

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

EMILY KOLLARITSCH; SHAYNA GROSS;
JANE ROE 1 and JANE ROE 2;

Plaintiffs,

Case No.

v.

Hon.

MICHIGAN STATE UNIVERSITY
BOARD OF TRUSTEES; DENISE MAYBANK,
in her individual and official capacity as
Vice President for Student Affairs;
LOU ANNA SIMON, in her individual and official
capacity as President of the Michigan State University; and
KAPPA SIGMA FRATERNITY,

Defendants.

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COMPLAINT AND JURY DEMAND

Plaintiffs, through their attorneys, submit this Complaint and state the following:

PARTIES AND JURISDICTION

1. Defendant Michigan State University Board of Trustees (“Trustees”) operates and governs Michigan State University (“MSU”), a public, state university located in Lansing, MI.

2. Defendant Denise Maybank (“Maybank”) is, and was at all times relevant, the Vice President for Student Affairs at MSU.

3. Defendant Lou Anna Simon is, and was at all times relevant, the President of MSU.

4. Defendant Kappa Sigma Fraternity (“Kappa Sigma”) is a national fraternity that operates, and at all relevant times operated, a chapter at MSU.

5. Plaintiff Emily Kollaritsch (“Kollaritsch”) was, at all times relevant, a student at MSU.

6. Plaintiff Shayna Gross (“Gross”) was at all times relevant, and still is, a student at MSU.

7. Plaintiff Jane Roe 1 was, at all times relevant, and still is, a student at MSU.

8. Plaintiff Jane Roe 2 was, at all times relevant, and still is, a student at MSU.

9. Michigan State University receives federal financial assistance and is therefore subject to the dictates of Title IX.

10. This court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331 and over state law claims pursuant to 28 U.S.C. § 1367.

11. Venue in this Court is proper under 28 U.S.C. § 1391(b) because the events giving rise to this claim took place in this judicial district, and Defendants reside in this judicial district.

BACKGROUND FACTS RELEVANT TO ALL COUNTS

12. The Trustees, by the Michigan state constitution, are vested with the authority to supervise, control, and govern MSU.

13. The Office of Civil Rights (“OCR”), a division of the United States Department of Education (“DOE”), is responsible for the implementation, interpretation, and enforcement of Title IX.

14. The OCR has promulgated numerous documents outlining the requirements for an educational institution to be in compliance with Title IX, including the Dear Colleague Letter of April 4th, 2011 (“DCL”), which deals specifically with peer-on-peer sexual harassment and sexual assault.

15. The DOE was authorized by Congress to promulgate regulations to govern the implementation, interpretation and enforcement of Title IX.

16. The DCL is a “significant guidance document,” intended to provide educational institutions with clarity as to the requirements they must follow in order to be in compliance with the DOE.

17. The DCL specifically outlines the requirements that educational institutions must follow regarding peer-on-peer sexual harassment and assault.

18. A failure to adhere to the requirements outlined in the DCL could result in the loss of federal funding for an educational institution.

19. In 2015, the OCR initiated an investigation into MSU to determine if MSU had violated their requirements under Title IX with regard to the handling of complaints of sexual harassment and sexual assault on campus.

20. In September 2015, the OCR released its report regarding the findings of its investigation into MSU. The OCR found that MSU:

- Failed to notify students and employees of the name or title of the Title IX Coordinator;
- Failed to notify students and employees of MSU’s notice of non-discrimination;
- Had grievance procedures that were not in compliance with Title IX;

- Failed to respond to reports of sexual harassment and sexual violence in a prompt and equitable manner, thereby causing and contributing to a sexually hostile environment on campus.

21. At the time of the conduct alleged herein, MSU's official policy was to complete an investigation into a report of sexual harassment and/or sexual assault within ninety days of the formal report.

22. Based on information and belief, MSU consistently, and virtually always, failed to complete their sexual harassment and/or assault investigations within the ninety-day time period prescribed in MSU's official policies.

23. At the time of the conduct alleged herein, MSU had an official policy against retaliation for any person that filed a complaint of sexual assault and/or sexual harassment.

24. At the time of the alleged conduct herein, MSU had a policy to always take interim measures to protect the complainant, based on the information reported, whether or not the claimant wished to proceed with a formal investigation. Some of the interim measures recognized by MSU were:

- No contact orders;
- Housing rearrangement for either party;
- No trespass orders;
- Interim suspensions; and
- Facilitating class changes for either party.

