

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

SARA WECKHORST,

Plaintiff,

v.

CIV. NO.:

KANSAS STATE UNIVERSITY,
an agency of the State of Kansas,

Defendant.

COMPLAINT AND JURY DEMAND

Plaintiff, Sara Weckhorst, alleges the following as her Complaint against Defendant, Kansas State University (“K-State”):

INTRODUCTION

1. This is a civil rights case brought by K-State student Sara Weckhorst, who was raped by two K-State students during a fraternity event and again later at the fraternity house. More than a dozen K-State students witnessed one of the rapes, and some of them posted videos and photographs of the rape on social media.

2. Sara immediately reported the rapes to K-State, but K-State refused to investigate because they occurred “off campus,” showing deliberate indifference to Sara’s report of rapes by its students.

3. To this day, and despite months of continued pleading from Sara and her family to investigate the rapes and remove these rapists from K-State, Sara has been left to languish on campus in fear and under the constant risk of encountering the two unpunished, perhaps emboldened, student-assailants.

4. K-State has firsthand knowledge of the dangers of fraternities. In the years 2011-2013, K-State reported 13 forcible sex offenses on-campus and 10 off-campus, and in 2014 K-State reported 16 rapes, 6 of which occurred off-campus. According to police reports, many of those off-campus rapes occurred at K-State fraternities. Yet, K-State refuses to disclose such acts of violence and tells students, prospective students, parents, and the campus community that Greek life is “safe and fun.”

5. K-State’s interpretation of its sexual assault policy deliberately turns its back on one of the most dangerous aspects of its campus life, conveniently writing fraternity rape out of its responsibility. Because of this its unlawful position and refusal to investigate the rapes of Sara and other fraternity rape victims, K-State is under federal investigation by the United States Department of Education.

6. Plaintiff brings this action to vindicate her statutory right to equal educational opportunities, rights that K-State has violated and will continue to violate absent relief from this Court.

JURISDICTION

7. This Court has subject matter jurisdiction over this matter pursuant to 28 U.S.C. §§ 1331 and 1343 because this litigation involves matters of federal law including claims made under Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. § 1681 *et seq.*

8. This Court also has supplemental jurisdiction over the state law claims pursuant to 28 U.S.C. § 1367.

9. K-State is located in Kansas, and the relevant facts occurred in Kansas, so venue in this Court is proper under 28 U.S.C. § 1391(b).

10. Defendant, K-State, is a state institution as defined by K.S.A. § 75-6102(a) and is subject to liability under the Kansas Tort Claims Act.

PARTIES

11. Plaintiff, Sara Weckhorst, is a citizen and resident of the State of Kansas, and at all times relevant to the misconduct by Defendant she was a student at K-State.

12. Defendant, K-State, is a public institution of higher education located in Manhattan, Kansas, and is a recipient of federal financial assistance within the meaning of 20 U.S.C. § 1681(a).

GENERAL ALLEGATIONS

I. Sara Was Raped by Multiple K-State Students

13. On April 26, 2014, Sara, then a freshman at K-State, accepted an invitation to a fraternity event at Pillsbury Crossing, a frequent K-State party location not far from campus. Sara became extremely incapacitated from consuming a large amount of alcohol and blacked out. Her last memory was speaking with a new acquaintance, J.F., a fellow K-State student and the fraternity sober designated driver for the party. Preying on Sara's incapacitated state, J.F. took Sara into his truck and raped her while about fifteen K-State students looked on, some taking video and photographs.

14. J.F. then transported Sara to the fraternity house, which is situated about a quarter mile from campus. On the drive, he assaulted her again.

15. Once at the fraternity house, J.F. took Sara to the "sleep room," lined with beds, and raped her again. When he was finished, he left her there, naked and passed out, and joined other fraternity members in partying downstairs.

16. Several hours later, at about 10:00 pm, Sara awoke from blackout, not knowing where she was or how she got there. A man she did not know was raping her from behind. She later learned the man was J.G., a K-State sophomore and a member of the fraternity. Still very intoxicated and confused, Sara made her way out of the bed and to a nearby patio. J.G. followed her to the patio and raped her again.

17. J.G. informed Sara that two fraternity brothers had penetrated her in the same day. Sara began to cry uncontrollably, having no recollection of the earlier sexual assaults. She retrieved her clothing and went home.

18. Sara later received a text from a K-State student stating “heard you got fucked at the lake,” and rumors about Sara, and upon information and belief photographs and videos of her, were posted on social media and widely spread.

19. The next day Sara began piecing together what had happened. She wanted to receive medical treatment from the K-State Lafene Health Center, but it was closed. She went to the Health Center the following day and was provided emergency contraception to prevent pregnancy from the rapes.

20. Sara next went to Mercy Regional Health Center where a sexual assault nurse performed a rape kit to collect evidence of the assaults on her body. The rape kit procedure is an extremely intense and invasive process which takes hours. The rape kit included an examiner placing a probe in Sara’s vagina, taking samples off her skin and under her fingernails, combing through her pubic hair, and taking pictures of her body and vagina. Sara also received antibiotics to prevent the transmission of sexually transmitted diseases she might have contracted from the rapes.

