

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

ERIN CAVALIER,

*

Plaintiff,

*

v.

*

Case No. 1:16-cv-2009

THE CATHOLIC UNIVERSITY OF
AMERICA,

*

*

Defendant.

COMPLAINT AND DEMAND FOR JURY TRIAL

Erin Cavalier (“Cavalier,” or “Plaintiff”), a 2016 graduate of the Catholic University of America (“CUA,” or “Defendant”), brings this Complaint for damages against CUA for violations of Title IX of the Education Amendments of 1972 (“Title IX”), 20 U.S.C. §§ 1681–1688, negligence, and negligent and intentional infliction of emotional distress. This suit arises out of CUA’s deliberately indifferent response to Cavalier’s rape while Cavalier was a student on CUA’s campus. In support of this Complaint, Cavalier alleges the following:

Introduction

1. This case is about CUA’s mistreatment of Cavalier and mishandling of the investigation and aftermath of Cavalier’s report of a sexual assault.

2. In the early morning hours of December 15, 2012, Cavalier reported to CUA that CUA football player John Doe had raped her in her dorm room. She again reported her rape to the Department of Education’s Office for Civil Rights (“OCR”) on December 19, 2013. As a result of Cavalier’s report, OCR opened an investigation into CUA’s compliance with Title IX, which continues to this day.

3. CUA responded to Cavalier’s two reports of rape by conducting a wholly

inadequate, untimely, and biased investigation, refusing to protect Cavalier from further harassment by her rapist, and retaliating against her. CUA's deliberately indifferent, negligent, and retaliatory actions included:

- a. From day one, CUA blamed Cavalier for her own rape. On the night of the rape, when Cavalier asked to be taken to the hospital, Cavalier was interrogated about whether she wanted to go the hospital because she really had been raped or because she was afraid she might be pregnant. At another time, CUA's Department of Public Safety ("DPS") officers implied to Cavalier that she must have consented to the sex because she was a "career alcoholic" at the age of 18.¹
- b. On February 18, 2013, CUA Captain Kim Gregory, the employee CUA charged with investigating Cavalier's report, recommended closing the investigation upon concluding that "[Cavalier's] consent was based upon the usage of a condom," despite Cavalier's consistent position that she had been incapable of giving consent due to severe intoxication, and despite the fact that neither Capt. Gregory nor any other CUA or law enforcement official had preserved any evidence of a condom.²
- c. On March 13, 2013, CUA closed its investigation into Cavalier's assault without ever considering evidence that Cavalier lacked the capacity to consent.
- d. Due, in part, to its initial, unreasonable decision to prematurely close the investigation, CUA took 298 days — from the date of the rape on December 15, 2012, to October 9, 2013 — to hold a disciplinary hearing and wrongly conclude, for the second time, that Doe did not assault Cavalier. OCR recommends that this process take 60 days.
- e. Although CUA took 292 days to hold a disciplinary hearing, it afforded Cavalier only a 48-hour notice of the hearing date. As a result, Cavalier's parents, who live in California, could not attend the hearing. Doe's parents attended the hearing.
- f. During the hearing, CUA forced Cavalier to follow an "unwritten rule" forbidding her from calling non-CUA witnesses to testify. This precluded Cavalier from calling her potentially most important witness — a victim's advocate who observed Cavalier's severe intoxication at the hospital after the rape.
- g. At the conclusion of its long-delayed disciplinary hearing, CUA decided that

¹ Ex. 10 at 2–3.

² Ex. 2 at 8.

Cavalier was “not incapable of giving consent,”³ despite Cavalier’s blood alcohol level of .216 g/dL on the night of the rape and accounts from numerous witnesses — including Doe — describing Cavalier as severely intoxicated.

- h. For four years, CUA refused to enforce its no-contact order against Doe. During Cavalier’s first year at CUA (2012–2013), Doe violated the no-contact order approximately once every two weeks. During her second year at CUA (2013–2014), Doe violated the no-contact order approximately twice a week. During her third (2014–2015) and fourth years (2015–2016), Doe violated the no-contact order approximately once a month. On multiple occasions over the four years, Cavalier told CUA Dean of Students Jonathan Sawyer and Associate Dean of Students Omar Torres that her rapist continually confronted her both on and off campus. CUA did nothing to stop the traumatic confrontations between Cavalier and her rapist.
- i. In fact, CUA facilitated Doe’s continued harassment of Cavalier by housing him 200 feet from her, despite Cavalier’s objections.
- j. CUA discouraged Cavalier from her sexual assault survivor advocacy work.
- k. CUA named Capt. Gregory, who did the most to deny Cavalier her Title IX rights, as the second-in-charge of all CUA Title IX enforcement in May 2016, just days before Cavalier graduated from CUA.

4. CUA’s actions facilitated, contributed to, and maintained a hostile educational environment for Cavalier that persisted from the day of her rape to the day of her graduation and that denied her access to the educational opportunities and benefits to which she was entitled.

5. CUA’s response to Cavalier’s rape also contravened its own policies, which require it to recognize sexual intercourse with an incapacitated individual as a form of sexual assault, take sexual assault seriously, protect survivors from further harassment, and remedy any hostile educational environment created as a result of sexual harassment.

6. Cavalier fought a four-year campaign to remedy her rape and the hostile environment at CUA for herself and all sexual assault survivors on CUA’s campus. At every turn, CUA’s deliberate indifference and retaliatory actions took an emotional, psychological, and

³ Ex. 6 at 1.

financial toll on her.

7. Doe has never been held accountable for his rape of Cavalier. This Complaint seeks to hold CUA accountable for its deliberate indifference to Cavalier's rape, its negligent failure to follow its own policies and to remedy the hostile educational environment created by Doe's rape and harassment of Cavalier, and its craven retaliation and negligent and intentional infliction of emotional distress against one of its own.

Parties

8. Cavalier is a resident of the Northern District of California. She matriculated as a first-year student at CUA on August 27, 2012. At all times relevant to this Complaint, Cavalier was enrolled as an undergraduate at CUA. She graduated from CUA on May 14, 2016.

9. CUA is a private institution of higher learning for undergraduate and graduate studies located in the District of Columbia. CUA receives federal financial assistance and is subject to Title IX.

Jurisdiction

10. This Court has subject-matter jurisdiction under 28 U.S.C. § 1331 because a federal question is at issue.

11. This Court also has subject-matter jurisdiction under 28 U.S.C. § 1332 based on diversity of citizenship. The amount in controversy exceeds \$75,000. The Parties are citizens of California and the District of Columbia.

12. This Court has supplemental jurisdiction over the District of Columbia tort causes of action under 28 U.S.C. § 1367.

Venue

13. Under 28 U.S.C. § 1391(b), venue is proper in this District because the Defendant

resides in this judicial District, a substantial part of the events giving rise to this action occurred in this District, and the Court can assert personal jurisdiction over the Defendant in this District.

Background Facts Relevant To All Counts

THE DEPARTMENT OF EDUCATION’S 2011 DEAR COLLEAGUE LETTER REGARDING SEXUAL ASSAULT

14. OCR is the federal agency primarily responsible for the enforcement and interpretation of Title IX.

15. On April 4, 2011, OCR issued a “Dear Colleague Letter” (“DCL”) to educational institutions, including CUA.⁴ The DCL is a “significant guidance document” that assists educational institutions with following and implementing Title IX.⁵ Schools that fail to follow the DCL may forfeit their federal funding.⁶

16. The DCL includes guidance on peer-on-peer sexual assault. As the DCL informs schools, even a single incident of sexual assault can create a hostile environment that renders a school liable under Title IX.⁷

17. The Title IX guidelines for educational institutions to follow when responding to student-on-student sexual harassment include:

- a. A school must be “prompt, thorough, and impartial” in any inquiry into sexual assault.⁸
- b. An investigation of a sexual assault complaint must be “adequate, reliable,

⁴ Ltr. from Russlynn Ali, Assistant Sec’y for Civil Rights, OCR (Apr. 11, 2011), <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201104.pdf> (hereinafter “DCL”). Schools are to read the DCL in conjunction with OCR’s “Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties,” which OCR issued in 2001. *See* DCL at 2.

⁵ DCL at 1 n.1.

⁶ DCL at 16.

⁷ DCL at 3.

⁸ DCL at 5.

and impartial.”⁹

- c. A school must disclose “any real or perceived conflicts of interest between the fact-finder or decision-maker and the parties” in the investigation and hearing processes.¹⁰
- d. Most investigations of sexual assault should take “approximately 60 calendar days following receipt of the complaint.”¹¹
- e. A school must promptly “take steps to protect the complainant as necessary, including taking interim steps before the final outcome of the investigation. . . . When taking steps to separate the complainant and the alleged perpetrator, a school should minimize the burden on the complainant.”¹²
- f. The “use of alcohol or drugs never makes the victim at fault for sexual violence.”¹³
- g. Schools have a “responsibility to provide a safe and nondiscriminatory environment for all students.”¹⁴
- h. Schools must provide students with grievance procedures that are “easily understood.”¹⁵

18. CUA was aware of and bound by these guidelines at all times relevant to this Complaint.

THE DEPARTMENT OF EDUCATION’S 2014 QUESTIONS AND ANSWERS ON TITLE IX AND SEXUAL VIOLENCE

19. On April 29, 2014, OCR issued its “Questions and Answers on Title IX and Sexual Violence of 2014” (“Q&A”), in order to “further clarify the legal requirements and guidance articulated in the DCL.”¹⁶

⁹ DCL at 9.

¹⁰ DCL at 12.

¹¹ DCL at 12.

¹² DCL at 15.

¹³ DCL at 15.

¹⁴ DCL at 5.

¹⁵ DCL at 9.

¹⁶ See U.S. Dep’t of Educ., OCR, *Questions and Answers on Title IX and Sexual Violence* ii (Apr. 29, 2014), <http://www2.ed.gov/about/offices/list/ocr/docs/qa-201404-title-ix.pdf> (hereinafter “Q&A”).

20. Schools are required to follow the Q&A at risk of losing their federal funding.

21. According to the Q&A, “sexual violence” refers to a sexual act perpetrated against a person’s will or where that person is incapable of giving consent due to intoxication.¹⁷

22. The Q&A reinforces that a school’s delayed or inappropriate response to a reported rape can result in a hostile educational environment which violates Title IX.¹⁸

23. The Q&A reinforces that schools must implement Title IX grievance procedures that include an impartial investigation and prompt responses.¹⁹

24. Other guidelines prescribed by the Q&A include:

- a. A school must take interim steps to protect the complainant before the resolution of a sexual assault investigation.²⁰
- b. All personnel involved in a Title IX investigation “must have training or experience in handling complaints of sexual violence and the school’s grievance procedures.”²¹
- c. Hearings should be conducted in a manner that “does not inflict additional trauma on the complainant.”²²
- d. A school must remedy any hostile environment created by its delayed or inappropriate response to allegations of sexual violence.²³
- e. The “responsible employees” for enforcing Title IX must be trained on “the potential for revictimization by responders and its effect on students” and “appropriate methods for responding to a student who may have experienced sexual violence, including the use of non-judgmental language.”²⁴
- f. A school must train its responsible employees on “consent and the role drugs or alcohol can play in the ability to consent.”²⁵

¹⁷ Q&A at 1.

¹⁸ Q&A at 2.

¹⁹ Q&A at 12.

²⁰ Q&A at 3.

²¹ Q&A at 25.

²² Q&A at 31.

²³ Q&A at 34 n.31.

²⁴ Q&A at 38.

²⁵ Q&A at 40.

- g. Schools must explain to students that “use of alcohol or drugs never makes the survivor at fault for sexual violence.”²⁶
- h. “[I]f an individual brings concerns about possible [Title IX] problems to a school’s attention . . . it is unlawful for the school to retaliate against that individual for doing so.”²⁷

25. The DCL and Q&A were primary sources of guidance for CUA’s own sexual assault and Title IX policies during all times relevant to this Complaint.

26. In response to a complaint Cavalier filed with OCR, through her advocate, on December 19, 2013,²⁸ OCR initiated an investigation into CUA’s compliance with Title IX.

CUA’S SEXUAL ASSAULT POLICIES

27. Since 2004, CUA has implemented no fewer than 10 policies regarding sexual assault and filing a grievance. These policies are not “easily understood,” as OCR requires.²⁹ Nevertheless, CUA has known since at least 2004 how to properly enforce Title IX.

28. From 2004 to 2012, CUA’s Sexual Assault Policies explicitly defined sexual assault to include situations where the victim was incapacitated and the assailant should have recognized the victim’s incapacitation. Thus, the 2004, 2005, and 2007 Sexual Assault Policies stated, “Sexual assault includes having sexual contact with a person while knowing or having reason to know that the person was incapacitated by drugs, including alcohol, or by other means.”³⁰

29. The 2008 and 2009 Sexual Assault Policies linked the concept of intoxication to the victim’s lack of free will. They stated, “Having sexual contact with a person . . . [who is]

²⁶ Q&A at 42.

²⁷ Q&A at 42.

³⁰ Ex. 10.

²⁹ DCL at 9.

³⁰ *Policies: Student Life: Sexual Assault*, CUA (archived July 7, 2004), <http://policies.cua.edu/archives/studentlife/sexassault1.cfm>; *Policies: Student Life: Sexual Assault*, CUA (archived Oct. 10, 2005), <http://policies.cua.edu/archives/studentlife/sexassault2.cfm>; *Policies*, CUA (archived July 31, 2007), <http://policies.cua.edu/archives/studentlife/sexassault3.cfm>.

incapacitated . . . is considered against free will.”³¹

30. However, CUA’s 2012 Sexual Assault Policy³² removed the express mention of incapacitation from the definition of “sexual assault.” Instead, it defined sexual assault as “sexual contact without meaningful, explicit, ongoing consent.”³³ However, it also stated that sexual assault included making a person have sex through force, threats, coercion, under duress, or against “her free will.”³⁴

31. De-emphasizing the role of incapacitation in its sexual assault policy not only broke from all previous and subsequent CUA Sexual Assault Policies, but threatened to make CUA’s definition of sexual assault inconsistent with the legal definition of criminal sexual assault in the District of Columbia in 2012 and now.³⁵

32. On August 22, 2013 — one day after Cavalier and her representatives met with CUA Title IX Coordinator Lisa Wood, CUA General Counsel Lawrence Morris, and other CUA representatives to discuss CUA’s deliberately indifferent and negligent response to her rape, CUA changed its Sexual Assault Policy to again expressly include incapacitation.³⁶

³¹ *Policies: Student Life: Sexual Assault*, CUA (archived Aug. 8, 2008), <http://policies.cua.edu/archives/studentlife/sexassault4.cfm>; *Policies*, CUA (archived July 27, 2009), <http://policies.cua.edu/archives/studentlife/sexassault5.cfm>.

³² CUA’s 2012 Sexual Assault Policy was in effect at the time of the December 15, 2012, rape. *See Policies: Sexual Assault*, CUA (archived Sept. 4, 2012), <http://policies.cua.edu/archives/studentlife/sexassault6.cfm>.

³³ This was also the definition of “sexual assault” provided in the CUA Code of Student Conduct at the time of Cavalier’s rape. *Policies: Code of Student Conduct*, CUA (archived Sept. 4, 2012), <http://policies.cua.edu/archives/studentlife/conduct10.cfm>.

³⁴ *Policies: Sexual Assault*, CUA (archived Sept. 4, 2012), <http://policies.cua.edu/archives/studentlife/sexassault6.cfm>.

³⁵ “The distinguishing characteristic of these offenses [in the District of Columbia], which we refer to generally as sexual assaults, is the commission of a sexual act or contact against the victim’s will or *without the victim’s consent*, typically by means of force or threats or *by taking advantage of the victim’s incapacitation* or impairment.” *Davis v. United States*, 873 A.2d 1101, 1104 (D.C. 2005) (emphasis added).

³⁶ *See Policies*, CUA (archived Aug. 22, 2013), <http://policies.cua.edu/archives/studentlife/sexassault8.cfm>.

33. Nevertheless, the five CUA Sexual Assault Policies before 2012 and all four Sexual Assault Policies after 2012 expressly included the concept of incapacitation. In the Sexual Assault Policies immediately preceding the 2012 policy, CUA linked incapacitation to the victim's lack of free will, which remained in the definition of sexual assault in 2012. Despite the changes in its policies that rendered them difficult to understand, especially to students, CUA knew that Cavalier's incapacitation mattered to the sexual assault investigation in 2012.

Allegations

SEXUAL ASSAULT — DECEMBER 15, 2012

34. At approximately 1:00 a.m. on December 15, 2012, John Doe, a football player at CUA, raped Erin Cavalier, then an 18-year-old first-year student, when he engaged in sexual intercourse with her knowing she was intoxicated and incapable of giving consent.

35. Doe knew Cavalier was intoxicated to the point of being incapable of giving consent because Cavalier had passed out in front of him at a party they had attended that night. When the party ended, Cavalier asked him to walk her to her dormitory, where he raped her.

