you wanted me to

Mr. Schaumleffel: Stop

Mr. Schaumleffel: I'm so horny

Ms. Dickerson: The warmth of my lips covering your cock, me licking every
last drop of your cum, or you could bend me over a table and start f__king
me doggy style then cum inside of me

[page 11]

Mr. Schaumleffel: you'd let me do that

Ms. Dickerson: Hearing me moan and scream your name, begging for you
not to stop

Mr. Schaumleffel: yes please

Ms. Dickerson: I want you to use me, you can do whatever you want to me

Mr. Schaumleffel: Omg seriously I am so hard right now

Ms. Dickerson: Maybe I should stop then?

Mr. Schaumleffel: No keep going

Ms. Dickerson: Oh master you like hearing about what would happen? I bet
you would like feeling how wet you make me, how I crave for your touch,
and how I want to touch you

[page 12]

Ms. Dickerson: Tell me master, what are you thinking about?

Mr. Schaumleffel: shh keep talking

Ms. Dickerson: After I suck your cock I want you to take my panties off, feel how wet they are, how wet you had made me, then go between my thighs and start eating me out, I want you to see how good I taste, make my legs shake and go weak, make me moan, I'll pull your hair from how much pleasure your bringing me, make me have to pull on the sheets, then make me cum, and lick up the mess you made

[page 13]

Mr. Schaumleffel: Holy f__k Mackenzie

Ms. Dickerson: Then roll me over, handcuff me to the bed, put me on all fours, and start f__king me as hard as you can, spank me if I'm being a bad girl and disobeying

Exhibit 2 (text messages submitted by Mr. Schaumleffel to Smith during investigation).

31. During the week of Thanksgiving Ms. Dickerson and Mr. Schaumleffel exchanged few text messages, but when they returned to school they started texting frequently again.

32. The Tuesday of the last week of November 2016, Ms. Dickerson and Mr. Schaumleffel spent time together. On the way to her room, they kissed in the hallway. They then went into her room and socialized with her friends there.

33. The next day (Wednesday) Ms. Dickerson invited Mr. Schaumleffel to her dorm room after his classes. After his class was finished he texted her, but she didn't respond, so Mr. Schaumleffel walked to the Chess Center and went to the bottom floor and tried to sleep on the couch. After sleeping lightly there, Ms. Dickerson texted him and said he could come to her room. Ms. Dickerson let him into her residence hall, and they went to her room. There, after kissing each other, Ms. Dickerson initiated French kissing with Mr. Schaumleffel.

34. After Ms. Dickerson French kissed Mr. Schaumleffel, he started feeling sick and vomited in her roommate's trash can. Mr. Schaumleffel cleaned it up and offered to go take the trash bag out. He then went up to the boys' restroom to brush his teeth.

35. When Mr. Schaumleffel returned he fully expected Ms. Dickerson to ask him to leave because he had just thrown up in front of her. Instead, Ms. Dickerson invited him to get back up on the bed with her and he did.

36. Ms. Dickerson kissed Mr. Schaumleffel and he started kissing back, and she again started French kissing Mr. Schaumleffel.

37. Then things started getting more heated. Mr. Schaumleffel kissed Ms. Dickerson's neck and she wrapped her legs around his butt. They French kissed some more and dry humped each other.

38. Since they knew Ms. Dickerson's roommate would be returning soon, Ms. Dickerson and Mr. Schaumleffel stopped dry humping and got under a blanket and tried to rest.

39. After a brief stay and some conversation with Ms. Dickerson and Mr. Schaumleffel, Ms. Dickerson's roommate left and they started kissing each other again and it got heated.

40. Their heads were at the base of Ms. Dickerson's bed and her legs were open with her legs around Mr. Schaumleffel's butt, their privates grinding against each other. It was then that her roommate Maggie and friend Grace returned.

41. Mr. Schaumleffel left as requested, and then texted Ms. Dickerson and apologized. Ms. Dickerson responded that it was okay.

42. Ms. Dickerson and Mr. Schaumleffel had planned on him spending the night with her that upcoming Friday, because her roommate would be away at a Forensics (speech) trip. They

had discussed and decided to possibly have sex that night, because Ms. Dickerson was off her period by then.

43. Something came up for Ms. Dickerson that prevented her from spending time with Mr. Schaumleffel on Friday, so they decided to go to Bob Evans for lunch Saturday.

44. Late Saturday morning Mr. Schaumleffel showed up at Ms. Dickerson's residence hall and she let him in. They then went back to her dorm room because she had to finish getting ready.

45. After Ms. Dickerson got ready they kissed, and Ms. Dickerson again started French kissing Mr. Schaumleffel.

46. While Ms. Dickerson was French kissing him, Mr. Schaumleffel placed his hands on her butt and she continued to kiss him. After a few minutes of kissing they decided to leave.

47. Ms. Dickerson and Mr. Schaumleffel then drove in his car to Bob Evans in Zanesville, on Underwood Street. They ate lunch there and then left and went back to his car. They sat in his car for about 15-20 minutes, during which time Ms. Dickerson started French kissing Mr. Schaumleffel and he started kissing her neck.

48. Ms. Dickerson and Mr. Schaumleffel then decided to go back to Muskingum. On their way back they had their fingers interlaced and he had his hand on her upper thigh.

49. When they arrived back at Muskingum they pulled into the Thomas Hall parking lot. They once again kissed and discussed going to the New Concord Reservoir. Ms. Dickerson agreed to go to the reservoir with him.

50. Mr. Schaumleffel then drove them to the reservoir.

51. When they arrived they parked up by the playground and started kissing over the center console. Ms. Dickerson again initiated French kissing by putting her tongue in Mr. Schaumleffel's mouth.

52. Mr. Schaumleffel then started kissing Ms. Dickerson's neck. She reciprocated by lightly moaning when he kissed her collar bone or neck.

53. Eventually Ms. Dickerson and Mr. Schaumleffel lifted the center console and Mr. Schaumleffel sat at the edge of her seat and they wrapped their arms around each other.

54. After more French kissing, they decided to exit the vehicle and walk down to see the water.

55. When they got to the water, they started kissing. Mr. Schaumleffel placed his hands on her hips then her butt. Ms. Dickerson had her hands around him. As they were kissing Mr. Schaumleffel noticed a sign saying that they were being recorded. He then suggested that they leave that area, and they agreed to return to the car.

56. Ms. Dickerson and Mr. Schaumleffel both agreed that the back seat would be best because it would allow them to move around more. They got into the back seat.

57. Ms. Dickerson again started French kissing Mr. Schaumleffel and he again started kissing her neck. After a while they took her shirt off and he started kissing the exposed part of her chest and the exposed part of her breast.

58. Ms. Dickerson removed her bra, but they were nervous and scared about someone driving up and seeing them, so Mr. Schaumleffel placed the blanket around them.

59. They then kissed and Mr. Schaumleffel sucked on her nipple. Ms. Dickerson moaned and played with Mr. Schaumleffel's hair.

60. Mr. Schaumleffel then fell asleep, sleeping on her breast.

61. When Mr. Schaumleffel woke up it was completely dark and Ms. Dickerson was kissing the top of his head.

62. After Mr. Schaumleffel woke up, Ms. Dickerson made a comment about how she thought they were going to have sex. Ms. Dickerson then said she was off her period and that they could have sex.

63. Mr. Schaumleffel responded that he did not have a condom, and asked if she did. She replied that she did not have a condom either.

64. Mr. Schaumleffel then remembered that he had a condom in the front console of my car. He then asked Ms. Dickerson if she was sure she wanted to have sex and she said yes she was.

65. Mr. Schaumleffel then excused himself to urinate in the bushes nearby. During that time, Ms. Dickerson's cell phone was on the front passenger seat. Ms. Dickerson could have easily called someone while he was out of the vehicle.

66. When Mr. Schaumleffel returned he again asked if she was sure [she] wanted to have sex. She said yes, so he pulled down his pants and boxers to his ankles.

67. Then while he was putting the condom on, Mr. Schaumleffel asked for at least the third time if she wanted to have sex.

68. Ms. Dickerson responded that yes she wanted to have sex and she pulled her pants and underwear down.

69. Ms. Dickerson then reached one leg over and positioned herself over Mr. Schaumleffel. She then grabbed his penis and slowly lowered her body onto it.

70. Not only did she verbally consent to sex multiple times, but she also consented by her actions and by lowering herself onto him.

71. Ms. Dickerson and Mr. Schaumleffel then started having intercourse.

72. Ms. Dickerson would go up and down on his penis and would rest with his penis fully inside her, rotating her hips.

73. At first Mr. Schaumleffel had his hands on her thighs and then on her back. He would also suck on her nipples and kiss her neck. She reached her head down a little to kiss him.

74. Ms. Dickerson was moaning during intercourse. I mostly would kiss her neck and nipples.

75. After about 10 minutes Ms. Dickerson had 60-90 seconds of intense sexual pleasure. Hearing her moan so intensely caused Mr. Schaumleffel to climax as well.

76. After their orgasms Mr. Schaumleffel kissed her neck and noticed it was really sweaty. Mr. Schaumleffel told her “your neck is really sweaty.” She responded by saying, “Yes, I’m doing all the work.”

77. After a few more minutes of intercourse, Ms. Dickerson lifted herself to get off. As she lifted herself off, Mr. Schaumleffel noticed that the condom had come off.

78. Ms. Dickerson then found the condom on her thigh and there was still sperm inside it. She handed Mr. Schaumleffel tissues to clean up and they moved to the front seat.

79. Mr. Schaumleffel and Ms. Dickerson then drove to Thomas Hall and she went inside. That was the last time he saw her in person.

80. Mr. Schaumleffel texted Ms. Dickerson that night, but she didn’t respond. Their last Snapchat message was in December of 2016. They last exchanged text messages in early January of 2017.

81. Mr. Schaumleffel never forced Ms. Dickerson to spend time alone with him or to engage in any sexual act.

82. At no point did Ms. Dickerson say that she wanted to stop their sexual activity or that she was uncomfortable. She also reciprocated their sexual acts.

83. The polygraph examination that Mr. Schaumleffel provided to Muskingum proved that his following statements are truthful:

- (a) “She said she was off her period and that we could have sex.”
- (b) “I told her that I didn’t have a condom, and asked if she did. She didn’t either and that’s when I remembered I had a condom in the front console of my car. I then asked her if she was sure she wanted to have sex and she said yes she was.”
- (c) “I exited the vehicle completely went over to the bushes and peed.... When I returned I asked if she was sure [she] wanted to have sex. She said yes....”
- (d) “Again while I was putting the condom on, I asked if she wanted to have sex, she said yes and she pulled her pants and undies down. She then reached one leg over me and positioned herself over me. She then grabbed my shaft and slowly lowered her body onto my penis. Not only did she verbally consent to sex, but she also consented by her actions and by lowering herself onto me.”
- (e) “She did consent both verbally and by her actions to having sex.” and
- (f) “I never threatened her or MPB’s [Muskingum Program Board] funding” to coerce her to engage in sexual activity.

Ms. Zambori’s Consensual Sexual Encounter with Mr. Schaumleffel

84. Mr. Schaumleffel first met Ms. Zambori in Student Senate and a Health and Fitness class. On a Friday in February of 2016, Doe messaged Ms. Zambori on Facebook Messenger, following which Ms. Zambori gave Mr. Schaumleffel her cell phone number.

85. Once Ms. Zambori gave her cell phone number to Mr. Schaumleffel, he and Ms. Zambori thereafter exchanged text messages.

86. On Saturday February 6, 2016, Mr. Schaumleffel invited Ms. Zambori over to his fraternity house via text message. Around 12:30 that morning she arrived and joined Mr. Schaumleffel and a group of friends in his dorm room.

87. After his friends left his dorm room, Ms. Zambori stayed and engaged in consensual kissing and dry-humping activity with Mr. Schaumleffel. Afterwards, Ms. Zambori and Mr. Schaumleffel both fell asleep in his bed.

88. The next day, Ms. Zambori and Mr. Schaumleffel texted each other several times, and Ms. Zambori invited Mr. Schaumleffel to her room that evening. They engaged in consensual sexual activity including kissing, taking off their shirts, and Ms. Zambori took off her bra. Ms. Zambori moaned appreciatively while Mr. Schaumleffel sucked her bare nipples. At some point, knowing that Ms. Zambori's roommate was about to return, Ms. Zambori put her bra back on and they both put their shirts back on.

89. After Ms. Zambori's roommate left again, they resumed consensual sexual activity including kissing, touching each other's upper bodies, and removing their shirts and Ms. Zambori's bra again.

90. Ms. Zambori told Mr. Schaumleffel that she didn't want to do anything below her waist. She placed her hands around Mr. Schaumleffel's penis and moaned appreciatively while he sucked her nipples and kissed her neck

91. At this point, Ms. Zambori and Mr. Schaumleffel talking about having intercourse. She said she wanted to wait till marriage and Mr. Schaumleffel said he respected that because his

sister wanted to wait till marriage, but that Mr. Schaumleffel wasn't sure about dating someone who didn't want to have sex.

92. Ms. Zambori responded that she had done lots of other things with boyfriends, such as performing oral sex on them.

93. Ms. Zambori and Mr. Schaumleffel talked about going out to dinner on Valentine's Day, perhaps to Olive Garden.

94. Ms. Zambori and Mr. Schaumleffel then started kissing again and started getting further aroused. Ms. Zambori was moaning and Mr. Schaumleffel was kissing her neck and sucking on her nipples. Ms. Zambori and Mr. Schaumleffel removed her pants and Ms. Zambori spread her legs so that Mr. Schaumleffel could stimulate her genitals with his fingers. After a very short period of time (5-20 seconds) Ms. Zambori told Mr. Schaumleffel that it was hurting. Mr. Schaumleffel immediately ceased stimulating her genitals with his finger and sat up and asked what was wrong.

95. Ms. Zambori informed Mr. Schaumleffel that his stimulation of her genitals was hurting. Mr. Schaumleffel asked her if it hurt normally and she responded that it hurt when he fingered her. Mr. Schaumleffel told her that she should go see a doctor or at least a nurse on campus because a girl down the hall from him had an issue that caused her pain when she got fingered. Mr. Schaumleffel's freshman roommate had told him that.

96. Ms. Zambori then said she had to go urinate, and Mr. Schaumleffel did too, and washed his hands.

97. Ms. Zambori and Mr. Schaumleffel both left Ms. Zambori's room to use the restrooms down the hall and shortly returned. When they returned they talked for a few minutes and then started to dry-hump. After that Mr. Schaumleffel told her his back had been hurting from

when she sexually scratched his back. Ms. Zambori offered to rub lotion on his back and he took his shirt off and let her do so.

98. Once Ms. Zambori was done putting lotion on Mr. Schaumleffel's back, he put his shirt back on and they talked for a few minutes. Mr. Schaumleffel told her how he still needed to get homework done and she offered to let him do his homework on her laptop. Mr. Schaumleffel told her he should be getting home and decided to leave.

99. At no point during the entire night did Ms. Zambori ask Mr. Schaumleffel to leave.

100. The next day Mr. Schaumleffel saw Ms. Zambori in Health and Fitness class and they talked a little after class. They sent some Snapchat messages, one of them where Mr. Schaumleffel said he was horny.

101. The following day, a Tuesday afternoon, Stacey Allan and Andi Milligan delivered a no contact order prohibiting Mr. Schaumleffel from contacting Ms. Zambori.

102. Ms. Zambori's actions and words showed that she consented to all of her sexual activity with Mr. Schaumleffel.

103. The polygraph examination that Mr. Schaumleffel provided to Muskingum proved that his following statement was truthful: "In all of our sexual actions Macey's actions showed that she consented to our sexual activity to everything we did."

104. As a result, Mr. Schaumleffel was shocked when Ms. Dickerson and Ms. Zambori brought charges against him under Muskingum's Code of Student Conduct

**Anti-Male Gender Bias Motivated Violations of Muskingum's Policies And
Mr. Schaumleffel's Title IX Rights**

105. Muskingum's violations of Muskingum Policies and Mr. Schaumleffel's Title IX rights were motivated by animus towards male students like Mr. Schaumleffel which is demonstrated, in part, in the direct and Indirect Evidence of Gender Bias detailed in this Complaint.

106. Upon information and belief, widespread anti-male bias exists at Muskingum in part because of an April 11, 2011 “Dear Colleague” letter issued by the United States Department of Education’s (“DOE”) Office of Civil Rights (“OCR”) which instructed how colleges and universities must investigate and resolve complaints of sexual misconduct under Title IX. (“2011 Dear Colleague Letter”) (available at <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201104.html> accessed 5/22/17).