II. K-State Refused to Investigate the Rapes Committed By Its Students

21. Sara sought help from the K-State Women's Center and the Manhattan Rape Crisis Center. Mary Todd, the director of Women's Center, assisted Sara in drafting and filing a complaint against the two student-assailants with the K-State Affirmative Action Office.

22. On May 5, 2014, Sara met with K-State investigator Ameerah McBride of the Office of Affirmative Action, who was charged with enforcing the University's sexual misconduct policy. Ms. McBride delivered shocking news: K-State would do nothing about the rapes or the two student-assailants because the rapes occurred off-campus. Though the student-assailants violated the K-State Student Conduct Code, Sections 3(A)(3), (10), and possibly others, for which "disciplinary sanctions will be imposed," K-State would not investigate or take action to hold the student-assailants responsible, remove them from campus, sanction them, or protect Sara and the rest of the student population from their presence on campus in any way.

23. Despite being a stone's throw from campus, the University-recognized fraternity house where Sara was raped, housing only K-State students, is like all K-State fraternities deemed by K-State to be "off-campus." Though the University-recognized fraternity hosted the party at Pillsbury Crossing, that rape too was ignored under K-State policies. That the fraternity house director is a K-State instructor also did not matter to K-State.

24. Ms. McBride cited K-State's policy against investigating off-campus sexual violence unless it occurs at a University-sponsored event or the sexual violence relates to discrimination, harassment, or retaliation alleged on-campus.

25. Under Title IX and K-State's own policy, Sara's report of sexual violence should have triggered an investigation into the rapes.

26. The U.S. Department of Education, Office for Civil Rights, in a 2011 Dear Colleague Letter, laid out the specific Title IX requirements applicable to sexual violence at educational institutions, explaining that under Title IX “[s]chools may have an obligation to respond to student-on-student sexual harassment that initially occurred off school grounds, outside a school’s education program or activity. If a student files a complaint with the school, regardless of where the conduct occurred, the school must process the complaint in accordance with its established procedures. Because students often experience the continuing effects of off-campus sexual harassment in the educational setting, schools should consider the effects of the off-campus conduct when evaluating whether there is a hostile environment on campus.”

27. Despite Sara reporting to K-State the continuing effects of the rapes in the educational setting, including fear of encountering the student-assailants on campus, K-State did not take those effects into account in evaluating the hostile environment she suffered and refused to investigate the assaults under its off-campus policy.

28. Under its own definition, the rapes of Sara *were* covered by the K-State policy. K-State defines “harassment” in the “academic environment” as conduct toward a person based on sex that “has the purpose and effect” of “creating an intimidating, hostile, or offensive educational environment for the person” or “unreasonably interfering with the academic performance or participation in any university-sponsored activity of the person;” or “threatening the academic opportunities of the person” and is sufficiently severe or pervasive that it alters the terms, conditions, or privileges of the person’s academic opportunities or participation in university-sponsored activities.”

29. The sexual violence committed by two K-State students against Sara placed her at risk and in constant fear of encountering the student-assailants on campus. This amounted to an

intimidating, hostile, or offensive educational environment which unreasonably interfered with the academic performance and participation in her education, threatening her academic opportunities.

30. K-State was well aware of, and even investigated, the harassing and retaliatory posts on social media, and this internet harassment should have triggered an investigation into Sara's complaint of rapes and sanctioning of the student-assailants. The sexual violence related directly to the internet harassment, and that conduct had "the purpose and effect of creating an intimidating, hostile, or offensive educational environment" for Sara, "threatening the academic opportunities" for Sara, and was "sufficiently severe or pervasive" that it altered Sara's academic opportunities.

31. Further, upon information and belief, K-State has in other circumstances investigated off-campus reports of sexual assaults, including a sexual assault by a K-State basketball player.

32. Sara was devastated that K-State refused to even investigate the rapes she suffered at the hands of two of its students with whom she shared the campus. Upon leaving the K-State office, she headed to Riley County Police Department to report the rapes.

33. After Ms. McBride informed Sara that K-State would not take any action on her behalf, Ms. McBride called the student-assailants to inform them Sara had filed charges against them for rape. Ms. McBride should not have done this, as she had already told Sara K-State would not investigate the rapes. Doing so invaded Sara's privacy rights, protected by Federal Educational Rights and Privacy Act. Not only did Ms. McBride refuse to act on Sara's behalf, she egregiously exposed Sara to potential retaliation, compromised her safety, placed her in fear,

and undermined the police investigation by tipping off the student-assailants and giving them an opportunity to coordinate their stories.

34. Upon information and belief, several K-State employees disagreed with the approach of not investigating fraternity sexual assault and expressed to University officials the concern that off-campus rape does affect a student's on-campus experience. University officials told employees that because there is so much misconduct at fraternities, K-State had taken the position to do its best to *not* investigate or adjudicate that misconduct, including reports of rape, purposely attempting to keep a chasm between K-State and incidents which happen off-campus.

35. Upon information and belief, K-State inconsistently applies its off-campus policy in determining when an off-campus sexual assault is sufficiently related to on-campus discrimination or harassment to warrant an investigation.