36. Prior to the rape, Doe and Cavalier were minimally acquainted as CUA athletes. Cavalier was on the CUA lacrosse team.

37. Around 11:00 pm on December 14, 2012, Doe and Cavalier crossed paths at a party at Flather Hall, a dormitory on CUA's campus. Before arriving at the party, Cavalier had been drinking with a female friend in Ryan Hall, her dormitory. Doe saw Cavalier at the Flather Hall dorm party heavily inebriated, he saw her continue to drink alcohol at the party, and he saw Cavalier pass out at the party as a result of her excessive drinking.

38. Although Doe also drank alcohol at the party, he maintained control of his actions.

39. When the party ended, Doe walked a stumbling, unsteady, and unclear Cavalier to her dorm room.

40. Cavalier does not remember how she got back to Ryan Hall. She remembers only finding Doe on top of her engaging in sexual intercourse with her.

41. At the time Doe engaged in sexual intercourse with her, Cavalier was visibly incapacitated and incapable of consenting due to severe alcohol intoxication. Doe knew Cavalier could not and had not consented to sex.³⁷

42. Cavalier does not remember Doe leaving her room.

43. At approximately 2:00 a.m., a resident assistant from Ryan Hall called CUA Area Coordinator Nicole Giglia and alerted her that a student at Ryan Hall may have been sexually assaulted. Giglia called DPS Lieutenant Dicks and met him at Ryan Hall. According to a December 15, 2012, email from Giglia to Dean Sawyer, among others, Giglia reported that Cavalier, while crying in her room, stated that she had been “raped tonight.” Cavalier also candidly admitted that “the details of the night were blurry” due to her drinking.³⁸

44. Cavalier was then interviewed in her room by Lt. Dicks.

45. At some point, the D.C. Metropolitan Police Department (“MPD”) and Emergency Medical Services Department (“EMS”) were contacted.

46. Officer A.D. Moore of the MPD arrived on the scene first and was briefed by Lt. Dicks. Giglia observed Officer Moore roll his eyes and state, “I’m not touching this, I’m calling the Sex Crime Unit.” Nevertheless, when the paramedics arrived and Giglia went to retrieve Cavalier, Officer Moore followed her and pushed passed her into Cavalier’s room, where Cavalier was sitting with two friends. Officer Moore asked to interview Cavalier with only Lt.

³⁷ See generally Exs. 2, 4, 7.

³⁸ Ex. 11 at 1.

Dicks in the room. Cavalier agreed, and Officer Moore shut the door. From outside the room, Giglia heard Officer Moore ask Cavalier, “Do you want to see the SANE nurse because you believe you were sexually assaulted or do you just want to go because you think you could get pregnant?”³⁹

47. After Officer Moore left the room, emergency medical technicians (“EMTs”) Olani Griffith and Shanetra Brown transported Cavalier to the hospital. EMT Griffith signed a report in which she made “findings” of “ALCOHOL USE (SUSPECTED); SEXUAL ASSAULT.” EMT Griffith wrote in her report that “[P]t. stated that she had been drinking alcohol in her dorm room with an acquaintance and he proceeded to rape her without a condom.”⁴⁰

48. At approximately 8:28 a.m., or about eight hours after the rape, the EMTs and a hospital nurse measured Cavalier’s blood alcohol level at 97 mg/dL (0.097 g/dL).⁴¹ With retrograde extrapolation, Cavalier’s blood alcohol level would have been 216 mg/dL (0.216 g/dL), or almost three times the legal limit of 80 mg/dL (0.08 g/dL) at the time of the rape.

CUA’S DELIBERATELY INDIFFERENT AND NEGLIGENT RESPONSE TO CAVALIER’S RAPE

CUA Conducted a Clearly Inadequate and Unreliable Investigation Plagued by Lengthy Delays and Partiality, Resulting in a Wrongful and Unreasonable Decision Against Cavalier

49. OCR advises educational institutions that a sexual assault investigation should take 60 days from the receipt of a complaint to a determination of responsibility and appropriate remedies.⁴²

50. OCR also requires the investigation of a sexual assault complaint to be “adequate,

³⁹ Ex. 11 at 1. A SANE nurse is a “sexual assault nurse examiner” or a medical professional trained in conducting sexual assault examinations of rape victims.

⁴⁰ Ex. 8 at 1.

⁴¹ Ex. 8 at 2.

⁴² DCL at 12.

reliable, and impartial.”⁴³

51. CUA’s own Title IX Policy states that “[s]ex discrimination . . . includes sexual harassment and sexual assault or violence. The Catholic University of America will not tolerate such discrimination.” CUA “*will respond* to reported violations of Title IX *by protecting the victim* and our community, conducting *prompt* and thorough investigations and providing support.”⁴⁴

52. Contrary to its own and OCR policy, CUA’s investigation of Cavalier’s rape took 298 days from the time Cavalier reported the assault on December 15, 2012, to the date of CUA’s decision not to hold Doe accountable on October 9, 2013 — nearly five times the length of an investigation that complies with Title IX. Nor did the investigation result in any disciplinary action against Doe, despite his clear violation of CUA policy and D.C. law.

53. From the start, CUA’s investigation was plagued by undue delay. The delay was exacerbated by CUA’s decision to prematurely terminate its investigation without a hearing, in disregard of the strong evidence that Cavalier was incapable of consenting to the sex with Doe and before CUA had interviewed key witnesses or obtained crucial evidence — most critically, Cavalier’s toxicology report from the night of her rape. In the end, Cavalier received a hearing, but CUA found Doe not responsible. These and other actions taken by CUA render its investigation and eventual decision clearly unreasonable in light of the known facts and circumstances.

54. **DAY 30: CUA First Informs Cavalier of the Support Services, Policies, and Disciplinary Procedures Available to Her.** On December 17, 2012, CUA’s Assistant Dean of

⁴³ DCL at 9.

⁴⁴ *Title IX*, CUA (last updated Sept. 20, 2016), <http://title9.cua.edu/default.cfm#consent> (emphases added). Upon information and belief, CUA’s Title IX Policy referenced in this Complaint was the same Policy in effect on December 15, 2012.

Students Rachel Wainer emailed Cavalier and offered her assistance. Cavalier accepted the offer via email on December 20, 2012. Dean Wainer failed to respond until January 14, 2013, when Cavalier again reached out for her help.⁴⁵ On January 14, 2013 — 30 days after the assault — Dean Wainer provided Cavalier with information about the support services, policies, and disciplinary procedures available to her.

55. At some point thereafter, CUA appointed DPS Captain Kim Gregory, Investigator Charles Callis, and Lt. Dicks to lead the fact-finding phase of its investigation.

56. **DAY 32: CUA First Interviews Witnesses.** CUA failed to interview any witnesses beyond Doe and Cavalier for the first 32 days after Cavalier made her report. On January 16, 2013, it conducted its first interviews with students who saw Cavalier and Doe at Flather Hall the night of the rape.⁴⁶

57. **DAY 67: CUA Interviews More Witnesses.** After the first set of interviews, DPS inexplicably waited over a month before interviewing two more student witnesses on February 20, 2013.⁴⁷

58. To date, Cavalier does not know whether DPS interviewed every student witness at the Flather Hall party.

59. CUA prohibited Cavalier from interviewing witnesses to corroborate her rape.⁴⁸

60. **DAY 95: CUA Prematurely Closes Its Investigation Without a Hearing.** On March 20, 2013, CUA informed Cavalier in a letter from Associate Vice President for Student Life and Dean of Students Jonathan C. Sawyer that its investigation was closed and that it had “determined that evidence does not exist to substantiate moving forward with student

⁴⁵ See Ex. 1.

⁴⁶ See Ex. 2 at 4.

⁴⁷ See Ex. 2 at 6–7.

⁴⁸ See Ex. 5.

disciplinary action.”⁴⁹

61. CUA’s refusal to continue its investigation and conduct a disciplinary hearing was clearly unreasonable in light of facts and circumstances known to CUA and in light of evidence and CUA policy that Dean Sawyer refused to consider at the time of his decision.

62. Dean Sawyer purported to base his decision an investigative report submitted by Capt. Gregory. That report contained significant evidence that Cavalier was incapable of consenting to sex on December 15, 2012, as the result of severe intoxication, and that Doe knew it.

63. Doe himself admitted that Cavalier was “drunk” when he took her back to Ryan Hall.⁵⁰

64. The report described interviews with eight CUA-student witnesses and one other student witness.⁵¹ These witnesses stated consistently that Cavalier was visibly heavily intoxicated the night of the rape.

65. Four witnesses described seeing Cavalier drunk or smelling alcohol on her when they saw her on the evening of December 14 or in the early morning on December 15, 2012.⁵² One witness and friend of Doe described Cavalier as so intoxicated that she was “staggering when she left” the party.⁵³ Doe’s roommate reported that “Erin and [Doe] seemed drunker” than everyone else at the Flather Hall party.⁵⁴ Another witness reported that “Erin was very drunk

⁴⁹ Ex. 3.

⁵⁰ Ex. 2 at 3.

⁵¹ The Plaintiff has not been able to determine, and CUA has refused to clarify, whether the ninth witness was a CUA student.

⁵² Ex. 2 at 5.

⁵³ Ex. 2 at 4.

⁵⁴ Ex. 2 at 6.

and falling asleep on the bed” at the party.⁵⁵

66. Another witness did not mention Cavalier specifically, but confirmed that the women at the Flather Hall party “appeared to be drunk.”⁵⁶ One witness confirmed that Cavalier stated shortly after the rape that she had been drinking.⁵⁷

67. The remaining two witnesses did not see Cavalier at or after the party at Flather Hall and made no statement about her condition at or near the time of the rape.⁵⁸

68. Capt. Gregory’s report also confirmed that Cavalier described herself as drunk to the point of memory loss and incapacitation immediately after the rape and throughout the investigation. A student witness who spoke to Cavalier several hours after the rape described Cavalier as “hysterical and crying.” The witness reported that Cavalier did “not remember how she got back to the room” from Flather Hall, that Cavalier’s memory was “fuzzy,” and that Cavalier did not “remember everything that happened.”⁵⁹ Cavalier herself stated to Capt. Gregory that she did not remember walking back to her dormitory or signing Doe in, or Doe leaving her room. She remembered finding herself “unclothed from the waist down” with Doe “on top of her.”⁶⁰

69. Finally, the report confirmed that Cavalier described the sexual intercourse as rape immediately after the event. A witness who found Cavalier crying on the floor in the Ryan Hall bathroom at 1:30 a.m. on December 15, 2012, recounted that Cavalier stated, “I think I’ve just been raped.”⁶¹

⁵⁵ Ex. 2 at 6.

⁵⁶ Ex. 2 at 6.

⁵⁷ Ex. 2 at 5.

⁵⁸ See Ex. 2 at 4–5, 6.

⁵⁹ Ex. 2 at 4.

⁶⁰ Ex. 2 at 3.

⁶¹ Ex. 2 at 5.

70. As important as the evidence that CUA purportedly considered and disregarded is the evidence it knew was critical to its determination, but refused to collect. DPS had access to and Dean Sawyer was aware of at least five other witnesses who could have provided crucial testimony on Cavalier's intoxicated state: CUA Area Coordinator Giglia, EMTs Griffith and Brown, the nurse who treated Cavalier at the hospital, and the CUA employee who saw Cavalier or Doe sign in to Cavalier's dormitory in the early morning on December 15, 2012. Yet, CUA closed its investigation never having interviewed any of these witnesses.

71. Most egregiously, despite Cavalier's consistent, stated position that she was too intoxicated to consent to sexual intercourse, CUA closed its investigation without requesting or consulting Cavalier's toxicology report.

72. The investigative report purportedly used by Dean Sawyer to arrive at his decision unreasonably concluded that Cavalier was not raped because, the report concluded, Doe used a condom during the sexual intercourse.⁶² Although Cavalier insisted throughout the investigation that she was too intoxicated to consent to sex, CUA entirely ignored this line of inquiry in its investigation, report, and initial decision to terminate the matter, in violation of longstanding CUA policy.

73. **DAY 249: CUA Reverses Itself and Grants Cavalier's Request for a Hearing.** On August 21, 2013, over eight months after she reported her rape, Cavalier and

⁶² Ex. 2 at 8. The conclusion that Doe used a condom was based entirely on hearsay. Although Officer Moore of the MPD, whose had made clear his disdain for Cavalier, allegedly observed a condom in Cavalier's trashcan after the rape, Ex. 2 at 2, neither he nor any other person, including officials from CUA on the scene the morning of the rape, preserved the condom as evidence. This was clearly unreasonable in light of the allegations of rape, as was a decision based off this inconclusive evidence in the absence of any hearing.

members of her support network⁶³ met with CUA General Counsel Larry Morris, Dean Sawyer, and CUA Title IX Coordinator Lisa Wood to press for a hearing. At this meeting, Dean Sawyer and Morris informed Cavalier that, in light of Cavalier's toxicology report, CUA would reverse its decision and hold a disciplinary hearing.⁶⁴ CUA did not explain its refusal to consider this evidence five months earlier.

74. **DAY 255: CUA Finally Issues a Written, but Inadequate, No-Contact Order Against John Doe.** On or about August 27, 2013, Cavalier received a letter documenting that a no-contact order was in place between her and Doe.⁶⁵ CUA had previously represented to her that a no-contact order was in place, but it had refused to provide written confirmation.

75. In violation of the DCL, the no-contact order also forbid Cavalier from contacting Doe.⁶⁶

76. **DAY 292: CUA Holds a Hearing.** CUA finally held a hearing on Cavalier's report on October 3, 2013. CUA notified Cavalier of the hearing date only two days prior, on October 1, 2013. As a result of this 48-hour notice, Cavalier's parents, who live in California, could not attend the hearing. Doe's parents attended the hearing.

77. **DAY 298: CUA Wrongfully and Unreasonably Determines — Again — That Cavalier Was Never Raped.** On October 9, 2013, CUA issued its final decision that Doe was not "responsible" for Cavalier's rape.

78. The October 3, 2013, hearing did not cure CUA's inadequate, unreliable, partial, and deliberately indifferent investigation of Cavalier's complaint.

⁶³ Cavalier's support network included her father, Mark Cavalier, her CUA lacrosse coach Meghan McDonough, lawyer Matthew Orenstein from the Network for Victim Recovery D.C. ("NVRDC"), Rachel Kohler, a Georgetown Law Fellow with NVRDC, and her counsel.

⁶⁴ See Ex. 5.

⁶⁵ See Ex. 5.

⁶⁶ DCL at 15.

79. Although it re-opened its investigation into Cavalier's rape, CUA never interviewed the five key witnesses it had ignored during the first investigation.

80. The October 3 hearing could not cure CUA's clearly unreasonable failure to preserve other, vital evidence. CUA failed to preserve or in any way document the condom allegedly used by Doe during the rape. Instead, CUA revealed its partiality by uncritically favoring Doe's self-serving statement that he "engaged in consensual sex; that he used a condom, which broke and that he put the broken condom in the trash,"⁶⁷ and Officer Moore's unverified statement that he observed a condom in Cavalier's trash.

81. CUA failed to preserve the video of Cavalier and Doe walking from Flather Hall to Ryan Hall and entering Ryan Hall, which would have provided vital evidence of Cavalier's level of obvious impairment.

82. CUA failed to preserve Cavalier's dorm room, the crime scene. Giglia stated that law enforcement looked at the room when Cavalier left. However, CUA has never produced any documentation, including photographs or forensic evidence that might have helped determine what happened in the room.

83. CUA never sought out Cavalier's toxicology report. Instead, Cavalier brought the toxicology report to CUA and demanded CUA consider this evidence in its investigation.

84. The October 3 hearing also could not cure the conflicts of interest and biases that pervaded the investigation and the hearing itself.

85. Two decision-makers at CUA, Capt. Gregory and Dean Sawyer, had conflicts of interests which undermined the impartiality of the process.

86. Capt. Gregory concluded twice that Cavalier had consented to sex and that no

⁷⁰ Ex. 2 at 4.

hearing was required.⁶⁸ She therefore had a conflict of interest as Cavalier pressed for a hearing, as granting Cavalier's request would have called into question Capt. Gregory's judgment and the adequacy of her investigation, and a finding in favor of Cavalier at any hearing would have further undermined her competence.