FACTS APPLICABLE TO PLAINTIFF KOLLARITSCH

25. Between October 1, 2011 and October 14, 2011, John Doe 1 attempted to rape Plaintiff Kollaritsch in his dormitory room at Case Hall, a dormitory owned and operated by MSU.

26. On October 15, 2011, John Doe 1 sexually assaulted Plaintiff Kollaritsch in the stands at an MSU football game.

27. On January 30, 2012, Kollaritsch reported her sexual assaults to the MSU Police Department.

28. Shortly afterward, the MSU Police Department reported the assaults to the MSU Office of Inclusions (“I3”).

29. On February 3, 2012, Kollaritsch met with Amanda Garcia-Williams (“Garcia-Williams”), MSU’s Title IX Coordinator, to formally commence a university investigation against John Doe.

30. Upon filing a formal complaint, MSU did not provide any accommodations to ensure that Kollaritsch would not encounter John Doe on campus, and John Doe was allowed to remain on campus, unrestricted, throughout the pendency of MSU’s investigation.

31. John Doe and Kollaritsch lived in the same dormitory, and frequented the same cafeteria and public areas around the dormitory.

32. Kollaritsch actually encountered John Doe on multiple occasions, subsequent to filing her official report. On more than one instance, Kollaritsch encountered John Doe at a dormitory cafeteria. On each of these occasions, Kollaritsch experienced a panic attack, and was forced to leave the building, often crying, lightheaded, and significantly distraught.

33. Throughout the pendency of the investigation, Kollaritsch often slept in her friends’ dormitory rooms, because she feared sleeping in her own room.

34. Approximately 200 days after her official complaint, Kollaritsch received an Investigation Report from MSU. This was 140 days longer than what the DOE considers

reasonable for the length of an investigation, and 80 days longer than MSU's own policies require for the completion of an investigation.

35. The Investigation Report did not accurately reflect the facts surrounding Kollaritsch's allegations of sexual assault, and in fact, characterized the assaults in a much less egregious manner.

36. The Investigation Report concluded that John Doe had violated the MSU Sexual Harassment Policy, but did not specify which policies were violated. In other words, John Doe was not explicitly found responsible for committing sexual assault.

37. Subsequently, John Doe was given the option to accept or deny the allegations prior to a judicial hearing to determine a sanction for his conduct.

38. John Doe accepted responsibility.

39. Kollaritsch was discouraged by Garcia-Williams from attending the MSU judicial board hearing to determine John Doe's sanction. The judicial board did not read the victim impact statement Kollaritsch prepared, nor was she ever informed of what the possible sanctions for John Doe could be.

40. Garcia-Williams specifically told Kollaritsch prior to the hearing that no student had ever been expelled from MSU as a result of sexually assaulting another student.

41. On November 13, 2012, over nine months after Kollaritsch's report, Kollaritsch was finally informed that as a sanction for his violation of the MSU Code of Conduct, John Doe was (1) put on a probationary status, (2) required to write an essay, and (3) required to obtain a letter from an employer organization demonstrating that John Doe could abide by MSU's rules of conduct. A "no contact" order was also issued to John Doe.

42. Garcia-Williams specifically informed Kollaritsch that John Doe had five days to appeal the sanctions. Garcia-Williams did not inform Kollaritsch of her right to appeal the sanction within five days as well.

43. Because Kollaritsch has a hearing disability, which was known to Garcia-Williams, on November 16th, 2012, Kollaritsch requested the official sanctioning documents to confirm the sanctions because it was difficult for her to hear the sanctions over the phone. After initially refusing, Garcia-Williams agreed to send Kollaritsch the documents. The document was sent to Kollaritsch on November 21, 2012, after her five-day period to appeal had expired.

44. After John Doe received his sanctions, he began to retaliate against Kollaritsch by stalking, harassing and intimidating Kollaritsch, despite the “no contact” order in place.

45. Kollaritsch was stalked, harassed and/or intimidated by John Doe on at least nine occasions after John Doe’s sanctions had been levied.

46. Kollaritsch reported the additional harassment to her MSU advocate, Shari Murgittroyd (“Murgittroyd”). Murgittroyd responded by discouraging Kollaritsch from pursuing a formal complaint for the additional harassment she was experiencing. Eventually, after Kollaritsch continued to report John Doe 1’s stalking behavior to Murgittroyd, Murgittroyd relented, and encouraged Kollaritsch to report the retaliation to MSU.