36. Sara was forced to attend K-State alongside the two student-assailants, living in constant hypervigilance and dread, fearing she would encounter her attackers at any time. She hid in her dormitory, stopped going to classes, and her grades suffered dramatically. She was forced to drop her math class.

37. For safety, K-State suggested Sara avail herself of the "Wildcat Walks," where fellow students accompany students as they walk around campus, "SafeRide," where fellow students drive students home on weekends, and the telephone number for campus police. Under this suggestion, the burden was placed on Sara to protect herself. Sara could have students serve as bodyguards or call the police for help coping with the daily risk of encountering the two student-assailants, rather than K-State investigating the perpetrators and taking corrective action against them.

38. Not yet ready to accept that K-State would not investigate multiple rapes by multiple students, Sara next meet with Karen Low, the Assistant Dean for the Office of Student Life, and Heather Reed, the Associate Dean for the Office of Student Life. The Deans again told Sara they considered this off-campus rape so they would not investigate.

39. The Deans told Sara the fraternity was already on probation for previous misconduct and if she filed a report about the alcohol present at their parties, K-State would be able to suspend the chapter.

40. Sara was shocked to learn K-State had a process in which the chapter could be punished for alcohol but not for fraternity members who commit rape against other students.

41. At the Deans' request, Sara filed an anonymous report about the presence of alcohol at the fraternity party. In response, the Dean of Student Life, Pat Bosco, approved K-State's Interfraternity Council's ("IFC") decision to suspend the fraternity for the alcohol at the party at which Sara had been raped.

42. On May 21, 2014, Ms. McBride informed Sara that K-State would investigate online comments about Sara by unidentified individuals on social media which occurred following the rapes. However, such investigation would not lead to the sanction, expulsion, or any accountability of the two student-assailants.

43. In response, Sara and her parents made very clear to K-State their dismay that K-State refused to respond to the rapes and their serious concern about Sara's safety on campus and ability to access her education. Sara wrote to Ms. McBride:

This has been a confusing and frustrating process since the moment I stepped into your Affirmative Action Office. At our first meeting I made it very clear that I was raped three times and that it was by two of my fellow Kansas State University students. [J.F.], designated driver of the day and member of [the fraternity] raped me quite publicly at Pillsbury Crossing. This designated driver ([J.F.]) was well aware that I had been drinking and knew I was unable to give consent. He

relocated me (again without my ability to give consent) to his [fraternity] house. Where he raped me again (and, yes, again without my consent). When he was finished with me, he relocated me to [the fraternity's] sleeping room where another individual ([J.G.]) raped me. And that was how I woke up/came to...I was being raped again (and I did NOT nor was I able to give consent). It was [J.G.]/rapist #2 who told me I had already been raped twice by [J.F.]/rapist #1. Even so, you told me that you would not investigate ANY of this. What you WOULD, however, investigate was sexual harassment that occurred after these THREE SEXUAL ASSAULTS because Kansas State wants to hide behind a vague policy that it all took place off campus. How is it that a fraternity house is off campus but KSU can charge them with drinking violations (also not a university sponsored function) but not raping me? And then have the audacity to ask me to file a report turning them in for drinking but not raping me.

I told you at our first meeting that it was very difficult for me to be fully engaged in classes knowing what people are saying and thinking about me as everything has been put out on the yik-yak app and various forms of social media. I told you that many people were calling me and texting me wanting to know what happened. I told you that the yik-yak app was most damaging but since that was an anonymous app, it was difficult to say who was behind the awful stories and harassment and possible video of the Pillsbury Crossing rape by [J.F.]. My mother sat in this same meeting and questioned why will you not go after the acts of sexual violence and assault by your students and only investigate sexual harassment that these two rapists may or may not be a part of. Again, you couched all your terms in that these three rapes happened off campus and K-State will do NOTHING therefore to eliminate these individuals from campus. And, yet the very day of our first meeting, you contact them and tell them charges have been filed against them. I completely FAIL TO UNDERSTAND why based on what I shared with you at this meeting why you felt it necessary to tell them charges were filed. What were your charges based on? If you can't go after them for raping me THREE times, what did you feel was going to be accomplished by talking with them about an anonymous yik-yak app and providing them my written statement before giving the police a chance to criminally investigate them?

Shortly thereafter you told Mary Todd that you had turned this entire situation over to university legal counsel and were waiting on direction from them and meanwhile my mother spoke with Heather Reed who told my mother that the investigation had ceased completely. Do you understand my confusion, not to mention my fear in being on campus with these men while trying to prepare for and take finals? No one from the University has once reached out to keep us informed. If we didn't call, we didn't hear FROM ANYONE.

Based on my experience to date, I feel like I have done my best to follow this process in the correct way and it has been a complete miscarriage on the part of AAO and K-State. What more can I supply only to have it too damage my self-esteem, my collegiate endeavors, my safety on campus, my belief in justice?