87. Capt. Gregory's bias against a hearing became apparent on April 23, 2013, when, after reviewing Cavalier's toxicology report, she submitted an Addendum Report. In the report, Capt. Gregory noted that, rather than re-consider her opinion regarding the rape in light of this evidence, she took the opportunity to scold Cavalier for failing to report that she was "incapacitated or unconscious during the sexual encounter or the events leading up to and/or after the sexual encounter."⁶⁹ Capt. Gregory informed Cavalier that witnesses contradicted her position that she was too intoxicated to consent. Capt. Gregory concluded that "there is no evidence" that Cavalier was too intoxicated to give consent and again recommended the investigation be closed.⁷⁰

88. Capt. Gregory's actions and report were clearly unreasonable, and any reliance on this report by any other CUA official was clearly unreasonable, in light of facts and circumstances Capt. Gregory and CUA knew. First and foremost, Cavalier had maintained throughout the investigation, and before CUA initially denied her complaint on March 20, 2013, that she was too intoxicated to consent. Capt. Gregory's statement to the contrary was false. Capt. Gregory also ignored that Cavalier had reported that she was too drunk to remember much of the sexual assault. Capt. Gregory's single-minded focus on witnesses who purportedly stated that Cavalier was "coherent" the evening of December 14 to the morning of December 15, 2012,

⁶⁸ See Ex. 2 at 8; Ex. 4 at 2.

⁶⁹ Ex. 4 at 2.

⁷⁰ Ex. 4 at 3.

was, frankly, bizarre in light of her earlier report, which included statements by witnesses that Cavalier was at times passed out, drunker than everyone else around her, and staggering when Doe walked her home. And Capt. Gregory's conclusion that "no evidence" supported Cavalier's incapacity to consent was belied by Cavalier's extraordinarily high blood alcohol level.

89. Capt. Gregory's bias was again on display when she interviewed Lindsey Silverberg of the Network for Victim Recovery of D.C. on September 27, 2013. Silverberg reported to Capt. Gregory that she met Cavalier at the hospital on December 15, 2012, to act as Cavalier's victim advocate. Silverberg reported that Cavalier was "clearly intoxicated; that she slurred her words; and had trouble staying awake during conversation." Silverberg, like other witnesses, reported that Cavalier stated that she had "blacked out walking from the dorm and during the assault."⁷¹

90. Capt. Gregory not only ignored this evidence, which contradicted her conclusion that Cavalier was capable of consenting and had consented to sex, but she misleadingly interrogated Silverberg by asking "why she was the only person who mentioned/reported that Erin displayed signs of being intoxicated."⁷² Capt. Gregory knew that at least four witnesses had described Cavalier as intoxicated — in some cases severely so — or smelling of alcohol on the night of her rape.⁷³

91. In light of Capt. Gregory's conflict of interest and obvious bias, it was clearly inappropriate for CUA to allow her to continue to occupy a central role in the process of investigating Cavalier's rape after Cavalier protested the March 20, 2013, closing of her case (which Capt. Gregory had recommended).

⁷¹ Ex. 7 at 1–2.

⁷² Ex. 7 at 2.

⁷⁷ See Ex. 2.

92. Dean Sawyer, the primary decision-maker in CUA's Title IX process, had a similar conflict of interest. On March 20, 2013, he prematurely and unreasonably concluded that no rape had occurred. He wrote to Cavalier that "DPS staff conducted a thorough and impartial investigation" and that "evidence does not exist to substantiate moving forward with student disciplinary action."⁷⁴ Like Capt. Gregory, he, too, then had an interest in continuing to deny Cavalier a hearing and in ensuring that Doe would not be held responsible in any hearing that occurred.

93. True to this partiality, Cavalier was forced to advocate forcefully for five months before Dean Sawyer relented and granted a hearing on Cavalier's report of rape.

94. However, the hearing process — controlled by Sawyer — was tilted towards Sawyer's original finding that Cavalier had not been raped. Despite taking nearly ten months to convene a hearing, and in spite of the fact that they knew she was from California, Dean Sawyer and Associate Dean Torres gave Cavalier just a 48-hour notice of the time and date of the hearing. Cavalier's parents therefore could not attend the hearing and show their support for their daughter, while Doe's parents could.

95. CUA also denied Cavalier the right to call witnesses, such as Silverberg, who were not associated with CUA. Associate Dean Torres informed Cavalier that CUA had a wholly unreasonable, "unwritten rule" that precluded parties from calling anyone unaffiliated with CUA to testify. This significantly hampered Cavalier in her presentation of her case.

96. CUA also refused to disclose Capt. Gregory's notes from her investigation and forced Cavalier to rely only on Capt. Gregory's biased reports. This, too, significantly hamstrung Cavalier's presentation of her case.

⁷⁴ Ex. 3.

97. Dean Sawyer, upon information and belief, also selected all four members of the Hearing Board. To date, Cavalier still has no idea what training and background qualified the Hearing Board members, except that Dean Sawyer's office approved them.

98. Dean Sawyer also controlled the Appeals Committee, which denied Cavalier's appeal of the unfair hearing. Dean Sawyer sent Cavalier the October 21, 2013 letter denying Cavalier's appeal.⁷⁵

99. Even though Dean Sawyer had a clear conflict of interest after denying Cavalier's complaint on March 20, 2013, CUA inappropriately allowed him to continue to control the re-opened investigation and hearing into Cavalier's rape. It is no surprise that the hearing process confirmed Dean Sawyer's earlier conclusion that Cavalier had not been raped.⁷⁶

100. Finally, in finding Doe not responsible for the rape, CUA unreasonably ignored the testimony of witnesses and evidence from Cavalier's medical records that she was severely and visibly incapacitated by alcohol on the night of December 14 and into the morning of December 15, 2012.

101. Most unreasonably, CUA ignored Cavalier's toxicology report, which showed that Cavalier, an 18-year-old girl, had a blood alcohol level nearly *three times* the legal limit at the time of the rape.

102. On May 1, 2016, just days before Cavalier's graduation, CUA announced its total indifference to the enforcement of Title IX on its campus, and to Cavalier's report of sexual assault, by promoting Capt. Gregory to the position of Deputy Title IX Coordinator. Capt. Gregory led the charge to deny Cavalier her Title IX rights and, as CUA well knows, is plainly unfit for the job.

⁷⁵ Ex. 9.

⁷⁶ Ex. 6 at 1.

103. CUA's persistent delays in investigating Cavalier's report; its initial, premature dismissal of her complaint in disregard of known facts and without examining all available evidence or considering her intoxication; its failure to seek out and preserve evidence; its continued employment of decision-makers with obvious conflicts of interest and announced biases in the investigation and hearing process and its reliance on their work; its deployment of an unfair hearing process; its conclusion that Cavalier was not raped; and its promotion of Capt. Gregory were clearly unreasonable, deliberately indifferent, and in dereliction of its own policies and duties to Cavalier.

CUA Re-Victimized Cavalier Throughout Its Investigation

104. OCR requires a school's "responsible employees" to be trained on "the potential for re-victimization by responders and its effect on the students" as well as "appropriate methods for responding to a student who may have experienced sexual violence, including the use of non-judgmental language."⁷⁷ CUA failed to follow this policy.

105. CUA worked with the MPD to investigate the rape. The MPD officer who arrived on the scene, Officer Morris, expressed clear disdain for Cavalier and her report, rolling his eyes and stating to CUA officials, "I'm not touching this, I'm calling the Sex Crime Unit."⁷⁸

106. Nevertheless, immediately after the rape, CUA officials on the scene allowed Officer Moore to isolate Cavalier from her friends and interrogate her. CUA officials were present, but did nothing, when Officer Moore asked Cavalier, "Do you want to see the SANE nurse because you believe that you were sexually assaulted or do you just want to go because you think you could get pregnant?"⁷⁹ CUA officials allowed Officer Moore's interrogation to

⁷⁷ Q&A at 38.

⁷⁸ Ex. 11 at 1.

⁷⁹ Ex. 11 at 1.

proceed instead of allowing Cavalier to receive treatment from paramedics.

107. On April 2, 2013, CUA officials once again re-victimized Cavalier during her interview regarding her blood toxicology report. Capt. Gregory and Investigator Callis made clear that they did not believe Cavalier and that they blamed her for her rape. The CUA investigators told Cavalier that despite her high blood alcohol level, “career alcoholics” can develop a high tolerance for alcohol. They insinuated that the 19-year old Cavalier somehow had developed a natural resistance or tolerance to the intoxicating effects of alcohol.⁸⁰ They also falsely stated to Cavalier that she had never previously urged that she was too incapacitated to consent and that her story was contradicted by other witnesses.

108. CUA’s acts demeaning Cavalier and blaming her for her rape not only violate OCR guidance, but CUA policy. CUA’s Sexual Assault Policy in place at the time of the rape “recognize[d] the moral, legal, physical and psychological seriousness of all sexual assaults, including that commonly designated as acquaintance rape between persons who already know one another, however casually.”⁸¹

109. CUA students who report sexual assault “have the right to have any and all reported sexual assaults treated with seriousness and to be treated justly and with dignity throughout the process. Students will not be pressured to suppress a sexual assault report. Students will not be made to think that they are somehow responsible for the commission of the crime against them; or that the victim was contributory [sic] negligent by assuming the risk of being assaulted by reason of circumstances, dress or behavior.”⁸²

⁸⁰ Ex. 10 at 2–3.

⁸¹ *Policies: Sexual Assault*, CUA (archived Sept. 4, 2012), <http://policies.cua.edu/archives/studentlife/sexassault6.cfm>.

⁸² *Policies: Sexual Assault*, CUA (archived Sept. 4, 2012), <http://policies.cua.edu/archives/studentlife/sexassault6.cfm>.

110. Throughout its investigation, CUA dismissed the trauma Cavalier had experienced, blamed her for her rape, and denied her the just and dignified treatment to which she was entitled.

CUA Delayed Implementing and then Refused to Enforce a No-Contact Order Between Doe and Cavalier, Subjecting Cavalier to Further Harassment from her Rapist

111. Cavalier reported her rape immediately after it occurred. For months, she pressed CUA to implement a no-contact order to protect her from her rapist. Cavalier received no documentation of such an order for *eight months*, until August 27, 2013. Until then, Cavalier had little assurance that a no-contact order was in place (though CUA verbally represented to her that it was). The lack of a clear no-contact order increased Cavalier's fear and anxiety of constantly seeing her rapist on campus and having no real way to stop the unwanted encounters.

112. Unfortunately, the no-contact order did little to stop Doe's harassing behavior, and CUA refused to further intervene.

113. For example, on October 4, 2013, just one day after the disciplinary hearing, Doe appeared at an off-campus lacrosse house party where he knew Cavalier, a lacrosse player, would probably be present.

114. When Cavalier saw Doe, she felt in immediate danger of her safety.

115. Cavalier asked the homeowner to have Doe leave. Doe refused to leave. Instead, he began an argument, and a physical altercation ensued, upon information and belief, between Doe and Cavalier's friends.

116. Cavalier left the house party. She subsequently told Dean Sawyer about this violation. CUA did not change its approach and did nothing, which did not stop Doe from later violations of the no-contact order.

117. The October 4, 2013, incident was only the most egregious in Doe's persistent

violations of the no-contact order and harassment of Doe, which CUA did nothing to prevent or remedy. For example:

- a. Sometime in January or February 2013, Doe had his friends approach Cavalier, who was sitting alone at CUA's Edward J. Pryzbyla Center (CUA's student union). They called Cavalier a "slut" and a "whore."⁸³
- b. Sometime after February 2013, but before October 4, 2013, Doe appeared at another lacrosse party, knowing Cavalier would be there. Cavalier informed CUA of this incident. CUA did nothing to prevent or remedy this harassment.
- c. Sometime in February 2014, Doe harassed and intimidated Cavalier at an off-campus house party, telling Cavalier that the house was "his territory" and she "need[ed] to leave."

118. During Cavalier's first year at CUA (2012–2013) after the assault, Doe violated the no-contact order approximately once every two weeks.

119. During Cavalier's second year at CUA (2013–2014), Doe violated the no-contact order approximately twice a week.

120. During Cavalier's third (2014–2015) and fourth years (2015–2016), Doe violated the no-contact order approximately once a month.

121. Cavalier informed Dean Sawyer and Associate Dean Torres at least six times over the course of her four years at CUA that her rapist continually confronted her both on and off campus. CUA never changed its approach to enforcing the no-contact order, despite its knowledge that its actions, if any, were ineffective.

122. In fact, CUA facilitated these confrontations by housing Doe 200 feet from Cavalier in Fall 2013, in the face of Cavalier's objections and when other housing was available.

⁸³ CUA was aware that Doe's friends were harassing Cavalier. Capt. Gregory stated in her report that a friend of Doe told Cavalier that she was "messed up" for filing a report against Doe. Ex. 2 at 4.

CUA'S DELIBERATE INDIFFERENCE AND NEGLIGENCE MAINTAINED, FACILITATED, AND CONTRIBUTED TO A HOSTILE EDUCATIONAL ENVIRONMENT FOR CAVALIER THAT DENIED HER ACCESS TO CUA'S EDUCATIONAL OPPORTUNITIES AND BENEFITS

123. When Doe raped Cavalier, he immediately turned CUA into a hostile educational environment for her, where she no longer felt safe, respected, or valued. CUA's response to the rape not only allowed that environment to persist, but actively facilitated and contributed to it, causing Cavalier severe emotional, psychological, and mental distress and denying her access to CUA's educational opportunities and benefits.

124. At every turn, CUA's response trivialized Cavalier's rape. CUA's persistent delays and stonewalling caused her to feel depressed, anxious, and upset. Cavalier's battle to make CUA take her rape seriously and give her a hearing exhausted her and distracted her from her coursework and her role on the CUA lacrosse team.

125. CUA's re-victimizing actions also took a large toll on Cavalier. Cavalier was made to feel that she was not to be trusted, that she had done something wrong for reporting her rape, that the rape was her fault because she was a "career alcoholic," and that she was not worth taking seriously.

126. Most importantly, Doe's actions and CUA's deliberately indifferent response caused Cavalier to feel unsafe at her home, CUA's campus. By raping her and subsequently violating the no-contact order, Doe communicated to Cavalier that he could do what he wanted to her with impunity, and by failing to discipline him in any way, CUA encouraged that message. When Doe was housed 200 feet from Cavalier's dormitory, she changed her route to classes to avoid the chance of an encounter. She asked friends to accompany her around campus so that she would not encounter Doe alone. Every day, she felt acutely her vulnerability and CUA's refusal to protect her.

CUA RETALIATED AGAINST CAVALIER BECAUSE SHE EXERCISED HER TITLE IX RIGHTS

127. On December 15, 2012, Cavalier exercised her rights under Title IX by reporting her rape to CUA. She continued to exercise her rights by advocating for a prompt, adequate, reliable, and impartial investigation into her rape. On December 19, 2013, again Cavalier exercised her rights under Title IX by reporting CUA's deliberately indifferent response to her rape to OCR.

128. As described above, CUA retaliated against Cavalier in response to her December 15, 2012, report by refusing to remedy and at times participating in and facilitating the hostile educational environment occasioned by her rape. CUA engaged in an untimely, inadequate, unreliable, and partial investigation, hearing, and appellate process; shamed and re-victimized Cavalier; turned a blind eye to continued harassment by her rapist; and shockingly housed him only 200 feet from her dormitory, enabling his easy access to her.

129. CUA took these actions because Cavalier engaged in protected Title IX activity by reporting her rape and advocating that her rapist face disciplinary proceedings.

130. When Cavalier exercised her Title IX rights by filing an official complaint with OCR on December 19, 2013, OCR placed CUA under investigation. Since that time, Cavalier has continued to advocate for her Title IX rights and the rights of other sexual assault survivors. In response, CUA has continued its retaliation against Cavalier.

131. Since her sophomore year, Cavalier's advocacy has included working with the media to give voice to sexual assault survivors and bring awareness to issues of sexual violence and the enforcement of Title IX.⁸⁴ She has planned and run "Take Back the Night" events to

⁸⁴ See, e.g., Nick Anderson, "Catholic U. Student Recounts Her Struggles After Reporting A Sex Assault," *Wash. Post*, June 29, 2014,

raise awareness of sexual violence and Title IX and support sexual assault survivors. She also pushed CUA to screen *The Hunting Ground*, a critically acclaimed documentary on sexual assault and Title IX.

132. Cavalier has not worked alone. She joined Peer Educators Empowering Respectful Students (“PEERS”) — CUA’s only peer education group that educates students on alcohol and drug use, mental health awareness, sexual assault awareness, and ethical decision making — to continue her Title IX advocacy. PEERS recruits many of its members at a CUA event called “Emerging Leaders Night.”

133. CUA has retaliated against Cavalier by attempting to limit her advocacy activities because of her complaint to OCR and her forceful assertion of her own rights. CUA sought to limit Take Back the Night events planned by Cavalier. CUA refused to show *The Hunting Ground*. In 2015, after Cavalier joined PEERS, CUA uninvited PEERS from attending the Emerging Leaders Night.

134. Finally, CUA promoted Capt. Gregory to Deputy Title IX Coordinator just days before Cavalier’s graduation, knowing the painful blow this would deal to Cavalier. Such action not only violates Title IX, but sadly devalues the principles of humility, grace, and empathy which set CUA apart from other universities.

135. For the reasons stated above, CUA’s retaliation caused Cavalier severe emotional pain and suffering. She again felt acutely the injustice that only she, and not Doe, was being punished for her rape.

https://www.washingtonpost.com/local/education/catholic-u-student-recounts-her-struggles-after-reporting-a-sex-assault/2014/06/29/9ed3b4f0-e694-11e3-afc6-a1dd9407abcf_story.html.