107. The 2011 Dear Colleague Letter manifests direct and/or Indirect Gender Bias Motivations in part by equating complainants in sexual misconduct proceedings as being females who must receive preferential treatment. For instance, the 2011 Dear Colleague Letter:

a) Incorrectly⁹ states: “1 in 5 women are victims of completed or attempted sexual assault while in college’ . . . [t]he Department is deeply concerned about this problem” *2011 Dear Colleague Letter*, (copy attached as *Exhibit 4*), p.2 (emphasis added);

⁹ As discussed in this Complaint, Muskingum, OCR, and President Obama’s administration’s often-repeated allegation that “1 in 4” or “1 in 5” female college students are sexually assaulted is unsupported. For example, a report issued by The American Association of University Women noted that over 90% of the colleges and universities in the United States reported none of their students were raped in 2014. *See*, American Association of University Women, *91 Percent of Colleges Reported Zero Incidents of Rape in 2014*, (Nov. 23, 2015). Similarly, a “special report from the Bureau of Justice Statistics titled ‘Rape and Sexual Assault Victimization Among College-Age Females, 1995-2013’ . . . found . . . female college . . . are less likely to be victims of sexual assault than their peers who are not enrolled in college. The report found . . . the incidence [of sexual assault] . . . was far lower than anything approaching 1 in 5: 0.76 percent for nonstudents and 0.61 percent for students.” Emily Yoffe, *The Problem with Campus Sexual Assault Surveys*, SLATE, Sept. 24, 2015. http://www.slate.com/articles/double_x/doublex/2015/09/aau_campus_sexual_assault_survey_why_such_surveys_don_t_paint_an_accurate.html (accessed 5/22/17). In addition, academics conducting a research study found approximately 50% of sexual assault allegations at two Midwestern American colleges were false. *See*, Eugene J. Kanin, *False Rape Allegations Archives of Sexual Behavior*, Vol. 23 No.1 (1994) available <https://archive.org/details/FalseRapeAllegations>) (accessed 5/22/17). Another academic paper exposed the lack of objective proof behind a “consensus among legal academics that only two percent” of sexual assault allegations are false. *See*, Edward Greer, *The Truth behind Legal Dominance Feminism’s Two-Percent False Rape Claim Figure*, 33 Loy. L.A.L. Rev. 947(2000); available at <http://digitalcommons.lmu.edu/cgi/viewcontent.cgi?article=2216&context=llr> (accessed 5/22/17). Issues such as these are addressed in detail in Stuart Taylor Jr. and KC Johnson’s recent book *The Campus Rape Frenzy: The Attack on Due Process at America’s Universities*. The rationale behind some of the false allegations is detailed in an academic research paper which reviewed multiple academic studies. *See*, Reggie D. Yager, *What’s Missing From Sexual Assault Prevention and Response*, (April 22, 2015) https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2697788 (accessed 5/22/17). This paper determined a high percentage of sexual assault allegations are false and based on the alleged victims’: (1) need for a cover story or alibi; (2) retribution for a real or perceived wrong, rejection or betrayal; and/or (3) desire to

b) Warns that “the majority of campus sexual assaults occur when women are incapacitated, primarily by alcohol.” *Id.* (emphasis added);

c) Suggests educational institutions seek grants from the U.S. Department of Justice’s Office on Violence against Women which require institutions “develop victim service programs and campus policies that ensure victim safety, [and] offender accountability. . . .” *Id.*, p.19 (emphasis added);

d) Warns education institutions that they must “never” view the “victim at fault for sexual violence” if she has been using “alcohol or drugs.” In fact, OCR asks “schools to consider” providing students who violate alcohol or drug policies with amnesty if they allege they were sexually assaulted while consuming alcohol or drugs. *Id.* p.15.; and

e) Shifts the burden of proof on males accused of sexual misconduct by requiring colleges to: “minimize the burden on the complainant.” p.15-16.

108. The 2011 Dear Colleague Letter also manifests direct and/or Indirect Gender Bias Motivations by making it more difficult for males accused of sexual misconduct to defend themselves. For example, the 2011 Dear Colleague Letter required schools to adopt the lowest burden of proof - “more likely than not” - in cases involving sexual misconduct. Several colleges had been using “clear and convincing” and some, like Stanford, applied the criminal standard - “beyond a reasonable doubt.”

109. Similarly, on April 29, 2014, OCR published a document signed by OCR’s then Asst. Sec. of Ed. Catherine E. Lhamon (“Sec. Lhamon”) titled “Questions and Answers on Title IX and Sexual Violence” (“OCR’s 2014 Q&A”) (available at <http://www2.ed.gov/about/offices/list/ocr/docs/qa-201404-title-ix.pdf> (accessed 5/22/17)). This OCR directive manifest direct and/or Indirect Gender Bias Motivations in part because it hampered the accused student’s ability to defend himself by reducing or eliminating the ability to expose

gain sympathy or attention. *Id.*

credibility flaws in the allegations made against him. For example, OCR's 2014 Q&A states schools:

a) "[M]ust not require a complainant to be present" at sexual misconduct disciplinary hearings. *OCR's 2014 Q&A*, p.30;

b) May decide to eliminate all opportunities for "cross-examination." *Id.*, p.31; and

c) Must avoid "revictimization" by minimizing the number of times a victim is interviewed so "complainants are not unnecessarily required to give multiple statements about a traumatic event." *Id.*, pp.30, 38.

110. Neither OCR's 2014 Q&A nor the 2011 Dear Colleague Letter were subject to notice-and-comment rulemaking, and therefore their validity as binding law is at best questionable. Thus, Senator James Lankford wrote to the DOE on January 7, 2016 to express his concerns that the DOE's Dear Colleague letters are not interpretive, but are unlawfully altering the regulatory and legal landscape of Title IX and the U.S. Constitution. *See, Exhibit 5* (containing Senator Lankford's Jan. 7, 2016 letter to ODE Acting Secretary John King).

111. Following Senator Lankford's letter, Representative Earl Ehrhart from Georgia filed a lawsuit against the DOE on April 21, 2016 in federal court alleging that DOE's implementation of the 2011 Dear Colleague letter was unconstitutional and unlawful. *See* <http://www.saveservices.org/wp-content/uploads/Ehrhart-v.-DOE-2016.pdf> (accessed 5/22/17).

112. Similar allegations were made against DOE in the federal lawsuit *Doe v. Lhamon et al.*, which was filed in United States District Court for the District of Columbia. *See, Exhibit 6* (containing *Doe v. Lhamon et al.*, Complaint). This Complaint details OCR's Indirect Evidence of Gender Bias which includes, but is not limited to, evidence of OCR pressuring colleges around the country to make it more difficult for male students accused of sexual misconduct to defend themselves.

113. Upon information and belief, Muskingum institutionalized OCR's direct and/or Indirect Gender Bias Motivations into Muskingum's implementation of Muskingum Policies. Evidence supporting this allegation includes, but is not limited, to threats made by Sec. Lhamon in February 2014 when she told college officials attending a conference at the University of Virginia that schools need to make "radical" change.

114. According to the Chronicle of Higher Education, college presidents suggested afterward that there were "crisp marching orders from Washington." *See, Colleges Are Reminded of Federal Eye on Handling of Sexual-Assault Cases, Chronicles of Higher Education*, February 11, 2014, located at <http://chronicle.com/article/Colleges-Are-Reminded-of/144703/> (accessed 5/22/17).

115. Many academics, authors, and organizations have raised alarms that DOE/OCR's worthwhile goal of protecting college students from sexual misconduct has evolved into an unlawful example of federal governmental overreach that violates the rights of male students who never engaged in misconduct. *See e.g., Emily D. Safko, Are Campus Sexual Assault Tribunals Fair?: The Need For Judicial Review and Additional Due Process Protections In Light of New Case Law*, 84 Fordham L. Rev. 2289 (2016), pgs. 2304-5 (discussing universities' concerns regarding OCR enforcement actions that commentators believe "incentivizes schools to hold accused students accountable by implementing and conducting proceedings that are unfairly stacked against the accused."). *Id.*, pgs. 2320-24 (addressing same); *Exhibit 7* (containing *Open Letter From Sixteen Members of Penn Law School Faculty* (Feb. 17, 2014)(stating in part: "[a]lthough we appreciate the efforts of Penn and other universities to implement fair procedures, particularly in light of the financial sanctions threatened by OCR, we believe that OCR's approach exerts improper pressure upon universities to adopt procedures that do not afford fundamental

fairness.”); Barclay Sutton Hendrix, *A Feather On One Side, A Brick On The Other: Tilting The Scale Against Males Accused of Sexual Assault In Campus Disciplinary Proceedings*, 47 Ga. L. Rev. 591, (2013); Stephen Henrick, *A Hostile Environment for Student Defendants: Title IX and Sexual Assault on College Campuses*, 40 N. Ky. L. Rev. 49 (2013); *Exhibit 8* (containing *Rethink Harvard’s Sexual Harassment Policy*, LETTER TO EDITOR, BOSTON GLOBE, Oct. 15, 2015); Janet Halley, *Trading the Megaphone for the Gravel in Title IX Enforcement*, HARV. L. REV. F. 103, 103-17, (2014); Samantha Harris, *Campus Judiciaries on Trial: An Update from the Court*, HERITAGE FOUNDATION, Oct. 6, 2015; <http://www.heritage.org/research/reports/2015/10/campus-judiciaries-on-trial-an-update-from-the-courts> (accessed 5/22/17); Janet Napolitano, “*Only Yes Means Yes*”: *An Essay on University Policies Regarding Sexual Violence and Sexual Assault*, Yale Law and Policy Review Volume 33; Issue 2 (2015); Robin Wilson, *Presumed Guilty*, CHRONICLE OF HIGHER EDUCATION (Sept. 3, 2014) http://chronicle.com/article/Presumed-Guilty/148529/?cid=a&utm_medium=en (accessed 5/22/17) (noting: “Under current interpretations of colleges’ legal responsibilities, if a female student alleges sexual assault by a male student after heavy drinking, he may be suspended or expelled, even if she appeared to be a willing participant and never said no. That is because in heterosexual cases, colleges typically see the male student as the one physically able to initiate sex, and therefore responsible for gaining the woman’s consent.”); *Dershowitz and Other Professors Decry ‘Pervasive and Severe Infringement’ of Student Rights*, Jacob Gershman (May 18, 2016), <http://blogs.wsj.com/law/2016/05/18/dershowitz-and-other-professors-decry-pervasive-and-severe-infringement-of-student-rights/> (accessed 5/22/17).

116. As detailed in many of the publications cited above, OCR’s investigations put millions of dollars in federal student aid at risk. This is because DOE/OCR can impose civil

penalties and/or suspend institutions from participating in federal student financial aid programs if DOE/OCR finds a university, such as Muskingum, did not do enough to discipline males alleged to have engaged in sexual misconduct with female students. Sec. Lhamon confirmed this risk of losing federal funds at a national conference at Dartmouth in the summer of 2014 when she said, “I will go to enforcement, and I am prepared to withhold federal funds.” *See, How Campus Sexual Assaults Came to Command New Attention*, NPR, August 12, 2014 located at <http://www.npr.org/2014/08/12/339822696/how-campus-sexual-assaults-came-to-command-new-attention> (accessed 5/22/17).

117. Similarly, in June 2014, Sec. Lhamon told a Senate Committee, “[t]his Administration is committed to using all its tools to ensure that all schools comply with Title IX” In addition, Sec. Lhamon noted:

“If OCR cannot secure voluntary compliance from the recipient, OCR may initiate an administrative action to terminate and/or refuse to grant federal funds or refer the case to the DOJ to file a lawsuit against the school. To revoke federal funds—the ultimate penalty—is a powerful tool because institutions receive billions of dollars a year from the federal government for student financial aid, academic resources and many other functions of higher education. OCR has not had to impose this severe penalty on any institution recently because our enforcement has consistently resulted in institutions agreeing to take the steps necessary to come into compliance and ensure that students can learn in safe, nondiscriminatory environments.”

118. Upon information and belief, for Muskingum, the withdrawal of federal funding would be catastrophic, in part, because, in academic year 2014-15 Muskingum undergraduate students received Pell Grants of approximately \$977,552 and Federal Student Loans of \$2,065,803. <https://nces.ed.gov/collegenavigator/?q=muskingum&s=all&id=204264#finaid> (accessed 5/12/17).

119. In 2016, the American Association of University Professors severely criticized OCR’s mandates as undermining student’s rights to fair and impartial adjudications in cases of

alleged sexual misconduct. *Exhibit 9* (containing AAUP's March 24, 2016 publication entitled: *Executive Summary: The History, Uses, and Abuses of Title IX*).

120. Similarly, in 2017, The American College of Trial Attorneys' ("ACTA") *White Paper On Campus Sexual Assault Investigations* noted: "OCR has established investigative and disciplinary procedures that, in application, are in many cases fundamentally unfair to students accused of sexual misconduct." *Exhibit 10*, p.3 (containing American College of Trial Attorneys' March 2017 *White Paper On Campus Sexual Assault Investigations*). To remedy this unfairness, ACTA made the following recommendations:

1. Sexual misconduct investigations and hearings should be conducted with due consideration for any appearance of partiality, including that which might arise from the fact finder's other responsibilities or affiliations.
2. The subject of a sexual misconduct investigation should promptly be provided with the details of the allegations and advised of his/her right to consult legal counsel.
3. The subject of a sexual misconduct investigation has the right to be advised and accompanied by legal counsel at all stages of the investigation.
4. The parties to a sexual misconduct investigation should be permitted to conduct some form of cross-examination of witnesses, in a manner deemed appropriate by the institution, in order to test the veracity of witnesses and documents.
5. The subject of a sexual misconduct investigation should be provided with access to all evidence at a meaningful time and in a meaningful manner so that he/she can adequately respond to it.
6. The standard of proof for "responsibility" should be clear and convincing evidence.
7. Fact finders in sexual misconduct investigations and hearings should produce written findings of fact and conclusions sufficiently detailed to permit meaningful appellate review. *Id.*, p.2.

126. As detailed below, Muskingum afforded Mr. Schaumleffel none of the traditional cornerstones of American justice articulated by ACTA. Instead, upon information and belief, Muskingum manifested direct and/or Indirect Gender Bias Motivations in its decision to ignore

the exculpatory evidence establishing Mr. Schaumleffel's innocence. This occurred in part because Muskingum's incorporation of the Obama Administration's "It's on us" campaign required Muskingum to march to the It's On Us male gender bias.

127. Upon information and belief, Muskingum's erroneous discipline of Mr. Schaumleffel manifested direct and/or Indirect Gender Bias Motivations stemming in part from its participation in the It's On Us campaign which portrays male students as sexual predators by distributing promotional materials that state:

- a) "It's on us to make sure *guys* know that if *she* doesn't or can't consent to sex, it's sexual assault." See generally, <http://itsonus.org/index.html#pledge> (accessed 5/22/17); https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=2&ved=0CCMQFjABahUKEwjW2vihqpbJAhUI02MKHeaeC94&url=http%3A%2F%2Fitsonus.org%2Fassets%2Ffiles%2Fit%27s_On_Us_Organizing_Guide_Fall_2015.pdf&usg=AFQjCNGy24MM2vn7-N7HwwUnshc6d6q0gQ&sig2=nlpOPMfxwODg7eSMWYrbxA&cad=rja (accessed 4/3/17) (emphasis added);
- b) Suggesting individuals videotape themselves "[s]ay[ing] to a camera...it's on us to recognize that if a *woman* doesn't or can't consent to sex, it's rape." *Id.*, (emphasis added); and
- c) Stating: "*Never* blame the victim," "*always* be on the side of the survivor," and "*trust* the survivor." *Id.* (emphasis added).

128. Upon information and belief, in response to pressure from the DOE/OCR that universities increase the percentage of male students found responsible for engaging in sexual misconduct with female students, Muskingum joined the "It's On Us" campaign in 2015. Support for this belief includes, but is not limited to, Muskingum publicity for the "It's On Us" campaign in 2015 and 2017. See *Exhibits 11 and 12*.

129. Upon information and belief, Muskingum encourages its faculty, staff and students to take the "It's On Us" pledge.

130. The Obama Administration's "It's On Us," campaign is its often repeated allegation that: "[a]n estimated one in five women has been sexually assaulted during her college years. . . ."