You were provided with a complaint form filed by Mary Todd with an addendum reporting the second rape by [J.F.]. You have a statement via mandatory reporter. I fully understand why victims of crimes such as this do not come forward. They are (as I am) victimized again and again by institutions that refuse to do the right thing even when our nation is screaming loud and clear that sweeping these sexual violent crimes under the carpet and excusing these offenders must stop. It is my sincere hope that Kansas State University's investigation leads to [J.F.] and [J.G.]'s permanent expulsion for my safety and that of all female K-State students.

44. Sara's parents provided a similar message to Ms. McBride:

Our daughter's letter and all of her statements have consistently detailed the ongoing issues of discrimination and humiliation resulting from the sexual assaults and the impact on her campus safety and wellbeing. . . [W]e have consistently asked for an investigation and our expectations have not changed. The fact that you can address off campus alcohol related behaviors with a fraternity, but cannot address a rape culture by that same fraternity is appalling. Our expectations for a University investigation and support for our daughter and future victims remains. Sara has been incredibly brave and forthcoming with her experience and our family remains committed to justice and safety. . . Let there be no misunderstanding, our expectations remain that the University has both a moral and legal obligation to take action to protect Sara's right to a safe educational environment and to ensure the wellbeing of future students.

* * *

[W]e find it incredibly condescending and insulting that you closed your May 21 letter indicating that you value Sara's presence at KSU and your commitment to maintaining an environment free of harassment. Your limited and untimely actions do not support this statement at all and we are left hoping that the University might actually learn from this experience so that other families do not have to experience the added trauma of an ineffective University response.

45. Over the months following the assaults, Sara and her family continued to plead with K-State to investigate the rapes. Again and again, K-State refused.

46. On June 5, 2014, Sara, accompanied by her family, drove seven hours to return to campus to meet with Dean Low, Scott Jones, Assistant Dean, Office of Student Life, and Roberto Malenado-Franzen, Interim Director, Affirmative Action Office. Sara and her family again begged K-State to investigate the rapes, expressing the extraordinary toll the assaults and K-

State's refusal to investigate had on Sara's mental health, education, wellbeing, and self-worth. They explained the grave security and safety concerns she had about spending the next two years on campus with the unpunished, perhaps emboldened, student-assailants. In response, the K-State officials again told Sara that because this was an off-campus rape, nothing could be done.

47. In response to K-State's refusal to acknowledge the impact of the assaults on Sara's education, Sara's mother read and gave the Deans a letter describing how the rapes "bleed over" to make Sara's campus experience hostile environment, profoundly impacting her education, safety, and wellbeing:

This "bleed over" is all over everything... her safety, her self-worth, her ability to fairly seek an education. This "bleed over" has seeped all over your campus and it has seeped so deep into her mind and soul, I do not know if she will ever be able to recover. This will continue to affect our daughter for the rest of her life. No diplomacy or glad-handing done here today will ever band-aid what has been done by this facility of higher education. How does "bleed over" stop if you allow [J.F.] and [J.G.] to stay on campus right along side Sara?

48. After the meeting, without permission, warning, informing, or obtaining Sara's consent, Dean Scott pulled language from an email Sara had written to K-State voicing her frustration with the University's refusal to investigate the rapes, put her words into a complaint, attached her name to it, and submitted it to the K-State Office of Greek Affairs. Doing so contributed to and worsened the hostile environment Sara suffered at K-State. The complaint was a superficial cover to give an appearance of action. Greek Affairs did not have jurisdiction to punish the student-assailants, only the fraternity. Dean Scott, in violation of Sara's rights as guaranteed under Federal Educational Rights and Privacy Act, released Sara's highly sensitive, private information, including her full name and a detailed description of the multiple rapes, to student peers on the IFC board without any chance of this action benefiting Sara. This shattered

any remaining sense of privacy, and Sara has since lived day-to-day not knowing who she might encounter who knows the details about the nightmare she endured.

III. K-State Knew of the Danger Posed to Students in Fraternity Houses

49. By establishing the boundaries of its campus to not include fraternity houses, and drafting its sexual assault policies to limit K-State's enforcement of those policies only to incidents which occur on-campus, K-State made an already precarious situation even more hazardous.

50. As K-State is aware, extensive research, literature, and other credible information establish the danger posed by fraternities. Statistics, insurance claims analyses, studies and reports, and widely known incidents of catastrophic injury, rape, and death have for decades demonstrated the foreseeable risk of dangerous injury, sexual assault, and death at fraternities.

51. In the late 1980s, the Fraternity Insurance Purchasing Group, a consortium of Greek organizations organized to coordinate risk management strategies, widely published that "fraternities and sororities were ranked by the National Association of Insurance Commissioners as the sixth-worst risk for insurance companies – just behind hazardous waste disposal companies and asbestos contractors."

52. A 2007 peer-reviewed research study by John Foubert, Johnathan Newberry, and Jerry Tatum published in the NASPA journal found that fraternity men are three times more likely to commit rape than non-fraternity men on campus. A 2006 study, *A Prospective Analysis of Sexual Assault Perpetration: Risk Factors Related to Perpetrator Behavior*, published in the *Journal of Interpersonal Violence*, came to the same result. A 2000 Department of Justice Report, *The Sexual Victimization of College Women*, recognized that 10.3 percent of campus rapes occur in a fraternity house.