Causes of Action

COUNT 1

(Violations of Title IX, 20 U.S.C. § 1681(a) — Deliberate Indifference to Reported Rape)

136. Cavalier re-alleges and incorporates the allegations set forth above.

137. Defendant CUA is a recipient of federal funds.

138. Defendant CUA, through employees with authority to take corrective action, had actual knowledge of Doe's rape of Cavalier on December 15, 2012, and of Doe's subsequent harassment of Cavalier.

139. Doe's actions against Cavalier constituted severe, pervasive, and objectively hostile harassment on account of her sex.

140. Defendant CUA responded with deliberate indifference to Cavalier's rape. Its deliberately indifferent actions and inactions include, but are not limited to:

- a. Its frequent and unnecessary delays in the process of investigating Cavalier's complaint, which contributed to the degradation in the quality of available evidence (including witnesses' memories) and the persistence of a hostile educational environment for Cavalier;
- b. Its refusal to adequately investigate the rape, including its refusal to interview key witnesses, preserve the available physical evidence, and collect and consider important documentary evidence;
- c. Its refusal for months to consider and investigate whether Cavalier was incapacitated by alcohol intoxication at the time of her rape;
- d. Its refusal to remove employees with manifest biases and conflicts of interest from positions of authority over the investigation and its continued reliance on work product from these employees;
- e. Its refusal to give Cavalier fair notice of the disciplinary hearing; to allow Cavalier to call key witnesses at the disciplinary hearing; and to otherwise conduct the hearing in a fair and impartial manner;
- f. Its re-victimization of Cavalier by blaming and shaming Cavalier and conveying to Cavalier that her version of events was not credible, in the face

of significant evidence to the contrary;

- g. Its refusal to timely institute and thereafter enforce a no-contact order between Doe and Cavalier;
- h. Its housing of Doe 200 feet from Cavalier's dorm; and
- i. Its refusal to meaningfully and appropriately discipline Doe for the rape of Cavalier.

141. Defendant CUA's actions allowed a hostile educational environment to persist and facilitated and contributed to that environment.

142. The hostile educational environment at CUA effectively deprived Cavalier of educational opportunities and benefits provided by CUA.

COUNT 2

(Violations of Title IX, 20 U.S.C. § 1681(a) — Retaliation)

143. Cavalier re-alleges and incorporates the allegations set forth above.

144. Cavalier engaged in protected activity when she reported her rape to Defendant CUA on December 15, 2012, advocated for Defendant CUA to take meaningful and appropriate action in response to her rape, and then reported Defendant CUA's Title IX violations to OCR on December 19, 2013.

145. Defendant CUA knew about Cavalier's protected activity.

146. Because of Cavalier's protected activity, Defendant CUA took adverse actions against her, including, but not limited to:

- a. Facilitating and contributing to the hostile educational environment for Cavalier;
- b. Making Capt. Gregory the Deputy Title IX Coordinator just days before Cavalier graduated from CUA;
- c. Refusing to enforce the no-contact order against Doe;
- d. Housing Doe 200 feet from Cavalier;

- e. Shaming and degrading Cavalier, including calling her a “career alcoholic,” acquiescing to Officer Moore’s harassing comments implying that she only wanted to go to the hospital because she feared pregnancy, and falsely informing her that her version of events was discredited by other witnesses;
- f. Delaying the resolution of Cavalier’s complaint for 298 days;
- g. Conducting an investigation and hearing distorted by conflicts of interest and unreasonable decision-making; and
- h. Impeding Cavalier’s sexual assault advocacy efforts, including Take Back the Night and her work with PEERS.

COUNT 3
(Negligence)

147. Cavalier re-alleges and incorporates the allegations set forth above.

148. Defendant CUA had a duty to take reasonable measures to protect Cavalier from sexual harassment, including sexual assault and a hostile educational environment at CUA.

Defendant CUA had a duty to resolve sexual assault complaints promptly, fairly, reliably, and impartially. Its duties also included the duty to properly warn, train, and educate CUA students, employees, and staff about how to avoid sexual harassment, including educating members of the CUA community on what actions constituted sexual harassment.

149. A special relationship existed between Defendant CUA and Cavalier, who was entrusted to CUA's care from 2012 to 2016. Defendant CUA voluntarily accepted the care of Cavalier and owed her a duty of care as a result.

150. Through the CUA Code of Student Conduct, CUA Sexual Assault Policies, CUA Title IX Policy, OCR's 2011 DCL, OCR's 2014 Q&A, Title IX itself, and CUA's no-contact order between Cavalier and Doe, CUA accepted a duty to protect Cavalier from sexual assault and to adjudicate and resolve complaints of student-on-student sexual harassment, including sexual assault, in a prompt, adequate, reliable, impartial, and fair manner.

151. CUA's policies recognize that student-on-student sexual harassment on campus, including sexual assault, is foreseeable.

152. CUA's agents, servants, and employees reasonably knew that on December 15, 2012, Cavalier reported that she had been raped by Doe.

153. CUA's agents, servants, and employees, acting within the course and scope of their employment at all times relevant to this Complaint, breached their duty of care to Cavalier

by, among other things, conducting an untimely, inadequate, unfair, unreliable, and partial investigation of Cavalier's sexual assault complaint, failing to enforce the no-contact order between Cavalier and Doe, unreasonably resolving Cavalier's complaint, and deviating significantly from the standard of care outlined by CUA's policies, OCR's policies, and Title IX.

154. Defendant CUA's breaches of the standard of care directly and proximately caused Cavalier's injuries, but not limited to, severe emotional, psychological, and mental distress.

155. Defendant CUA's intentional and negligent acts and omissions amount to negligence, negligent failure to warn, train and/or educate, and negligence *per se*.

COUNT 4

(Negligent Infliction of Emotional Distress)

156. Cavalier re-alleges and incorporates the allegations set forth above.

157. Defendant CUA had a special relationship with Cavalier and/or had undertaken an obligation to Cavalier that necessarily implicated Cavalier's emotional well-being. Specifically, Defendant CUA had a duty to promptly, adequately, reliably, fairly, and impartially investigate and resolve Cavalier's complaint of rape, and to protect Cavalier from Doe by enforcing a no-contact order between Cavalier and Doe.

158. There was an especially likely risk that Defendant CUA's negligent actions and inactions would cause serious emotional distress to Cavalier. Defendant CUA's failure to promptly, adequately, reliably, fairly, and impartially investigate and resolve Cavalier's complaint was likely to cause Cavalier to continue to feel unsafe, demeaned, and harassed, and to subject her to further abuse from her rapist by sending the message that rape would not be taken seriously.

159. Defendant CUA's failure to enforce the no-contact order was likely to cause serious emotional distress to Cavalier by subjecting her to continued contact, harassment, and intimidation by the man who raped her.

160. Defendant CUA's negligent actions and inactions regarding the investigation and resolution of Cavalier's complaint and its failure to enforce the no-contact order between Cavalier and Doe, in fact, directly and proximately caused severe emotional, psychological, and mental distress to Cavalier.

COUNT 5

(Intentional Infliction of Emotional Distress)

161. Cavalier re-alleges and incorporates the allegations set forth above.

162. Defendant CUA engaged in extreme and outrageous conduct, including but not limited to the following:

- a. Refusing to enforce the no-contact order between Doe and Cavalier, despite knowing that Doe and his friends continually violated the no-contact order and confronted, harassed, and intimidated Cavalier;
- b. Housing Doe 200 feet from Cavalier;
- c. Refusing to properly investigate Cavalier's rape, including refusing to interview key witnesses, preserve available physical evidence, and collect and consider important documentary evidence;
- d. Blaming and shaming Cavalier, and refusing to meaningfully investigate Cavalier's version of events or consider her incapacitation in its investigation;
- e. Conducting an unfair investigation hearing distorted by conflicts of interests and unreasonable decision-making;
- f. Taking 298 days to conclude its investigation into Cavalier's complaint; and
- g. Refusing to meaningfully and appropriately discipline Doe.

163. Defendant CUA's actions were intentionally and/or recklessly directly and

proximately caused Cavalier severe emotional, psychological, and mental distress.

WHEREFORE, Plaintiff Cavalier demands judgment against the Defendant CUA for compensatory and punitive damages in excess of \$75,000, including:

- Damages for reimbursement for all of Plaintiff's tuition and related expenses;
- Damages for Plaintiff's expenses incurred as a consequence of the sexual assault;
- Damages for deprivation of equal access to Defendant CUA's educational benefits and opportunities;
- Damages for past, present, and future emotional pain and suffering; ongoing and severe mental anguish; loss of past, present, and future enjoyment of life; and past and present lost earnings and earning capacity;
- Punitive damages for Defendant CUA's intentional creation of a hostile educational environment, intentional retaliation, and intentional infliction of emotional distress;
- Pre-judgment and post-judgment interest;
- Legal fees and costs; and
- Any other damages deemed just and appropriate.

DEMAND FOR JURY TRIAL

Plaintiff Cavalier respectfully demands a trial by jury under Rule 38 of the Federal Rules of Civil Procedure.

TABLE OF EXHIBITS

Exhibit No.	Description
1	E-mail exchange between Rachel Wainer & Erin Cavalier (Dec. 17, 2012–Jan. 14, 2013)
2	Investigative Report from Capt. Kim Gregory & Investigator Charles Callis to Thomasine Johnson (Feb. 18, 2013) [redacted]
3	Letter from Dean Jonathan Sawyer to Erin Cavalier (Mar. 20, 2013)
4	Addendum Report from Capt. Kim Gregory & Investigator Charles Callis to Thomasine Johnson (Apr. 23, 2013) [redacted]
5	Letter from Associate Dean Omar Torres to Erin Cavalier (Aug. 27, 2013) [redacted]
6	Letter from Dean Jonathan Sawyer to Erin Cavalier (Oct. 9, 2013) [redacted]
7	Addendum Report from Capt. Kim Gregory & Investigator Charles Callis to Thomasine Johnson (Sept. 27, 2013) [redacted]
8	EMT & Toxicology Report (Dec. 15, 2012) [redacted]
9	Letter from Dean Jonathan Sawyer to Erin Cavalier (Oct. 21, 2013) [redacted]
10	Letter from Matt Ornstein & Rachel Kohler to DOE (Dec. 19, 2013)
11	E-mail from Nicole Giglia to Dean Jonathan Sawyer et al. (Dec. 15, 2012) [redacted]

Respectfully submitted,

/s/

Kobie Flowers (Bar No. 991403)
BROWN GOLDSTEIN & LEVY, LLP
1750 K Street, NW
Suite 200
Washington, DC 20006
Tel: (202) 742-5969
Fax: (202) 742-5948
kflowers@browngold.com

Abigail Graber (*pro hac vice pending*)
BROWN GOLDSTEIN & LEVY, LLP
120 E. Baltimore Street
Suite 1700
Baltimore, Maryland 21202
Tel: (410) 962-1030
Fax: (410) 385-0869
agraber@browngold.com

Dated: October 7, 2016

Counsel for Plaintiff Erin Cavalier

Exhibit 1

Sawyer, Jonathan C.

From: Wainer, Rachel N
Sent: Thursday, February 14, 2013 3:13 PM
To: Sawyer, Jonathan C.
Subject: FW: Follow up from the Office of the Dean of Students

Jon, please see my original message from 12/17 at the bottom which starts this thread.

From: Wainer, Rachel N
Sent: Monday, January 14, 2013 1:57 PM
To: Cavalier, Erin M 83CAVALIER
Subject: RE: Follow up from the Office of the Dean of Students

Hi Erin,

We can absolutely meet today. I am sorry we were not able to touch base before the University closed for the Christmas holiday. I am free from now until 5:00pm. Please let me know when you would like to come by.

Best,
Dean Wainer

From: Erin Cavalier [<mailto:83cavalier@cardinalmail.cua.edu>]
Sent: Monday, January 14, 2013 1:48 PM
To: Wainer, Rachel N
Subject: Re: Follow up from the Office of the Dean of Students

Dean Wainer,

Good afternoon, I hope to find that you enjoyed your Christmas, New Years and time off!

I am contacting you to discuss the email you sent me on December 17, 2012. I am sure that you were away from your office but I did a little research of my own on CUA's policy regarding sexual harassment and I found it to be very wordy and confusing. If I am understanding it correctly, it states that if there is a complaint and there is sufficient evidence the case will go through a judiciary process. I am not sure if that only happens if I press criminal charges or not. Like I said, it was unclear.

I discussed my confusion with my advocate, Lindsey, who works at the Network for Victim Recovery of DC (NVRDC) and was able to find this statement regarding the Dean of Student's role in this situation.

A student who has made a report of sexual misconduct will be referred to the Dean of Students, who will appoint a trained resource person to identify, explain and navigate the available support services. This includes information regarding counseling, educational support, pastoral care, medical treatment, and information about University disciplinary action. The Dean of Students can also provide assistance in rearranging class schedules and housing; every effort will be made to accommodate all reasonable requests, to protect the student and the campus community, and to minimize the impact on the student's educational program. When appropriate, the Dean of Students may issue no-contact orders to the students involved. DPS shall be notified when an order of no contact is issued. Further steps may be taken by the Dean of Students in his/her discretion.

Going forward, would it be possible if we met either later today or tomorrow to discuss what my next options are? Now that I am back on campus, I would like to get back to this.

Thank you for your time,
Erin Cavalier

On Thu, Dec 20, 2012 at 10:30 PM, Erin Cavalier <83cavalier@cardinalmail.cua.edu> wrote:
Dean Wainer,

I am so sorry it has taken so long to get back to you. I have been very busy this week with Christmas on the way. I am available to talk most of tomorrow. I am unavailable from 3:30-4:15ish but other than that any time between 9am-5pm works for me. I do live in California, so just be aware of the time change. I know it is easy to forget! :)

Thank you and talk to you soon,
Erin Cavalier

On Mon, Dec 17, 2012 at 10:12 PM, Wainer, Rachel N <WAINER@cua.edu> wrote:

Dear Erin,

My name is Rachel Wainer and I am one of the Assistant Deans of Students here at the University. I work with many offices on campus, including Residence Life and the Department of Public Safety, to support students and help connect them with the appropriate on and off-campus resources.

I know that this weekend you met with one of our Area Coordinators, Nicole Giglia, and a DPS officer following a situation in your residence hall room. I am glad to hear that Nicole was able to assist you in identifying the appropriate resources, and that EMS personnel made sure you got to Washington Hospital Center for any necessary medical care. I hope the SANE nurses there were helpful--I know it is a very good program.

I wanted to check in and see how you were doing. I understand that you may have questions or concerns, and I would be more than happy to connect with you. If you let me know a few times that are convenient for you this week between 9-5 we can schedule some time to talk. You can reach me at wainer@cua.edu or 202-319-5619.

Best,

Dean Wainer

Rachel N. Wainer

Assistant Dean of Students

The Catholic University of America

353 Pryzbyla Center

Washington, DC 20064

Phone: 202-319-5885

Fax: 202-238-2043

THE CATHOLIC UNIVERSITY OF AMERICA

Exhibit 2



MEMORANDUM

TO: Thomasine Johnson
Director

THRU: Cheryl Pendergast
Associate Director

FROM: Captain Kim Gregory
Investigator Charles Callis

DATE: February 18, 2013

SUBJECT: Investigative Report Regarding an Allegation of Sexual Assault/Violence Filed by
Erin Cavalier

Allegation

On December 15, 2012, Area Coordinator Nicole Giglia notified Lieutenant Marvin Dicks of the Department of Public Safety (DPS) of an allegation of sexual assault from Erin Cavalier of Ryan Hall. Lieutenant Dicks responded and conducted a preliminary investigation.

Complainant

Name: Erin Cavalier (Freshman) Address: [REDACTED]
DOB: [REDACTED]
CUA Address: Ryan Hall, Room 212
Cell phone: [REDACTED]

Involved Subject

Name: [REDACTED] (Freshman) Address: XXX
DOB: XXX
CUA Address: Flather Hall, Room 221
Cell phone: XXX

Preliminary Investigation

On December 15, 2012, at approximately 0205 hours, Lieutenant Dicks was notified by Area Coordinator Nicole Giglia to respond to Ryan Hall for a reported sexual assault. Upon arrival at Ryan Hall, Lieutenant Dicks was advised that a student, Erin Cavalier was possibly sexually assaulted by a student residing in Flather Hall. The student from Flather Hall was identified as [REDACTED].

Lieutenant Dicks interviewed Erin Cavalier and [REDACTED]. Erin reported that she and her friend female student went to Flather Hall and consumed alcoholic beverages on the 2nd and 3rd floor. They were running from floor/room to floor/room trying to evade DPS, who were patrolling the hallways. Erin said she came back to Ryan Hall with [REDACTED], but she does not know how she got there. Once inside of her room, she and [REDACTED] started hugging and she consented to having sex with a condom. Erin offered [REDACTED] a condom. Erin indicated that [REDACTED] refused to use a condom and penetrated her. [REDACTED] informed her that he had ejaculated inside of her, which caused her to be upset. Erin kicked [REDACTED] out of her room.