See, e.g., <https://www.whitehouse.gov/blog/2014/09/19/president-obama-launches-its-us-campaign-end-sexual-assault-campus> (accessed 5/22/17); <https://www.whitehouse.gov/the-press-office/2014/04/29/fact-sheet-not-alone-protecting-students-sexual-assault> (accessed 5/22/17).

131. Similarly, Muskingum's Title IX Training powerpoint for faculty and staff, in response to the question, "What's the BIG Deal?!" makes a similar claim by alleging: "20-25% of college women will be victims of attempted or actual sexual assault." (*Exhibit 13, Muskingum Title IX Training, p. 7*).¹⁰

132. However, as discussed in Paragraphs 133-135, allegations that 20% of America's female college students are being sexually assaulted by their male counterparts has been thoroughly refuted by organizations such as the Bureau of Justice Statistics which determined only 0.61% of female college students are sexually assaulted.

133. Evidence disproving Muskingum's allegation that upwards of 25% of its female students are sexually assaulted is disproven by the fact that 55.3% of Muskingum's approximately 3000 students during the 2015-2016 academic year were female. (<https://www.collegefactual.com/colleges/muskingum-university/student-life/diversity/#secMaleFemale> & <http://muskingum.edu/about/profile.html> (accessed 5/18/17)). Therefore, if the one in five statistic were applicable, approximately 1327 female Muskingum students would be sexually assaulted during their four year stay at UC's main campus, or 332

¹⁰ Muskingum's Title IX Training powerpoint also states, "6% of undergraduate college men will be victims of attempted or actual sexual assault." Upon information and belief, however, Muskingum has never expelled a student for sexually assaulting a male student. Moreover, research shows that this percentage may actually be closer to 12.7%. See Jessie Ford and José G. Soto-Marquez, *Sexual Assault Victimization Among Straight, Gay/Lesbian, and Bisexual College Students, Violence and Gender*, vol. 3, No. 2 (2016): 107-115 (<http://online.liebertpub.com/doi/full/10.1089/vio.2015.0030> (accessed 5/22/17)). Muskingum's citation of the 6% statistic (of college males being victims of sexual assault) rather than 12.7% manifests its direct and/or Indirect Gender Bias Motivation.

females students per year. Yet, the reality is nowhere close to that extrapolated statistic. This is because from 2012-2014, there were zero forcible rapes and sex offenses reported by Muskingum pursuant to the Clery Act requirements.

www.muskingum.edu/campuspolice/downloads/campussafety.pdf (accessed 05/17/2017). (In addition to Muskingum manifesting direct and Indirect Evidence of its Gender Bias Motivations by issuing discipline against predominantly male students, Muskingum may also be under-reporting criminal incidents of sexual misconduct to enhance public perception of campus safety.)

134. Similarly, Emily Yoffe's 2014 article in *Slate* refutes the "1 in 5" allegation. Emily Yoffe, *The College Rape Overcorrection*, SLATE, Dec. 7, 2014, http://www.slate.com/articles/double_x/doublex/2014/12/college_rape_campus_sexual_assault_is_a_serious_problem_but_the_efforts.html (accessed 5/22/17). Specifically, Ms. Yoffe asked Christopher Krebs - the lead author of the study cited by President Obama - whether his study represented the experience of the approximately 12 million female students in America. *Id.* Mr. Krebs stated those involved in the study, "don't think one in five is a nationally representative statistic." *Id.* This was because Mr. Krebs stated his sampling of only two schools "[i]n no way . . . make[s] our results nationally representative." *Id.* See also, Heather MacDonald, *An Assault on Common Sense*, The Weekly Standard, Nov. 2, 2105, <http://www.weeklystandard.com/an-assault-on-common-sense/article/1051200> (accessed 5/22/17) (detailing why a recent survey conducted by Association of American Universities has been improperly distorted to falsely suggest large percentages of female college students are being sexually assaulted on America's college campuses).

135. Ms. Yoffe also noted that if the “one-fifth to one-quarter assertion [regarding sexual assaults on college campuses were true that] would mean that young American college women are raped at a rate similar to women in Congo, where rape has been used as a weapon of war.” Emily Yoffe, *The College Rape Overcorrection*, SLATE, December 7, 2014, http://www.slate.com/articles/double_x/doublex/2014/12/college_rape_campus_sexual_assault_is_a_serious_problem_but_the_efforts.html (accessed 5/22/17).

136. Nevertheless, then V.P. Joe Biden repeatedly presented Indirect Evidence of Gender Bias in promoting the “It’s On Us” campaign as a tool to protect female students from male students. *See e.g.*, <https://www.osu.edu/buckeyesact/vpbidenvideo.html> (accessed 5/22/17). V.P. Biden also made it clear the Obama Administration and DOE used Title IX investigations and potential loss of federal funding to encourage university presidents to join the campaign. *Id.* In addition, V.P. Biden manifest Indirect Evidence of Gender Bias by encouraging “guys” to take the “It’s On Us” pledge to combat the fact that 1 in 5 college women are the victim of sexual assault while attending college. *Id.*

137. Muskingum’s direct and Indirect Gender Bias Manifestations are further manifested, in part, by Muskingum’s embrace of *The Clothesline Project*.¹¹ Evidence supporting this belief includes, but is not limited to direct and/or Indirect Gender Bias Evidence associated with *The Clothesline Project* such as the following statements on the project’s website:

- a) Clothesline Project’s events are designed to develop “provocative ‘in-your face’ educational and healing tool[s]” that “break the silence and bear witness to one issue – violence against women.”
- b) Defines a “[s]urvivor” as “a woman who has survived intimate personal violence such as a rape; battering, incest, child sexual abuse.” and;

¹¹ *See Exhibit 15* (Muskingum publicity for *Clothesline Project* exhibit at Muskingum).

- c) Defines “[v]ictim” as “a *woman* who has died at the hands of her abuser. *Id.*, *Exhibit 14* (containing information from *The Clothesline Project’s* website)(emphasis added).

138. Moreover, based on the information detailed in this Complaint, and upon information and belief, Muskingum’s unlawful discipline of Mr. Schaumleffel occurred, in part, because of Muskingum’s archaic assumptions that female students do not sexually assault fellow male students because females are less sexually promiscuous than males. Evidence supporting this belief, includes, but is not limited to, Muskingum’s:

- a) Unlawful rejection of the preponderance of evidence which proved Ms. Zambori and Ms. Dickerson voluntarily consented to sexual intercourse and other sexual activity with Mr. Schaumleffel. *See generally, supra*, Paragraph 29-79, 87-99 (discussing same).
- b) Decision to ignore a polygraph report that established Mr. Schaumleffel’s innocence, *See supra* Paragraph 13.
- c) Pressuring Ms. Zambori to file a charge along with Ms. Dickerson when Ms. Zambori had been satisfied with Muskingum’s issuance of a No Contact directive several months earlier and had no intention of seeking further discipline against Mr. Schaumleffel. *See infra*, Paragraph 154.
- d) Unlawfully disciplining Mr. Schaumleffel for accepting Ms. Zambori’s offer to engage in sexual activity that Ms. Zambori initiated and consented to but apparently later regretted, *See infra*, Paragraph 180.
- e) Upon information and belief, pressuring Ms. Dickerson to file a charge by falsely claiming that Mr. Schaumleffel had previously engaged in non-consensual sexual activity with Ms. Zambori.
- f) Unlawfully disciplining Mr. Schaumleffel for accepting Ms. Dickerson’s offer to engage in sexual activity that Ms. Dickerson initiated and consented to but apparently later regretted. *See generally, supra*, Paragraph 180.

139. Upon information and belief, Muskingum’s erroneous discipline of Mr. Schaumleffel was caused in part by Muskingum’s fears that if it did not show preferential treatment to females who allege sexual misconduct by males, Muskingum would become involved in an

OCR investigation. Evidence supporting this belief includes, but is not limited to, Muskingum's Title IX Training powerpoint for faculty and staff, in which it states,

When school processes are found not to be in compliance with OCR expectations:

- Federal Funding may be cut/removed
- Case may be referred to the Department of Justice
- OCR may assert its own resolution process

(*Exhibit 13, Muskingum Title IX Training, p. 31*). Therefore, upon information and belief, Muskingum's erroneous discipline of Mr. Schaumleffel manifested direct and/or Indirect Gender Bias Motivations in part to avoid loss of federal funding, an OCR investigation, and/or additional negative publicity that Muskingum did not adequately handle sexual assault investigations.

140. Muskingum's direct and Indirect Gender Bias Motivations have created a hostile environment which in turn creates an adverse educational setting in violation of Title IX in part because Muskingum engages in sex stereotyping discrimination based on unlawful notions of masculinity and femininity. This hostile environment causes innocent males on Muskingum's campus to be unlawfully disciplined and interferes with males' ability to participate in or benefit from various activities including learning on campus.

141. OCR, the Obama Administration, and/or Muskingum's legitimate goal of preventing sexual assault is *not* the issue in, nor is it the basis for, this Complaint. Rather, this Complaint addresses how Muskingum's unlawful discipline of Mr. Schaumleffel was motivated by direct and Indirect Evidence of Gender Bias designed to: (a) afford females like Ms. Zambori and Ms. Dickerson preferential treatment regarding Title IX and/or Muskingum Policies; (b) severely discipline male students like Mr. Schaumleffel who are alleged to have engaged in sexual

misconduct regardless of their innocence, and (c) equate “victim/complainants” in sexual misconduct proceedings as being females who receive preferential treatment over the males they accuse of sexual misconduct.

142. Items a-c in the preceding paragraph occurred in part because Muskingum allowing Mr. Schaumleffel’s disciplinary proceeding to be tainted by the following two organizations that manifest direct or Indirect Evidence of Gender Bias: (1) NCHERM; and (2) the Association of Title IX Administrators (“ATIXA”). These two interconnected organizations’ manifestations of direct and/or Indirect Evidence of Gender Bias includes, but is not limited to, equating victim/complainants in sexual misconduct proceedings as being females who must receive preferential treatment by:

- a) Using *feminine pronouns* when referring to the “*victim*” of alleged sexual misconduct.
- b) Applying *masculine pronouns* when referring to the student “*accused*” of perpetrating allegations of sexual misconduct [and] referring to them as “*the usual suspects*”.
- c) Alleging, the burden of proof regarding whether a female student consented to sexual contact should be placed on the male student because: “[t]he core of consent is the right of the victim to be unmolested until *she* gives clear permission for sexual activity to take place-what I call sexual sovereignty.”
- d) Publishing a whitepaper stating: (a) “victims have historically been accorded 3/5 of the rights of an accused . . . *victims are typically women*, equity may require institutions to *recalibrate the pendulum to right the historical imbalance*. An *equitable process . . . will force a victim focus, but only as a casualty of history*,” and (b) criticizing how in the past accused males were “afforded presumptions of innocence, rights to attorneys, rights to remain silent. Rights, rights, rights. But, *we forgot about victims along the way*” . . . *[therefore Universities] must deconstruct . . . the due process castle . . .*” and;
- e) Manifesting bias in favor of female victims via an Open Letter . . . which states: “. . . *our experience suggests victims tell the truth*.” *Exhibit 16* (containing documents issued by NCHERM and/or ATIXA)(emphasis added).

143. Muskingum explicitly acknowledges the influence of NCHERM and ATIXA on its Policies by stating the following at the end of its Sex and Gender-Based Misconduct Policy:

“(Much of the information found in the above section has been adapted from the ATIXA Gender-Based and Sexual Misconduct Policy by the National Center for Higher Education Risk Management and the Association of Title IX Administrators, 2014).” *Exhibit 17*, p. 69.

144. Upon information and belief, Muskingum selected Muskingum employee Stacey Allan (“Allan”) to be involved in Mr. Schaumleffel’s disciplinary procedure as Chair of its Community Standards Board because of her: (a) direct and/or Indirect Gender Bias Motivations, and/or (b) embrace of ATIXA, NCHERM, and/or the Obama Administration’s direct and/or Indirect Gender Bias Motivations. Evidence supporting this belief includes, but is not limited to the following:

- Allan organized the “Break the Silence: It’s on us” exhibit at Muskingum on March 27, 2015 (*Exhibit 18* (article from Muskingum student newspaper *Black and Magenta*));
- Allan directed, produced and acted in the play “Vagina Monologues” as a V-Day observance of a movement to end violence against women and girls. *Exhibit 19* (detailing V-Day purpose and activities)); and
- Allan tweeted her supported for the “It’s on us” campaign and other biased tweets such as “Women are more likely to say ‘I’m sorry’ than men because they are more likely to think they’ve done something wrong”; “All a girl really wants is for one guy to prove to her that they are not all the same. – Marilyn Monroe”; “Ugh men! I really think I’m better off single” (*Exhibit 20* (Stacey Allan tweets))(emphasis added).

145. Upon information and belief, Muskingum’s erroneous discipline of Mr. Schaumleffel manifested direct and/or Indirect Gender Bias Motivations stemming in part from Muskingum’s affiliation as a “partner” institution with the American Association of University

Women. Evidence supporting this belief includes, but is not limited to direct and/or Indirect Gender Bias Evidence that:

- (a) Muskingum's partnership with AAUW includes sponsoring "Take Back the Night Marches" on Muskingum's campus to promote "women's safety." See *Exhibit 21* (slide from American Association of University Women powerpoint). Evidence that "Take Back the Night" events are based on direct and/or Indirect Gender Bias Motivations includes, but is not limited to, comments by prominent feminist Christina Hoff Sommers' who noted these events are regularly "driving home the point" to male college students "that women are from Venus and men are from Hell." *Exhibit 22*, (containing May 30, 2013 essay entitled *Why Men Are Avoiding College*.) In addition, takebackthenight.org's website details the organization's "history" of organizing females to engage in advocacy on behalf of females subjected to sexual assault, domestic violence, and other crimes. *Exhibit 23* (containing pages from takebackthenight.org's website).
- (b) The AAUW promotes the slogan, "A Nation's Decency Is In Large part measured by how it responds to violence against women." See *Exhibit 21* (slide 4 from American Association of University Women powerpoint) (emphasis added).
- (c) The AAUW website states, "Our campuses are in crisis. The chance of a woman being sexually assaulted during college is about the same as her chance of catching the flu during an average year — except she can't just take Nyquil and rest in bed for a few days....." See *Exhibit 21* (slide 5 from American Association of University Women powerpoint) (emphasis added).
- (d) AAUW refers to campus sexual assault as "A NATIONAL EPIDEMIC -- 60+ colleges around the country currently being investigated by the federal government for mishandling

sexual assault complaints. Students are continuing to come forward with personal stories of unsatisfactory treatment of their complaints. Universities often underreport the number of sexual assault cases on their campuses and fail to properly investigate complaints. No effective sanctions against the schools for these blatant violations. This needs to stop.” See *Exhibit 21* (slide 10 from American Association of University Women powerpoint).

(e) AAUW suggests universities find more male students guilty of sexual misconduct in order to remedy AAUW’s belief that: “For too many female students college doesn’t turn out the way it’s supposed to.....” *Exhibit 21* (slide 13 from American Association of University Women powerpoint).

(f) AAUW cites the following as valid statistics:

- Recent major studies of campus crime report:
 - approximately 25% of college women were sexually assaulted,
 - as many as 50% of college students experienced dating violence,
 - 13% of college women were stalked and
 - 20% of student-athletes were victims of hazing. *Exhibit 21* (slide 17 from American Association of University Women powerpoint).

(g) AAUW promotes the “Walk a Mile in Her Shoes” campaign which “encourages MEN to take a stand against sexual assault and about how men can PLEDGE to take steps to stop it.” *Exhibit 21* (slide 17 from American Association of University Women powerpoint) (all caps in original).

(h) AAUW sponsors *The Red Flag Campaign*¹² which evidences direct and/or Indirect Gender Bias Motivations, which include, but are not limited to, advocating institutions distribute

¹² *Exhibit 21* (slide 71 from American Association of University Women powerpoint).

promotional materials “wherever men hang out” and encourage “prizes” for “men who participate in *Red Flag Campaign* programming.” *Exhibit 24* (containing information from Red Flag Campaign’s website) (emphasis added). This promotional material includes statements such as: (i) “He said if I really loved him, I would have sex with him,” (b) “If I want to get some, I just need to get her wasted,” (c) “She gets pissed when I hang out with my friends – She says she should be enough,” and (d) “Say Something – Another guy kept cornering my friend at a party. So, I checked in with her.” *Id.*, (emphasis added).