53. A 2011 article published in *The Oracle: The Research Journal of the Association of Fraternity/Sorority Advisors* reviewed research indicating that the disproportionate amount of rape committed by fraternity members was related to a fraternity culture which encourages sexual aggression by promoting views which support female subservience, male dominance, and rape-supportive attitudes.

54. Beyond the institutional research, K-State had firsthand knowledge of the dangers of fraternities since such information was annually gathered and compiled by K-State for its campus crime statistics reporting. In the years 2011-2013, K-State reported 13 forcible sex offenses on-campus and 10 off-campus, and in 2014 K-State reported 16 rapes, 6 of which occurred off-campus. According to police reports, many of the off-campus rapes and forcible sex offenses occurred in fraternity houses.

55. Police reports indicate at least 11 forcible rapes were perpetrated at K-State fraternities between 2012 and the present. Given the statistically low number of rapes reported to the police, it is safe to assume the actual number is significantly higher. Police reports also indicate domestic violence occurred at the fraternity house where Sara was raped prior to her assaults, including a highly dangerous incident in which the perpetrator strangled and punched his girlfriend. Upon information and belief, at least two other students were raped at K-State fraternities by K-State students, reported the assaults to K-State, and K-State refused to investigate their assaults because they occurred off-campus.

56. The risk posed by the fraternity to women like Sara was real, and the environment of this particular chapter is shockingly abhorrent, evidenced by its tolerance and, likely, encouragement of members who posted the following on social media:

a. A photograph of naked member, his genitals covered only the barrel of a rifle;

b. A photograph of a woman's breasts, scantily clad by a bra, with "RUSH [fraternity]" and "FUCKPROBATION" written across her breasts;

c. "Getting a 1.7 gpa with a 1.7 BAC...."

d. "24/7 Open door. 2 free beers. American traditions. ...
#FatandSkinnygirlsWELCOME..."

e. A photo of President Obama in a noose, with the comment, "were all thinkin it."

f. "Congratulations Syria! Your now top of my hate list! After...#obama
#terrorists #niggers #mexicans #liberals #chicks #nontobaccousers"

g. "How would someone say, 'come over and fuck me?' #trynottobefat"

h. "Damn KState chinks walking around in Eskimo jackets like its cold!
Throw in a dip and warm up! Or go back to Ching Chong Land!"

i. "i bet id fuck the ifcs presidents girlfriend if i had the chance... oh wait hes probably such a chach he doesnt have one or is gay."

j. "'Got it in' In chapter room last night -guess you say that's going out with a bang #last shacker of [fraternity]."

IV. K-State's Misleading Representation of its Greek System

57. Not only is K-State deliberately indifferent to sexual violence committed against its students at K-State's many fraternity houses, it has chosen not to warn or even accurately disclose to students and parents, including the Weckhorsts, the risks associated with fraternities.

In promoting K-State to potential students by speaking about the Greek Community and its relationship with it, K-State declares:

The Greek community at Kansas State University has been in existence since 1913, with a continuing tradition of excellence. Through the years we have been a community that fosters academic excellence, leadership ability, philanthropic services, and active contributions to both the campus and Manhattan communities. Our Greek community consists of 17 sororities and 28 fraternities, with a total membership of almost 4,000 undergraduate students. While each organization maintains its own activities, traditions, and national affiliations, each is founded on similar principles of scholarship, leadership, community service, and lifelong friendship.

58. K-State further endorses fraternities and sororities to the parents of potential students giving the appearance of association and safety:

The Greek experience at K-State provides a safe and fun way to maximize the college experience. Your son or daughter will also find personal growth and development extending far beyond his or her years on campus.

59. K-State boasts that 21% of the undergraduate student population is affiliated with its fraternities and sororities. K-State embraces fraternities as integral to the K-State community experience in its promotional materials. Greek Life and K-State are inextricably and intimately tied together. The Office of Greek Affairs is located in the K-State Student Union, K-State hosts an extensive Greek Affairs website (www.k-state.edu/fsl; FSL is short for “Fraternity and Sorority Life”), and K-State employs five individuals as the Greek Affairs staff. The Greek Affairs office is responsible for a number of functions to support fraternities and sororities including administrative assistance, advisory responsibilities, education and development, serving as a liaison to chapter presidents, regular meeting with chapters, and chapter assessments.

60. K-State is aware of many other incidents of fraternity misconduct and neglected to disclose that information to students, like Sara, so they could protect themselves. Yet all appears safe in fraternity houses from the promotional information K-State chooses to disclose.

61. Upon information and belief, K-State does not disclose reports of rape at its fraternity houses to the associated national fraternity, including failing to disclose to the national fraternity in this case Sara's report of rape by its members in its K-State chapter house. This failure to disclose prevents the national fraternity and its local alumni association from potentially intervening and assisting K-State in making its fraternity houses safe.

62. K-State gives no indication of the rape of K-State students at its fraternities of which it has knowledge, including the fraternity where Sara was raped. K-State's current description of the status of the fraternity does not even hint Sara's reports of rape at its house, events, and by its members, or that anything dangerous occurred, stating only that the "fraternity has lost recognition as a K-State Interfraternity Council member, and has been suspended from campus. If you are interested in joining this fraternity, please be aware that it is not currently recognized by the university until August 1, 2018."