[REDACTED] reported that he and several other friends were drinking alcohol in Room 220 of Flather Hall. Erin got drunk, knocked on his door and asked him to walk her home. [REDACTED] agreed and proceeded to walk Erin to Ryan Hall. Erin signed him in and the two of them went to her room. Once inside of the room, Erin performed oral sex on him. Erin asked him if he had a condom, he replied, "No." Erin reached inside of her desk drawer and retrieved a condom. The two of them then engaged in sex. The condom broke and [REDACTED] said that he told Erin the condom broke and he stopped before ejaculating. [REDACTED] placed the broken condom in the trash can and left the room.

Lieutenant Dicks noted that during his interview, neither Erin nor [REDACTED] appeared intoxicated.

MPD and EMS were notified and responded. Erin was transported by EMS to Washington Hospital Center for treatment. Officer A.D. Moore of MPD took a report (12-171-131) and during the course of his investigation observed a broken condom inside of the trash can in Room 212 of Ryan Hall. MPD Sexual Assault Unit was notified and Detective Yvette Maupin assumed responsibility for the investigation.

Erin Cavalier and [REDACTED] left Catholic University for Christmas break on December 15, 2012. Both students returned to Catholic University on or about January 14, 2013.

Complaint Statement/Interview

Erin Cavalier

On January 16, 2013, Erin Cavalier was interviewed by Captain Kim Gregory and Investigator Charles Callis of DPS. Erin indicated that she does not remember all the events that occurred on December 15th, 2012. On December 15, 2012, Erin said she started drinking with her friends at

Ryan Hall and then went to her friend, [REDACTED] room at Millennium North and drank alcohol with her and her roommate.

At approximately 10:45 pm, Erin and [REDACTED] went to Flather Hall to "party and hang out" with [REDACTED] friends. They went to the 2nd floor of Flather Hall and partied with 10-15 people. They listened to music and drank alcohol. The group was moving from room to room; and running between the 2nd and 3rd floor because DPS was patrolling the floors.

Erin does not remember how she got back to Ryan Hall; nor does she remember signing [REDACTED] in for Ryan Hall. She said she remembers being on her bed, unclothed from the waist down and [REDACTED] was on top of her. She does not remember exactly what was said, but does recall him saying something about a condom. Erin said that a condom was found inside of the trash can in her room; that condom was not there prior to [REDACTED] being there. Erin further stated that she does not remember kicking [REDACTED] out of her room.

Erin was asked about having oral sex with [REDACTED]. She said that she does remember having oral sex with him, but not sure when it happened. Erin stated after [REDACTED] left, she went to the bathroom and a girl found her on the floor of the bathroom. The girl went and got the Resident Assistant.

Erin said that she was introduced to [REDACTED] that night; she had seen him around campus. [REDACTED] is a friend of [REDACTED] who was a classmate and lives at Flather. Later that day she received a text from [REDACTED] saying that he and [REDACTED] will get the Plan B pill for her.

Erin called her roommate [REDACTED] the next morning and told her what happened.

Involved Subject Statement/Interview

[REDACTED]
On January 24, 2013, [REDACTED] was interviewed by Captain Gregory and Investigator Callis. [REDACTED] stated on December 15th, 2012, he was in room 221 at Flather Hall drinking with friends, when Erin came over and joined them. [REDACTED] said that he did not know Erin; never had a conversation with her, and that this was the first time he met her. All of them were in the room drinking for approximately three hours, sometime between 10:00 p.m. and 1:00 a.m.; Erin shouted and asked who was going to take her home, because female student was gone. Erin then asked [REDACTED] to walk her home. [REDACTED] said he was drunk and Erin appeared to be drunk as well. He does not recall the two of them having any conversation on the way back to her dorm.

When they arrived at Ryan Hall, Erin signed him in and the two of them went to her room. Once inside of the room, they talked for about five minutes, then Erin started kissing him. She then unbuckled his pants and performed oral sex on him. Erin asked if he had a condom; he replied, "No." Erin went to her desk draw and gave him a condom. The two of them then engage in sex. During the sexual encounter, the condom broke and he informed Erin about the broken condom. [REDACTED] said that he did not ejaculate inside of Erin. [REDACTED] took off the condom and threw it in the trash can. Before leaving the room, [REDACTED] told Erin that he would get her the Plan B pill.

After he left Erin's room, [REDACTED] said that he went to the Pryzba and then to his friend MS1's room. He asked MS1 if he could go with Erin to get the Plan B pill. He then went back to his room and was later awoken by DPS, who informed him that Erin accused him of rape. [REDACTED] said he told DPS and MPD that they engaged in consensual sex; that he used a condom, which broke and that he put the broken condom in the trash can.

[REDACTED] said that although Erin appeared to be drunk, she seemed to be in control and coherent. He further stated that he did not use any force, and did not initiate the sex acts.

Witness Statement/Interview

Female Student 1 (FS1)

On January 16, 2013, FS1 was interviewed by Captain Gregory and Investigator Callis. FS1 said on December 15th, she saw that she had a missed call from Erin at 3:00 a.m.; she called her back at 9:00 a.m. When she talked to Erin, she was hysterical and crying. Erin told her that she went out with FS2 and they were drinking at Flather Hall. She does not remember how she got back to the room; she remembers a boy being in the bed with her. Erin told her that it was kind of fuzzy on how she ended up in the bed with [REDACTED] and that a used condom was found in the room.

Erin told her that she does not remember everything that happened, but she was upset about being in bed with a kid she does not know.

Male Student 1 (MS1)

On January 17, 2012, MS1 was interviewed by Captain Gregory and Investigator Callis. MS1 said on December 15th, a group of them were drinking inside of Flather Hall. [REDACTED] was with the group and FS2 and her friend Erin joined them. They were drinking for a couple of hours and Erin said she needed someone to walk her home. She walked up to [REDACTED] and asked him to take her home.

MS1 said that Erin appeared to be drunk. She was staggering when she left. Sometime later that night, he is awakened by MS4, who tells him that [REDACTED] wants him to come to the lobby. While in the lobby, [REDACTED] is talking to DPS and [REDACTED] tells him that Erin accused him of rape. He hears [REDACTED] tell DPS that he had sex with Erin and the condom broke and he told her that he would get her the Plan B pill.

MS1 texted Erin and told her that he and [REDACTED] will get her the Plan B pill in the morning. He also told her that it was "messed up" for what she was accusing [REDACTED] of doing. MS1 recalls Erin responding to his text, but does not recall exactly what she said.

Female Student 2 (FS2)

On January 24, 2013, Captain Gregory and Investigator Callis interviewed FS2. FS2 said on December 15th, she went to Flather Hall to see some friends. While at Flather, DPS was

patrolling the hallway and when she went to the bathroom, someone reported seeing her run into one of the rooms and close the door. DPS came to the room and she opened the door. FS2 said DPS believed she was among the group of kids that were running from room to room.

FS2 does not recall Erin going to Flather Hall with her on that day. FS2 acknowledges that she had been drinking, but denies taking alcohol to the room. FS2 further stated that she did not know Erin knew [REDACTED] and had no idea what happened to Erin that night.

Female Student 3 (FS3)

On January 24, 2013, FS3 was interviewed by Captain Gregory and Investigator Callis. FS3 said that during the early morning hours of December 15th, Erin came and knocked on her door, asking her to go to the hospital with her. Erin told her that her roommate was gone. FS3 said that she was surprised when Erin came to her room, because they are not really close friends. According to FS3, Erin didn't seem drunk, but she could smell an odor of alcohol.

Erin told FS3 that she was packing when a friend called, they all were drinking, and went to Flather Hall to continue drinking. While at Flather, some kids were running back and forth between rooms. Erin asked [REDACTED] to walk her back to her dorm; she did not remember the walk; but does remember signing him in. Once inside of the room, she remembers him asking if she wanted to have sex; she replied, "We can have sex, if you have a condom. I don't want to have sex if you don't have a condom." He never told her that he had a condom, but one was found in the room.

Erin said the sexual encounter happened about midnight. She went to the bathroom and that was where the RA – FS4 found her. FS3 said Erin was crying when she told her what happened between her and [REDACTED].

Female Student 4 (FS4)

On January 30, 2013, Captain Gregory and Investigator Callis interviewed FS4, Resident Assistant at Ryan Hall. FS4 said on December 15th, she came home about 1:30 a.m. and saw Erin in the bathroom. Erin saw her and broke down and cried. Erin said, "I think I've just been raped." FS4 took Erin to her room and Erin told her that she was concerned about being pregnant. Erin told her that while she was having sex; she asked [REDACTED] to put on a condom; he would not pull out and put one on because, he said, he had already ejaculated.

FS4 was in the room when Erin called her friend and said that she had gone to the Millennium for drinks and after that they went to Flather to continue drinking there. Erin said she and the guy were having sex and she asked him to stop/pull out and put on a condom, but he would not. According to FS4, Erin said, "pull out; put a condom on and continue."

Erin did not tell FS4 the name of the guy; nor, did she explain to her why she believed she was raped. FS4 further indicated that Erin appeared to be more concerned about the possibility of being pregnant.

Male Student 2 (MS2)

On February 13, 2013, Captain Gregory and Investigator Callis interviewed MS2, roommate of [REDACTED]. MS2 said that on the night of December 15th, he and friends were moving from room to room in Flather Hall. Everyone was drinking, however, Erin and [REDACTED] seemed drunker than any of them. While at the party, he saw several young men trying to "hit on Erin"; but she rejected them all and seemed only interested in [REDACTED]. MS2 said [REDACTED] and Erin were socializing with each other and left the party together. Shortly after they left, he went back to his room.

Sometime later that night or early that morning, [REDACTED] returned to their room. MS2 asked him what happened and [REDACTED] said, "Erin gave me some head and then we had sex." [REDACTED] also told him, "You would be proud of me because I used a condom."

[REDACTED] told him after he talked to DPS, Erin accused him of rape. She told DPS that he did not use a condom; but the police and DPS found the condom he used inside of the trash can in her room.

Male Student 3 (MS3)

On February 14, 2013, Captain Gregory and Investigator Callis interviewed MS3. MS3 said that everyone was partying in two rooms and by the end of the night everybody appeared drunk. He remembered Erin Cavalier and FS2 coming to one of the rooms about 10:00 p.m. At some point during that night, Erin was very drunk and falling asleep on the bed in Room 220. He does not remember how long he saw her sleeping on the bed.

Everyone at the party was socializing with each other. Around 1:00 a.m., he heard [REDACTED] say that he was going to walk Erin back to her room. People at the party started cleaning up the room. He believes [REDACTED] left the party with Erin before DPS came.

MS3 said after the party he went to MS2's room and was in the room when [REDACTED] returned. MS3 said that he does not know what occurred between Erin and [REDACTED].

Male Student 4 (MS4)

On February 20, 2013, Captain Gregory and Investigator Callis interviewed MS4. During the early morning hours of December 15th, MS4 said that he was down stairs washing clothes when [REDACTED] came down stairs visibly upset. [REDACTED] told him that Erin Cavalier told DPS that he forced himself on her, and that he raped her. [REDACTED] told him that he did not rape Erin that they had sex and the condom broke. [REDACTED] said he told Erin that he would get her the birth control pill the next day. He then asked him if he would go upstairs and get MS1. MS4 went to MS1's room and MS1 came down stairs. MS4 and MS1 were there when DPS and the police came.

[REDACTED] told him later that DPS found the condom in Erin's room.

Male Student 5 (MS5)

On February 20, 2013, Captain Gregory and Investigator Callis interviewed MS5. MS5 said on that night, everyone was partying between two rooms. He believes there was a mixture of males and females in the room. He said FS2 was there and recalls two other females with FS2. MS5 said FS2 and the females appeared to be drunk.

MS5 said that he was at the party for about ten minutes before DPS showed up. While he was there, he did not notice anything unusual, other than people drinking.

MPD Investigation

On February 7, 2013, Investigator Callis contacted Detective Yvette Maupin of MPD Sexual Assault Unit for an update. Detective Maupin told Investigator Callis, that she has been trying to contact Erin Cavalier since the incident was initially reported in December 2012, with negative results. Detective Maupin stated Erin has been unresponsive for her repeated request for a follow-up interview.

Detective Maupin further stated on the morning of the incident, she responded to Washington Hospital Center to interview Ms. Cavalier. During the interview, Erin reported to her that the sexual encounter with [REDACTED] was consensual up until the time he refused to use a condom. Detective Maupin informed Erin that a condom was found on the scene of the incident, inside of her room. She then asked her when was the last time she had consensual sex in her bedroom; Erin responded about a month ago. Detective Maupin then asked Erin, if her roommate could have left the condom; Erin replied, "No, because my roommate is gone." Detective Maupin then asked Erin where did she think the condom came from? Erin answered, "It must have been ours."

Detective Maupin further noted that Erin refused to be examined by the SANE nurse at Washington Hospital Center. According to Detective Maupin, Erin requested medication in the form of the "morning after pill", but refused the examination.

Detective Maupin informed Investigator Callis that she plans on presenting this matter to the United States Attorney's Office for review and determination.

Summary

On the night of December 14th, 2012, Erin Cavalier had been drinking with [REDACTED] prior to attending the party at Flather Hall, and continued drinking at the party. While at the party, Erin met [REDACTED] and the two of them walked back to Ryan Hall. Erin signed [REDACTED] into her residence hall, and once inside of her room, the two of them engaged in a sexual intercourse. Erin acknowledges that she consented to have sex with [REDACTED], however; the point of contention with Erin involves that she did not consent to have sex without a condom.

This investigation revealed that a condom was used during the sexual encounter between Erin and [REDACTED]. According to [REDACTED], Erin asked if he had a condom; he said "no", she then retrieves a condom from her desk and gave it to him. The discarded condom was observed in the trashcan in Erin's room. When questioned by the MPD detective, Erin indicates that the condom found, must have been the one used by them.

Based upon the information gathered in this investigation, it is clear that a "rape" did not occur. Erin consented Case 1:16-cv-0206 Document 1-1 Filed 10/07/16 Page 9 of 9
Case 1:16-cv-0206 Document 1-1 Filed 10/07/16 Page 9 of 9
By Erin's own admission to DPS, MPD and her friends, her consent was given based upon the usage of a condom.

It is recommended that this investigation be closed, and a copy of the investigation forwarded to the Office of the Dean of Students for whatever action deem appropriate.

Exhibit 3



THE CATHOLIC UNIVERSITY OF AMERICA
OFFICE OF THE DEAN OF STUDENTS
WASHINGTON, D.C. 20064

Erin Cavalier
Ryan 212
Campus

March 20, 2013

Dear Erin,

As we discussed at our meeting on March 13, the Department of Public Safety (DPS) recently completed a sexual assault investigation for an incident that occurred on December 15, 2012. As is the University's practice, DPS submitted an investigative report to me for review and to determine if the facts uncovered during the investigation support moving forward with student disciplinary action under the *Code of Student Conduct*.

In my review of the investigative report, I found that DPS staff conducted a thorough and impartial investigation. After careful consideration of all of the information contained within the investigative report, I have determined that evidence does not exist to substantiate moving forward with student disciplinary action.

I hope that you will continue to see me, Ms. Wood, and Captain Gregory and our respective staffs as persons who want to and can support you in all of your endeavors at Catholic University. As I shared in our meeting, I would be happy to connect you to our on-campus counseling resources at any point in the future. Similarly, I will review your academic schedule and on-campus housing arrangements on a regular basis to try to limit any future contact between you and the subject in this investigation.

Please feel free to contact me at 202-319-5619 or sawyerj@cua.edu if you have any questions regarding this correspondence or if I can be of any assistance in your future endeavors at CUA.

Sincerely,

Jonathan C. Sawyer
Associate Vice President for Student Life & Dean of Students

Exhibit 4



MEMORANDUM

TO: Thomasine Johnson
Director

THRU: Cheryl Pendergast
Associate Director

FROM: Captain Kim Gregory
Investigator Charles Callis

DATE: April 23, 2013

SUBJECT: Addendum Report Regarding an Allegation of Sexual Assault/Violence filed by
Erin Cavalier

Additional Information

On April 4, 2013, Captain Gregory received information from the Dean of Students Office regarding an appeal submitted by Erin Cavalier based upon additional information from the Washington Hospital Center. The information from the Washington Hospital Center was information documented by the DC Fire Emergency Medical Services (DCFEMS), Incident Number 120171641 and a copy of the toxicology report from December 15, 2012.

According to the information on the DCFEMS report written by EMT Olani Griffith, Erin complained of a sexual assault; she exhibited symptoms of anxiety; Erin indicated a [REDACTED]. EMT Griffith's initial findings stated alcohol use (suspected); sexual assault; patient (Erin) was walking at scene, orientated, alert, skin temperature normal; normal color, moisture normal; and speech normal.