47. On February 4, 2013, Kollaritsch contacted Rick Shafer (“Shafer”), the Associate Director of MSU Student Life, and Garcia-Williams to report John Doe’s retaliatory harassment. In response, Shafer specifically discouraged Kollaritsch from reporting the harassment to the MSU police, and instead encouraged her to file a complaint with the MSU Office of Inclusion.

48. MSU did not provide any interim safety measures after Kollaritsch reported John Doe’s retaliatory harassment to Shafer and Garcia-Williams.

49. Also in February 2013, Shafer admitted to Kollaritsch that he had made a mistake in allowing John Doe to remain in Case Hall, the same dormitory building in which Kollaritsch was living. Shafer informed Kollaritsch that she shouldn't be so afraid of John Doe, but did not offer to remove John Doe from the dormitory or restrict John Doe in any way. Instead, Shafer offered to void Kollaritsch's housing contract and encouraged her to move to an off-campus apartment.

50. On March 11, 2013, Kollaritsch filed a formal complaint ("Retaliation Complaint") regarding John Doe's retaliatory harassment with Garcia-Williams.

51. When Kollaritsch filed her Retaliation Complaint, Garcia-Williams told her that there was a difference between retaliation and just seeing John Doe, and consistently suggested that Kollaritsch needed mental health services.

52. Because MSU took no measures to protect Kollaritsch's safety following John Doe's sanction hearing, and through her Retaliation Complaint, Kollaritsch filed for a Personal Protection Order ("PPO") in East Lansing District Court on March 13, 2013. The next day, Kollaritsch was issued an ex-parte PPO by Judge Ball.

53. John Doe subsequently filed a motion to terminate the PPO, on the grounds that it was impacting his life and he had no desire to contact Kollaritsch. On June 4, 2013, Judge Ball denied John Doe's motion, ordering that the PPO remain in place because Kollaritsch was in reasonable danger.

54. On April 25, 2013, Murgittroyd told Kollaritsch that what had happened was not that bad because it was not actual rape. Murgittroyd also told Kollaritsch that Kollaritsch should be happy that John Doe was sanctioned at all.

55. On May 28, 2013, Garcia-Williams e-mailed Kollaritsch her investigative report regarding the Retaliation Complaint. Garcia-Williams had concluded that no retaliation had occurred, and John Doe had not further violated MSU's Code of Conduct.

56. Kollaritsch was not allowed to be involved in the investigation process, nor was there a hearing. Further, Kollaritsch was never informed of her right or ability to appeal the conclusions.

57. On June 4, 2013, Kollaritsch filed a written response to Garcia-Williams' report, and deemed it an appeal, because she had not been told if she could appeal the findings, or how to appeal the findings.

58. In her response, Kollaritsch pointed out that Garcia-Williams had failed to account for several pieces of evidence that Kollaritsch had provided. Further, Garcia-Williams failed to interview one of Kollaritsch's corroborating witnesses.

59. Further, Kollaritsch presented evidence that John Doe's corroborating witness was not credible. During the hearing on John Doe's motion to terminate the PPO, he produced a witness that, under oath, admitted that he could not identify Kollaritsch. This same witness was used as a corroborating witness during Garcia-Williams' investigation to show that John Doe did not harass Kollaritsch. When Kollaritsch pointed out that John Doe's witness was not credible, Garcia-Williams chose not to re-consider her final conclusions.

60. On June 25, 2013, Kollaritsch informed Murgittroyd that Kollaritsch was fearful for her safety on campus. Murgittroyd responded that Kollaritsch should just transfer to another university.

61. On August 5, 2013, Kollaritsch met with Denise Maybank, MSU's Vice President of Student Affairs and William Beekman, MSU's Vice President. Kollaritsch expressed her fear

that she was not safe on campus. Maybank asked Kollaritsch what she thought the appropriate sanction should be for John Doe. Kollaritsch replied that John Doe should have been expelled or suspended.

62. On August 19, 2013, Kollaritsch received an e-mail from Maybank effectively refusing to do anything about Kollaritsch’s complaints. Instead, she told Kollaritsch to contact the MSU Police Department to create a “safety plan.” The MSU police department informed Kollaritsch that the “safety plan” consisted of locking her door, locking her windows and closing her blinds.

63. Frustrated, and fearful for her safety, Kollaritsch took multiple temporary leaves of absence from MSU. Kollaritsch did not attend classes during the fall semester of her senior year, nor during the fall semester of the following year.

64. Defendant’s and MSU’s actions and inactions in response to Kollaritsch’s report of sexual assault, and later, her report of retaliation, subjected her to additional harassment and created a sexually hostile environment for Kollaritsch on campus.