V. K-State Failed to Regulate or Act to Make Fraternities Safe for Students

63. Fraternities are student organizations, boasted by K-State as an integral part of its campus experience and highlighted as part of its self-promotion. K-State has the authority and ability to regulate fraternity houses (e.g. make such premises safe), as demonstrated by its rules for regulating parties and certain other activities at fraternity houses and events.

64. Yet K-State delegates management of these exceptionally dangerous entities to untrained students. K-State's event registration form explicitly leaves the chapter with "full responsibility" for the enforcement of federal, state, and city law, IFC policies, including risk management policies, the regulation of individuals' behavior, and taking corrective action to ensure member and guest safety.

65. K-State and its fraternities have exclusive knowledge of the risks such fraternities and their self-managed housing have to the general student population, including Sara. Despite the extreme and known dangers posed by fraternities, K-State has created a working relationship with fraternity houses which does not require an active, trained presence.

66. Upon information and belief, K-State campus police do not have the same access to the fraternity houses as to other student housing, despite K-State's representation that its police officers routinely patrol fraternities and sororities.

67. Despite the safety risks posed by fraternities, the only outside supervision imposed by K-State is a Faculty/Staff Advisor, encouraged to attend at least two chapter meetings a year.

68. This is juxtaposed with the supervision provided by the Office of Housing and Dining Services to promote safety and protect students in campus housing. In K-State residence halls, a full-time Resident Assistant ("RA") lives on each floor and is responsible for informing residents of policies and regulations and responding to behavior in violation of those policies and regulations. Community Assistants staff the front desks 24 hours a day. Door Assistants check the identification of those entering the building and register guests. A Residential Life Coordinator, a professional with a master's degree, lives onsite and is responsible for supervision and training RAs.

69. K-State allows fraternities to reap significant financial benefit by endorsing them with University recognition. K-State does not require that any of this money be used to keep the premises or guests safe. Instead, fraternities are allowed to collect rent and dues from their members without investing into housing standards, supervision, or safety. If the fraternity had a professional, full-time, live-in Residential Life Coordinator, Community Assistant, Door Assistant, and floor-by-floor RAs responsible for ensuring safety and adherence to K-State policy,

K-State rules and community standards would have more likely been upheld on April 26, 2014, preventing the rapes of Sara at the fraternity house. Any one of these supervisors could have seen and prevented an underage, black-out-intoxicated individual from being placed naked in the house's "sleep room" where she was raped by two K-State students and the student-assailants would likely not have felt entitled to violate sexual misconduct policies so blatantly.

70. Instead K-State allows fraternities free rein in return for, upon information and belief, some form of benefit.

71. Despite the obvious dangers of unsupervised fraternity housing, and report of sexual attacks on Sara at the fraternity house, K-State continues to promote its Greek community as "a safe and fun way to maximize the college experience."

72. K-State's glowing endorsement and portrayal of fraternities is all the more frightening when compared to its practice *against* investigating, applying its rules to, or providing security to prevent the most extreme and entirely predictable fraternity dangers.

73. This practice willfully takes no action in response to fraternity rape at K-State, endangering students by failing to remove predators from campus, and failing to remedy the hostile environment for victims whose educational access is threatened and impaired by their assailants co-attending K-State.

74. K-State's failure to warn and protect Sara, coupled with its refusal to respond to fraternity sexual violence, licensed J.F. and J.G. to rape Sara with impunity.

VI. K-State's Egregious Conduct and Failures Severely Damaged Sara

75. Sara did everything sexual assault victims are encouraged to do. She sought help at the local rape crisis center and K-State's Women's Center. She filed a Title IX complaint with K-State. She reported the rapes to the police. She sought emergency medical care. She endured

a rape kit. Despite this, K-State turned its back on her. Sara wants to continue her K-State education, but doing so means facing emboldened student-assailants who know K-State will protect them and not the victim of their attacks.

76. After months of being stonewalled by K-State, Sara filed a complaint with the Department of Education, Office for Civil Rights. In response, the federal government opened a Title IX investigation into K-State, and that investigation is ongoing. Over nearly two year after the rapes, the student-assailants remain on campus, and K-State has not investigated or taken any meaningful actions to protect Sara or remedy the overtly hostile environment.

77. Since the multiple, brutal rapes by fellow students, and K-State's institutional betrayal, Sara has lost her sense of security. She is always afraid, apprehensive, and hyper-alert, on-campus and off. Every man who passes her on the sidewalk terrifies her. At least once a day on-campus, Sara is overcome by panic, anxious that any passing man could be one of the student-assailants. She is constantly on the lookout for J.F. Recently, walking to the K-State library she passed a man who turned toward her. She jumped, screamed, and began to cry. Sara only uses campus resources like the library when she is joined by friends or her Chi Omega sorority sisters, and otherwise stayed home to avoid being alone in a campus setting.

78. After the sexual assaults and K-State's refusal to investigate the assailants, Sara has exhibited symptoms of post-traumatic stress disorder (PTSD), a physical manifestation of the distress, involving bodily symptoms.

79. The first semester that K-State refused to investigate, Sara stopped going to classes and was forced to withdraw from math. Listening to attendance on the first day of classes each semester since in those classes that have attendance, Sara is overwhelmed with anxiety, listening intently to hear if the names of the student-assailants, their friends, or the fraternity members who

watched the first rape were called. She remains plagued by incessant thoughts about what happened, interfering with her ability to concentrate in class. She is haunted, knowing she could be sitting next to J.G. in a class or in the library and not even know it because she cannot recall anything about his appearance. Sara's grades plummeted and as a result, she lost the prestigious "Purple and White" scholarship awarded to her by K-State, causing her to have to pay additional tuition.

80. At night, Sara cannot fall asleep without being behind a locked door. When she does sleep, she suffers nightmares about the weight of a man's body on top of her and being unable to move. When awake, she struggles to remain present. Surrounded by people, she feels a mental numbness, like she is not really there and cannot feel or acknowledge the things around her. The assaults and K-State's subsequent mistreatment have strained Sara's relationships, causing her to distance herself from her parents and friends. She is afraid of being noticed. She has decreased her involvement in her sorority and philanthropy and has turned down leadership opportunities. From the gregarious and confident woman she was before the assaults, Sara now finds it hard to talk to people she does not know.

81. Recently, one of the student-assailants came into Sara's place of work, which caused Sara to have a severe panic attack. Since the encounter, she has felt increasingly unsafe, insecure, and threatened.

82. Sara loved K-State, and there is no other school in the nation she wanted to attend. K-State's failure to investigate the rapes makes her feel like the institution does not care about what happened to her, and that has had a very damaging effect on how she feels about herself.

83. By refusing to investigate off-campus sexual assaults at fraternities and fraternity events, like those Sara endured, K-State makes students, like Sara, more vulnerable to rape

because it sends a message to fraternity members that students can rape other students with no fear of school disciplinary action. K-State's practice ignores the reality that many off-campus sexual assaults adversely impact the on-campus educational environment for victims, just as it did Sara's.

COUNT I
Violation of Title IX 20 U.S.C. § 1681(a)
Deliberate Indifference to Plaintiff's Report of Rapes

84. Plaintiff incorporates all preceding paragraphs into this Count by reference as though fully restated herein.

85. Beginning in April 2014, K-State had actual knowledge of the severe, pervasive, and objectively offensive sexual harassment and hostile environment experienced by Sara in the form of multiple rapes inflicted upon her by two K-State students while other K-State students watched and recorded some of the incidents, post-rape social media harassment of Sara spread among the student population, and the constant on-campus risk that Sara would encounter the student-assailants while accessing her education.

86. K-State's conduct made Sara's already hostile educational environment even worse by, among other things, contacting both student-assailants to inform them of Sara's report of rape immediately after telling her K-State would not investigate and by releasing Sara's name and detailing the rapes to the Office of Greek Affairs, without obtaining Sara's consent or warning her, even though doing so would not result in any investigation of the rapes. These actions made Sara more fearful on campus and violated her privacy.

87. Although K-State was on notice of multiple other instances of sexual assault and gender-based violence perpetrated against K-State students and others at K-State fraternities as early as February of 2012, its failure to take action to address those incidents created a climate in

which such misconduct was tolerated. As a result, K-State's conduct encouraged sexual assault and gender-based violence at its fraternities.

88. Persons with this actual knowledge, including the OIE, had the authority to take corrective action to end the discrimination and harassment at K-State but interpreted the policy to avoid taking such action.

89. K-State acted with deliberate indifference to Sara's report of multiple rapes and the hostile educational environment created by failing to investigate or take any disciplinary measures in response her report.

90. K-State was further deliberately indifferent by:

a. failing to investigate any prior allegations of fraternity sexual and gender-based violence, thereby creating a climate which tolerated sexual assault and other misconduct at K-State fraternities;

b. failing to institute any protective procedures to guard against the risk posed by its fraternities to female students;

c. posting only positive information about K-State fraternities on its Greek Affairs website, and failing to post critical safety information regarding risks, despite knowing the dangers of K-State fraternities, including but not limited to numerous incidents of sexual violence committed at fraternity houses; and

d. failing to enforce the student conduct code in response to instances of sexual violence at its fraternities to prevent sexual assault and other misconduct at K-State fraternities.

91. The sexual harassment Sara suffered from this hostile environment was so severe, pervasive, and objectively offensive that it effectively deprived Sara her access to educational

opportunities and benefits, including forcing Sara to hide in her dormitory to avoid the student-assailants, causing her to be absent from class, negatively impacting her ability to concentrate in class, negatively impacting her grades, forcing her to drop her math class, causing her to lose the “Purple and White” scholarship awarded to her by K-State and forcing her to start additional paying tuition, leaving her in fear of encountering the student-assailants on campus, causing her to decrease her involvement in her sorority, Chi Omega, and turn down leadership opportunities, and causing her severe psychological distress.

92. As a direct and proximate result of K-State’s deliberate indifference, Sara sustained and continues to sustain injuries.

COUNT II
Kansas Consumer Protection Act (“KCPA”)
Deceptive Acts and Practices in Violation of the Kansas Consumer Protection Act

93. Plaintiff incorporates all preceding paragraphs into this Count by reference as though fully restated herein.

94. K.S.A. § 50-623, *et seq.* prohibits deceptive acts and practices and applies to educational services provided by public universities to students.

95. Defendant, K-State, is a supplier under the KCPA, as a supplier of educational services.

96. Sara is a student enrolled in K-State, pays tuition to a public university of the State of Kansas, and is therefore a consumer under the KCPA

97. Defendant, K-State, supplied educational services to Sara.

98. Defendant, K-State, engaged in consumer transactions with Sara in which it sold or leased, for value, educational services to Sara for the use and benefit of Sara.

99. Defendant, K-State, engaged in numerous deceptive acts and practices in connection with its consumer transactions with Sara, including but not limited to representations made to Sara, knowing or with reason to know that:

a. K-State's property and services possessed characteristics, uses, and benefits they did not have;

b. K-State's property and services were of a particular standard, quality, and grade where such property and services were materially different from the representations; and

c. K-State's fraternities are safe according to its promotional materials, when in reality they are sites of sexual assaults and gender violence, and K-State refuses to investigate instances of sexual assault in its fraternity houses.

100. K-State willfully used, in written representation and upon information and belief in oral representation, exaggeration, falsehood, innuendo, and/or ambiguity as to material facts, specifically regarding the safety of its fraternities, the risks of sexual assault at its fraternities and its position against investigating sexual assault at its fraternities and indifference to sexual assault at its fraternities.

101. K-State willfully failed, and/or willfully concealed, suppressed, and/or omitted material facts, specifically regarding the safety of its fraternities, the risks of sexual assault at its fraternities, its position against investigating sexual assault at its fraternities, and its indifference to sexual assault at its fraternities.

102. Defendant K-State engaged in unconscionable acts and practices in connection with its transaction with Sara for educational services when it knew or had reason to know:

a. it made misleading statements of opinion regarding the safety of K-State fraternities upon which Sara and was likely to rely to her detriment;

b. students, like Sara, may be sexually assaulted by K-State students at K-State fraternities but the university would refuse to investigate such assaults; and

c. it had knowledge of many incidents of sexual assault and other sexual misconduct at its fraternities and refused to disclose that information to students, like Sara, so they could protect themselves.

103. Plaintiff has incurred damages as a direct result of Defendant's unconscionable and/or deceptive acts and practices and she is "aggrieved" as that term is used in K.S.A. §§ 50-634 and 636.

COUNT III Negligence

104. Plaintiff incorporates all preceding paragraphs into this Count by reference as though fully restated herein.

105. Defendant, K-State, owed statutory, common law, and assumed duties to Sara to regulate, supervise, warn, protect her from, or otherwise make reasonably safe for her and other likely student invitees the foreseeably dangerous environment at K-State recognized fraternity houses.

106. K-State breached these duties and was negligent by, among other things:

a. failing to warn Sara or her family about the dangers posed by K-State fraternities, specifically for female students attending events at that location;

b. failing to require safety measures and precautions to prevent known dangers to female students like Sara at fraternities or otherwise take necessary and reasonable actions to make fraternity houses a safe environment for students;

- c. failing to have in place or enforce policies to protect students from sexual assault and rape at K-State fraternities;
- d. failing to investigate reports of sexual assaults by and against its students at K-State fraternities and K-State fraternity events;
- e. failing to discipline student perpetrators of sexual assault at K-State fraternities under its code, including the two student-assailants who sexually assaulted Sara thus leaving her in ongoing proximity to them on campus;
- f. failing to act reasonably under the circumstances; and
- g. other negligent and deliberately indifferent conduct.

107. As a direct and proximate result of K-State's breach of its duties, Sara sustained and continues to sustain physical, mental, and emotional injuries including multiple sexual assaults and physical and psychological distress.

108. The sexual assaults of Sara at a K-State fraternity party and at a K-State fraternity house were foreseeable as K-State had knowledge of numerous instances of sexual assaults at K-State fraternities for several years, including previous incidents of gender-based violence at this fraternity.

109. K-State has the authority and ability to control and regulate its fraternity houses as student organizations, boasted by K-State as integral to the campus experience, as demonstrated by K-State rules for regulating parties, practices, and certain other activities at fraternity houses and events.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiff requests that this Court to award her:

- A. Compensatory damages on Count I;

- B. Compensatory damages and Civil Penalties on Count II;
- C. Compensatory damages on Count III;
- D. Attorney's fees;
- E. Declaratory judgment that the Defendant's treatment of her violated Title IX;
- F. Injunctive relief ordering K-State to conduct an investigation and disciplinary proceedings into Sara's reports of sexual assault;
- G. Injunctive relief ordering K-State revise its policies, procedures, and practices so that it is in compliance with Title IX; and
- H. Such other and further relief that is just and appropriate under the circumstances.

JURY DEMAND

Plaintiff demands trial by jury.

Respectfully submitted,

April 20, 2016

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