EMT Griffith noted that patient (Erin) told her that she had been drinking alcohol in her dorm room with an acquaintance and he proceeded to rape her without a condom. Patient was with MPD prior to their arrival, but did not file any charges. Patient (Erin) stated that she just wanted to go to H13 to see a Sane Nurse to test for pregnancy. Patient was taken to H13.

The toxicology report submitted is from the Washington Hospital Center. According to the report, a specimen was collected at 8:28 am EST on December 15, 2012. The results of the toxicology collected from Erin Cavalier shows an Ethanol level of 97H.

On April 10, 2013, Captain Gregory and Investigator Callis met with Erin Cavalier and Matthew Ornstein, Staff Attorney for Network for Victim Recovery of D.C., regarding the additional information from the hospital. During this meeting, Erin contends that, based upon the toxicology report, she was too drunk to give consent. Erin was informed that we did not have access to the toxicology report and that it was known, by her own admission, at the time of the incident that she had been drinking. It was further explained to Erin that many of the witnesses interviewed stated that she appeared coherent and understood what was occurring. Erin was reminded that neither she; nor any of the witnesses said that she was incapacitated or unconscious during the sexual encounter or the events leading up to and/or after the sexual encounter.

On April 19, 2013, Captain Gregory received an e-mail from Detective Maupin of MPD. Detective Maupin stated that Erin Cavalier's case was presented for a warrant review to the Assistant United States Attorney's Office. After reviewing all the evidence in the case, Assistant United States Attorney Toni Florence declined to issue a warrant for [REDACTED].

Summary

On April 4, 2013, Erin Cavalier presented a toxicology report that states on December 15, 2012, there was a high content of alcohol in her system. Erin contends that due to that high level of alcohol, she was unable to give consent for a sexual encounter. The additional information presented was considered, and based upon the evidence gathered pertaining to the sexual encounter, there is no evidence presented that states Erin's blood alcohol level impaired her ability to give consent at the time of the incident.

On the night of the incident, Erin had contact with several people. Each of those individuals stated that Erin appeared coherent. She was coherent during her encounter with DPS and MPD; the EMT personnel documented alcohol use, however, the EMT also indicated that she appeared oriented, alert and normal speech. Each of these individuals from different agencies, had contact with Erin at various times that night and none of them reported that she was incoherent, incapacitated or displayed symptoms of being under the influence of alcohol.

It is therefore recommended that this investigation be classified as closed by the Department of Public Safety. It is further recommended that the additional information be forwarded to the Dean of Students Office for whatever action deemed appropriate.

Exhibit 5

THE CATHOLIC UNIVERSITY OF AMERICA

Office of the Dean of Students

Washington, D.C. 20064

202-319-5619

Fax 202-238-2043

August 27, 2013

Erin Cavalier
Camalier 303

Dear Erin,

After an extensive investigation and review of the investigative reports and related evidence that has been brought to the University's attention in reference to an alleged incident occurring on December 15, 2012, it has been determined that sufficient evidence exists to warrant resolving this matter through a hearing before a University Hearing Board. A hearing will be scheduled for late September 2013 and you will receive an official letter from the Office of Student Conduct and Ethical Development inviting you to participate.

As outlined during your meeting with Dean Sawyer on August 21, an *order of no contact* is in place between you and Mr. [REDACTED]. You are to have no direct, indirect or third party contact with Mr. [REDACTED]. This means that you may not speak to or contact him in person, by phone, via email or through friends or other third parties.

In addition, in an effort to maintain confidentiality, you may not speak with any current student about this matter. You will have an opportunity to provide names of potential witnesses to the Office of Student Conduct & Ethical Development prior to the hearing. Failure to comply with this directive including any attempts to threaten, coerce or harass Mr. [REDACTED] will result in further university disciplinary action up to and including suspension on an interim basis.

As Dean Sawyer informed you on August 26, Mr. [REDACTED] was advised on that date that the *order of no contact* that was put in place with him during the investigative process is still active and he received a similar notice of our expectations. Should Mr. [REDACTED] contact you or any student attempt to discuss this matter with you, please immediately contact me via email at torres@cua.edu or (202) 319-5619 during normal business hours.

Sincerely,



Omar Estrada Torres
Associate Dean of Students

cc: Cheryl Pendergast, Associate Director of Public Safety
Jonathan Foerster, Area Coordinator – Centennial Village

Exhibit 6

THE CATHOLIC UNIVERSITY OF AMERICA
Office of the Dean of Students
Washington, D.C. 20064
202-319-5619
Fax 202-238-2043

October 9, 2013

Erin Cavalier
Camalier 303

RE: Outcome Notification - Student Conduct Proceeding involving [REDACTED]

Dear Erin:

On October 3, 2013, the University Hearing Board convened in reference to an incident that occurred on December 15, 2012 involving student [REDACTED]. The Board considered the documents that the University provided to all parties in advance, as well as the documents that you submitted. It heard the testimony of eight witnesses, deliberated privately, and came to the conclusion, by the preponderance of the evidence, that there was insufficient evidence to support a finding of a violation of the *Code of Student Conduct*, Section R(2a) (Sexual Assault). The Board found that no force was involved, that you were not incapable of giving consent, and that the respondent would not reasonably have thought that you were incapacitated or unable to give consent.

You are reminded that all parties, including witnesses and advisors, are expected to maintain confidentiality regarding the proceeding. The Order of No Contact between you and [REDACTED] will remain in place indefinitely. The Offices of the Dean of Students, Campus Ministry, and the Counseling Center among others remain available to support you in your future endeavors.

Should you wish to appeal this decision, you may do so according to the procedures outlined in the *Code*. The appeal must specify grounds that would justify consideration and must specifically address at least one of the following criteria:

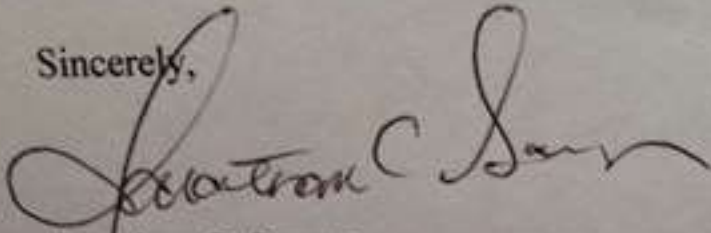
1. There is a significant procedural error that changes the findings of fact of the disciplinary proceeding.
2. New evidence that significantly alters the findings of fact, that was previously unknown to the complainant or respondent, has been discovered and is available during the appeals process.

A letter of appeal should be submitted by 5:00 p.m. on Friday, October 11, 2013 to:

Office of the Dean of Students
Attn: Associate Dean of Students
Pryzbyla Center, Suite 353
Or e-mail: cua-deanofstudents@cua.edu

If you have any questions regarding the appeals process, please contact Omar Estrada Torres, Associate Dean of Students, at (202) 319-5619 or via e-mail at torres@cua.edu.

Sincerely,

A handwritten signature in black ink, appearing to read "Jonathan C. Sawyer". The signature is fluid and cursive, with the first name "Jonathan" being more prominent than the last name "Sawyer".

Jonathan C. Sawyer
Associate Vice President for Student Affairs & Dean of Students

CC: Omar Estrada Torres, Associate Dean of Students
Student File

Exhibit 7



MEMORANDUM

TO: Thomasine Johnson
Director

THRU: Cheryl Pendergast
Associate Director

FROM: Captain Kim Gregory
Investigator Charles Callis

DATE: September 27, 2013

SUBJECT: Addendum Report Regarding an Allegation of Sexual Assault/Violence filed by
Erin Cavalier

Additional Information

On September 27, 2013, Captain Gregory and Investigator Callis interviewed Ms. Lindsey Silverberg, Case Manager for Network for Victim Recovery of D.C. Lindsey is Erin Cavalier's Victim Advocate/Case Manager. Below is a synopsis of the interview.

On December 15th, 2012, Lindsey stated she received a call at approximately 4:00 a.m., to respond to Med Star for a sexual assault victim. She arrived at Med Star approximately 15 minutes later and upon her arrival, Detective Maupin of MPD was speaking to Erin. (Lindsey was not present during that interview.) Detective Maupin informed her that she was investigating Erin's reported sexual assault.

After speaking with Detective Maupin, Lindsey introduced herself to Erin. Lindsey observed that Erin was clearly intoxicated; that she was slurring her words; and had trouble staying awake during conversation. Lindsey stayed with Erin when she was interviewed by the SANE nurse. Lindsey heard Erin tell the nurse what occurred that night. Erin stated that she had been drinking with some friends and that she did not remember leaving the party or walking back to her dorm. Erin told the nurse that she knew of "██████", but that night was the first time she had met him; and Erin told the nurse that there were periods during the assault she when didn't remember what happened. The nurse informed Erin of her option of having a forensic examination and Erin declined the examination. Lindsey said the examination could take hours and Erin declined

because she did not want to miss her flight. Lindsey is of the opinion that Erin was tired and felt overwhelmed by everything that was occurring. Lindsey stayed with Erin from 4:30 am – 9:00 am, when Erin and her friend left the hospital. During that time period was when she observed Erin's condition.

Lindsey was present when Erin was re-interviewed by Detective Maupin in February 2013. According to Lindsey, Erin's story did not change from what Erin told the nurse at the hospital; to what she reported to Detective Maupin. During the re-interview, she heard Erin tell Detective Maupin that she "blacked out walking from the dorm and during the assault." This is the same information Lindsey heard Erin tell the nurse at the hospital on December 15th, 2012.

Captain Gregory and Investigator Callis asked Lindsey why she was the only person who mentioned/reported that Erin displayed signs of being intoxicated during their interview. It was pointed out that Erin encountered several law enforcement personnel and EMS that night and none of the reports provided, stated that Erin was intoxicated or spoke with slurred speech. Lindsey responded by saying she observed Erin in that condition and she could not say why others did not have the same observation.

Lindsey referred Erin to Matthew Ornstein, a staff attorney in their office for further assistance.

Summary

It is recommended that this additional information be forwarded to the Dean of Students Office for whatever action deemed appropriate.

Exhibit 8

DCFEMS

Incident #: 120171641

Patient: ERIN CAVALIER

1923 Vermont Ave., NW

Washington, DC 20001 (202) 673-3320

PAGE 1

35776665

INCIDENT		PATIENT	DATES/TIMES	
Incident #	120171641 /	Patient Name: ERIN CAVALIER	Dispatched	03:04:02, 12/15/2012
Incident-dispatch	SEXA- UNKN STATUS	Sex: F DOB: [REDACTED] Age: 18YR	Enroute	03:05:06
Address	620 MICHIGAN AVE NE	Weight: Race/Eth: Caucasian	At Scene	03:13:17
City,St,Zip	WASHINGTON, DC, 20064	Address: [REDACTED]	At Patient	03:15
Status	PRIORITY 3 (BRAVO)	City,St,Zip [REDACTED]	Departed Scene	03:49
Agency/Unit	DCFEMS / A26	SSN: [REDACTED]	At Destination	03:54:48
Shift/Veh	FIRE 3 / S-509		In Service	
Skillset	BLS		At Quarters	
Crew				
Shanetra Brown, 3702, EMT-B				
Olani Griffith, 00063786, EMT-B				

Hx PRESENT

Subject	Description / Details
CAUSE	SEXUAL ASSAULT;
COMPLAINT	SEXUAL ASSAULT;
SYMPTOMS	ANXIETY;

Hx PAST

Subject	Description / Details
ALLERGIES	NONE;
MEDS	[REDACTED];
PREEXIST	[REDACTED]

FINDINGS

Subject	Description / Details
IMPRESSION	ALCOHOL USE (SUSPECTED); SEXUAL ASSAULT;
INITIAL	PT FOUND POSITION WALKING AT SCENE; LOC ORIENTATION ORIENTED X 3, AVPU ALERT; AIRWAY STATUS PATENT; BREATH QUALITY NON-LABORED, (R) LS CLEAR, (L) LS CLEAR, CHEST WALL EXPANSION EQUAL EXPANSION; CIRCUL STATUS PRESENT, SITE RADIAL, STRENGTH NORMAL, REGULARITY REGULAR,; GCS SCORE 15, EYES 4-SPONTANEOUS, VERBAL 5-ORIENTED, MOTOR 6-OBEYS COMMANDS; SKIN TEMP NORMAL, COLOR NORMAL, MOISTURE NORMAL; EYES (R) REACTIVITY REACTIVE, (L) REACTIVITY REACTIVE, (R) SIZE NORMAL, (L) SIZE NORMAL; NEURO FACIAL DROOP NONE, ARM DRIFT NONE, SPEECH NORMAL, GRIPS STRONG - BILATERAL;
PHYSICAL	NONE;

CARE EVENTS


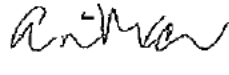

Time	Subject	Description/Details	BP	P	R	SpO2	Pos
03:35	TREATMENT	POSITION PT,					
03:38	VITALS	100/61 118				97% ROOMAIR	

pt stated that she had been drinking alcohol in her dorm room with an acquaintance and he proceeded to rape her without a condom. pt was with mpt prior to our arrival but did not file any charges. she stated that she just wanted to go to h13 to see a same nurse to test for pregnancy. pt was taken to h13.

RESULT

Disposition	TRANSPORTED BLS
Destination	#13 WASHINGTON HOSPITAL CENTE
Dest.Reason	CLOSEST APPROPRIATE
Trans.Reason	NO OTHER MEANS OF TRANSPORT
Status	NON-EMERGENCY
MedCU, Name	
To Ambulance	AMBULATED
In Ambulance	SITTING
From Ambulance	AMBULATED

AUTHORIZATION

MEDIC	PT ASSIGNMENT	RECEIVER
		
GRIFITH O, WRITTEN BY	CAVALIER, PATIENT	NURSE
SIGNED 12/15 03:42	SIGNED 12/15 03:47	SIGNED 12/15 03:47

Patient Name: CAVALIER, ERIN MACKENZIE
 MRN: WHC-000002982629
 Encounter Number: WHC-000035776665
 Facility: Washington Hospital Center
 Client: Washington Hospital Center

Toxicology

Collected Date	12/15/2012		
Collected Time	08:28:00 EST		
Procedure		Units	Ref Range
Ethanol Lvl	97 ^H	mg/dL	[0-3]

* = Abnormal C = Critical # = Interpretive Data I = Corrected L = Low H = High @ = Reference Lab f = Footnotes
 Millennium Print Date/Time: 12/16/2012 04:06
 Chart Request ID: 57141872

PRINTED BY: MCKPRINT

2/22/2012

Exhibit 9



THE CATHOLIC UNIVERSITY OF AMERICA

Office of the Dean of Students

Washington, DC 20064

202-319-5619

Fax: 202-238-2043

October 21, 2013

Erin Cavalier
Camalier 303

RE: Appeal Notification

Dear Erin,

I received your letter (dated October 15, 2013) in which you registered your appeal of the decision issued in regard to the October 3, 2013 University Hearing involving Mr. [REDACTED]. According to the *Code of Student Conduct* ("Code"), the outcome of a student conduct proceeding may be appealed; the appeal must be based on one or more of the following criteria:

1. There is a significant procedural error that changes the findings of fact of the student conduct proceeding.
2. New evidence that significantly alters the finding of fact, that was previously unknown to the respondent, has been discovered and is available during the appeal process.

An appeals committee was convened on October 17, 2013 to review your appeal. The committee determined that the University Hearing followed established disciplinary procedural guidelines and recommended that the appeal be denied. After careful consideration of the disciplinary record related to this matter, I concur with the committee's recommendation.

You are reminded that all parties, including witnesses and advisors, are expected to maintain confidentiality regarding the proceeding. The Order of No Contact between you and [REDACTED] will remain in place indefinitely.

The Offices of the Dean of Students, Campus Ministry, and the Counseling Center among others remain available to support you in your future endeavors.

Sincerely,

Jonathan C. Sawyer
Associate Vice President for Student Affairs & Dean of Students

CC: Omar Estrada Torres, Associate Dean of Students
Student File

Exhibit 10

Matthew S. Ornstein
Rachel J. Kohler
Network for Victim Recovery of D.C.
5321 First Place, NE
Washington D.C.

December 19, 2013

SENT VIA ELECTRONIC MAIL

Office of Civil Rights *District of Columbia Office*
U.S. Department of Education
400 Maryland Ave. SW
Washington, DC 20202-1475
Telephone: 202-453-6020
Fax: 202-453-6021
ocr.dc@ed.gov

Re: Formal Complaint Under Title IX against Catholic University of America

Dear Sir or Madam,

I write on behalf of my client, Erin Cavalier (hereafter Cavalier), a student at Catholic University of America (hereafter CUA), to request your immediate attention in regard to a hostile environment at CUA. For the following reasons, I ask that the Office of Civil Rights (hereafter OCR) accept this letter as a formal Complaint under Title IX against CUA for discrimination based on sex. I am Cavalier's Victims' Rights Attorney, and I am authorized by her to report this matter to your office.