65. As a result of Defendant’s and MSU’s actions and inactions in response to Kollaritsch’s report of sexual assault, and later, her report of retaliation, Kollaritsch was deprived of several educational opportunities and/or benefits, including but not limited to:

- A drop in her GPA;
- The inability to sleep in her own dorm room;
- Avoidance of all social activities on campus, or sponsored by, or related to MSU;
- The need to seek multiple academic accommodations from professors;
- The need to take multiple temporary leaves of absence from classes; and
- An unusually large amount of absences from classes.

BACKGROUND FACTS RELATED TO SHAYNA GROSS

66. Based on information and belief, John Doe sexually assaulted another female student on campus while both were participating in MSU's ROTC program.

67. At all times relevant, John Doe was a member, in good standing of MSU's chapter of Kappa Sigma.

68. Plaintiff Gross was an acquaintance of, and friendly with John Doe.

69. In February of 2013, John Doe asked Gross, via text message, if she wanted to hang out with him at the Kappa Sigma fraternity house. Gross responded that she would hang out with him, but made it clear that it was "only as friends," to which John Doe agreed.

70. That night, Gross and a friend of hers, went to John Doe's fraternity house. Gross was given alcoholic drinks to drink by John Doe.

71. At one point during the night, and the next day, Gross could only recollect flashes of the evening. The next day, John Doe informed Gross that they had engaged in sexual intercourse one time at the fraternity house, one time in her dormitory room at Case Hall, and one time in his dormitory room in Case Hall.

72. Gross had little to no recollection of engaging in sexual intercourse with John Doe.

73. Gross officially reported her assault to the MSU Office of Inclusion on February 12, 2014, after Plaintiff Kollaritsch had reported to MSU that John Doe had sexually assaulted her, and after John Doe, based on information and belief, sexually assaulted another female student in the ROTC program.

74. Upon reporting her assault, Gross was told by Garcia-Williams that her investigation would be completed in ninety days.

75. Gross e-mailed Garcia-Williams multiple times for status updates regarding her investigation. Garcia-Williams almost never responded immediately, often times waiting a week to respond.

76. In fact, Gross' investigation was not completed until October 14, 2014, over eight months after Gross made her official complaint. The report concluded that John Doe had sexually assaulted Gross.

77. On November 13, 2014, Gross e-mailed MSU President Simon to express her concerns with the way that the Office of Inclusion had handled her investigation.

78. Throughout the investigative process, John Doe was allowed to remain on campus, unrestricted.

79. On January 28, 2015, over three months after the investigation concluded, and almost a year after her initial report, a disciplinary hearing was held. Gross was told that the only way to get communications directly from MSU regarding the hearing was to attend the hearing herself. Otherwise, she would have to receive communications through Garcia-Williams. Though she did not want to attend the hearing, given Garcia-Williams' untimeliness in communicating with Gross and the excessive time it took for the investigation to actually conclude, Gross decided to attend so as to be able to receive communications directly.

80. On February 3, 2015, a sanction of expulsion was levied on John Doe.

81. On February 10, 2015, John Doe appealed the sanction.

82. On March 2, 2015, MSU's appellate board denied John Doe's appeal and upheld the sanction.

83. On March 16, 2015, John Doe submitted a second appeal.

84. On March 24, 2015, over thirteen months after Gross' initial report, Maybank informed Gross that she had decided to disregard the investigation completed by MSU, and hire the law firm of Warner Norcross & Judd LLP to conduct a brand new investigation. Nowhere in MSU's Student Life Handbook or MSU's Relationship Violence & Sexual Misconduct Policy was there authority for Maybank to order a brand new investigation, conducted by an independent law firm.

85. Gross was given no information regarding the parameters of the new investigation, how it would be conducted, or any timelines regarding its completion.

86. During Gross' interview with the lawyers from Warner Norcross & Judd LLP, Gross requested that her attorney and her MSU advocate, Murgittroyd be present. The lawyers allowed Gross' attorney to be present but not Murgittroyd. Murgittroyd then called someone at Defendant Regents directly, who told the lawyers to allow Murgittroyd to remain in the room during Gross' interview.

87. On May 13, 2015, Gross received the findings of the new investigation. The new investigation found that John Doe 1 and his witnesses were not credible. Nevertheless, the report concluded that Gross and John Doe had engaged in sexual relations that night, but they could not find that the relations were "non-consensual."

88. On May 20, 2015, Gross appealed these findings.

89. On June 12, 2015, Gross' appeal was denied.

90. Throughout the pendency of the entire investigatory, adjudicatory and appellate process, John Doe was allowed to remain on campus, where Gross could have encountered him at any time. Based on information and belief, John Doe was also allowed to remain as a member in good standing of both ROTC and his fraternity.

91. At least one professor initially refused to provide academic accommodations to Gross, despite her being registered with the Resource Center for Persons with Disabilities (“RCPD”). Gross was forced to contact her sexual assault counselor, who then contacted a representative from the RCPD to help resolve the issue.

92. Defendant’s and MSU’s actions and inactions in response to Gross’ report of sexual assault, subjected her to additional harassment and created a sexually hostile environment for Gross on campus.

93. As a result of Defendant’s and MSU’s actions and inactions in response to Gross’ report of sexual assault, Gross was deprived of several educational opportunities and/or benefits, including but not limited to:

- Being forced to register with the RCPD due to her inability to maintain her academic schedule;
- Leaving multiple class sessions in tears due to the stress of the process;
- Falling asleep in class due to the sleep deprivation caused by the stress of the process;
- Dropping a class because one of John Doe’s friends was on the same bus route at the same time as Gross needed to be to get to that class;
- Avoidance of all social activities on campus, or sponsored by, or related to MSU;
- Withdrawing participation in extra-curricular activities, including various theatre projects; and
- The need to seek multiple academic accommodations from professors.

BACKGROUND FACTS RELATED TO JANE ROE 1

94. Plaintiff Jane Roe 1 incorporates all paragraphs of this Complaint as if fully alleged herein.

95. On November 1, 2013, Plaintiff Jane Roe 1 was sexually assaulted on campus by John Doe 2, a fellow student at MSU.

96. Jane Roe 1 immediately went to Sparrow Clinton Hospital to have a Sexual Assault Nurse Examiner (“SANE”) examination performed. She also reported the sexual assault to the MSU Police Department.

97. On February 25, 2014, Jane Roe 1 filed a formal complaint with Garcia-Williams. At this meeting, Garcia-Williams promised to interview two of Jane Roe 1’s witnesses prior to the upcoming spring break.

98. On March 18, 2014, Jane Roe 1 contacted Garcia-Williams for an update on the status of her complaint. On March 19, 2014 Garcia-Williams responded that she was waiting for the results of Jane Roe 1’s SANE examination. Jane Roe 1 asked if there was anything that could be done while Garcia-Williams was waiting for the SANE report. Garcia-Williams said that nothing could be done.

99. On April 18, 2014, Jane Roe 1 contacted Garcia-Williams again for an update on the status of her complaint. On April 19, 2014, Garcia-Williams informed Jane Roe 1 that she was still waiting for the SANE report. Again, Jane Roe 1 asked if there was anything she could do to expedite the process. Garcia-Williams informed Jane Roe 1 that there was nothing she could do.

100. In late April of 2014, Jane Roe 1’s mother contacted Garcia-Williams on behalf of her daughter. Garcia-Williams again told Jane Roe 1’s mother that she had yet to obtain the SANE

report, nor had she interviewed John Doe 2. For the first time, she did mention that John Doe 2 had withdrawn from MSU for the time being.

101. On May 6, Jane Roe 1's mother again contacted Garcia-Williams for an update. Garcia-Williams informed Jane Roe 1's mother that she had still not received the SANE report. Jane Roe 1's mother then called Sparrow Hospital to see why the SANE report had not been sent. She was informed that the SANE report had been sent to Garcia-Williams on March 14, 2014. The hospital indicated it would send the SANE report to Garcia-Williams again. Jane Roe 1's mother then called Garcia-Williams to inform her that the SANE report had already been sent, and was going to be sent again.

102. On May 20, 2015, Jane Roe 1's mother called Garcia-Williams and left a message asking for a status update.

103. On May 22, 2015, after not receiving a call back, Jane Roe 1's mother called Garcia-Williams again. Garcia-Williams was unavailable, so Jane Roe 1's mother drove to campus to speak with her directly. She was informed by the Title IX office that Garcia-Williams was in, but that she was busy with meetings all day.

104. Later that day, Garcia-Williams called Jane Roe 1's mother and informed her that she had spoken to John Doe 2, and he was going to let her know what he wanted to do with regard to the investigation by May 30, 2014.

105. On May 30, 2014, the deadline for John Doe 2 to respond to Garcia-Williams, neither Jane Roe 1 nor her mother were contacted by Garcia-Williams.

106. On June 30, 2014, Jane Roe 1's mother called Garcia-Williams for a status update. Garcia-Williams told Jane Roe 1's mother that Garcia-Williams was working on setting up a time

to meet with John Doe 2. There were no consequences for John Doe 2 missing the previous deadline to respond.

107. Jane Roe 1's mother also expressed her, and Jane Roe 1's, concern that John Doe 2 could return to campus without their knowledge. Jane Roe 1's mother also learned on this phone call that Garcia-Williams had not reviewed the SANE report.

108. On July 21, 2014, Jane Roe 1's mother called Garcia-Williams for a status update. Garcia-Williams did not pick up. Jane Roe 1's mother then drove to campus, and was told again, that Garcia-Williams was in the office, but was busy.

109. On July 30, 2014, Jane Roe 1's mother had a call with Garcia-Williams and Garcia-Williams' supervisor, Paulette Russell, Senior Advisor to the President for Diversity and Director of the Office for Inclusion and Intercultural Initiatives. Jane Roe 1's mother expressed her dissatisfaction with the way Garcia-Williams had handled her daughter's investigation, and expressed her desire to have someone else handle the investigation from that point on. Russell promised to look into the matter and get back to Jane Roe 1's mother by the following Friday.

110. On August 1, 2014, the date on which Russell promised to respond to Jane Roe 1's mother, Russell did not respond. Russell, in fact, never responded to Jane Roe 1's mother.

111. On November 4, 2014, Garcia-Williams e-mailed Jane Roe 1 letting her know that she had drafted a report of findings related to Jane Roe 1's investigation, which was available for Jane Roe 1 to pick up at the Office of Inclusion. Frustrated with the whole process, Jane Roe 1 did not respond.

112. On December 15, 2014, Garcia-Williams e-mailed Jane Roe 1 and informed her that their investigation had determined that there was insufficient evidence to support a finding that John Doe 2 violated MSU's Sexual Harassment Policy.

113. In total, MSU took approximately nine months to complete the investigation.

114. Defendant's and MSU's actions and inactions in response to Jane Roe 1's report of sexual assault subjected her to additional harassment and created a sexually hostile environment for Jane Roe 1 on campus.

115. As a result of Defendant's and MSU's actions and inactions in response to Jane Roe 1's report of sexual assault, Jane Roe 1 was deprived of several educational opportunities and/or benefits, including but not limited to:

- Being forced to move back home due to the stress of dealing with the process;
- Seeking academic accommodations from several professors;
- Being absent from and tardy to class on a larger basis than ordinary;
- Avoiding MSU's campus at night; and
- Avoiding virtually all social events on MSU's campus, or in other ways affiliated with or sponsored by MSU.

BACKGROUND FACTS RELATED TO JANE ROE 2

116. Plaintiff Jane Roe 2 was sexually assaulted by John Doe 3 on August 23, 2013.

117. Jane Roe 2 reported her assault to I3 on or about August 26, 2013.

118. Garcia-Williams commenced an investigation, and interviewed John Doe 3 on September 3, 2013.

119. On December 10, 2013, Garcia-Williams issued her report, finding John Doe 3 to have violated the MSU Student Code of Conduct.

120. On January 29, 2014, six months after Jane Roe 2 made her initial report, MSU conducted a hearing to determine John Doe 3's sanction for sexually assaulting Jane Roe 2. Ultimately, John Doe 3 received a sanction of expulsion.

121. John Doe 3 appealed this decision to Maybank. On April 7, 2014, almost eight months after Jane Roe 2 filed her initial complaint, Maybank upheld John Doe 3's expulsion.

122. On May 5, 2014, Jane Roe 2 was notified by MSU that John Doe 3 had received permission to return to campus on May 10, 2014 to attend MSU's graduation ceremony.

123. This decision was made without any consultation whatsoever with Jane Roe 2.

124. That same day, Jane Roe 2 formally appealed this decision, as she intended to attend the graduation ceremony herself.

125. On May 7, 2014, Jane Roe 2's appeal was denied.

126. Subsequently, Jane Roe 2 met with Maybank to discuss Maybank's decision to allow John Doe 3 back on campus. Maybank informed Jane Roe 2 that there was nothing Maybank could do to prevent him from coming back.

127. After John Doe 3 had already been allowed back on campus, upon learning about the events leading up to John Doe 3's allowance back on campus, President Simon said to Jane Roe 2 that it was a mistake that John Doe 3 was allowed to return back to campus.

128. By the time the entire process had played itself out, John Doe 3 was allowed to complete the semester. He subsequently transferred to another college, without having to disclose his expulsion.

129. Throughout this entire process, John Doe 3 was allowed to remain on campus, subject to the terms of a Personal Protection Order filed by Jane Roe 2. Nevertheless, Jane Roe 2 actually did encounter John Doe 3 on campus on at least one occasion.

130. Throughout the entire process, John Doe 3 was allowed to remain in his position as a front desk employee of the dormitory building directly across from the building in which Jane

Roe 2 was an employee. Moreover, by virtue of his position, John Doe 3 had access to all of Jane Roe 2's contact information, including which dormitory and room number she lived in.

131. Defendant's and MSU's actions and inactions in response to Jane Roe 2's report of sexual assault subjected her to additional harassment and created a sexually hostile environment for Jane Roe 2 on campus.

132. As a result of Defendant's and MSU's actions and inactions in response to Jane Roe 2's report of sexual assault, Jane Roe 2 was deprived of several educational opportunities and/or benefits, including but not limited to:

- A drop in her academic grades;
- Being forced to register with the RCPD;
- The need to seek multiple academic accommodations;
- Avoiding all social events that did not take place within her own dormitory building;
- Withdrawing participation with MSU's rugby team;
- Withdrawing participation in events associated with her major, including but not limited to fashion shows and galas; and
- Frequently missing work due to meetings with the administration regarding her complaint.

FIRST CAUSE OF ACTION
DISCRIMINATION ON THE BASIS OF GENDER IN VIOLATION OF 20 U.S.C. § 1681
(TITLE IX)
(ALL PLAINTIFFS AGAINST DEFENDANT TRUSTEES)

133. Plaintiffs incorporate all paragraphs of this Complaint as if fully set forth herein.

134. The acts, and failures to act, perpetrated against Plaintiffs amounted to unlawful sexual harassment and discrimination on the basis of gender. One or more administrators or

officials of MSU, with authority to take corrective action on Plaintiffs' behalf, had actual notice of said discrimination and failed to adequately respond, in violation of their own policies. Those failures amounted to deliberate indifference toward the unlawful sexual conduct that had occurred, was occurring, or was likely to occur.

135. Additionally, and/or in the alternative, Defendant Trustees failed to enact and/or disseminate and/or implement proper or adequate policies to discover, prohibit or remedy the kind of discrimination that Plaintiffs suffered. This failure included, without limitation, non-existent or inadequate customs, policies or procedures for the recognition, reporting, investigation and correction of unlawful discrimination. Those failures amounted to deliberate indifference toward the unlawful sexual conduct that had occurred, was occurring, or was likely to occur.

136. Defendant Trustees acted with deliberate indifference in deviating significantly from the standard of care outlined by the DOE in the Dear Colleague Letter of 2011.

137. As a result of Defendant Trustees' deliberate indifference, Plaintiffs suffered loss of educational opportunities and/or benefits and have and will continue to incur attorney fees and costs of litigation.

SECOND CAUSE OF ACTION
VIOLATION OF CIVIL RIGHTS UNDER 42 U.S.C. §1983
(ALL PLAINTIFFS AGAINST DEFENDANTS MAYBANK AND SIMON)

138. Plaintiffs incorporate all paragraphs of this Complaint as if fully set forth herein.

139. Plaintiffs, as female university students, were members of a protected class under the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution. Plaintiffs also enjoyed the constitutionally protected Due Process right to be free from the invasion of bodily integrity through sexual molestation, abuse, assault or rape. The various acts as alleged herein amounted to a violation of these clearly established constitutionally protected rights, of

which reasonable persons in the defendants' position should have known. Defendants Maybank and Simon had a duty to prevent student-on-student sexual molestation, abuse, assault and rape, said duty arising under the above-referenced constitutional rights and also under clearly established rights against discrimination pursuant to Title IX. By failing to prevent John Doe's, John Doe 2's, and John Doe 3's aforementioned molestations, abuse, assaults and rapes upon Plaintiffs, and/or by responding to known reports of John Doe's, John Doe 2's and John Doe 3's sexually inappropriate behavior with female students, including Plaintiffs, in a manner that was so clearly unreasonable as to amount to deliberate indifference, Defendants Maybank and Simon are liable to Plaintiffs, pursuant to federal law 42 U.S.C. §1983.

140. Defendant Trustees is also liable to Plaintiffs under 42 U.S.C. §1983 for the following:

- Maintaining customs, policies and/or procedures of inadequate and/or non-existent monitoring and/or investigation of John Doe, John Doe 2 and John Doe 3, so as to amount to deliberate indifference as to known or obvious consequences of John Doe's, John Doe 2's, and John Doe 3's behavior, up to and including violations of the aforementioned equal protection and due process rights, and unlawful discrimination under Title IX; and
- Failing to adequately train administrators, employees and others in a position to discover, report, investigate or prevent the acts complained of herein, which amounted to the above referenced violations of constitutional rights and/or federal law.

THIRD CAUSE OF ACTION
ELCRA (SEX DISCRIMINATION)
(ALL PLAINTIFFS AGAINST DEFENDANT TRUSTEES)

141. Plaintiffs incorporate all paragraphs of this Complaint as if fully set forth herein.

142. Plaintiffs and members of the Plaintiff Classes are members of a protected class pursuant to the Constitution of the State of Michigan and the ELCRA, MCL 37.2101 et seq. and MCL 37.2301.

143. The facilities operated by the Defendant Trustees were and are an educational institution under the ELCRA, MCL 37.2401 et seq. and MCL 37.2301.

144. Defendant Trustees' policies and practices, including failure to properly warn, train and/or educate its students regarding the prevention of sexual harassment and/or assault, and the failure to properly investigate reports of sexual harassment and assault have a disparate impact on Plaintiffs as females by subjecting them to increased levels of sexual abuse, assault and other violence on campus in comparison to male students and by subjecting them to increased levels of emotional distress and other harm by virtue of Defendants' failures to promptly and appropriately address complaints of sexual assault.

145. Defendant Trustees' acts and omissions based upon Plaintiffs' gender have resulted in harm to Plaintiffs including physical and emotional harm, and Plaintiffs being denied privileges and opportunities that should be available to MSU students in violation of MCL 37.2103 et seq.; MCL 37.2701(a)(f).

FOURTH CAUSE OF ACTION
NEGLIGENCE
(PLAINTIFF GROSS AGAINST DEFENDANT KAPPA SIGMA)

146. Plaintiffs incorporate all paragraphs of this Complaint as if fully set forth herein.

147. Defendant Kappa Sigma had a duty to protect Plaintiff Gross as an invitee to Kappa Sigma's local MSU chapter. This created a special relationship between Defendant Kappa Sigma and Plaintiff Gross who was temporarily entrusted to Defendant Kappa Sigma's care. Defendant Kappa Sigma voluntarily accepted the entrusted care of Plaintiff Gross. As such, Defendant Kappa Sigma owed Plaintiff Gross a duty of care.

148. Defendant Kappa Sigma, by and through its agents, servants and employees, knew or reasonably should have known of John Doe 1's dangerous and exploitive propensities. It was foreseeable that if Defendants did not adequately exercise or provide the duty of care owed to invitees, including but not limited to Plaintiff Gross, female invitees would be vulnerable to sexual assault by John Doe 1.

149. Defendant Kappa Sigma breached its duty of care to Plaintiff Gross by allowing John Doe 1 to come into contact with Plaintiff Gross without supervision; by failing to adequately supervise, or retain John Doe 1 who it permitted and enabled to have access to Plaintiff Gross; by failing to investigate or otherwise confirm or deny such facts about John Doe 1; by failing to warn Plaintiff Gross that John Doe 1 posed a risk of sexually assaulting female students, including Plaintiff Gross; and/or by holding out John Doe 1 to Plaintiff Gross as being in good standing and trustworthy.

150. As a result of the above-described conduct, Plaintiff Gross has suffered, and continues to suffer physical injury, great pain of mind and body, shock, emotional distress, physical manifestations of emotional distress, embarrassment, loss of self-esteem, disgrace, humiliation, and loss of enjoyment of life; has suffered and continues to suffer spiritually; was prevented and will continue to be prevented from performing Plaintiff Gross' daily activities and obtaining the full enjoyment of life; has sustained and will continue to sustain loss of earnings and

earning capacity; and/or has incurred and will continue to incur expenses for medical and psychological treatment, therapy, and counseling.

WHEREFORE, Plaintiffs pray for damages; punitive damages; costs; interest; statutory/civil penalties according to law; attorneys' fees and costs of litigation, pursuant to 42 U.S.C. §1988 or other applicable law; and such other relief as the court deems appropriate and just.

Respectfully submitted,
NACHT, ROUMEL & SALVATORE, P.C.

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Dated: November 18, 2015

DEMAND FOR TRIAL BY JURY

NOW COME Plaintiffs, by and through their counsel, and hereby demand a trial by jury as to all of those issues so triable as of right.

Respectfully submitted,
NACHT, ROUMEL & SALVATORE, P.C.

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