146. Upon information and belief, Muskingum’s erroneous discipline of Mr. Schaumleffel manifested direct and/or Indirect Gender Bias Motivations stemming in part from the influence of Dr. Allison Kimmich. Ms. Kimmich is the wife of Muskingum Trustee Nikhil Deogun who, upon information and belief, promoted Muskingum’s adoption of direct and/or Indirect Gender Bias Motivations in the creation and enforcement of Muskingum’s Policy. Evidence supporting this belief includes, but is not limited to:

- (a) Muskingum awarded Dr. Kimmich an honorary Muskingum degree in 2012 when she and Mr. Deogun gave Muskingum’s commencement address that year;
- (b) Dr. Kimmich’s doctorate is in Women’s Studies and she served as Executive Director of the National Women’s Studies Association (NWSA). In this role, Dr. Kimmich represented NWSA by organizing a convening of women’s studies faculty at the invitation of the White House Council on Women and Girls. She has also been invited to serve as an expert on a Department of Education-sponsored roundtable on higher education and civic engagement. Her efforts to advance diversity at NWSA were recognized when the National Council for Research on Women awarded NWSA its Member Center Diversity and Inclusion award in 2010;

(c) In a blog posting that previewed her 2012 commencement remarks, Dr. Kimmich stated:

Highlights of my working life include planning a yearly national conference that features cutting-edge feminist scholarship. I'm also a leader in conversations about women's issues outside of higher education: in 2010, I organized a meeting at the invitation of the White House Council on Women and Girls to discuss how feminist academics could help shape policy initiatives, and I recently attended a Department of Education-sponsored discussion about applying classroom learning in community settings. (<https://thesocietypages.org/girlwpen/author/kimmich/> (accessed 5/19/17)).

147. Upon information and belief, individuals investigating the allegations against Mr. Schaumleffel and serving on Mr. Schaumleffel's disciplinary panel ("Community Standards Board" or "Board") manifested direct and/or Indirect Gender Bias Motivations to violate Mr. Schaumleffel's rights under Muskingum Policies and Title IX by erroneously finding Mr. Schaumleffel responsible for Ms. Zambori's and Ms. Dickson's false allegations. Evidence supporting this belief includes, but is not limited to:

- a) Investigator Beth Fox is Muskingum's Head Women's Basketball Coach and Senior Women's Administrator. She has tweeted gender-biased tweets including, "The only way women can stop being the underrepresented sex is if we, as women, stop believing we are." *Exhibit 25*.
- b) Board Member Hallie Baker's position as representative of the Association for Gerontology in Higher Education on the Gerontological Society of America's Committee on Women's Issues in Gerontology. *Exhibit 26* (press release about Dr. Baker joining Committee on Women's Issues in Gerontology) and;
- c) Board Member Baker's role as best friend, co-author and mentor to Dr. Pamela Pitman Brown, author of the dissertation "Relationship Power and Control Among Single Heterosexual Women at Midlife: Correlates of Condom Use and Traditional Gender Role Ideology." Dr. Brown's dissertation exhibits gender bias right from page 1:

"Good girls" do this and "bad girls" do that. However, no one ever talked about boys as "good" or "bad"; they were just "boys." My dad tried to get me to understand but of course, when it comes down to gender privilege how can a father explain to his daughter that boys

are privileged and girls are not? I made up my mind that I was going to do what I wanted, when I wanted, and how I wanted, and the “rules” would not apply to me. However, the “rules” always apply to girls. If we drink too much, we are “bad.” If we have too many “boyfriends” we are “bad”...but if we have no boyfriend people are concerned about us as well. There are times you feel as if you simply cannot get around the “gender rules.” (https://etd.ohiolink.edu/pg_10?0::NO:10:P10_ACCESSION_NUM:miami1334761953, accessed 5/12/17).

148. Although Muskingum may contend Muskingum Policies are gender neutral, this is a pretext for the direct and/or Indirect Gender Bias Motivations manifested in this Complaint which motivate Muskingum to discipline innocent male students Mr. Schaumleffel via sexual misconduct proceedings that afford females preferential treatment in violation of Title IX and/or Muskingum Policies.

149. Altogether, this Complaint manifests Muskingum’s pattern and practice of: (a) providing preferential treatment to females – like Ms. Zambori and Ms. Dickson – who falsely allege they were sexually assaulted by male students like Mr. Schaumleffel; (b) imposing presumptions against male students – like Mr. Schaumleffel – who are falsely accused of sexual misconduct; (c) creating an unlawful hostile environment for male students like Mr. Schaumleffel based on their gender and/or (d) discriminating against male students to appease pressure from the federal government, Muskingum’s female student body, and/or the general public to discipline males students like Mr. Schaumleffel even though the preponderance of the evidence proves these male students did not engage in sexual misconduct.

Muskingum’s Gender-Biased Disciplinary Proceeding

150. Muskingum’s 2016 – 2017 Student Handbook outlines the process by which a complaint alleging sexual assault is handled. *See Exhibit 17*, pp. 58-69. Once a complaint is filed, Muskingum conducts a preliminary investigation. *Id* at 64. Here, Valerie Smith, Muskingum’s

Director of International Student Services and Special Programs (Smith), and Fox, were charged with conducting this investigation. *Exhibit 17*, p.1.

151. According to Muskingum's Student Handbook, "Cases involving physical contact or severe harassment will likely be resolved through the Community Standards Board hearing process." *Exhibit 17*, p. 64.

152. According to Muskingum's Student Handbook, for all cases resolved through the Community Standards Board process, the Community Standards Board shall be composed as follows, in pertinent part:

The [Community Standards] board is composed of students, staff and faculty members. Their responsibilities include determining whether an alleged is responsible or not responsible for violations of the Code of Student Conduct and recommending sanctions to the board chair.... *Exhibit 17*, p. 50.

153. Muskingum's Student Handbook specifies the following quorum requirement for proceedings of the Community Standards Board: "Five members, with at least three students and two faculty/staff members will constitute a quorum." *Exhibit 17*, p. 50 (emphasis added).

154. Ms. Dickerson did not initially want to file a sexual misconduct charge against Mr. Schaumleffel, but Muskingum's Title IX Officer Farley convinced Ms. Dickerson to do so by telling Ms. Dickerson (falsely) that Mr. Schaumleffel had previously engaged in sexual misconduct with Ms. Zambori.

155. Muskingum also induced Ms. Zambori to file a sexual misconduct charge against Mr. Schaumleffel. Ms. Zambori had requested and received a "No Contact" directive regarding Mr. Schaumleffel in February of 2016, but she did not proceed to make allegations that sexual misconduct occurred in violation of Muskingum's policy until Muskingum requested her to do so a few days after Ms. Dickerson filed her charge.

156. Ms. Zambori told Mr. Schaumleffel's fraternity brother, Matt Triola, that Muskingum had requested that she file a sexual misconduct charge against Mr. Schaumleffel. Mr. Triola told this to Mr. Schaumleffel on January 20, 2017.

157. According to Mr. Triola, Muskingum's student life office had contacted Ms. Zambori and told her, "It had happened to another girl" and that they needed her to write a statement about what had happened between her and Mr. Schaumleffel in February of 2016, leading to the No Contact directive.

158. On or about January 16, 2017, Muskingum's Title IX Coordinator/Director of Student Conduct Amber (Zifzal) Farley ("Farley") sent Mr. Schaumleffel a "Notice of Investigation" letter which identified Farley as "Title IX Coordinator" and Smith and Fox as "University Title IX Investigators" regarding allegations against Mr. Schaumleffel from an unidentified source (and) attached a statement of Mr. Schaumleffel's rights in the process. *Exhibit 27* (Amber Farley's January 16, 2017, *Notice of Investigation* letter). As detailed in this Complaint, Muskingum violated promises in the statement of rights attached to Farley's letter to conduct a "adequate," "reliable," "impartial" investigation of Roe's false allegations, to have any case of sexual misconduct resolved by an "impartial Community Standards Board Hearing," and to conduct any appeal in an "impartial" manner. *Id.*

159. Prior to Smith and Fox conducting their initial interview of Mr. Schaumleffel, Smith and Farley communicated repeatedly by email with Mr. Schaumleffel. In those messages, Smith's and Farley's comments to Mr. Schaumleffel included, but were not limited to:

- a) "I will serve as the lead investigator and Beth [Fox] will primarily serve as the note taker. We do not use or allow recording devices during the interview but you have a good level of control or ownership over the notes. After the meeting, Beth will send you the retyped notes in a timely fashion. You will have the opportunity to look over the notes and make any corrections, changes, or additions before sending them back to us." (January 23, 2017, email from Smith to Mr. Schaumleffel, *Exhibit 28*).

- b) “After the interview, you will have a chance to add/change/correct anything from the written notes/transcript. If there is something that you think will help to support your case and it occurs to you after the interview, you can also submit that after the interview but it should be done in a timely fashion so we have it before we submit the final report.” (January 24, 2017, email from Smith to Mr. Schaumleffel, *Exhibit 29*, pp. 1).
- c) “Yesterday, you had asked about a polygraph. As I said then, this is not something that our policy prohibits, but also be aware that I do not know what weight this would have on the hearing body.” (January 26, 2017, email from Farley to Mr. Schaumleffel, *Exhibit 30*, pp. 1).

160. Smith and Fox conducted their initial interview of Mr. Schaumleffel on January 25, 2017. *See, Exhibit 29*, pp. 1 (containing Smith and Fox’s notes of interviews of Mr. Schaumleffel).

161. On January 31, 2017, Smith emailed Mr. Schaumleffel the transcript of the investigators’ interview with him. (January 31, 2017, email from Smith to Mr. Schaumleffel, *Exhibit 31*).

162. On February 1, 2017, Ms. Schaumleffel emailed Smith with concerns about the interview transcript, stating, “I found numerous occasions where a statement I made was transcribed but the following explanation was missing.” Upon information and belief, direct and/or Indirect Gender Bias Motivations caused Smith and/or Fox to omit Mr. Schaumleffel’s exculpatory evidence from the interview transcript.

163. Smith gave Mr. Schaumleffel one week to respond to the interview transcript. (February 1, 2017, email from Smith to Mr. Schaumleffel, *Exhibit 32*, p. 1).

164. On February 7, 2017, Mr. Schaumleffel provided documentation to supplement the investigation transcript. (February 7, 2017, email from Mr. Schaumleffel to Smith, *Exhibit 33*).

165. On February 7 and 8, 2017, Mr. Schaumleffel provided additional documentation to supplement the investigation transcript. In his February 8, 2017, Mr. Schaumleffel indicated that he needed a few weeks of additional time to retrieve and provide highly probative text and

snapchat messages: “My dad is helping me attempted to get software to recover my text messages and recover our snapchat messages, but it looks like its going to take a few weeks....” (February 8, 2017, email from Mr. Schaumleffel to Smith, *Exhibit 34*).

166. Mr. Schaumleffel’s documentary submission including the text messages stated in Paragraph 30 above, which he and Ms. Dickerson had exchanged over Thanksgiving break 2016, and in which Ms. Dickerson consented to sexual activity with Mr. Schaumleffel.

167. Instead of giving Mr. Schaumleffel a few weeks to provide this additional information as he had requested, Smith and Fox completed and submitted their Investigation Report (“Investigation Report”) to Title IX Coordinator Farley on or about February 22, 2017. (Investigation Report, *Exhibit 35*). Upon information and belief, direct and/or Indirect Gender Bias Motivations caused Smith and Fox to deny Mr. Schaumleffel’s requested extension.

168. On March 1, 2017, Mr. Schaumleffel met with Farley to receive a copy of the Investigation Report. At that time, he was informed that he was a respondent to two separate complaints filed by two different Muskingum students.

169. At their meeting on March 1, 2017, Farley requested that Mr. Schaumleffel sign a form indicating his consent to having the two hearings consolidated. (Consent form, *Exhibit 36*). Mr. Schaumleffel signed the Consent form. Upon information and belief, direct and/or Indirect Gender Bias Motivations caused Farley to request Mr. Schaumleffel’s hearings be consolidated in order to increase the probability that he would be found responsible and expelled from Muskingum.

170. After reviewing the Investigation Report, Mr. Schaumleffel put Muskingum on notice of the report’s errors. *Exhibit 37* (Mr. Schaumleffel’s Response to Official Report). In

pertinent part, Mr. Schaumleffel detailed why the allegations against him were false in part because:

(a) The text messages between Ms. Dickerson and Mr. Schaumleffel that were exchanged over Thanksgiving break, prior to their first sexual encounter, were highly sexual and demonstrated Ms. Dickerson's consent. Mr. Schaumleffel stated in his Response to Official Report: "There was multiple times when we discussed a potential relationship and [Ms. Dickerson] reciprocated that she was interested in potentially dating.... We did have text messages where we were very sexual in nature toward each other." *Exhibit 37*, Schaumleffel Response to Report, p. 3.

(b) Mr. Schaumleffel had provided these text messages to Smith during her investigation, prior to her issuance of the Investigation Report. These messages are set forth above in Paragraph 30, and include numerous statements of Ms. Dickerson's consent to sexual activity and her intent to initiate sexual activity with Mr. Schaumleffel such as:

- "I like it very rough"
- "I like it when I'm being thrown around, my hair being pulled, my ass being slapped"
- "I guess I am pretty wild"
- "I bet the next eleven days are going to drive you crazy thinking about how you want to control me, how it would feel to have my lips on your cock, wondering what I taste like, wanting to be able to touch me however you want to"
- "Bet you want to know how wet you make me too to hear my moans and gasps, to see how much you turn me on"
- "you'll be moaning and screaming my name all night long"
- "If only I were there, I would be sucking your cock, doing whatever you wanted me to"
- "The warmth of my lips covering your cock, me licking every last drop of your cum, or you could bend me over a table and start f__king me doggy style then cum inside of me"
- "Hearing me moan and scream your name, begging for you not to stop"
- "I want you to use me, you can do whatever you want to me"

- “Oh master you like hearing about what would happen? I bet you would like feeling how wet you make me, how I crave for your touch, and how I want to touch you”
- “After I suck your cock I want you to take my panties off, feel how wet they are, how wet you had made me, then go between my thighs and start eating me out, I want you to see how good I taste, make my legs shake and go weak, make me moan, I’ll pull your hair from how much pleasure your bringing me, make me have to pull on the sheets, then make me cum, and lick up the mess you made”
- “Then roll me over, handcuff me to the bed, put me on all fours, and start f_king me as hard as you can, spank me if I’m being a bad girl and disobeying” *Exhibit 2* (text messages submitted by Mr. Schaumleffel to Smith during investigation).

(c) The text messages that Mr. Schaumleffel had submitted to Smith during the investigation and prior to issuance of the Investigation Report also refuted Ms. Dickerson’s claim that Mr. Schaumleffel had threatened to post a nude photograph of Ms. Dickerson as leverage to induce her to engage in non-consensual sexual activity. Mr. Schaumleffel’s Response to Report states the following:

[Ms. Dickerson] says that I somehow got a picture off her phone that she did not give me and that I then used it as leverage to get her to say or do certain things or send additional pictures. I asked the investigators about this and Valerie and Amber said “that was her story.” I then during the hearing wrote that question and had Stacey ask [Ms. Dickerson] and her response was that it was a picture from a guy she hand sent a picture two months before. I then asked how that could be possible because we didn’t meet in person until Monday November 28th 2016, yet by this point we had been talking for almost three weeks and she had sent over 20 nude photos. Also I was told by Amber that if I had questions about the investigation that I felt had not been answered, the investigators could go back and look into it, however when I brought up my question about how she got the picture they said I would have to ask that during the hearing, yet they allowed [Ms. Dickerson] to ask questions and then the investigators would ask me.

She [Ms. Dickerson] then goes onto say that she cooperated out of fear that she would be posted on the internet or social media. There is a set of text messages where we discuss the matter and

we both agree that neither of us would ever do such an act.
Exhibit 37, Schaumleffel Response to Report, p. 4.¹³

- (d) Nearly a year had passed between Ms. Zambori requesting a No Contact directive in February 2016 and Ms. Zambori writing a statement in January 2017 about what had happened between her and Mr. Schaumleffel. As a result, Ms. Zambori's statement inaccurately identified the events as occurring on a Saturday when they occurred on a Sunday. *Exhibit 37*, Schaumleffel Response to Report, p. 3.
- (e) Mr. Schaumleffel had written his own contemporaneous account of what had happened between him and Ms. Zambori in February of 2016, but in the year that had passed he had misplaced or discarded it. *Exhibit 37*, Schaumleffel Response to Report, p. 3.
- (f) When Muskingum's Stacey Allan ("Allan") delivered the No Contact directive regarding Ms. Zambori to Mr. Schaumleffel, Allan instructed Mr. Schaumleffel to block Ms. Zambori on Snapchat. As the result of Allan's instruction, Mr. Schaumleffel is not able to recover his Snapchat messages with Ms. Zambori,

¹³ The text messages to which Mr. Schaumleffel refers actually show it was Ms. Dickerson - not Mr. Schauleffel – who threatened to post a nude photograph of Mr. Schaumleffel if Mr. Schaumleffel did not engage in the sexual interactions. These issues are discussed in the following text exchange:

Ms. Dickerson: Why I couldn't make you do anything
Mr. Schaumleffel: How would you lol
Ms. Dickerson: I mean I do have that picture of you
Mr. Schaumleffel: You wouldn't do shit
Ms. Dickerson: You underestimate me big time
Mr. Schaumleffel: Why's that?
Ms. Dickerson: If I reeeeeeally wanted to I could definitely do something with that picture
Mr. Schaumleffel: You're funny boo
Ms. Dickerson: I mean yeah, I am hilarious (*Exhibit 2* (text messages submitted by Mr. Schaumleffel to Smith during investigation)).

which would provide additional evidence that their sexual activity was completely consensual. *Exhibit 37*, Schaumleffel Response to Report, p. 3.

(g) Because the investigators did not inform Mr. Schaumleffel prior to their interview with him of the identity of the persons bringing sexual misconduct charges against him, he was unable to prepare by bringing evidence to the interview of the dates involved and the sequence of events. Mr. Schaumleffel did provide this information after the interview, but this information was only added as an addendum to the Investigation Report and the report itself was not corrected. *Exhibit 37*, Schaumleffel Response to Report, p. 4.

(h) The investigators discouraged Mr. Schaumleffel from providing exculpatory evidence and demonstrated their bias and premature conclusion that he had engaged in sexual misconduct as follows:

- “once I saw how they took messages sent by [Ms. Dickerson] and twisted them and allowed [Ms. Dickerson] to fabricate a story about how she was fearful and was forced to send these messages, I stopped giving them text messages.” *Exhibit 37*, Schaumleffel Response to Report, p. 14.
- “As I told the investigators, I remembered additional information and yet and tried to be as honest as possible, and they use it against me. She [Ms. Dickerson] was hesitant the first time sending me pictures, as was I when I sent her pictures. Again, I never threated her or MPB’s funding. Also I was told that because they choose not to record the interview I could go back and change what was said if they had misworded what I wrote, which was extremely common as they often would put what I first said and then leave

out any explanation I would add.” *Exhibit 37*, Schaumleffel Response to Report, p. 14.

- “Again during the investigation on January 25th the investigators used leading questions, such as ‘you deleted the pictures you had of her right?’ reminding me that I could be charged with additional charges such as sexual exploitation if I still had them. I never deleted any picture that night or at any time. I still have every nude she sent me and I was looking for a relationship.” *Exhibit 37*, Schaumleffel Response to Report, p. 15.
- There were items that Mr. Schaumleffel could “easily [have] clarified, yet they never asked me to. Yet they gave [Ms. Dickerson] multiple times the ability to defend her statements that showed holes in her statement.” *Exhibit 37*, Schaumleffel Response to Report, p. 15.

171. Upon information and belief, direct and/or Indirect Gender Bias Motivations caused the Muskingum’s employees identified in Paragraph 170 to engage in the conduct described in order to: (a) limit or eliminate Mr. Schaumleffel’s ability to present exculpatory evidence, and/or (b) increase the probability that he would be found responsible and expelled.

172. Since neither Smith nor Fox addressed Mr. Schaumleffel’s requests that the aforementioned errors be addressed, Mr. Schaumleffel was left to his own devices in attempting to undo the prejudice in the Investigation Report.

173. Muskingum’s Community Standards Board conducted a hearing to resolve the charges brought by Ms. Zambori and Ms. Dickerson against Mr. Schaumleffel on March 14, 2017.

174. The composition of Mr. Schaumleffel's Muskingum's Community Standards included: (a) Muskingum administrator Stacey Allen (Chair), and (b) Muskingum faculty members Kenneth Blood, Hallie Baker and Peter Gosnell.

175. Prior to the Community Standards Board hearing, Mr. Schaumleffel expressed his objection to Professor Gosnell being on the Community Standards Board because Mr. Schaumleffel had had to withdraw from a class taught by Professor Gosnell due to religious objections to Professor Gosnell's teaching and methods.

176. There were no students on Muskingum's Community Standards Board that heard and decided the charges against Mr. Schaumleffel.

177. Mr. Schaumleffel never waived his right to have students on the Community Standards Board that heard and decided the charges against him.

178. According to Muskingum's Student Handbook, the Community Standards Board that heard and decided the charges against Mr. Schaumleffel lacked a quorum to proceed or to issue any decision because no students were appointed to the Community Standards Board. *Exhibit 17, p. 50.*

179. During the Community Standards Board hearing, Board Members violated Mr. Schaumleffel's rights under Muskingum Policies and/or Title IX when, among other things: (a) Smith prevented Mr. Schaumleffel from answering questions from Board Member Ken Blood about other sexual activity with Ms. Zambori or Ms. Dickerson besides the sexual activity that formed the basis for their charges, testimony which would have demonstrated that they had engaged in consensual sexual activity with him on other occasions; (b) Board Members disregarded Mr. Schaumleffel's challenge to the objectivity of Professor Gosnell; (c) Board Members ignored testimony from Mr. Schaumleffel that disproved the allegations of Ms. Zambori

and Ms. Dickerson; (d) Board Members failed to ensure that Mr. Schaumleffel was provided “a process of fundamental fairness” as required by Muskingum’s statement of Student Rights; (e) Board Members failed to maintain a presumption that Mr. Schaumleffel was not responsible prior to any finding of responsibility; and (f) Board Members found Mr. Schaumleffel responsible despite the lack of a preponderance of evidence in favor of such a finding. In addition, Board Members violated Mr. Schaumleffel’s rights under Muskingum Policies and/or Title IX as demonstrated in Paragraphs 191-201 below. Upon information and belief, the direct and/or Indirect Gender Bias Motivations detailed in this Complaint caused these violations of Muskingum Policies and/or Title IX.

180. After engaging in this conduct, on March 14, 2017, the Board Members: (a) erroneously found Mr. Schaumleffel responsible for Non-consensual sexual intercourse and sexual harassment; and (b) expelled Mr. Schaumleffel from Muskingum. *See, Exhibit 38* (containing Board’s March 14, 2017, findings).

181. The Community Standards Board also violated Muskingum Policies by resolving the charges against Mr. Schaumleffel without a quorum because no students were appointed to or participated on the Community Standards Board. Upon information and belief, direct and/or Indirect Gender Bias Motivations detailed in this Complaint caused this violation of Muskingum Policies and/or Title IX.

182. Because the Community Standards Board that heard and decided the charges against Mr. Schaumleffel lacked a quorum to proceed or to issue any decision because no students were appointed to the Community Standards Board, the findings of the Community Standards Board are null and void.

183. Muskingum gave Mr. Schaumleffel the right to appeal the Board's erroneous findings, which violated Muskingum Policy by being decided without a quorum, to a panel consisting of three members of the Community Standards Board within five (5) business days of the Board's decision. *Exhibit 38* (containing Board's March 14, 2017, findings). The appeal panel is authorized to refer the case back to the Community Standards Board or to another hearing body "as appropriate" or to adjust the findings or sanctions of the Community Standards Board. *Exhibit 17* (Muskingum Student Handbook, p. 58).

184. On March 15, 2017, Mr. Schaumleffel emailed Farley to ask if they could meet to discuss the findings and sanction of the Community Standards Board. *Exhibit 39* (March 15, 2017 email exchange between Mr. Schaumleffel and Farley).

185. Farley responded that she and Stacey Allan, Chair of the Community Standards Board, could meet with him the next day.

186. On March 16, 2017, Farley and Allan met with Mr. Schaumleffel to discuss the Community Standards Board's decisions and his possible appeal.

187. Farley and Allan discouraged Schauleffel from appealing the findings of responsibility and advised him to appeal only the harshness of the sanction of expulsion.

188. Farley and Allen's decision to discourage Mr. Schaumleffel from appealing Muskingum's erroneous findings that he had engaged in sexual harassment and non-consensual sexual intercourse manifests the direct and/or Indirect Gender Bias Motivations discussed in this Complaint. Because Mr. Schaumleffel was unaware of Farley and Allen's direct and/or Indirect Gender Bias Motivations at the time, he was deceived into complying with their advice even though he wanted to challenge the erroneous finding in his appeal.

189. Mr. Schaumleffel filed a timely appeal on March 18, 2017. (*Exhibit 40*). In this appeal, Mr. Schaumleffel contended that the sanction of expulsion was not in keeping with Muskingum's description of his case as a "behavior education process," and requested that Muskingum permit him to complete his final semester from home so that he could graduate following the Fall 2017 semester.

190. On March 21, 2017, Muskingum denied Mr. Schaumleffel's appeal, stating, "The Board did not find any compelling information, in your appeal letter, showing a procedural error where sanctions were assigned greater than the stated possible outcomes. Given this, your appeal has been denied. This decision is now final and cannot be further appealed." *Exhibit 41* (March 21, 2017, letter from Farley to Mr. Schaumleffel denying appeal).

Violations of Mr. Schaumleffel's Rights under Muskingum Policies and/or Title IX Rights

191. The conduct of the Muskingum employees involved in Mr. Schaumleffel's erroneous discipline violated Mr. Schaumleffel's rights under Muskingum Policies and Title IX. This conduct also violated OCR's guidance regarding the credibility of the parties and the presence of corroborating evidence. *See e.g., OCR's Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties* ("OCR's Sexual Harassment Guide") (January 2001). <https://www.federalregister.gov/documents/2001/01/19/01-1606/revised-sexual-harassment-guidance-harassment-of-students-by-school-employees-other-students-or>. (accessed 5/22/17).¹⁴ For example, OCR's Sexual Harassment Guide recommends evaluating the "relative credibility" of evidence by looking at the level of detail and consistency

¹⁴ This Court has acknowledged the appropriateness of Muskingum incorporating OCR directives into Muskingum's adjudication of allegations of sexual misconduct. *See, Exhibit 42*, pageid.694 (containing *Pierre v. University of Dayton* No.3:15-cv-362, Docket 30 (W.D.S.D.OH. March 27, 2017) (rejecting a plaintiff's breach of contract claim in part because Dayton's "use of the "preponderance of evidence standard of proof is directed by" OCR).

of each person's account . . . in an attempt to determine who is telling the truth. Another way to assess credibility is to see if corroborative evidence is lacking where it should logically exist." *Id.*, p. 9. Muskingum's conduct detailed in this Complaint details how Muskingum failed to follow these recommendations. Upon information and belief, direct and/or Indirect Gender Bias Motivations caused this failure.

192. As detailed in this Complaint, and upon information and belief, direct and/or Indirect Gender Bias Motivations caused Muskingum to violate at least the following OCR's mandates requiring that Muskingum:

- a) ". . . . provide due process to the alleged perpetrator" *U.S. Dep't Of Education Office of Civil Rights, Dear Colleague Letter*, (Apr. 4. 2011); <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201104.html>
- b) Employ "[p]rocedures that . . . will lead to sound and supportable decisions." *U.S. Dep't Of Education Office of Civil Rights. OCR's Sexual Harassment Guide* (emphasis added).
- c) Provide "[a]dequate, reliable, and impartial investigation of complaints, including the opportunity to present witnesses and other evidence"; and
- d) Implement "adequate training as to what conduct constitutes sexual harassment, which includes "alleged sexual assaults." *Id.*, 20-21 (emphasis added).

193. Muskingum also violated Muskingum Policies by failing to include at least three students on the Community Standards Board that found Mr. Schaumleffel responsible for sexual harassment and non-consensual sexual intercourse. Therefore, Muskingum's findings that Mr. Schaumleffel had violated the Code of Student Conduct are null and void.

194. Muskingum also violated Muskingum Policies by allowing Community Standards Board Members to receive an Investigation Report tainted with Smith and Fox's credibility determinations and omissions caused by direct and/or Indirect Gender Bias Motivations. *See e.g., Supra*, Paragraph 167 (discussing same). This occurred even though Smith and Fox's report

stated, “This report will NOT determine whether it is more likely than not that there has been a violation of the Student Conduct Code or University policy.” *See, Exhibit 35*, p. 1 (Investigation Report). Therefore, upon information and belief, Muskingum’s erroneous discipline of Mr. Schaumleffel was caused in part by Muskingum’s reliance on credibility determinations and contained in the Investigation Report and the omission from the report of information tending to prove Mr. Schaumleffel not responsible for violations of the Student Code of Conduct.

195. Muskingum also violated Muskingum Policies by banning him from campus on January 25, 2017, despite that there was no indication of any “danger of the student causing harm to him/herself or others” or that “the person poses a threat to the well-being of the University’s community” as required under Muskingum’s statement of Student Rights.

196. As detailed in part in Paragraph 170 above, Mr. Schaumleffel repeatedly put Muskingum on notice that Muskingum’s investigation and disciplinary proceeding violated Muskingum Policies and Title IX. Yet, as detailed in this Complaint, Muskingum manifested direct and Indirect Evidence of Gender Bias Motivations in violating Muskingum Policies and Title IX.

197. In rejecting a male student’s breach of contract claim, this Court’s *Pierre* decision noted: “[t]he proper focus in analyzing whether a private university provided fundamental fairness is whether the University adhered to its misconduct procedure. . . is whether the proceedings fell within the range of reasonable expectations of one reading the relevant rules, an objective reasonableness standard. *See e.g., Exhibit 42*, pageid.690 (discussing *Doe v. Amherst College*, 3:15-cv-30097, Doc. 38 at 23 (D. Mass. Oct. 5, 2015) and *Walker v. President & Fellows of Harvard Coll.*, 82 F.Supp. 3d 524, 530 (D. Mass. 2014)).

198. As detailed herein, the procedural violations that permeated Mr. Schaumleffel's disciplinary process, combined with a discriminatory bias against males and the underlying motive to protect Muskingum's reputation and financial wellbeing led to an erroneous finding of sexual misconduct against John Doe. This occurred even though to ensure a fair and impartial proceeding, "[e]ach case must be decided on its own merits, according to its own facts. If a college student is to be marked for life as a sexual predator, it is reasonable to require that he be provided a fair opportunity to defend himself and an impartial arbiter to make that decision." *Doe v. Brandeis Univ.*, 177 F. Supp. 3d 561 (D.Mass. 2016) (emphasis added).

199. Based on the facts detailed in this Complaint, Muskingum employees manifested direct and Indirect Evidence of Gender Bias Motivations by conducting Mr. Schaumleffel's disciplinary proceeding in a procedurally flawed and superficial manner which was neither independent nor impartial.

200. Muskingum manifested direct and Indirect Evidence of Gender Bias Motivations by improperly placing the burden of proof on Mr. Schaumleffel, in part by: (a) accepting at face value Ms. Zambori's and Ms. Dickerson's allegations, notwithstanding their inconsistent statements and contradictory evidence, and (b) and intentionally overlooking any evidence tending to diminish Ms. Zambori's and Ms. Dickerson's credibility and/or exculpate Mr. Schaumleffel.

201. Based on the facts detailed in this Complaint, Muskingum manifested direct and Indirect Evidence of Gender Bias Motivations by presuming Mr. Schaumleffel was guilty while characterizing Ms. Zambori's and Ms. Dickerson's as "victims." However, "whether someone is a "victim" is a conclusion to be reached at the end of a fair process, not an assumption to be made at the beginning." *Doe v. Brandeis Univ.*, 177 F. Supp. 3d 561 (D. Mass. 2016).

Damages Caused by Defendants

202. Because of Defendants' conduct detailed in this Complaint, Mr. Schaumleffel has been suffering depression, panic attacks, and difficulty sleeping and interacting socially. Mr. Schaumleffel has been prescribed medications to address anxiety and depression caused by Defendants.

203. As a direct and proximate result of Defendants' conduct detailed in this Complaint, Mr. Schaumleffel has suffered and will continue to suffer mental anguish, personal humiliation, and a great loss of reputation, loss of employment opportunities and/or wages, reduced future earning capacity, attorneys' fees, and other direct and consequential damages.

204. Even though Muskingum is prohibited from disclosing information about student disciplinary proceedings by the Family Educational Rights and Privacy Act (FERPA), Muskingum employees Does 1-5 disclosed the nature of Ms. Zambori's and Ms. Dickerson's allegations, Muskingum's finding that Mr. Schaumleffel had violated its Student Code of Conduct by engaging in sexual harassment and non-consensual sexual intercourse and Muskingum's expulsion of Mr. Schaumleffel to Mr. Neal, who then distributed that information to others.

205. Following the disclosure of this FERPA-protected information about Mr. Schaumleffel to Mr. Neal, Mr. Neal requested all records of Muskingum's proceedings into Mr. Schaumleffel's "arrest, expulsion/removal, investigation, or charges for sexual assault" by letter dated March 27, 2017 to the Muskingum University Dean of Students.¹⁵

206. The next day, Mr. Neal directed Tri-Valley Local Schools Treasurer Ryan Smith to issue a press release to the Dresden Transcript notifying the public that the Tri-Valley Local

¹⁵ A copy of Mr. Neal's March 27, 2017, letter to the Muskingum University Dean of Students is attached as *Exhibit 43*.

School District Board of Education would hold a special meeting on March 30, 2017, to consider “the discipline of a public official, or the investigation of charges or complaints against a public official pursuant to ORC 121.22.”¹⁶

207. Following the Tri-Valley Local School District Board of Education’s special meeting on March 30, 2017, Mr. Neal issued a public statement in which he announced that the focus of the special meeting was information received “from an anonymous source regarding Jason Schaumleffel, one of the members of the Board of Education.”¹⁷

208. On March 31, 2017, Muskingum’s Vice President for Institutional Advancement/Student Affairs Janet Heeter Bass emailed Mr. Neal informing him that Muskingum would not provide the records he had requested without a release from Mr. Schaumleffel.

209. On March 31, 2017, Mr. Neal forwarded Ms. Heeter Bass’s email to members of the Tri-Valley Board of Education and Mr. Smith along with his own email stating as follows:

This response from Muskingum should make things easy. If Mr. Schaumleffel can simply sign the release, we can obtain the records and the BOE can go from there. I have had two more anonymous calls this morning and one from the TR [Zanesville *Times Recorder*] with an updated record requests. This story is not going away any time soon. In my opinion, it is time to provide the records or resign from the Board of Education....¹⁸

210. Mr. Neal provided his March 31, 2017, email to a reporter for the *Zanesville Times Reporter*, who described it in an article published in that newspaper on March 31, 2017.¹⁹

¹⁶ A copy of the Tri-Valley Local Schools’ March 28, 2017, press release is attached as *Exhibit 44*.

¹⁷ A copy of Mr. Neal’s statement is attached as *Exhibit 45*.

¹⁸ A copy of these email messages is attached as *Exhibit 46*.

¹⁹ A copy of this newspaper article, “Tri-Valley Board Member Under Investigation,” is attached as *Exhibit 47*.

211. In an April 6, 2017, article published by Whiz News, Tri-Valley School Board President Eddie Brock confirmed that the school district had received “an anonymous letter” and had participated in “some follow-up phone conversations and things like that” regarding Muskingum’s disciplinary proceedings involving Mr. Schaumleffel.

212. On information and belief, the anonymous letter and the follow-up phone conversations took place between Mr. Neal, Mr. Smith and/or Does 1-5.

213. On April 21, 2017, Mr. Neal emailed members and employees of the Tri-Valley Board of Education falsely claiming that Mr. Schaumleffel had created a “real scandal” by engaging in sexual assault against two Muskingum University students:

[Mr. Schaumleffel is involved in a] real scandal...two incidents of sexual misconduct, expulsion from Muskingum University, being banned from campus at Muskingum University, and telling lies to our constituents in a public meeting can be found within your own ranks on the Board of Education. The facts are that there are two counts of sexual misconduct at Muskingum University over two separate semesters that eventually resulted in the expulsion of Mr. Schaumleffel. A positive rape kit was performed on one of his victims and I have been in contact with local authorities and with personnel with direct knowledge of what occurred at Muskingum (not by email or text messages incidentally) who have verified all of these accusations. You all have been put in a precarious position by Mr. Schaumleffel when he stated publicly at the BOE meeting that none of the accusations were true after telling all of us in executive session that indeed... at least wo [sic] of them are true. This constitutes malfeasance (a wrongful act by a public official) and is grounds for the removal of a school board member. While I understand our obligation to keep executive session information quiet, I cannot be a part of being complicit in these lies by remaining silent. I thought that Mr. Schaumleffel might lay low and try to stay out of the public eye for a while in light of these actions, but his records request yesterday have confirmed that he has no intention of doing so. I will assure you once again... that this latest request will yield nothing other than what Mr. Schaumleffel has already been sent. As you all are aware, there are no text messages or emails aside from the ones in which he was included. As much as Mr. Schaumleffel would like to appear a victim... he simply is not. The

two girls at Muskingum are the victims. Unfortunately, the TV School District is the other victim.

We have not yet received Mr. Schaumleffels [sic] ID badge that he agreed to turn in, and we have yet to hear from his fictitious attorney. To be clear... Muskingum University has “indisputable proof” of what occurred there. They have only expelled three students in the last 21 years.... One of them being Mr. Schaumleffel. I do not believe there is an attorney in his right mind with any interest in this case. In terms of moving the meeting to Muskingum University... I included Mr. Schaumleffel in every correspondence there has been on this topic. I have not yet contacted the university to secure a meeting place, but I am completely willing to do so if that is the will of the BOE. Additionally, Mr. Schaumleffel has not signed a release of his information from Muskingum University as we requested. He did however contact the university to notify them that he would not be signing any consent to release information.

This email is a public record and I intend to include it in Mr. Schaumleffel’s most recent request.

Have a great weekend!²⁰

214. On or about May 18, 2017, Neal and the Tri-Valley Board of Education issued a media release²¹ stating that “Mr. Schaumleffel was recently expelled from Muskingum University and banned from campus property for Title IX violations (sexual misconduct).” The media release stated further that Mr. Schaumleffel “has been uncooperative and unresponsive to all questions from the community he serves. His unwillingness to answer to the public leaves the remaining board of education members no choice other than to continue to request that he remove himself from the board.” The media release stated accused Mr. Schaumleffel of being “completely unaccountable to the public.”

²⁰ A copy of Mr. Neal’s April 21, 2017, email is attached as *Exhibit 48*.

²¹ A copy of the Tri-Valley Board of Education’s May 18, 2017, media release is attached as *Exhibit 49*.

215. As a direct and proximate result of Defendant(s)' conduct detailed in this Complaint, the *Zanesville Times-Recorder* has published false and misleading newspaper accounts regarding Mr. Schaumleffel, in response to which the following Facebook postings have been made on the Facebook page of the *Zanesville Times-Recorder*:

- A post (since deleted) by someone using the pseudonym Fred Cotton calling Mr. Schaumleffel a pedophile and accusing him of being a danger to students in the Tri-Valley schools;
- A post (since deleted) stating that Mr. Schaumleffel is disgusting and a disgrace to his community;
- A post (since deleted) stating that Mr. Schaumleffel should kill himself;
- A post by Heather Justin Yingling stating, "Do you have daughters?? I have a daughter in this district and if the allegations are true he doesn't need to be an official in our schools! Period! He could easily clear this up by proving his innocence if the allegations were false but he is refusing and he is banned from that college. Does it make since [sic] for a innocent man to be banned?"
- A post by Laura Taylor Adams responding to one by Shawn Mortimer that had defended Mr. Schaumleffel: "Do you know what happened Shawn Mortimer or are you stupidlyl jumping on this guys bandwagon? That would make you an idiot. What if it came out he was screwing animals? You'd still be defending the [sic] his right to bestiality? I think if someone was concerned enough tto inform the board, it's not a simple incident. But if you know different. Tell us. If I find out. I will say what it is. Whoever wrote the letter, pm [private message] me and I will say what it is. There, easy."

- A post by Tonya M. Wisecarver stating, “If he isn’t gonna answer the questions he needs to resign period. I sure as hell don’t want him to be on the school board!!
- A post by Kara Willis Clapper stating, “What is he hiding? He won’t tell the board what happened and the board is not authorized to request what happened from Muskingum Univ. I’ll sign a petition.”
- There were five responses to Ms. Clapper’s call for a petition to remove Mr. Schaumleffel from the school board:
 - Erika Sterling responded, “Me too.”
 - Laura Taylor Adams responded, “Me too. Just tell what the accusation is. Then we will know if there is reason for concern.”
 - Ruth Davis responded, “Hopefully, the truth will come out, but in the meantime, I will sign a petition.”
 - Laura Taylor Adams again responded, “I think the truth should come out immediately. He should say what he was accused of, sounds pretty serious if he’s banned from the college. I can only assume he was stalking someone who works there.”
 - Laura Taylor Adams responded for the third time, “But since he won’t say, we can all think the worst and put it out there. He’s not going to get an attorney or he would have already. This will follow him forever, he’s smart enough to go to college, he’s smart enough to know that. Getting an attorney would put it out there publicly. I say get the petition going asap if he refuses to let people know what it is. It can only be really bad if he refuses. And it is everyones business as this guy is on a board making decisions for students.”

216. As a direct and proximate result of Muskingum's conduct detailed in this Complaint, Mr. Schaumleffel has suffered and will continue to suffer loss of educational opportunities and difficulty in gaining entrance to another university comparable to Muskingum.

Count 1 – Defamation Per Se
(Against Zambori and Dickerson)

217. Mr. Schaumleffel hereby incorporates by reference the aforementioned allegations contained in this Complaint as though fully set forth herein.

218. Ms. Zambori made false statements that Mr. Schaumleffel engaged in non-consensual sexual contact with her to Mr. Triola and other friends and acquaintances (Non-Privileged Defamation).

219. Ms. Zambori's Non-Privileged Defamation included her statement to Mr. Triola in January of 2017 that Muskingum was requesting that she file a written statement about Mr. Schaumleffel engaging in non-consensual sexual activity with her because, according to Muskingum, "it had happened to another girl."

220. Ms. Dickerson also made false statements that Mr. Schaumleffel engaged in non-consensual sexual contact with her to friends and acquaintances (Non-Privileged Defamation).

221. Ms. Dickerson's Non-Privileged Defamation included her statements to friends that Mr. Schaumleffel had engaged in non-consensual sexual intercourse with her in late November of 2016 to justify her request that they accompany her to the emergency room to have a rape kit taken and to obtain Plan B contraception.

222. Ms. Zambori and Ms. Dickerson knew and intended their Non-Privileged Defamation to damage Mr. Schaumleffel's personal and professional reputation.

223. Ms. Zambori and Ms. Dickerson knew and intended their Non-Privileged Defamation to be heard and/or read by persons in the City of New Concord, and the State of Ohio

and intended their Non-Privileged Defamation to damage Doe's personal and professional reputation.

224. Ms. Zambori and Ms. Dickerson made their Non-Privileged Defamation with actual malice and reckless disregard of their falsity, or with knowledge of their falsity.

225. Ms. Zambori's and Ms. Dickerson's Non-Privileged Defamation related to this count were not made by Ms. Zambori and Ms. Dickerson in support of any complaint they filed against Mr. Schaumleffel with Muskingum or any governmental or quasi-governmental body. Rather, Ms. Zambori's and Ms. Dickerson's Non-Privileged Defamation related to this count are: (a) completely unrelated to any complaint Ms. Zambori and Ms. Dickerson made about Mr. Schaumleffel to Muskingum or any governmental or quasi-governmental body; and (b) were not made in the presence of Muskingum employees or any other governmental or quasi-governmental body involved in an action against Mr. Schaumleffel.

226. Ms. Zambori's and Ms. Dickerson's Non-Privileged Defamation harmed Mr. Schaumleffel's professional reputation.

227. Ms. Zambori's and Ms. Dickerson's Non-Privileged Defamation amount to defamation per se because they accuse Plaintiff of criminal activity and/or injure Mr. Schaumleffel's professional reputation.

228. As a direct and proximate result of Ms. Zambori's and Ms. Dickerson's Non-Privileged Defamation, Mr. Schaumleffel suffered and will continue to suffer the damages detailed above.

Count 2 – Defamation Per Quod
(Against Zambori and Dickerson)

229. Mr. Schaumleffel hereby incorporates by reference the aforementioned allegations contained in this Complaint as though fully set forth herein.

230. Ms. Zambori made false statements that Mr. Schaumleffel engaged in non-consensual sexual contact with her to Mr. Schaumleffel's fraternity brother, Matt Triola, and other friends and acquaintances (Non-Privileged Defamation).

231. Ms. Zambori's Non-Privileged Defamation included her statement to Mr. Triola in January of 2017 that Muskingum was requesting that she file a written statement about Mr. Schaumleffel engaging in non-consensual sexual activity with her because, according to Muskingum, "it had happened to another girl."

232. Ms. Dickerson made false statements that Mr. Schaumleffel engaged in non-consensual sexual contact with her to friends and acquaintances (Non-Privileged Defamation).

233. Ms. Dickerson's Non-Privileged Defamation included her statements to friends that Mr. Schaumleffel had engaged in non-consensual sexual intercourse with her in late November of 2016 to justify her request that they accompany her to the emergency room to have a rape kit taken and to obtain Plan B contraception.

234. Ms. Zambori and Ms. Dickerson knew and intended their Non-Privileged Defamation to be heard and/or read by persons in the City of New Concord, and the State of Ohio and intended their Non-Privileged Defamation to damage Mr. Schaumleffel's personal and professional reputation.

235. Ms. Zambori and Ms. Dickerson made their Non-Privileged Defamation with actual malice and reckless disregard of their falsity, or with knowledge of their falsity.

236. Ms. Zambori's and Ms. Dickerson's Non-Privileged Defamation related to this count were not made by them in support of any complaint they filed against Mr. Schaumleffel with Muskingum or any governmental or quasi-governmental body. Rather, Ms. Zambori's and Ms. Dickerson's Non-Privileged Defamation related to this count are: (a) completely unrelated to

any complaint Ms. Zambori and Ms. Dickerson made about Mr. Schaumleffel to Muskingum or any governmental or quasi-governmental body; and (b) were not made in the presence of Muskingum employees or any other governmental or quasi-governmental body involved in an action against Mr. Schaumleffel.

237. Ms. Zambori's and Ms. Dickerson's Non-Privileged Defamation harmed Mr. Schaumleffel's professional reputation.

238. As a direct and proximate result of Roe's Non-Privileged Defamation, Mr. Schaumleffel suffered and will continue to the damages detailed above.

WHEREFORE, with regard to Counts 1-2, Mr. Schaumleffel demands judgment against Ms. Zambori and Ms. Dickerson as follows:

- (a) For actual, special, and compensatory damages, including Mr. Schaumleffel's legal fees, in an amount to be determined at trial but in no event less than \$75,000.00;
- (b) For punitive damages in an amount sufficient to deter Ms. Zambori and Ms. Dickerson from conducting similar future conduct but in no event less than \$100,000;
- (c) Judgment for attorneys' fees, pursuant any applicable statute;
- (d) Judgment for all other reasonable and customary costs and expenses that were incurred in pursuit of this action;
- (e) Pre-judgment interest and post judgment interest as may be permitted by law and statute; and/or
- (f) Such other and further relief as this Court finds just and equitable.

Count 3 -Breach of Contract
(Against Muskingum)

239. Mr. Schaumleffel hereby incorporates by reference the aforementioned allegations contained in this Complaint as though fully set forth herein.

240. Mr. Schaumleffel applied for and enrolled at Muskingum and, with the assistance of his parents, paid tuition and other fees and expenses. Mr. Schaumleffel did so in reliance on the understanding, and with the reasonable expectations, among others, that: (a) Muskingum would implement and enforce Muskingum Policies, and (b) Muskingum Policies would comply with the requirements of applicable law, including Title IX.

241. Muskingum Policies create an express contract, or, alternatively, a contract implied in law or in fact between Mr. Schaumleffel and Muskingum.

242. As set forth in this Complaint, Muskingum repeatedly and materially breached Muskingum Policies and Mr. Schaumleffel's rights under Title IX incorporated into Muskingum's Policies.

243. During all times relevant to this Complaint, Mr. Schaumleffel did all, or substantially all, of the significant things Muskingum Policies required he do. All of the foregoing breaches of contract were wrongful, without lawful justification or excuse, prejudicial, and were part of an effort to achieve a predetermined result in Mr. Schaumleffel's case: a finding of Responsible for sexual misconduct. As a direct and foreseeable result of these breaches of contract, Mr. Schaumleffel has sustained, and will continue to sustain, the damages detailed above.

WHEREFORE, with regard to Count 3, Mr. Schaumleffel demands judgment against Muskingum as follows:

- (a) For actual, special, and compensatory damages, including Mr. Schaumleffel's legal fees, in an amount to be determined at trial but in no event less than \$75,000.00;
- (b) Judgment for attorneys' fees, pursuant any applicable statute;
- (c) Judgment for all other reasonable and customary costs and expenses that were incurred in pursuit of this action;
- (d) Pre-judgment interest and post judgment interest as may be permitted by law and statute; and/or

(e) Such other and further relief as this Court finds just and equitable.

Count 4 -
Violation of Title IX –Hostile environment sexual harassment and/or discrimination
(Against Muskingum)

244. Doe hereby incorporates by reference the aforementioned allegations contained in this Complaint as though fully set forth herein.

245. Pursuant to 20 U.S.C. § 1681, Title IX is a federal statute designed to prevent sexual discrimination and/or harassment in educational institutions receiving federal funding.

246. Title IX of the Education Amendments of 1972, 20 U.S.C. §§ 1681-1688, applies to all public and private educational institutions that receive federal funds, including colleges and universities. The statute prohibits discrimination based on sex in a school’s “education program or activity,” which includes all of the school’s operations. Title IX provides in pertinent part: “[n]o 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.” 20 U.S.C. § 1681(a). The United States Supreme Court has held that Title IX authorizes private suits for damages in certain circumstances.

247. Muskingum receives federal financial assistance and is thus subject to Title IX.

248. Title IX includes an implied private right of action, without any requirement that administrative remedies, if any, be exhausted. An aggrieved plaintiff may seek money damages and other relief.

249. Both the DOE and the DOJ 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 its regulations.

34 C.F.R. § 106.8(b) (Department of Education); 28 C.F.R. § 54.135(b) (Department of Justice).

250. Title IX mandates Muskingum afford equitable procedures and due process to Mr. Schaumleffel which includes, but is not limited to those detailed in this Complaint.

251. Upon information and belief Muskingum knew, or in the exercise of due care should have known, that Muskingum employees involved in adjudicating Ms. Zambori's and Ms. Dickerson's complaint against Mr. Schaumleffel received gender biased training regarding Title IX which caused them to violate Mr. Schaumleffel's rights under Title IX and/or Muskingum Policies as detailed in this Complaint.

252. Muskingum's policies fail to meet the standards required by Title IX and/or Constitutional safeguards as interpreted by United States Courts regarding how institutions of higher education conduct disciplinary proceedings.

253. Upon information and belief, in virtually all cases of campus sexual misconduct by Muskingum, the accused student is male and the accusing student is female.

254. Muskingum created an environment in which male students accused of sexual assault, such as Mr. Schaumleffel, are fundamentally denied their rights under Title IX and/or Muskingum Policies so as to be virtually assured of a finding of Responsible. Such a biased and one-sided process deprives male Muskingum students like Mr. Schaumleffel of educational opportunities based on their gender.

255. Upon information and belief, Muskingum's investigation and/or discipline of Mr. Schaumleffel was taken to demonstrate to DOE, DOJ, OCR and/or the general public that Muskingum: (a) is aggressively disciplining male students accused of sexual assault, and (b) providing females involved in sexual misconduct proceedings with preferential treatment not provided to males.

256. Muskingum had actual or constructive knowledge that its investigation and/or discipline of Mr. Schaumleffel posed a persuasive and unreasonable risk of gender discrimination with regard to Mr. Schaumleffel.

257. Muskingum's actions and inactions detailed above and below set in motion a series of events that Muskingum knew, or reasonably should have known, would cause Muskingum's male students, such as Mr. Schaumleffel, to suffer unlawful gender discrimination.

258. Muskingum's investigation and/or discipline of Doe is discriminatory and based upon or motivated by Mr. Schaumleffel's male gender.

259. Muskingum's employees unlawfully failed to exercise the authority to institute corrective measures to remedy: (a) Muskingum's violations of Mr. Schaumleffel's rights under Muskingum Policies, Title IX, and/or guidance promulgated by OCR; and/or (b) Muskingum's unlawful determination that Mr. Schaumleffel violated Muskingum Policies which Muskingum adopted pursuant to federal laws and regulations related to Title IX.

260. Muskingum's employees exhibited deliberate indifference by refusing to remedy: (a) Muskingum's violations of Mr. Schaumleffel's rights under Muskingum Policies, Title IX, and/or guidance promulgated by OCR, and/or (b) Muskingum's erroneous determination that Mr. Schaumleffel violated Muskingum Policies which Muskingum adopted pursuant to federal laws and regulations related to Title IX.

261. Muskingum's deliberate indifference caused Mr. Schaumleffel to suffer sexual harassment and/or discrimination so severe, pervasive or objectively offensive that it deprived Mr. Schaumleffel of access to educational opportunities or benefits and caused other harms detailed in this Complaint.

262. Upon information and belief, Muskingum possesses additional documentation

evidencing its unlawful pattern of gender-biased decision making which provides preferential treatment to female students who falsely accused male students like Mr. Schaumleffel of sexual misconduct.

263. Upon information and belief, Muskingum possesses additional documentation evidencing their refusal to discipline female students who were alleged to have sexually assaulted male students.

264. As a direct result of Muskingum's violations of Mr. Schaumleffel's rights under Title IX and/or Muskingum Policies, Mr. Schaumleffel has suffered and will continue to suffer the damages detailed above.

265. Muskingum's hostile environment, sexual harassment and/or discrimination caused Mr. Schaumleffel to be damaged in an amount to be determined at trial.

Count 5 -Violation of Title IX – Deliberate Indifference
(Against Muskingum)

266. Mr. Schaumleffel hereby incorporates by reference the aforementioned allegations contained in this Complaint as though fully set forth herein.

267. Muskingum's employees acted with deliberate indifference towards Mr. Schaumleffel because of his male gender.

268. Muskingum's employees unlawfully failed to exercise the authority to institute corrective measures to remedy: (a) Muskingum's violations of Mr. Schaumleffel's rights under Muskingum Policies, Title IX, and/or guidance promulgated by OCR, and/or (b) Muskingum's erroneous determination that Mr. Schaumleffel violated Muskingum policies which Muskingum adopted pursuant to federal laws and regulations related to Title IX.

269. Muskingum's employees exhibited deliberate indifference by refusing to remedy: (a) Muskingum's violations of Mr. Schaumleffel's rights under Muskingum Policies, Title IX, and/or guidance promulgated by OCR, and/or (b) Muskingum's erroneous determination that Mr. Schaumleffel violated Muskingum Policies which Muskingum adopted pursuant to federal laws and regulations related to Title IX.

270. Upon information and belief, Muskingum possesses additional documentation evidencing their gender based deliberate indifference towards Mr. Schaumleffel and/or other similarly situated male students.

271. Muskingum's deliberate indifference caused Mr. Schaumleffel to suffer and continue to suffer the damages detailed above.

Count 6 - Violation of Title IX – Erroneous Outcome
(Against Muskingum)

272. Mr. Schaumleffel hereby incorporates by reference the aforementioned allegations contained in this Complaint as though fully set forth herein.

273. Muskingum's employees unlawfully disciplined Mr. Schaumleffel because of his male gender.

274. By erroneously disciplining Mr. Schaumleffel, Muskingum violated Muskingum Policies, Title IX, and/or guidance promulgated by OCR regarding Title IX.

275. Muskingum's employees unlawfully failed to exercise the authority to institute corrective measures to remedy: (a) Muskingum's violations of Mr. Schaumleffel's rights under Muskingum Policies, Title IX, and/or guidance promulgated by OCR, and/or (b) Muskingum's erroneous determination that Mr. Schaumleffel violated Muskingum Policies which Muskingum adopted pursuant to federal laws and regulations related to Title IX.

276. Muskingum's employees exhibited deliberate indifference by refusing to remedy: (a) Muskingum's violations of Mr. Schaumleffel's rights under Muskingum Policies, Title IX, and/or guidance promulgated by OCR, and/or (b) Muskingum's erroneous determination that Mr. Schaumleffel violated Muskingum Policies which Muskingum adopted pursuant to federal laws and regulations related to Title IX.

277. Muskingum's conduct detailed in this Complaint involved arbitrary and capricious violations of Ohio law.

278. Upon information and belief, Muskingum possesses additional communications evidencing Muskingum's erroneous discipline of Mr. Schaumleffel based on his gender.

279. Muskingum's erroneous discipline of Mr. Schaumleffel caused Mr. Schaumleffel to suffer and continue to suffer the damages detailed above.

280. Muskingum's erroneous discipline of Mr. Schaumleffel entitles Mr. Schaumleffel to injunctive relief in part because Muskingum's discipline of Mr. Schaumleffel is unlawful and violates Mr. Schaumleffel's rights under Muskingum Policies, federal and/or state laws. For, as detailed in this Complaint, Muskingum's erroneous discipline of Mr. Schaumleffel will cause irreparable harm that may be uncertain, great, actual and not theoretical. Moreover, Muskingum's discipline may not be able to be remedied by an award of monetary damages because of difficulty or uncertainty in proof or calculation. Therefore, Mr. Schaumleffel may be entitled to injunctive relief which includes, but is not limited to an Order requiring that Muskingum: (a) expunge Mr. Schaumleffel's official Muskingum student file of all information related to his encounters with Ms. Zambori and Ms. Dickerson; (b) be barred from disclosing Muskingum's aforementioned discipline of Mr. Schaumleffel to third parties in the future; and/or (c) allow Mr. Schaumleffel to immediately re-enroll at Muskingum.

Count 7 -Violation of Title IX – Selective Enforcement
(Against Muskingum)

281. Mr. Schaumleffel hereby incorporates by reference the aforementioned allegations contained in this Complaint as though fully set forth herein.

282. As detailed in this Complaint, Muskingum violates Title IX’s prohibitions against engaging in the “selective enforcement” of Muskingum Policies on the basis of gender. *See e.g., Marshall v. Indiana Univ.*, Case No. 1:15-cv-00726, 2016 U.S. Lexis 32999, *19 (S.D. Ind. Mar. 15, 2016) (emphasis in original) (citing *Routh v. Univ. of Rochester*, 981 F. Supp. 2d 184, 211-12 (W.D.N.Y. 2013) (stating that “selective enforcement” liability under Title IX occurs when a plaintiff “allege[s] facts sufficient to give rise to the inference that the school intentionally discriminated against the plaintiff *because of* his or her sex”). In addressing a selective enforcement claim raised by a male student in a similar situation to Doe, the Second Circuit noted “selective enforcement” theory requires that the school’s “decision to initiate the proceeding” or the “severity of the penalty” “was affected by the student’s gender” without regard to guilt. *Yusuf v. Vassar College*, 35 F. 3d 709, 715 (2d Cir. 1994).

283. The facts detailed in this Complaint establish that Muskingum’s decision to initiate the proceeding against Mr. Schaumleffel and/or or the severity of the penalty imposed on Mr. Schaumleffel was affected by Mr. Schaumleffel’s male gender - without regard to his guilt.

284. Muskingum’s Title IX liability to Mr. Schaumleffel caused Mr. Schaumleffel to suffer and continue to suffer the damages detailed above.

WHEREFORE, regarding Counts 4-7, Mr. Schaumleffel demands judgment and relief against Muskingum as follows:

- a. Damages in an amount in excess of Seventy-Five Thousand Dollars (\$75,000.00) to compensate Mr. Schaumleffel’s past and future pecuniary and/or non-pecuniary damages caused by Muskingum’s conduct;

- b. Order(s) requiring Muskingum to expunge Mr. Schaumleffel's official Muskingum student files of all information related to his interactions with Ms. Zambori and Ms. Dickerson;
- c. Order(s) requiring Mr. Schaumleffel's reinstatement to Muskingum;
- d. Judgment for attorneys' fees, pursuant to any applicable statute, including Title IX;
- e. Judgment for all other reasonable and customary costs and expenses that were incurred in pursuit of this action;
- f. Pre-judgment interest and post judgment interest as may be permitted by law and statute; and/or
- g. Such other and further relief as this court may deem just, proper, equitable, and appropriate.

Count 8 – Declaratory Judgment
(Against Muskingum)

285. Mr. Schaumleffel hereby incorporates by reference the aforementioned allegations contained in this Complaint as though fully set forth herein.

286. As detailed in this Complaint, Mr. Schaumleffel has a legal tangible interest in requiring Muskingum to administer Muskingum Policies, Title IX, and/or OCR guidelines in a lawful manner.

287. As detailed in this Complaint, Muskingum is opposing Mr. Schaumleffel's aforementioned legal tangible interest in part because of Muskingum's violations of Mr. Schaumleffel's rights under Title IX and/or Muskingum Policies.

288. Therefore, an actual controversy exists between Mr. Schaumleffel and Muskingum concerning said legal tangible interests.

289. Judicial intervention is required because unless Muskingum is enjoined, Muskingum's unlawful acts will cause irreparable harm to Mr. Schaumleffel which includes, but is not limited to: (a) denying Mr. Schaumleffel the benefits of his education at Muskingum; (b)

damage to Mr. Schaumleffel's academic and professional reputation; and/or (c) Mr. Schaumleffel's inability to enroll at other institutions of higher education and to pursue his chosen career.

WHEREFORE, regarding Count 8, Mr. Schaumleffel demands a Declaratory Judgment that Muskingum violated Doe's rights under Muskingum Policies, Title IX and/or OCR regulations.

Count 9 – Promissory Estoppel

(Against Muskingum in the alternative to Mr. Schaumleffel's Breach of Contract, Negligence, Fraud and/or Negligent Misrepresentation Claims)

290. Mr. Schaumleffel hereby incorporates by reference the aforementioned allegations contained in this Complaint as though fully set forth herein.

291. As described in this Complaint: (a) Mr. Schaumleffel detrimentally relied on Muskingum's promises to adjudicate Ms. Zambori's and Ms. Dickerson's false allegations of sexual misconduct in accordance with Muskingum Policies and applicable law including, but not limited to, Title IX; (b) Mr. Schaumleffel's detrimental reliance on these promises and subsequent damages detailed in this Complaint for Muskingum's breaches of these promises were foreseeable to Muskingum.

292. Muskingum's breaches caused Doe the damages detailed above in an amount to be determined at trial.

Count 10 - Negligence

(Against Muskingum in the alternative to Mr. Schaumleffel's Breach of Contract, Promissory Estoppel, Fraud and/or Negligent Misrepresentation Claims)

293. Mr. Schaumleffel hereby incorporates by reference the aforementioned allegations contained in this Complaint as though fully set forth herein.

294. As described in this Complaint: (a) Muskingum owed Mr. Schaumleffel a duty to

honor the provisions of Muskingum Policies; (b) Muskingum breached those duties by, among other things: conducting disciplinary proceedings that violated Mr. Schaumleffel's rights under Muskingum Policies; and (c) Muskingum's breaches of these duties is the cause in fact and legal cause of Mr. Schaumleffel's injuries detailed above.

295. Muskingum's negligence caused Mr. Schaumleffel to suffer and continue to suffer the damages detailed above.

Count 11 - Fraud

(Against Muskingum in the alternative to
Mr. Schaumleffel's Breach of Contract, Promissory Estoppel and/or Negligence Claims)

296. Mr. Schaumleffel hereby incorporates by reference the aforementioned allegations contained in this Complaint as though fully set forth herein.

297. Muskingum made express and implied promises to provide Mr. Schaumleffel with impartial guidance regarding Muskingum's processes and procedures for investigating and resolving the sexual misconduct allegations against him.

298. Specifically, Muskingum made express and implied promises to provide Mr. Schaumleffel with impartial guidance regarding his right to appeal the decision of the Community Standards Board.

299. By making express and implied promises to provide Mr. Schaumleffel with impartial guidance regarding his right to appeal the decision of the Community Standards Board, Muskingum intended to mislead Mr. Schaumleffel into appealing only the severity of the sanction imposed against him and not the Community Standards Board's finding that he was responsible for sexual harassment and non-consensual sexual intercourse.

300. Rather than providing Mr. Schaumleffel with impartial guidance regarding his right to appeal the decision of the Community Standards Board, Muskingum's Farley and Allan

discouraged Schaumleffel from appealing the findings of responsibility and advised him to appeal only the harshness of the sanction of expulsion.

301. In reliance on Muskingum's express and implied promises to provide Mr. Schaumleffel with impartial guidance regarding his right to appeal the decision of the Community Standards Board, Mr. Schaumleffel appealed only the harshness of his sanction.

302. Plaintiff justifiably relied on Muskingum's promises to provide him with impartial guidance regarding his right to appeal the decision of the Community Standards Board.

303. Muskingum's statements and omissions caused Mr. Schaumleffel to suffer and continue to suffer the damages detailed above.

Count 12 – Negligent Misrepresentation

(Against Muskingum in the alternative to
Mr. Schaumleffel's Breach of Contract, Promissory Estoppel and/or Negligence Claims)

304. Mr. Schaumleffel hereby incorporates by reference the aforementioned allegations contained in this Complaint as though fully set forth herein.

305. Muskingum made express and implied promises to provide Mr. Schaumleffel with impartial guidance regarding Muskingum's processes and procedures for investigating and resolving the sexual misconduct allegations against him.

306. Specifically, Muskingum made express and implied promises to provide Mr. Schaumleffel with impartial guidance regarding his right to appeal the decision of the Community Standards Board.

307. Muskingum failed to exercise reasonable care in making express and implied promises to provide Mr. Schaumleffel with impartial guidance regarding his right to appeal the decision of the Community Standards Board.

308. Rather than providing Mr. Schaumleffel with impartial guidance regarding his right

to appeal the decision of the Community Standards Board, Muskingum's Farley and Allan discouraged Mr. Schaumleffel from appealing the findings of responsibility and advised him to appeal only the harshness of the sanction of expulsion.

309. In reliance on Muskingum's express and implied promises to provide Mr. Schaumleffel with impartial guidance regarding his right to appeal the decision of the Community Standards Board, Mr. Schaumleffel appealed only the harshness of his sanction.

310. Plaintiff justifiably relied on Muskingum's promises to provide him with impartial guidance regarding his right to appeal the decision of the Community Standards Board.

311. Muskingum's statements and omissions caused Mr. Schaumleffel to suffer and continue to suffer the damages detailed above.

WHEREFORE, with regard to Counts 9-12, Mr. Schaumleffel demands judgment against Muskingum as follows:

- (a) For actual, special, and compensatory damages, including Mr. Schaumleffel's legal fees, in an amount to be determined at trial but in no event less than \$75,000.00;
- (b) Order(s) requiring Muskingum to expunge Mr. Schaumleffel's official Muskingum student files of all information related to his interactions with Ms. Zambori and Ms. Dickerson;
- (c) Order(s) requiring Mr. Schaumleffel's reinstatement to Muskingum;
- (d) Judgment for attorneys' fees, pursuant to any applicable statute;
- (e) Judgment for all other reasonable and customary costs and expenses that were incurred in pursuit of this action;
- (f) Pre-judgment interest and post judgment interest as may be permitted by law and statute; and/or
- (g) Such other and further relief as this court may deem just, proper, equitable, and appropriate.

Count 13 – Intentional Infliction of Emotional Distress
(Against Zambori, Dickerson, Muskingum and Does 1-5)

312. Mr. Schaumleffel hereby incorporates by reference the aforementioned allegations contained in this Complaint as though fully set forth herein.

313. As detailed in this Complaint, Ms. Zambori's, Ms. Dickerson's and/or Muskingum's conduct was truly extreme and outrageous.

314. Ms. Zambori intended her conduct to inflict severe emotional distress, or knew there was at least a high probability that her conduct would cause severe emotional distress to Mr. Schaumleffel detailed above.

315. Ms. Dickerson intended her conduct to inflict severe emotional distress, or knew there was at least a high probability that her conduct would cause severe emotional distress to Mr. Schaumleffel detailed above.

316. Muskingum intended its conduct to inflict severe emotional distress, or knew there was at least a high probability that Muskingum's conduct would cause severe emotional distress to Ms. Zambori intended her conduct to inflict severe emotional distress, or knew there was at least a high probability that her conduct would cause severe emotional distress to Mr. Schaumleffel detailed above.

317. Ms. Zambori's conduct caused Mr. Schaumleffel severe emotional distress and other damages detailed in this Complaint.

318. Ms. Dickerson's conduct caused Mr. Schaumleffel severe emotional distress and other damages detailed in this Complaint.

319. Muskingum's conduct caused Ms. Zambori's conduct caused Mr. Schaumleffel severe emotional distress and other damages detailed in this Complaint.

320. Ms. Zambori's, Ms. Dickerson's and Muskingum's aforementioned conduct caused Mr. Schaumleffel to suffer the damages detailed above in an amount to be determined at trial.

Count 14 – Negligent Infliction of Emotional Distress
(Against Zambori, Dickerson, Muskingum and Does 1-5)

321. Mr. Schaumleffel hereby incorporates by reference the aforementioned allegations contained in this Complaint as though fully set forth herein.

322. Ms. Zambori owed Mr. Schaumleffel a duty to not engage in the conduct alleged in this Complaint.

323. Ms. Dickerson owed Mr. Schaumleffel a duty to not engage in the conduct alleged in this Complaint.

324. Muskingum owed Mr. Schaumleffel a duty to not engage in the conduct alleged in this Complaint.

325. Ms. Zambori breached the duties she owed Mr. Schaumleffel to not engage in the conduct detailed in this Complaint and this breach was the proximate cause of Mr. Schaumleffel's severe emotional distress and other damages detailed in this Complaint.

326. Ms. Dickerson breached the duties she owed Mr. Schaumleffel to not engage in the conduct detailed in this Complaint and this breach was the proximate cause of Mr. Schaumleffel's severe emotional distress and other damages detailed in this Complaint.

327. Muskingum breached the duties it owed Mr. Schaumleffel to not engage in the conduct detailed in this Complaint and this breach was the proximate cause of Mr. Schaumleffel's severe emotional distress and other damages detailed in this Complaint.

328. Ms. Zambori's, Ms. Dickerson's and Muskingum's aforementioned conduct caused Mr. Schaumleffel to suffer the damages detailed above in an amount to be determined at trial.

Count 15 - Breach of the Covenant of Good Faith and Fair Dealing
(Against Muskingum)

329. Mr. Schaumleffel repeats and re-alleges each and every allegation hereinabove as

if fully set forth herein.

330. Based on the aforementioned facts and circumstances, Muskingum acted in bad faith in causing the erroneous discipline of Mr. Schaumleffel and/or the disproportionate sanction imposed on Mr. Schaumleffel.

331. Based on the aforementioned facts and circumstances, Muskingum breached and violated a covenant of good faith and fair dealing implied in their agreement(s) with Mr. Schaumleffel.

332. As a direct and foreseeable consequence of these breaches, Mr. Schaumleffel suffered the damages detailed above.

333. Mr. Schaumleffel is entitled to recover damages for Muskingum's breach of the express and/or implied contractual obligations described above.

334. As a direct and proximate result of the above conduct, Mr. Schaumleffel sustained the damages detailed above.

WHEREFORE, with regard to Counts 13-15, Mr. Schaumleffel demands judgment against Ms. Zambori, Ms. Dickerson, Muskingum and/or Does 1-5 as follows:

- (a) For actual, special, and compensatory damages, including Mr. Schaumleffel's medical fees and legal fees, in an amount to be determined at trial but in no event less than \$75,000.00;
- (b) For punitive damages in an amount sufficient to deter Ms. Zambori, Ms. Dickerson and/or Muskingum from conducting similar future conduct but in no event less than \$100,000;
- (c) Order(s) requiring Muskingum to expunge Mr. Schaumleffel's official Muskingum student files of all information related to his interactions with Ms. Zambori and Ms. Dickerson;
- (d) Order(s) requiring Mr. Schaumleffel's reinstatement to Muskingum;
- (e) Judgment for attorneys' fees, pursuant to any applicable statute;

- (f) Judgment for all other reasonable and customary costs and expenses that were incurred in pursuit of this action;
- (g) Pre-judgment interest and post judgment interest as may be permitted by law and statute; and/or
- (h) Such other and further relief as this court may deem just, proper, equitable, and appropriate.

Count 16 – Defamation Per Se
(Against Neal and Does 1-5)

335. Mr. Schaumleffel hereby incorporates by reference the aforementioned allegations contained in this Complaint as though fully set forth herein.

336. Neal received false information regarding Mr. Schaumleffel’s conduct at Muskingum that was disclosed by Does 1-5 in violation of the Family Educational Rights and Privacy Act.

337. Neal republished information regarding Mr. Schaumleffel’s conduct at Muskingum to employees of the Tri-Valley Local School District, members of its Board of Education, journalists, and, upon information and belief, to others.

338. Neal republished false information received regarding Mr. Schaumleffel’s conduct at Muskingum as alleged in Paragraph 214 above.

339. In addition, on or about May 18, 2017, Neal and the Tri-Valley Board of Education issued a media release²² stating that “Mr. Schaumleffel was recently expelled from Muskingum University and banned from campus property for Title IX violations (sexual misconduct).” The media release stated further that Mr. Schaumleffel “has been uncooperative and unresponsive to all questions from the community he serves. His unwillingness to answer to the public leaves the remaining board of education members no choice other than to continue to request that he remove

²² See Exhibit 49.

himself from the board.” The media release stated accused Mr. Schaumleffel of being “completely unaccountable to the public.”

340. Does 1-5 and Neal knew and intended the information regarding Mr. Schaumleffel’s conduct at Muskingum to damage Mr. Schaumleffel’s personal and professional reputation.

341. Does 1-5 and Neal published information about Mr. Schaumleffel’s conduct at Muskingum without privilege.

342. Does 1-5 and Neal published information about Mr. Schaumleffel’s conduct at Muskingum with malice and reckless disregard of its falsity, or knowledge of its falsity.

343. By republishing information that had been disclosed to him in violation of FERPA and that Mr. Schaumleffel had denied, Neal engaged in actions or omissions that are manifestly outside the scope of his employment and his acts or omissions were malicious, in bad faith, or wanton or reckless.

344. The information published by Does 1-5 and Neal harmed Mr. Schaumleffel’s professional reputation.

345. The information published by Does 1-5 and Neal amounts to defamation per se because they accuse Mr. Schaumleffel of criminal activity and/or injure Mr. Schaumleffel’s professional reputation.

346. As a direct and proximate result of the disclosure of false information about Mr. Schaumleffel’s conduct at Muskingum by Does 1-5 and Neal, Mr. Schaumleffel suffered and will continue to suffer the damages detailed above.

Count 17 – Defamation Per Quod
(Against Neal and Does 1-5)

347. Mr. Schaumleffel hereby incorporates by reference the aforementioned allegations contained in this Complaint as though fully set forth herein.

348. Neal received false information regarding Mr. Schaumleffel's conduct at Muskingum that was disclosed by Does 1-5 in violation of the Family Educational Rights and Privacy Act.

349. Neal republished information regarding Mr. Schaumleffel's conduct at Muskingum to employees of the Tri-Valley Local School District, members of its Board of Education, journalists, and, upon information and belief, to others.

350. Neal republished false information received regarding Mr. Schaumleffel's conduct at Muskingum as alleged in Paragraph 214 above.

351. In addition, on or about May 18, 2017, Neal and the Tri-Valley Board of Education issued a media release²³ stating that "Mr. Schaumleffel was recently expelled from Muskingum University and banned from campus property for Title IX violations (sexual misconduct)." The media release stated further that Mr. Schaumleffel "has been uncooperative and unresponsive to all questions from the community he serves. His unwillingness to answer to the public leaves the remaining board of education members no choice other than to continue to request that he remove himself from the board." The media release stated accused Mr. Schaumleffel of being "completely unaccountable to the public."

²³ See Exhibit 49

352. Does 1-5 and Neal knew and intended the information regarding Mr. Schaumleffel's conduct at Muskingum to damage Mr. Schaumleffel's personal and professional reputation.

353. Does 1-5 and Neal published information about Mr. Schaumleffel's conduct at Muskingum without privilege.

354. Does 1-5 and Neal published information about Mr. Schaumleffel's conduct at Muskingum with malice and reckless disregard of its falsity, or knowledge of its falsity.

355. By republishing information that had been disclosed to him in violation of FERPA and that Mr. Schaumleffel had denied, Neal engaged in actions or omissions that are manifestly outside the scope of his employment and his acts or omissions were malicious, in bad faith, or wanton or reckless.

356. The information published by Does 1-5 and Neal harmed Mr. Schaumleffel's professional reputation.

357. As a direct and proximate result of the disclosure of false information about Mr. Schaumleffel's conduct at Muskingum by Does 1-5 and Neal, Mr. Schaumleffel suffered and will continue to suffer the damages detailed above.

Count 18 – False Light Invasion of Privacy
(Against Neal and Does 1-5)

358. Mr. Schaumleffel hereby incorporates by reference the aforementioned allegations contained in this Complaint as though fully set forth herein.

359. Does 1-5 and Neal disclosed private information regarding Mr. Schaumleffel's consensual sexual activity at Muskingum in a manner that placed him in a false light.

360. The private information that Does 1-5 and Neal disclosed about Mr. Schaumleffel's conduct at Muskingum was private and confidential according to the provisions of the Family Educational Rights and Privacy Act.

361. The false light in which Does 1-5 and Neal disclosures about Mr. Schaumleffel's consensual sexual activity at Muskingum placed Mr. Schaumleffel would be highly offensive to a reasonable person.

362. Does 1-5 and Neal had knowledge of or acted in reckless disregard as to the falsity of the publicized matter and the false light in which Mr. Schaumleffel would be placed.

363. As a direct and proximate result of the disclosures by Does 1-5 and Neal that placed Mr. Schaumleffel in a false light, Mr. Schaumleffel suffered and will continue to suffer the damages detailed above.

Count 19 – Publication of Private Facts
(Against Neal and Does 1-5)

364. Mr. Schaumleffel hereby incorporates by reference the aforementioned allegations contained in this Complaint as though fully set forth herein.

365. Neal received false information regarding Mr. Schaumleffel's consensual sexual activity at Muskingum that was disclosed by Does 1-5 in violation of the Family Educational Rights and Privacy Act.

366. Neal republished information regarding Mr. Schaumleffel's consensual sexual activity at Muskingum to employees of the Tri-Valley Local School District, members of its Board of Education, journalists and, upon information and belief, to others.

367. By disclosing information about Mr. Schaumleffel's consensual sexual activity at Muskingum that was false and protected by the Family Educational Rights and Privacy Act, Does 1-5 and Neal wrongfully intruded into Mr. Schauleffel's private activities.

368. The information about Mr. Schaumleffel's consensual sexual activity at Muskingum disclosed by Does 1-5 and Neal was not a matter of legitimate public concern.

369. Does 1-5 and Neal acted in such a manner as to outrage or cause mental suffering, shame or humiliation to a person of ordinary sensibilities.

370. Does 1-5 acted with malice and knowledge or reckless disregard that their actions that they were wrongfully intruding into Mr. Schaumleffel's private activities in a manner that would cause him to outrage or cause mental suffering, shame or humiliation.

371. As a direct and proximate result of Does 1-5 and Neal wrongfully intruding into his private activities, Mr. Schaumleffel suffered and will continue to suffer the damages detailed above.

WHEREFORE, with regard to Counts 16-19, Mr. Schaumleffel demands judgment against Does 1-5 and Neal as follows:

- (g) For actual, special, and compensatory damages, including Mr. Schaumleffel's legal fees, in an amount to be determined at trial but in no event less than \$75,000.00;
- (h) For punitive damages in an amount sufficient to deter Does 1-5 and Neal from conducting similar future conduct but in no event less than \$100,000;
- (i) Judgment for attorneys' fees, pursuant any applicable statute;
- (j) Judgment for all other reasonable and customary costs and expenses that were incurred in pursuit of this action;
- (k) Pre-judgment interest and post judgment interest as may be permitted by law and statute; and/or
- (l) Such other and further relief as this Court finds just and equitable.

Respectfully submitted,

ROSENBERG & BALL CO., LPA
By: /s/ Eric J. Rosenberg
Eric J. Rosenberg (0069958)
David T. Ball (Ohio Bar #0078885)

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Attorneys for Jason Schaumleffel

JURY DEMAND

Plaintiff hereby demands a trial by a jury on all issues so triable of the within cause.

Respectfully submitted,

ROSENBERG & BALL CO., LPA

By: /s/ Eric J. Rosenberg
Eric J. Rosenberg (0069958)