Cavalier is 19 years old and presently enrolled at CUA where she has encountered multiple violations of Title IX—related to sex-based discrimination—in the wake of a sexual assault perpetrated against her. Cavalier was sexually assaulted by a fellow student on December 15, 2012. After speaking with a Department of Public Safety (DPS) officer directly after the incident, the University was formally put on notice about the occurrence of the sexual assault on December 15, 2012. Other employees of the school that know of the incident include: Jonathan Sawyer, Associate Vice President for Student Affairs and Dean of Students; Lisa Wood, Title IX Coordinator; Megan McDonough, Women's Lacrosse Coach. As the result of the violations of Title IX that Cavalier suffered, we request OCR investigate three areas: (1) the sexual assault training DPS officers receive; (2) gaps in current CUA policy; and (3) the preliminary investigation process or screening process conducted by CUA officials.

This complaint is timely filed as University's grievance procedures concluded on October 21, 2013.

BACKGROUND

On December 15, 2012, Cavalier was sexually assaulted by another student in her dorm-room between 1:00 and 1:30 a.m. Cavalier and her assailant had both been drinking alcohol with friends in another student's room when Cavalier's assailant elected to walk her back to her dormitory. Cavalier was extremely intoxicated. After the assault, Cavalier was discovered by her Resident Advisor (RA), who then contacted CUA officials, DPS, and the Metropolitan Police Department (MPD). Cavalier was ambulated to the Washington Hospital Center where she underwent a sexual assault forensic exam and reported she had been sexually assaulted.

Cavalier returned to her parents' home in California shortly afterwards and did not return until after the winter holiday break. On January 16, 2013, Cavalier returned to campus and met with DPS officers for a formal interview. Cavalier was advised on January 24, 2013 that DPS would first begin interviewing witnesses.

On March 25, 2013, Cavalier received a letter dated March 20, 2013, stating that the investigation into her case "did not uncover sufficient evidence to substantiate moving forward with student disciplinary action." Upon receipt, Cavalier retained counsel and filed an appeal pursuant to CUA's student code of conduct. In this appeal, Cavalier quoted CUA's sexual assault policy for the purpose of reminding CUA that, as per their policy definitions, her extreme level of intoxication rendered her incapable of consenting to sexual activity. As "new evidence" is one of the two circumstances giving rise to an appeal, Cavalier attached her toxicology report that was generated from the blood samples taken during her sexual assault forensic exam. The newly available report indicated a blood alcohol level of 97 mg/dL (0.097 g/dL). Since this sample was taken over eight hours after the assault, Cavalier's attorneys were able to use retrograde extrapolation to estimate that her blood alcohol content at the time of the assault was approximately 216 mg/dL (0.216 g/dL). With an estimated blood alcohol content of 0.216 g/dL, sources indicate that she would have suffered from severe motor impairment, loss of consciousness, and loss of understanding during the time of sexual contact. Cavalier requested that CUA reopen the investigation into her sexual assault and pursue the complaint with the knowledge that she was very likely incapable of consenting to sexual activity as a result of her extreme intoxication.

On April 2, 2013, CUA notified Cavalier that the case would be re-opened and Cavalier would be re-interviewed by DPS officers Gregory and Callis on April 12, 2013. Cavalier appeared with counsel, explained her toxicology report, and requested DPS re-interview witnesses in light of the fact that the toxicology report demonstrated Cavalier was extremely intoxicated. The investigators were unsympathetic; stating that they had made all necessary inquiries and that there was no evidence Cavalier lacked the capacity to consent. The investigators suggested that, even if Cavalier had an extremely high blood alcohol content, this evidence itself was not particularly useful since many "career alcoholics" can develop high tolerances for alcohol. When Cavalier's counsel took offense to the investigator's suggestion that a nineteen year old college student was a career alcoholic, the investigators apologized but explained that, in their personal experience, they had heard of extremely intoxicated individuals accurately operating complex machinery because of their developed tolerances. They inferred that even if Cavalier was extremely intoxicated, perhaps her assailant was unable to recognize her extreme intoxication because she had some kind of natural resistance or developed tolerance to the intoxicating effects of alcohol. In support of their contention, the investigators remarked that none of the witnesses

they interviewed described Cavalier as extremely intoxicated or otherwise suggested she may have been too intoxicated to consent. Cavalier's counsel reminded the investigators that CUA had not turned over any documents, reports, or evidence relating to the case thus far, and as such, Counsel was incapable of intelligently discussing the content of their report or the sufficiency of their investigation.

Cavalier and counsel met with Associate Vice President for Student Affairs and Dean of Students Jonathan Sawyer to discuss the status of her case on May 10, 2013. Cavalier's counsel described the disappointing meeting with investigators, requested copies of the investigative reports, and requested a formal disciplinary hearing. Dean Sawyer agreed to consider these requests.

Over the next few months, Counsel continued to correspond with CUA officials to inquire whether a hearing would be held or when the investigative report would be released. In July 2013, Cavalier's counsel exchanged emails and phone calls with CUA's General Counsel. When CUA's Counsel advised that the school's position remained that there was insufficient evidence to conduct a disciplinary hearing, Cavalier's counsel again explained that because CUA refused to provide any reports or documentation, Cavalier's counsel was simply unable to discuss the content of the investigative report. CUA's General Counsel agreed to forward copies of the DPS report.

Upon receiving the investigative reports in July, 2013, Cavalier and counsel thoroughly reviewed the file. The file contained two DPS reports, the first was dated February 18, 2013 and contained a summary of the investigating officer's notes from the initial witness interviews as well as a general summary section. The second report was dated April 23, 2013 and summarized the DPS meeting with Cavalier regarding the toxicology report. These reports, especially the officers' summaries, were extremely problematic. The report summaries contained various conclusions about Cavalier's level of intoxication, such as: "[o]n the night of the incident, Erin had contact with several people. Each of those individuals stated that Erin appeared coherent." The problem with these conclusions is that they are directly contradicted by the witnesses statements contained within the body of their own report. In fact, several interviewed witnesses told investigators that Cavalier was heavily intoxicated, was unable to walk, and had passed out at some point during the night. DPS ignored the contradictory-testimonial evidence they had themselves collected when writing their summaries.

Cavalier, Cavalier's parents, and Cavalier's attorneys met with Dean Sawyer, CUA's General Counsel, and CUA's Title IX Coordinator on August 25, 2013. Cavalier's counsel remarked that, now after having seen the reports, it is clear that there was sufficient evidence that Cavalier was intoxicated to entitle her to a disciplinary hearing so that she may present her case. In addition, Cavalier's attorneys requested that CUA provide any video surveillance generated by the cameras in the applicable dormitories. Cavalier's counsel also asked for the investigator's raw notes taken during the investigation on the basis that the provided report was overly summarized and apparently inaccurate. CUA agreed to convene a disciplinary hearing, stated they were unable to find any camera footage, and declined to disclose the investigators' original notes. The hearing was later set for October 3, 2013.

DESCRIPTION OF TITLE IX VIOLATIONS

We believe that the initial dismissal of Cavalier's case violated Title IX in that Cavalier was denied a hearing without an appropriate investigation. OCR reviews complaints to see if (1) the school appropriately investigated or otherwise responded to allegations of sexual harassment; and (2) whether the school has taken immediate and effective corrective action responsive to the harassment, including effective actions to end the harassment, prevent its recurrence, and, as appropriate, remedy its effects.¹ Title IX requires that schools conduct adequate, reliable, and impartial investigations of complaints, including the opportunity to present witnesses and other evidence.² Title IX states that all complainants have the right to present their cases.³ In addition to this right, every complainant should have the opportunity to present his or her witnesses and other evidence.⁴

Cavalier was denied these rights when she was forced to lobby, argue, and fight for a grievance hearing after her case was preliminarily dismissed on March 2013. Without sufficient inquiry into Cavalier's level of intoxication, the dismissal of Cavalier's case appeared arbitrary. This refusal to provide a hearing was especially egregious, as Cavalier would later discover, because the initial DPS report did contain information supporting Cavalier's claim that she was intoxicated beyond the capacity to consent. These supporting statements should have prompted DPS to fully investigate Cavalier's level of intoxication in greater detail and most certainly should have prompted CUA to hold a disciplinary hearing. By not re-interviewing witnesses and not holding a hearing until October 2013, Cavalier's ability to reasonably present her case was severely compromised. Many of the witnesses investigators interviewed in early 2013 had left campus and were no longer available for the October hearing and most of the witnesses that did appear stated that they had difficulty remembering the specifics of events that had taken place nearly a year prior.

In particular, Cavalier and her assailant were required to sign-in as proof of residence when they first entered Cavalier's dormitory. Cavalier was told by investigators that the investigators had talked to this DPS employee during their investigation. This person's statements, however, were not contained in the DPS report Cavalier later received. Since that employee had left CUA by the time a hearing was held, Cavalier has never been able to speak with this individual or get a statement. This person's observations would have been critical in establishing Cavalier's level of intoxication as this was the last person to observe her demeanor prior to the assault.

Lastly, Cavalier requested that Lindsey Silverberg be permitted to testify in the October 3, 2013 disciplinary hearing. Ms. Silverberg is a victim advocate and a member of the DC Sexual Assault Response Team. Ms. Silverberg had responded to the hospital when Cavalier arrived for her forensic exam and Ms. Silverberg's testimony related to her observations and impressions of Cavalier's intoxication during this time frame. Unfortunately Cavalier's request was denied,

¹ U.S. Dep't of Education, Office of Civil Rights. "Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties." Title IX. Issued Jan. 2001. p. 14 (Hereafter "2001 Guidance")

² 2001 Guidance page 20; Letter from Office of Civil Rights – Cleveland Office to General Counsel for Eastern Michigan University. Re: OCR Docket #15-09-6002. p. 3.

³ If the school does not provide a procedure for filing complaints of sex-based discrimination, it is in violation of the Title IX regulation at 34 C.F.R. §106.8(b).

⁴ 2001 Guidance page 20; Dear Colleague Letter page 9.

Associate Dean of Students Omar Torres explained that CUA had an “unwritten rule” that precluded individuals who were not affiliated with the University from appearing before the Hearing Board. When Cavalier’s counsel inquired further, it was explained that this rule was not official, but a custom, habit, or practice employed in all CUA disciplinary hearings. As a form of compromise, CUA permitted Ms. Silverberg to provide a written statement. Even so, however, this accommodation was wholly inadequate for Cavalier’s purposes. Cavalier was unable to develop Ms. Silverberg’s testimony or pose questions to clarify issues or concerns that arose during the course of the hearing. Worse, the Board was unable to talk with Lindsey and pose their own questions in order to better understand the short written statement Ms. Silverberg was allowed to submit.

Especially because the investigators relied upon the lack of statements regarding Cavalier’s intoxication by Emergency Medical Technicians (also non-affiliated personnel) in their report, the inability to call non-affiliated personnel and contradict those conclusions seriously undermined Cavalier’s ability to present her case.

Cavalier’s grievance hearing took place on October 3, 2013. The Board made a decision on October 9, 2013 and Cavalier submitted an appeal on October 15, 2013. Her appeal was rejected on October 21, 2013 and this constitutes the final action in Cavalier’s case. Cavalier was assaulted December 15, 2012 and her hearing did not take place until October 3, 2013, nearly ten months later. Recognizing that OCR believes a typical investigation takes approximately 60 calendar days following receipt of the complaint, it is clear that this case was substantially mishandled by the administration.⁵

REQUEST FOR REMEDIES

Based on Cavalier’s experience as described above, there are three areas that we request that your office review (1) the sexual assault training Public Safety officers receive; (2) gaps and inadequacies in current CUA policy; and (3) CUA’s preliminary investigation and screening process.

1. DPS Requires Further Training in Handling Sexual Assault Cases and Victims

First, we request the office review and expand the sexual assault training DPS officers receive at CUA (if any) related to sexual violence as well as the proper responses for investigating allegations of sexual misconduct and sexual assault. Based on the conduct of the public safety staff during Cavalier’s investigation, it seems that there is substantial room for improvement in the office’s understanding of sexual assault, victim trauma responses, and best practices for interacting with potential sexual assault victims. We complained to the administration about the public safety office’s treatment of Cavalier on May 10, 2013. After this complaint, a staff member of the Network for Victim Recovery of DC was asked by the Office of Public Safety to provide a brief, twenty minute presentation on NVRDC’s services regarding sexual assault victims. Although this is a step in the right direction, this brief presentation is wholly insufficient to adequately train DPS officers to properly handle sexual assault cases. Title IX requires that all

⁵ Dear Colleague Letter, page 12. A single incident will not take as long as multiple incidents and/or multiple complainants.

persons involved in implementing the grievance procedure have been trained or have experience in handling complaints of sexual harassment and violence.⁶ Based on this, we believe that there is room for OCR to recommend improvement in CUA's Public Safety Officers' training on sexual assault matters.

2. CUA's Current Sexual Misconduct Policy Needs Further Updates

Second, on page 10 of CUA's pamphlet entitled: "Sexual Violence: Recognize it. Prevent it. Report it", the pamphlet explains that there is no exemption clause in the Student Life Sexual Assault Misconduct Policy for associated minor infractions (revised August 2013). The pamphlet explains:

At times, students are hesitant to report the occurrence of a sexual misconduct to University officials because they are concerned that they themselves or witnesses may be charged with other lesser policy violations (e.g. visitation or alcohol violations). The importance of dealing with alleged sexual misconduct is a paramount consideration. Accordingly, in these cases, the University may postpone its decisions regarding other disciplinary action against a student who makes a report of sexual misconduct, or against a witness to the incident.⁷

In stating that CUA "may postpone" its decision to undertake disciplinary action against a student, but not granting immunity, CUA creates a chilling effect on all reporting of sexual assault on campus and upon all potential witnesses to such assaults. The implication is that the school will pursue these lesser charges at some point in time, but may decide to delay the process for some unknown period of time and upon unknown criteria. Even if the school harbors no such intent, a victim or witness contemplating participating in the school's grievance procedure has every reason to believe, from looking at the policy, that disciplinary action will be taken at some point in time.

Finally, adhering to an unofficial, unwritten "habit" that universally precludes non-CUA affiliated individuals from directly participating in CUA grievance procedures is not only arbitrary, but countermands OCR's requirements that schools have equitable procedures. On the whole, sexual assault victims are likely to have a great deal of evidence in the form of third-party witnesses as result of seeking counseling, medical attention, and case advocacy. CUA itself directs sexual assault victims to take advantage of these resources in its sexual assault literature. It is inequitable, under such circumstances, to preclude witnesses such as Ms. Silverberg from providing live testimony as such witnesses often have vital information that cannot be sufficiently presented when reduced to writing. No CUA-affiliated individuals or employees perform sexual assault forensic examinations or respond as advocates under DC's Sexual Assault Response Team. Thus, Ms. Silverberg's testimony is unique evidence that CUA's unofficial policy outright precludes from its grievance procedure. As this evidence is complex, nuanced testimony, Cavalier's inability to present Ms. Silverberg's live testimony seriously impaired her

⁶ Dear Colleague Letter page 12.

⁷ policies.cua.edu/StudentLife/studentconduct/assault.cfm

impact as a witness and denied Cavalier the ability to effectively address a critical facet of her case.

3. *The “Screening” Process Employed by CUA is Inappropriate Under Title IX*

Third, we request that your office review the preliminary investigation process that CUA employed in Cavalier’s case. As described at length above, the amount of time, effort, and resources Cavalier spent merely trying to obtain a hearing is anathema to the spirit and purpose Title IX. In essence, when CUA dismissed Cavalier’s claim without giving her the opportunity to provide evidence on her own behalf, she was arbitrarily dismissed by the upper level of the administration; an act which the OCR has previously stated violates Title IX.⁸

The purpose of conducting a disciplinary is so that a complainant, such as Cavalier, may present her case to the assembled Board and demonstrate that she was sexually assaulted. In many cases where there are only two people in a room, as with Cavalier, the most important evidence will be the statements and explanations of the parties. CUA, in performing a cursory review of the case and determining it lacked sufficient evidence without a hearing, deprived Cavalier of the ability to present her evidence through her own voice. As a result, the weight her statements carried were relegated to the verbiage used when talking with investigators, the (questionable) summary skills of the investigators preparing the report, and the interpretation of the CUA officials “screening” Cavalier’s case when reading the self-contradictory report.

The purpose of holding a hearing is, in many ways, to prevent cases of sexual assault from being improperly dismissed because of a school administration’s reliance on inaccurate or misinterpreted investigative reports. As such, the Hearing Board is comprised of multiple diverse members to prevent one individual’s skewed interpretation of evidence from reaching an unreasonable conclusion. The parties are allowed to provide questions to witnesses or make responsive statements to explain, clarify, or contradict confusing evidence adduced at the hearing. Most importantly, the persons ultimately deciding the merits of the case (the Board) will have had the benefit of seeing and hearing the witnesses and parties in person. Credibility is not merely assessed by a speaker’s specific word choice but is a function of that speaker’s poise, tone, facial expressions, body language, and general demeanor. By allowing DPS investigators to simply report their conclusions to CUA officials, who may then dismiss the case based on an incomplete and flawed report, this “screening” policy specifically encapsulates all the pitfalls of arbitrary and unreasonable decision making that the hearing process is specifically designed to prevent.

In addition, the process itself is extremely unclear. CUA’s Code of Student Conduct states the following about filing complaints (termed making referrals):

1. [a]ny person may refer a student or student organization suspected of violating this Code to SCED. The referral will be reviewed to determine the appropriate student conduct or administrative action to be taken in accordance with this Code including,


⁸ Letter from Office of Civil Rights – Cleveland Office to Vice President for Enrollment and Legal Counsel for Notre Dame College. Re: OCR Docket #15-09-6001. Dated Sept. 24 2010. pg 5

in the event that there is insufficient evidence to support formal action, a determination that student conduct or administrative action is not warranted.

If this stage of the grievance procedure is an informal process, then it is problematic that CUA's administration did not explain to Cavalier how the formal and informal grievance processes interacted. Her case was initially dismissed without any formal fact-finding and against her will. Although schools may have voluntary informal methods of resolution (like mediation) in addition to their formal processes, OCR has stated that the complainant must be notified of the right to end the informal process at any time and begin the formal stage of the complaint process. If this preliminary dismissal was a piece of the informal process, then Cavalier should have been notified that she was entitled to end the informal investigation in order to participate in a formal process as any point.

We request that the Office of Civil Rights investigate this matter in hopes that soon, Cavalier can continue her education in a safer, non-discriminatory environment. To communicate with my client, obtain further information, or discuss this matter further please contact me at (202) 742-1727 or Matt@nvrhc.org.

Regards,


Matthew S. Ornstein, Esq.



Rachel Kohler, Esq.
Network for Victim Recovery of D.C.
5321 First Place, NE
Washington, DC 20011

Exhibit 11

Sawyer, Jonathan C.

From: Giglia, Nicole
Sent: Saturday, December 15, 2012 5:05 AM
To: Sawyer, Jonathan C.; Petrovich Kerr, Amy L.; Torres, Omar Estrada; Wainer, Rachel N; Troy, Bradley J.
Subject: Supplemental Report - EC

2:03AM – Contacted by Ryan RA [REDACTED] who reported that one of her residents, Erin Cavaller, may have been sexually assaulted. [REDACTED] stated that Erin was crying and asked [REDACTED] to sit in her room while she was on the phone. Erin proceeded to tell her friend on the phone that she thinks she "may have been raped tonight." [REDACTED] told Erin she was going to contact the AC.

I contacted DPS and requested to speak with Lieutenant. I asked Lt. Dicks to meet me in the Ryan lobby to respond to a student who had possibly been sexually assaulted. In the lobby I informed Dicks that Erin told the RA she believes she was sexually assaulted by a Flather resident and that I would be knocking on her door. We then proceeded upstairs and Lt. Dicks waited outside while I introduced myself to Erin and asked if I could come into her room. Erin was crying on her bed and said that I could speak with her in her room. I asked if Erin was okay and if she felt safe. She said she was. I asked her if something happened tonight. Erin then said that she believed she had been "raped tonight." Erin then said that she was scared because her friends had recently been involved in a similar situation and she didn't want that to happen to her. (Erin was referring to the incident with two Ryan girls last month). I informed Erin that it would not happen like that. I stated that DPS was on scene so that she could file a written report. I also stated that she could go to the SANE nurse at WHC which was completely free and anonymous. She said that would be okay with both of those options and we went into the lounge with Lt. Dicks.

Lt. Dicks introduced himself to Erin and proceeded to ask questions about the events of the night. Erin reported to Lt. Dicks that she had been in Flather earlier in the evening with several friends drinking alcohol. Erin said they moved to a few different rooms between floors 2 and 3 because DPS was walking around the building. They had been drinking hard liquor. Erin then stated that she and Flather resident [REDACTED] went back to her room Ryan 212. The PSA book shows that Erin signed [REDACTED] in. Erin stated that she and [REDACTED] began "hooking up" on her bed. She asked that he put on a condom and he said "it's fine." Erin again asked that he put on a condom and Aaron replied that he had just ejaculated inside of her. At this point Erin became upset and told him to get out of her room. She stated that the details of the night were blurry.

After sharing her story, Lt. Dicks contacted his supervisor and I requested that he contact EMS because she wanted to see the SANE nurse. Lt. Dicks spoke with Cheryl Pendergast for approximately 15 minutes. He informed me that EMS was notified. It is unclear who contacted MPD but they responded first. Officer A.D. Moore spoke with Lt. Dicks and was briefed on the situation. When he heard the story he rolled his eyes and said "I'm not touching this, I'm calling the Sex Crime Unit." Officer Moore then requested to speak with Lt. Dicks privately outside. While they were talking EMS arrived. I went outside and informed EMS that there was a student who needed to be transported to WHC to see a SANE nurse. The paramedics said okay and I went upstairs to get Erin. At this time Officer Moore said that he needed to ask her questions and proceeded to head up the stairs as well.

I knocked on Erin's door and asked if she was ready to go. Her friend, [REDACTED] opened the door and Office Moore moved past me and told Erin he needed to speak with her alone. Erin asked for a minute and he said he needed to ask her questions. Erin complied and her two friends left the room. Officer Moore went into the room and asked that Lt. Dicks be in there as well. They shut the door. From the hall I could hear Officer Moore asking Erin questions and at one point he asked "do you want to see the SANE nurse because you believe you were sexually assaulted or do you just want to go because you think you could get pregnant." At this time Officer Moore got a phone call and he stepped out of the room. A few minutes later one of the paramedics came upstairs and asked why there was a delay. I informed her that Officer Moore kept asking Erin questions. The paramedic responded that Officer Moore was gone so we should go now. Erin gathered her things and we walked out of Ryan. Erin went directly into the ambulance with her friend [REDACTED] While in the hall I informed [REDACTED] that when they got to the hospital Erin had to see the SANE nurse. [REDACTED] understood.

The ambulance left campus at 3:35AM. Officer Moore was still on the phone outside.

At 4:14AM I was paged by Lt Dicks who wanted me to key into room 212 for MPD to investigate. I consulted with Amy who said I could give DPS the key but nothing else. Lt. Dicks used his master key, Officer Moore went into the room and looked around and I observed from the hallway.

Erin stated that she was taking the 12noon shuttle to BWI to catch a 4PM flight home to San Francisco. I will call WHC before I send my on call report. Please let me know what else you may need for follow up.

Nicole

CIVIL COVER SHEET

JS-44 (Rev. 7/16 DC)

I. (a) PLAINTIFFS ERIN CAVALIER 6 Woodland Place Kentfield, CA 94909 (b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF <u>Marin Co, Ca</u> (EXCEPT IN U.S. PLAINTIFF CASES) (c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER) Kobie A. Flowers Brown Goldstein & Levy, LLP 1750 K Street, NW, Suite 200 Washington, DC 20006 Phone: (202) 742-5969	DEFENDANTS THE CATHOLIC UNIVERSITY OF AMERICA 620 Michigan Ave., N.E. Washington, DC 20064 COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT _____ (IN U.S. PLAINTIFF CASES ONLY) <small>NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED</small>																												
II. BASIS OF JURISDICTION (PLACE AN x IN ONE BOX ONLY) <table style="width: 100%; border: none;"> <tr> <td style="width: 50%; vertical-align: top;"> <input type="radio"/> 1 U.S. Government Plaintiff </td> <td style="width: 50%; vertical-align: top;"> <input checked="" type="radio"/> 3 Federal Question (U.S. Government Not a Party) </td> </tr> <tr> <td style="vertical-align: top;"> <input type="radio"/> 2 U.S. Government Defendant </td> <td style="vertical-align: top;"> <input type="radio"/> 4 Diversity (Indicate Citizenship of Parties in item III) </td> </tr> </table>	<input type="radio"/> 1 U.S. Government Plaintiff	<input checked="" type="radio"/> 3 Federal Question (U.S. Government Not a Party)	<input type="radio"/> 2 U.S. Government Defendant	<input type="radio"/> 4 Diversity (Indicate Citizenship of Parties in item III)	III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN x IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT) <u>FOR DIVERSITY CASES ONLY!</u> <table style="width: 100%; border: none;"> <thead> <tr> <th></th> <th style="text-align: center;">PTF</th> <th style="text-align: center;">DFT</th> <th></th> <th style="text-align: center;">PTF</th> <th style="text-align: center;">DFT</th> </tr> </thead> <tbody> <tr> <td>Citizen of this State</td> <td style="text-align: center;"><input type="radio"/> 1</td> <td style="text-align: center;"><input type="radio"/> 1</td> <td>Incorporated or Principal Place of Business in This State</td> <td style="text-align: center;"><input type="radio"/> 4</td> <td style="text-align: center;"><input checked="" type="radio"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td style="text-align: center;"><input checked="" type="radio"/> 2</td> <td style="text-align: center;"><input type="radio"/> 2</td> <td>Incorporated and Principal Place of Business in Another State</td> <td style="text-align: center;"><input type="radio"/> 5</td> <td style="text-align: center;"><input type="radio"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td style="text-align: center;"><input type="radio"/> 3</td> <td style="text-align: center;"><input type="radio"/> 3</td> <td>Foreign Nation</td> <td style="text-align: center;"><input type="radio"/> 6</td> <td style="text-align: center;"><input type="radio"/> 6</td> </tr> </tbody> </table>		PTF	DFT		PTF	DFT	Citizen of this State	<input type="radio"/> 1	<input type="radio"/> 1	Incorporated or Principal Place of Business in This State	<input type="radio"/> 4	<input checked="" type="radio"/> 4	Citizen of Another State	<input checked="" type="radio"/> 2	<input type="radio"/> 2	Incorporated and Principal Place of Business in Another State	<input type="radio"/> 5	<input type="radio"/> 5	Citizen or Subject of a Foreign Country	<input type="radio"/> 3	<input type="radio"/> 3	Foreign Nation	<input type="radio"/> 6	<input type="radio"/> 6
<input type="radio"/> 1 U.S. Government Plaintiff	<input checked="" type="radio"/> 3 Federal Question (U.S. Government Not a Party)																												
<input type="radio"/> 2 U.S. Government Defendant	<input type="radio"/> 4 Diversity (Indicate Citizenship of Parties in item III)																												
	PTF	DFT		PTF	DFT																								
Citizen of this State	<input type="radio"/> 1	<input type="radio"/> 1	Incorporated or Principal Place of Business in This State	<input type="radio"/> 4	<input checked="" type="radio"/> 4																								
Citizen of Another State	<input checked="" type="radio"/> 2	<input type="radio"/> 2	Incorporated and Principal Place of Business in Another State	<input type="radio"/> 5	<input type="radio"/> 5																								
Citizen or Subject of a Foreign Country	<input type="radio"/> 3	<input type="radio"/> 3	Foreign Nation	<input type="radio"/> 6	<input type="radio"/> 6																								

IV. CASE ASSIGNMENT AND NATURE OF SUIT

(Place an X in one category, A-N, that best represents your Cause of Action and one in a corresponding Nature of Suit)

<input type="radio"/> A. Antitrust <input type="checkbox"/> 410 Antitrust	<input type="radio"/> B. Personal Injury/Malpractice <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Medical Malpractice <input type="checkbox"/> 365 Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Product Liability	<input type="radio"/> C. Administrative Agency Review <input type="checkbox"/> 151 Medicare Act <u>Social Security</u> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <u>Other Statutes</u> <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 890 Other Statutory Actions (If Administrative Agency is Involved)	<input type="radio"/> D. Temporary Restraining Order/Preliminary Injunction Any nature of suit from any category may be selected for this category of case assignment. *(If Antitrust, then A governs)*
---	---	--	--

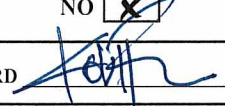
<input type="radio"/> E. General Civil (Other)	OR	<input type="radio"/> F. Pro Se General Civil
<u>Real Property</u> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent, Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property <u>Personal Property</u> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<u>Bankruptcy</u> <input type="checkbox"/> 422 Appeal 27 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <u>Prisoner Petitions</u> <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Conditions <input type="checkbox"/> 560 Civil Detainee – Conditions of Confinement <u>Property Rights</u> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <u>Federal Tax Suits</u> <input type="checkbox"/> 870 Taxes (US plaintiff or defendant) <input type="checkbox"/> 871 IRS-Third Party 26 USC 7609	<u>Forfeiture/Penalty</u> <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other <u>Other Statutes</u> <input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 430 Banks & Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions <input type="checkbox"/> 470 Racketeer Influenced & Corrupt Organization <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Satellite TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 890 Other Statutory Actions (if not administrative agency review or Privacy Act)

<input type="radio"/> G. Habeas Corpus/ 2255 <input type="checkbox"/> 530 Habeas Corpus – General <input type="checkbox"/> 510 Motion/Vacate Sentence <input type="checkbox"/> 463 Habeas Corpus – Alien Detainee	<input type="radio"/> H. Employment Discrimination <input type="checkbox"/> 442 Civil Rights – Employment (criteria: race, gender/sex, national origin, discrimination, disability, age, religion, retaliation) *(If pro se, select this deck)*	<input type="radio"/> I. FOIA/Privacy Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 890 Other Statutory Actions (if Privacy Act) *(If pro se, select this deck)*	<input type="radio"/> J. Student Loan <input type="checkbox"/> 152 Recovery of Defaulted Student Loan (excluding veterans)
<input type="radio"/> K. Labor/ERISA (non-employment) <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 740 Labor Railway Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input checked="" type="radio"/> L. Other Civil Rights (non-employment) <input type="checkbox"/> 441 Voting (if not Voting Rights Act) <input type="checkbox"/> 443 Housing/Accommodations <input checked="" type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 445 Americans w/Disabilities – Employment <input type="checkbox"/> 446 Americans w/Disabilities – Other <input type="checkbox"/> 448 Education	<input type="radio"/> M. Contract <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholder's Suits <input type="checkbox"/> 190 Other Contracts <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<input type="radio"/> N. Three-Judge Court <input type="checkbox"/> 441 Civil Rights – Voting (if Voting Rights Act)

V. ORIGIN
☒ 1 Original Proceeding
 ☐ 2 Removed from State Court
 ☐ 3 Remanded from Appellate Court
 ☐ 4 Reinstated or Reopened
 ☐ 5 Transferred from another district (specify)
 ☐ 6 Multi-district Litigation
 ☐ 7 Appeal to District Judge from Mag. Judge
 ☐ 8 Multi-district Litigation – Direct File

VI. CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE.)
 20 USC §§ 1681-1688

VII. REQUESTED IN COMPLAINT	CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 <input type="checkbox"/>	DEMAND \$ _____	JURY DEMAND: YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>
VIII. RELATED CASE(S) IF ANY	(See instruction)	YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>	If yes, please complete related case form

DATE: 10/07/2016	SIGNATURE OF ATTORNEY OF RECORD 
------------------	--

INSTRUCTIONS FOR COMPLETING CIVIL COVER SHEET JS-44
 Authority for Civil Cover Sheet

The JS-44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and services of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. Listed below are tips for completing the civil cover sheet. These tips coincide with the Roman Numerals on the cover sheet.

- I. COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF/DEFENDANT (b) County of residence: Use 11001 to indicate plaintiff if resident of Washington, DC, 88888 if plaintiff is resident of United States but not Washington, DC, and 99999 if plaintiff is outside the United States.
- III. CITIZENSHIP OF PRINCIPAL PARTIES: This section is completed only if diversity of citizenship was selected as the Basis of Jurisdiction under Section II.
- IV. CASE ASSIGNMENT AND NATURE OF SUIT: The assignment of a judge to your case will depend on the category you select that best represents the primary cause of action found in your complaint. You may select only one category. You must also select one corresponding nature of suit found under the category of the case.
- VI. CAUSE OF ACTION: Cite the U.S. Civil Statute under which you are filing and write a brief statement of the primary cause.
- VIII. RELATED CASE(S), IF ANY: If you indicated that there is a related case, you must complete a related case form, which may be obtained from the Clerk's Office.

Because of the need for accurate and complete information, you should ensure the accuracy of the information provided prior to signing the form.

____ District of _____

Defendant(s)

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE*(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* _____
 was received by me on *(date)* _____ .

☐ I personally served the summons on the individual at *(place)* _____
 _____ on *(date)* _____ ; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* _____
 _____, a person of suitable age and discretion who resides there,
 on *(date)* _____, and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* _____, who is
 designated by law to accept service of process on behalf of *(name of organization)* _____
 _____ on *(date)* _____ ; or

☐ I returned the summons unexecuted because _____ ; or

☐ Other *(specify)*: _____ .

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc: