

IN THE CUYAHOGA COUNTY COURT OF COMMON PLEAS

CIVIL DIVISION

JANE DOE, *c/o ERIC ROSENBERG, ESQ. 205 S. PROSPER ST. GRANVILLE, OHIO 43023*

Plaintiff,

2023 OCT 19 A 10:21 Case No. CLERK OF COURTS CUYAHOGA COUNTY JUDGE

Complaint SHERRIE MIDAY CV-23 987214

v.

CASE WESTERN RESERVE UNIVERSITY and JANE ROE, *Address UNKNOWN*

Defendants.

JURY DEMAND ENDORSED HEREIN



10900 Euclid Ave Adelbert Hall Room 311 Cleveland OH 44106

VERIFIED COMPLAINT FOR PRELIMINARY AND PERMANENT INJUNCTIVE RELIEF AND DAMAGES

Plaintiff Jane Doe ("Doe")¹ by her attorneys, Rosenberg & Ball Co. LPA, complain against Defendants Case Western Reserve University ("CWRU" or the University) and Jane Roe ("Roe") as follows:

NATURE OF THE ACTION

1. This action requests, among other things, preliminary and permanent injunctive relief to enforce: (i) a settlement contract between Doe and Roe ("Settlement Contract"); and (ii) the University's promise to terminate a Title IX disciplinary proceeding against Doe.

The Parties

2. Doe is currently enrolled as a student at CWRU and a resident of the City of Cleveland, Cuyahoga County Ohio. Doe seeks to file her real name and address under seal pursuant to her motion to proceed with pseudonyms.²

¹Contemporaneous with filing of this complaint, Doe filed a motion to proceed pseudonymously given the sensitive nature of the allegations and the stigma that attaches to the accused from unproved allegations of sexual misconduct—allegations Doe firmly denies.

² *Id.*

3. Defendant CWRU is an Ohio not-for-profit corporation residing in the State of Ohio, City of Cleveland, Cuyahoga County Ohio. CWRU's statutory agent is Attorney Peter M. Poulos - who according to the Ohio Secretary of State's office – maintains the following address: Case Western Reserve University, 10900 Euclid Ave., Adelbert Hall, Room 311, Cleveland, Ohio 44106.

4. Defendant Roe is currently enrolled as a student at CWRU and a resident of the City of Cleveland, Cuyahoga County Ohio. Doe seeks to file Roe's real name and address under seal pursuant to Doe's motion to proceed with pseudonyms.³

The Facts

5. On or about March 29, 2023, Roe maliciously, and with the deliberate intent to injure, falsely accused Doe of subjecting Roe to sexual misconduct on March 24, 2023. Roe made those defamatory statements verbally to individuals, including, but not limited to, CWRU students with the following initials: A.L.; J.L.; M.V.; and E.R. (Roe's defamatory statements to these individuals collectively referred to as "Non-Privileged Defamation").⁴

6. On April 11, 2023, the University notified Doe that the University opened an investigation into Roe's allegations that Doe subjected Roe to sexual misconduct on March 24, 2023 ("Roe's Allegations").

7. On May 4, 2023, Doe submitted herself to a polygraph examination which disproved Roe's Allegations in part by finding Doe truthfully reported her interactions with Roe on March 24, 2023 as follows:

³ *Id.*

⁴ If the Court grants Doe's motion to proceed with pseudonyms, Doe will file A.L., J.L., M.V., and E.R.'s real names under seal.

[Roe], [A.S] (our suitemate), and I returned to the dorm around 10:50 pm the night of the 24th after eating dinner in the first-floor lounge of one of [Roe's friend's apartment. While eating dinner, [Roe] had mentioned that she had paid someone who was 21+ to get her alcohol. We made the collective decision that it could be fun to have a few shots in celebration of her birthday. So, we got back and had a few shots and began to play some music and dance in the common room, just having a good time. Two of my other suitemates (A.S. & T.G.) were there as well doing some work for a club on their laptops, but they danced with us as well once they were done. [A.S.] and I were dancing together when she mentioned she wanted to go back to her room, so I let her go and said good night. [T.G.] left soon after. [Roe] and I continued to dance for a little bit, until one of her friends ([J.L.]) texted her that he was outside our dorm. We let him and we were having a conversation with him. He was talking about how he met his current girlfriend. He left and [Roe] and I were sitting on the couch, and that's when she started crying about [M.V.]. [Roe] had mentioned earlier that day how she was considering breaking up with him because he was emotionally unavailable for her. On the couch, she was crying about how much she missed him and why things had to be this way. I went to console her because she was profusely crying. I first sat there, but she leaned into my shoulder for support, so I hugged her. I was just hugging her while she was crying, just being there as a shoulder to cry on for her. I soon asked her if she was tired and she said yes. So I got up, but she was unable to and reached out for my hand for help. I helped her get up, walked her back to her room, and helped her up onto the bed. I stayed with her because I was scared she would harm herself in a vulnerable state like this. She continued to cry and I was consoling her. She was unable to stay sleeping on her side and was falling into a crevice on the side of the bed, so I put my arm around her chest and pulled her back in. She still continued to cry so I gave her a kiss on the cheek as an act of reassurance. She then started asking for her phone, saying "phone..phone.. [M.V.]" ([M.V.] is her boyfriend's name). I said no because I thought she was going to call [M.V.]. She kept asking for her phone by just saying "phone..phone" and [M.V.]'s name at times, and I kept saying no because I thought she was going to call Milo and ask to get back together. I didn't give her the phone because I didn't want her to say anything she would regret the next day when she herself was thinking about breaking up with him. I was getting tired and could barely keep my eyes open, so I just gave her the phone and went to sleep.

I did not ever kiss [Roe] on the lips or any other part of her body. I did not touch her breast in a sexual manner, I only put my arm around her chest to pull her back onto the bed so that she wouldn't get hurt. I did not remove her clothing, put my hand over her mouth to prevent her from crying out for help, or prevent her from getting her phone to call for help by putting the weight of my body on her. I was only consoling a close friend who was going through a tough time in her life. *Exhibit 1* (containing redacted version of May 4, 2023 Polygraph Report).

8. Doe provided her Polygraph Report to the University, but the University largely ignored it and other exculpatory evidence disproving Roe's Allegations during the University's biased investigation of Roe's Allegations.

9. Unfortunately, Roe's false allegations against Doe are not uncommon. Brett Sokolow – the Chair of the Advisory Board of the Association of Title IX Administrators (“ATIXA”) - reported: “Probably 40 or 50% of allegations of sexual assault are baseless,” https://www.thecentersquare.com/national/legal-experts-say-bidens-pushing-ahead-to-the-obama-past-on-campus-rape-could-be/article_184d1e3a-3fc0-11eb-956d-87947675f52c.html (last accessed on October 18, 2023).

10. Mr. Sokolow's finding that “[p]robably 40 or 50% of allegations of sexual assault are baseless” is grounded in his extensive Title IX experience which includes heading up an organization that: “provided services to over 5,000 school, college and university clients, including training programs for campus and school district administrators, faculty and staff training, sexual assault and Title IX case management, risk management for fraternities and sororities, workshops and seminars.” <https://www.atixa.org/speakers/brett-a-sokolow-j-d/> (last accessed on October 18, 2023).

11. One prominent example of the baseless claims supporting Mr. Sokolow's belief can be found in the Rolling Stone's article on “Jackie,” an alleged rape victim at the University of Virginia. The article has since been retracted by the publisher when it became apparent that Jackie's story was fabricated.⁵

⁵ *A Rape on Campus* by Sabrina Erdely was published in the December 4, 2014 issue of Rolling Stone. After other journalists investigated the article's claims and found significant discrepancies, Rolling Stone issued multiple apologies for the story. Columbia Journalism Review featured the article in “The Worst Journalism of 2014.” The Virginia Alpha Chapter of the Phi Kappa Psi fraternity was awarded \$1.65 million in a settlement with the Rolling Stone over the discredited 2014 article. (<https://www.nytimes.com/2017/06/13/business/media/rape-uva-rolling-stone-frat.html>)

12. Another example is the discredited (a) Columbia University student Emma Sulkowicz who spent her final year at Columbia toting a mattress to protest the university's supposed failure to punish her alleged rapist; ⁶ claims of Erica Kinsman and of Kamilah Willingham, who had been featured in the movie, "The Hunting Ground."⁷

13. Sadly, false allegations of sexual misconduct are made for all sorts of reasons: material gain, alibi, revenge, sympathy, attention, a disturbed mental state, relabeling, regret, and for no reason at all.⁸ According to one study, the most common reason for making a false sexual assault allegation is emotional gain, while 21% of complainants made false allegations without knowing why they had done it. (*Ibid.*)

14. But, false sexual misconduct allegations result in profound injustice and harm. For example, Robert DuBoise spent almost 37 years in jail for a 1983 murder and rape that DNA

⁶ See Bauer-Wolf, Jeremy. *Mattress Protest and Its Aftermath*, Inside Higher Ed (July 24, 2017), <https://www.insidehighered.com/news/2017/07/24/media-circus-surrounding-mattress-girl-case-changed-conversation-sexual-assault>. Emma Sulkowicz waited seven months to report her allegations to Columbia University. After investigation by the university and law enforcement, Paul Nungesser, the accused student, was cleared of the charges. Ms. Sulkowicz tried to get other women to accuse Mr. Nungesser of sexual assault, but Columbia University found him not responsible for those claims as well. On April 23, 2015, Mr. Nungesser sued Columbia University for being complicit in allowing the harassment from his accuser, which significantly damaged, if not effectively destroyed Paul Nungesser's college experience, his reputation, his emotional well-being and his future career prospects. The lawsuit includes dozens of Facebook messages between the two former friends and many declarations of Ms. Sulkowicz's love for Mr. Nungesser before and after the alleged rape.

⁷ See, Levingston, Ivan B. K. *Film 'The Hunting Ground' Misrepresents Harvard Sexual Assault Statistics*, The Harvard Crimson (March 26, 2015), <https://www.thecrimson.com/article/2015/3/26/hunting-ground-film-statistics/>; Yoff, Emily. *How The Hunting Ground Blurs the Truth*, Slate (June 1, 2015) <https://slate.com/news-and-politics/2015/06/the-hunting-ground-a-closer-look-at-the-influential-documentary-reveals-the-filmmakers-put-advocacy-ahead-of-accuracy.html>; Schow, Asche. *The continuing collapse of 'The Hunting Ground,' a campus sexual assault propaganda film*, Washington Examiner (June 3, 2015). <https://www.washingtonexaminer.com/the-continuing-collapse-of-the-hunting-ground-a-campus-sexual-assault-propaganda-film>

⁸ de Zutter, André; van Koppen, Peter J.; Horselenberg, Robert (February 2017). "Motives for Filing a False Allegation of Rape". *Archives of Sexual Behavior*. International Academy of Sex Research. 47 (2): 457-464. doi:10.1007/s10508-017-0951-3. PMC 5775371. PMID 28213722. (<https://link.springer.com/article/10.1007/s10508-017-0951-3>)

proves he did not commit.⁹ In May 2018, Gregory Counts and VanDyke Perry were exonerated for convictions of a 1991 gang-rape the complainant acknowledged never occurred.¹⁰ And, Malcolm Alexander wrongly served 38 years for a rape he did not commit.¹¹

15. Like the falsely accused individuals above, Doe sought justice when she learned the University charged Doe with violating the University's *Policy Against Sexual Harassment And Procedures For Supporting Faculty, Students, Employees, and Third Parties Who Experience It* ("Title IX Policy") located at <https://acrobat.adobe.com/link/review?uri=urn%3Aaaid%3Ascds%3AUS%3Ad716b4ef-f90d-302b-8512-87da520ac494> (last accessed on October 18, 2023).

16. However, after the University engaged in a biased investigation, Doe felt she had no choice but to request the University ask Roe if she would be willing to engage in Title IX Policy's "Resolution through Mediation" process which states in relevant part:

II. RESOLUTION PROCESS PROVISIONS COMMON TO ALL CASES

A. Alternative Resolution Options

The Parties may voluntarily engage in efforts to informally resolve a Complaint or conflict before or after an investigation or hearing. These efforts are referred to as Alternative Resolution.

Alternative Resolution includes three different approaches:

1. Negotiation or mediation between the Parties, with or without the participation of the Office for Equity, to reach an agreement about the outcome of the Complaint or its allegations;

⁹ <https://innocenceproject.org/innocence-project-client-robert-dubois-expected-to-be-released-after-37-years-in-prison-for-1983-tampa-murder/>

¹⁰ <https://innocenceproject.org/with-consent-of-new-york-county-district-attorneys-office-two-men-exonerated-of-1992-rape-conviction/>

¹¹ <https://innocenceproject.org/louisiana-man-exonerated-dna-evidence-serving-nearly-38-years/>

2. When the person reported to have violated this Policy accepts responsibility for violating this Policy and an appropriate sanction; or

3. When the Parties and the Title IX Coordinator agree to resolve the matter by providing the Parties with supportive measures (only) as the remedy for the situation.

Either Party may initiate Alternative Resolution by contacting the Title IX Coordinator.

The Parties must indicate in writing that their participation in Alternative Resolution efforts is their voluntary choice.

Alternative Resolution is not an option for matters proceeding pursuant to Process A when at least one Party is a student and another is a CWRU employee.

When the Parties cannot agree on all terms of an Alternative Resolution, the investigation and hearing process will continue and/or resume.

The outcome of a Complaint resolved through Alternative Resolution is not appealable

1. Resolution through mediation or negotiation with the Title IX Coordinator or Designee

The Title IX Coordinator will explore resolution through mediation or negotiation at the request of the Parties. All Parties must consent to the use of Alternate Resolution.

The Title IX Coordinator is not required to assist the Parties with achieving resolution through mediation or negotiation. The Title IX Coordinator may consider the following factors when assessing next steps following a Party's request for assistance with achieving an outcome through Alternative Resolution:

- 1) Likelihood of potential resolution, taking into account any power dynamics between the Parties;
- 2) The Parties' motivation to participate;
- 3) Civility of the Parties to one another;
- 4) Results of a violence risk assessment or ongoing risk analysis;
- 5) Disciplinary history;
- 6) Whether Emergency Removal is required;

- 7) Complexity of the allegations;
- 8) Emotional investment of the Parties;
- 9) Rationality of the Parties;
- 10) Goals of the Parties;

The Title IX Coordinator maintains records of any Alternative Resolution outcome. The failure of a Party to comply with the terms of an Alternative Resolution agreement may result in further Process pursuant to this Policy.

2. Parties privately engage in mediation or negotiation

Parties who are not subject to No Contact Directives may explore resolution through mediation or negotiation without the assistance of the Title IX Coordinator. Parties who are subject to No Contact Directives may explore resolution through mediation or negotiation through each Party's Advisor and without the assistance of the Title IX Coordinator. Parties must consent to the use of Alternate Resolution in writing, with a copy provided to the Office for Equity.

17. Doe and Roe initially engaged in mediation without the University's involvement pursuant to the "private" mediation option in §II(A)(2) of the Title IX Policy. For instance, Doe offered a settlement that largely mirrored outcomes Roe sought in her interview with a Title IX investigator, but Roe did not respond.

18. Then, on October 11, 2023, Doe received an email from Rachel Lutner - the University's Senior Associate Vice President and Title IX Coordinator ("Lutner"). Lutner's email stated Roe wished to discontinue private mediation and proceed with a mediation in which Lutner served as Roe's agent. Specifically, Lutner's October 11, 2023 email stated

Hello [Doe],

[Roe] has requested, pursuant to Part II.A.2 of the Policy Against Sexual Harassment and Procedures for Supporting Faculty, Students Employees and Third Parties Who Experience It that the Title IX Coordinator contact you to explore the possibility of resolving this matter by agreement in lieu of a hearing.

Note that [Roe] is not interested in exploring informal resolution without the assistance of the Title IX Coordinator.

Please let me know if you are interested in discussing informal resolution with the assistance of the Title IX Coordinator. If you are, [Roe] has identified terms of a possible agreement that might enable this matter to resolve by agreement and not a hearing, and she has authorized me to share those terms with you.

I look forward to hearing from you. Also, let me know if you have any questions. Thank you. *Exhibit 2, p.1* (containing redacted version of said email)(emphasis added).

19. On October 11, 2023, Doe agreed to continue mediations with Lutner serving as Roe's agent by sending Lutner an email stating: "My advisor and I are open to receiving [Roe]'s proposal." *Id.*,

20. On October 12, 2023, Lutner sent Doe an email which detailed Roe's settlement offer as follows:

Hello [Doe],

[Roe] is agreeable to resolving the pending Office of Equity matter that is scheduled for a hearing on October 19, 2023, by agreement, in lieu of that hearing, that includes the following terms:

1. The No Contact Directives between you and [Roe] will remain in effect and force until neither you nor [Roe] is enrolled in an academic program at CWRU. You may contact the Office of Equity in advance of any semester to request information about whether [Roe] is enrolled for the upcoming semester, and the Office of Equity will provide that information to you.
2. You will refrain from living on campus so long as [Roe] is enrolled in any CWRU program. You may contact the Office of Equity in advance of any semester to request information about whether [Roe] is enrolled for the upcoming semester, and the Office of Equity will provide that information to you.
3. You agree that you will not study in KSL, the Wade Office or BRB during [Roe] enrollment in any CWRU program.
4. Within 30 days of October 19, 2023, you will complete 4 hours of training on consent and healthy sexual relationships and communication, and other topics related to the reported conduct which will be considered by a hearing panel next week. The Office of Equity will provide or arrange the training for you.

5. Within 30 days of October 19, 2023, you will make to [Roe] a one-time, lump sum payment of \$10,000. *Id.*, p.1-2.

21. Doe feared the only way she could overcome the University's bias in favor of Roe was to pay Roe the money she demanded even though her \$10,000 monetary demand felt like extortion since it was linked to a threat to destroy Doe's long-lived dream of becoming a dentist. This is because Lutner and/or Roe alleged Doe would someday be a high income earner and should be willing to pay \$10,000 since she:

[Doe] frequently expressed [her] concern about the possible impact of this process on [her] future as a dentist. The requested payment, which will guarantee that the allegations of conduct that violate the sexual harassment policy do not negatively impact [Doe's] future as a dentist, is a minute fraction of [her] future earnings unencumbered by a finding of responsibility."

Lutner concluded her email by stating: "Please let me know if these terms are agreeable to you or if you have any questions. Thank you." *Id.*, p.2.

22. On October 12, 2023, Doe sent a counteroffer to Roe's agent Lutner which stated in pertinent part:

Hello Ms. Lutner,

Thank you for letting me know [Roe] "is agreeable to resolving the pending Office of Equity matter" through a settlement that involves the five terms outlined in your email.

Even though [Roe's] allegations against me are untrue, I am open to working with her to find a mutually agreeable settlement that will include: (a) assurances that the pending Office of Equity matter against me that is scheduled for a hearing on October 19, 2023 will be dismissed with prejudice as a term of any settlement; (b) the rescheduling of October 19, 2023 hearing for mid-November – in necessary - to allow us time to explore settlement terms; (c) assurances that [Roe] will not disclose the terms of our settlement – nor the status of this matter - to anyone other than her parents and/or advisor in this proceeding; and (d) [Roe's] promise to permanently delete from her phone, and any other media source or storage facility, all photos, videos, and/or materials related to me – which is something she should be willing to do since she alleges looking at these materials cause her trauma.

If [Roe] agrees to these additional settlement terms, I will accept the following terms from her settlement proposal:

1. The No Contact Directives between [Roe] and me will remain in effect and force - unless our respective academic programs mandate that we attend the same class or program at the same time - until neither of us is enrolled in an academic program at CWRU. I may contact the Office of Equity in advance of any semester to request information about whether [Roe] is enrolled for the upcoming semester, and the Office of Equity will provide that information to you
2. I will refrain from living on campus so long as [Roe] is enrolled in any CWRU program. I may contact the Office of Equity in advance of any semester to request information about whether [Roe] is enrolled for the upcoming semester, and the Office of Equity will provide that information to you.
3. Within 30 days of October 19, 2023, I will provide [Roe] a one-time, lump sum payment of \$10,000.

I am also willing to accept the following modified version of [Roe's] term #3: "I agree that I will not study in the Wade Office during [Roe's] enrollment in any CWRU program." I seek this modification because my studies require me to access University facilities in KSL and BRB.

This offer remains open only until 10 am tomorrow morning. For, my attorney is currently preparing to vindicate me at the upcoming hearing and every dollar I pay him to prepare for the hearing is a dollar I will not pay to satisfy [Roe's] aforementioned monetary demands.

In closing, I wish to address two related issues. First, can you confirm the University's amnesty policy applies if we reach a settlement and that neither [Roe] nor I will be charged with underage drinking?

Second, if [Roe] and I cannot reach a settlement, will you consider revisiting your decision to not investigate/adjudicate my concerns that [Roe] may have violated the University's policies via her interactions with witness(es) in this case?

I ask because of the terms of the University's recent settlement agreement with the United States Department of Education ("Dept. of Ed. Settlement Agreement") suggest you should reverse your decision. For instance, the settlement supports the accuracy of the following acknowledgment in your October 9th email: the "[s]haring information when the purpose of the disclosure is to harm another person . . . may constitute possible retaliation" prohibited by the University's Title IX policies *Id.*, pgs.2-3.

23. On October 12, 2023, Roe's agent Lutner told Doe that Roe unequivocally accepted Doe's counteroffer by sending the following email:

Hello [Doe],

[Roe] accepts your modified proposal. The Office of Equity will cancel the hearing. I will prepare a resolution agreement and send it to you in draft to review on Monday or Tuesday. If you have any questions in the meantime, please let me know. Thank you. *Id.*, p.4 (emphasis added).

24. Lutner's email did not answer Doe's question about whether Doe and/or Roe would be charged with underage drinking. So, Doe sent Lutner the following email on October 12, 2023: "In my previous email, I asked if the amnesty policy also applies to this settlement and that neither Ananya nor I would be charged for underage drinking. Can you please confirm if this is the case?" *Id.*, p.4.

25. Then later that same day, Lutner answered this question in an email that promised: "neither of you will be charged for underage drinking." *Id.*, p.5.

26. On October 13, 2023, Lutner attempted to get Doe to renegotiate her Settlement Contract with Roe via an email that stated:

Hello [Doe],

[Roe] did not originally see the following as terms that would go into the agreement:

(c) assurances that [Roe] will not disclose the terms of our settlement – nor the status of this matter - to anyone other than her parents and/or advisor in this proceeding; and (d) [Roe] promise to permanently delete from her phone, and any other media source or storage facility, all photos, videos, and/or materials related to me – which is something she should be willing to do since she alleges looking at these materials cause her trauma.

[Roe] responds as follows:

(c) She will only discuss the informal resolution "with persons who support her" and she does not agree to the provision prohibiting her from discussing the "status of the matter". (d) She does not agree to your final term.

As you consider [Roe's] response, consider the following. The Office of Equity, which will be a party to this agreement, cannot prevent any person from sharing information with the persons who support them, and Title IX prohibits a school from preventing a student from discussing a Title IX case. Given that this is not a private agreement, [Roe's] response, above, is the most that an agreement to which the Office of Equity is a party, can agree to on the subject of limiting disclosure. As to (d), the Office of Equity does not have any way to enforce this or assess for compliance. The Office of Equity does not include informal resolution terms which are unenforceable.

Please let me know your response. *Id.*, p.5.

27. Lutner's attempts to force Doe to renegotiate the Settlement Contract was yet another example of the University's bias against Doe. For example, Lutner's allegation that the University was a "party" to the Settlement Contract is disproven by the University's Title IX Policy. This is partly because the Title IX Policy's unequivocally states "mediation . . . between the Parties" can occur "without the participation of the Office for Equity." *Title IX Policy*, §II(A)(emphasis added).

28. Likewise, the Title IX Policy explicitly defines the term "Parties" as comprising only "the person who may have experienced sexual harassment and the person alleged to have violated this Policy." *Title IX Policy*, §I(D)(17). Therefore, Lutner's claim that the University was a "party" to the Settlement Contract lacks merit.

29. The Title IX Policy also highlights the untruthfulness of Lutner's claim that the Settlement Contract cannot require Roe to "delete . . . photos, videos, and/or materials related to [Doe]." *Exhibit 1*, p.5 (containing Lutner's October 13, 2023 email). Lutner alleges this contract provision is invalid because "the Office of Equity does not have any way to enforce"

this term. . . . [and] The Office of Equity does not include informal resolution terms which are unenforceable.” *Id.*

30. In reality, the Title IX Policy is devoid of any provision that prohibits an informal resolution “term” that the University alleges it cannot enforce. *See generally, Title IX Policy.*

31. Similarly, Lutner erroneously alleges the University lacks a mechanism to enforce the Settlement Contract’s requirement that Roe “delete . . . photos, videos, and/or materials related to [Doe].” This is because the Title IX Policy allows the University to discipline Roe if it learns Roe used her phone or computer to show someone a video or photo of Doe. It does so by stating the “failure of a Party to comply with the terms of an Alternative Resolution agreement may result in further Process pursuant to this Policy.” *Title IX Policy, §II(A).*

32. Lutner’s attempt to void terms of Settlement Contract manifests bias in other ways. For, if the requirement that Roe destroy videos and photos was voidable because it was unenforceable, then Doe’s payment of \$10,000.00 to Roe would be equally voidable. Yet, Lutner never suggested Doe need not pay Roe the \$10,000.00 she demanded.

33. Sadly, Lutner’s actions prove she lacked a basis in fact for claiming University policies prohibited the Settlement Contract’s requirement that Roe “delete . . . photos, videos” of Doe. This because on October 18, 2023 allowed Roe to include the following terms in a new offer that she hoped to superimpose over the Settlement Contract:

[Roe] will not send, share or otherwise disclose any videos, pictures or materials related to [Doe] to any person or entity except the CWRU Title IX Coordinator or designee.

If these terms are documented in an agreement to be prepared by the Title IX Coordinator, and both parties sign the agreement, the pending matter alleging violation of the Policy will be closed and will only be reopened in the event of a breach of the agreement. *Exhibit 4, p.1.*

34. Lutner's bias caused Doe to ask Lutner to require her principal Roe to honor the terms of the legally enforceable Settlement Contract – while simultaneously offering some “accord and satisfaction[s]” to attempt to placate Roe and Lutner. Doe did so by sending Lutner an email that stated:

Hello Ms. Lutner,

Unfortunately, [Roe] created a legally enforceable contract yesterday when she told you to tell me that she accepted my counteroffer to her offer. That said, I am open to discussing a possible accord and satisfaction to our legally enforceable contract.

Specifically, I may consider substituting [Roe]'s version of (c) if she identifies the names of the “support persons” that she will talk to about the informal resolution and/or “status of the matter.” If the University would rather not be involved in accord and satisfaction discussions regarding this legally enforceable promise that [Roe] made to me, she can provide the names of these “support persons” to my attorney outside the informal resolution process. He is cc'd on this email.

Likewise, I will agree to an accord and satisfaction regarding [Roe]'s attempt to delete section (d) from our legally enforceable promise if [Roe] agrees to reduce her monetary demand to \$5,000.00. This reduction is necessary because I fear [Roe] may attempt to use the photos, videos, and/or materials - that she is contractually obligated to destroy – to extort money from me in the future.

I feel this way partly because I do not see any other reasons for [Roe] to want to hold on to these materials since she claims that they cause her trauma when she looks at them.

My accord and satisfaction regarding these terms will remain until 12 pm today. After that, I will consider other legal options for enforcing the legally enforceable contract that I have with [Roe].

Regards,
[Doe].

Exhibit 2, pgs.5-6.

35. Doe's concern that Roe sought to void the Settlement Contract in order to "extort money from [Doe] in the future" was clearly warranted. For on October 18 – just before this lawsuit was filed - Lutner informed Doe that Roe was demanding Doe pay Roe \$15,000.00. *Exhibit 4, p.2.*

36. Back on October 13, 2023, acting on behalf of her principal Roe, Lutner quickly rejected Doe's proposed "accord and satisfaction" and threatened to continue the University's prosecution of Doe for alleged violations of the Title IX Policy. Lutner did so via an email that stated:

Hello [Doe],

I think you and [Roe] are very close to coming to an agreement. Would you agree to participate in a mediation with her on Thursday morning, October 19, 2023, in place of the hearing. I think that some direct communication about what each person wants out of this process will likely result in an agreement.

As for whether there is already an enforceable agreement, there is not:

1. [Roe] did not agree to your terms because, at the time she "accepted", she only saw a summary of them that, due to an error, did not include the terms in the paragraph that included the limitations on disclosure and the deletion of all videos and pictures. When she did see those terms, she did not agree to them. So, there was no meeting of the minds as to that initial acceptance. The statements in this paragraph can be established as fact by review of the email chain.
2. The Sexual Harassment Policy states that informal resolution agreements are fully voluntary. The Office of Equity permits parties to withdraw from or request modification to an informal resolution at any time until the agreement is signed. It is very common, given the nature of the difficult issues facing parties to such agreements, that parties are conflicted and this process plays out in how parties come to such agreements over time.

I read that you believe there is an enforceable agreement, but understand that the Office of Equity does not agree, and will proceed with this case accordingly. That is why I am proposing mediation. Please let me know.

Exhibit 3, p.1.

37. Lutner's arguments for claiming the right to void the Settlement Contract were again disproven by the Title IX Policy. For instance, Title IX Policy contains no provision that allows a Party to "withdraw from or request modification to an informal resolution at any time [prior to] the agreement [being] signed."

38. Likewise, nothing in the "informal resolution" rules promulgated by the United States Department of Education in 34 CFR 106.45(b) support Lutner's claim that Roe can "withdraw from or request modification to an informal resolution at any time [prior to] the agreement [being] signed." Rather, these rules mandate Title IX Coordinators like Lutner "serve impartially" and facilitate "informal resolution process[es]" that are free of "conflict of interest or bias . . . against . . . respondents" like Doe." *34 CFR 106.45(b)(1)(ii)*.

39. Lutner's failure to honor her 34 CFR 106.45's mandates (and) her threats to prosecute Doe, left Doe no choice but to consider this lawsuit. Before doing so, however, Doe made another attempt to get Lutner and Roe to honor the terms of the Settlement Contract. Specifically, Doe sent the following email to Lutner on October 16, 2023:

Dear Ms. Lutner,

Thank you for your October 13th email. You responded to my offer to give [Roe] until noon on October 13th to accept my proposed "accord and satisfaction" modifications to the legally enforceable contract she and I entered into on October 10th. [Roe] did not timely accept my proposed "accord and satisfaction" modifications. Therefore, I withdraw them and expect her to honor the terms of our contract.

If [Roe] fails to do so, I will file a lawsuit against her and the University which will include a request for injunctive relief to prohibit the University from proceeding with the disciplinary action your October 10th email promised had been "cancel[ed]."

My lawsuit will include, but not be limited to, breach of contract claims against [Roe]. This claim will be based in part on your October 10th email which unequivocally stated [Roe] "accept[ed]" my counteroffer to her settlement

proposal. Your email bound [Roe] partly because she authorized you to serve as her agent in our settlement discussions.

You allege an “error” caused [Roe] to become confused about the terms of my counteroffer. The facts suggest otherwise. But, even if the University contributed to this alleged error, [Roe] has legal remedy – she can sue the University for breaching its fiduciary duties as [Roe]’s agent.

[Roe] could bring this claim against the University in the lawsuit the University appears intent on forcing me to file against it. If forced to bring this lawsuit, my claims against the University will include, but not necessarily be limited to, the following claims which will be pleaded in the alternative: (a) breach of contract; (b) promissory estoppel; and (c) tortious interference with contract.

I will include a breach of contract claim partly because your October 13th email alleges the University was a party to my contract with [Roe]. Assuming that you are correct for the purpose of argument, your October 10th and October 11th emails prove the University accepted the terms of my counteroffer to [Roe]’s offer. It did so by explicitly stating the University (a) “cancel[ed]” the Title IX hearing, and (b) promised that neither [Roe] nor I would “be charged for underage drinking.”

In the alternative to a breach of contract claim, my lawsuit will include a promissory estoppel claim because I reasonably relied on your promises in items a and b in the preceding paragraph. I did so because my counteroffer required [Roe] to promise that her Title IX complaint would be “dismissed with prejudice as a term of any settlement.” As an attorney, you knew- or should have known – the legal significance of this requirement. And, your emails proved you understood the contract terms unambiguously by “cancel[ing]” the Title IX hearing, getting the actual agreement ready for signatures (and) promising that neither [Roe] nor I would “be charged for underage drinking.”

Instead of honoring your promises and/or contractual obligations, you weaponized your authority over me by threatening to prosecute me if I did not honor your demand that I renegotiate a contract that you unequivocally stated [Roe] “accept[ed].” This is further evidence of the University’s bias in favor of accusing students that has repeatedly prejudiced my ability to expose [Roe]’s false claims against me. It also proves the University is tortiously interfering with my contract with [Roe].

Nevertheless, I will entertain the University and/or [Roe]’s “accord and satisfaction” proposals to my legally enforceable contract with [Roe] until 10 am tomorrow. These proposals may come via email or in a meeting. But, I must be assured I will not have to interact personally with [Roe]. Moreover, I want guarantees that my advisor Eric Rosenberg will be permitted to speak on my behalf to avoid being further traumatized by the University and [Roe].

In closing, I am cc'ing the University's General Counsel Peter Poulos in the event he wants to speak directly to Mr. Rosenberg about the lawsuit that I plan on filing later this week if the parties are not able to reach mutually acceptable "accord and satisfaction" provision to my legally enforceable contract with [Roe].

I also include General Counsel Poulos because I want him to know why I feel I've been left with no choice but to sue the University even though my concerns so far are mostly limited to the actions of The Office of Equity. Simply put, the Office of Equity's bias and rejection of my best efforts to work in good faith with them for the last six months has led me to this point. Consequently, I ask that the General Counsel's office ensure the biased/retaliatory conduct I've experienced at the hands of the Office of Equity does not extend outside that office and further prejudice my present and future interactions with the University.

Regards,
[Doe]

Exhibit 3, pgs. 1-2.

40. On October 16, 2023, Lutner sent Doe an email stating Lutner and Roe were "unable to meet [Doe's] deadline" *Id.*

41. As a result, Doe informed Lutner she would have no choice but to begin "preparing the lawsuit mentioned in [her] earlier email." *Id.*, p.3. However, Doe added that if Lutner or Roe "wish[ed] to propose an 'accord and satisfaction' for any term(s) of" the Settlement Contract that Roe "reserve[d] the right to entertain said proposal until [her] lawsuit [was] filed." *Id.*

42. On October 18, 2023, Lutner again acted as Roe's agent by sending Doe an email stating:

Hello [Doe],

[Roe] has authorized me to share the following proposal:

1. The No Contact Directives between [Doe] and [Roe] will remain in effect and force until neither is enrolled in an academic program at CWRU. [Doe] may contact the Office of Equity in advance of any semester to request information . . . about whether [Roe] is enrolled for the upcoming

semester, and the Office of Equity will provide that information on request.

2. [Doe] will refrain from living on campus so long as [Roe] is enrolled in any CWRU program. [Doe] may contact the Office of Equity in advance of any semester to request information about whether [Roe] is enrolled for the upcoming semester, and the Office of Equity will provide that information to her.
3. [Doe] agrees that she will not study in KSL, the Wade Office or BRB during [Roe]'s enrollment in any CWRU program. [Doe] may, however, attend classes and programs in these campus buildings, but must leave the building within 15 minutes of the end of the program or class that she attended.
4. Within 30 days of October 19, 2023, [Doe] will complete 4 hours of training on consent and healthy sexual relationships and communication, and other topics related to the reported conduct which will be considered by a hearing panel next week. The Office of Equity will provide or arrange the training for [Doe].
5. The Office of Equity will not initiate or cause another office on campus to initiate charges against [Doe] or [Roe] for underage drinking.
6. [Roe] and [Doe] will limit disclosure of the terms of this agreement to the persons who support either of them, and it will be a violation of the agreement for either to share information about this agreement with the intention that (1) the information shared harms the other person or (2) the other person learns of the sharing and is distressed by it.
7. Within 30 days of October 18, 2023, [Doe] will make to [Roe] a one-time, lump sum payment of \$10,000. This payment is necessary because [Roe] insists on being compensated for (1) agreeing not to discuss this agreement with others, except those who support her; and (2) to refrain from sharing the information on her phone about [Doe].
8. [Roe] will not send, share or otherwise disclose any videos, pictures or materials related to [Doe] to any person or entity except the CWRU Title IX Coordinator or designee.
9. If these terms are documented in an agreement to be prepared by the Title IX Coordinator, and both parties sign the agreement, the pending matter alleging violation of the Policy will be closed and will only be reopened in the event of a breach of the agreement.

[Roe] makes this proposal for the following reasons:

- You and [Roe] previously came close to an agreement along the lines of these terms.

- As previously stated, the sum of \$10,000 is sought to entice [Roe] to give up her right to a hearing, which she believes will result in a finding that your conduct towards her violated the sexual harassment policy. On learning that you demand that she (1) limit disclosure of this agreement, and (2) agree not to share the pictures and videos and related material, if any, on her phone relating to you, [Roe] advised me that she sought an additional \$5,000, for a total of \$15,000. After discussion about your correspondence, and in seeking \$10,000 at this time, [Roe] incorporates your demand that you pay her only \$5,000 so that you have money for any future litigation relating to the sharing of these materials (which [Roe] assures you is unnecessary) and reduces her \$15,000 by \$5,000.
- [Roe] notes that resolving this matter pursuant to an agreement along the lines of the above enables the parties to achieve a resolution that is less expensive and more certain than your alternative, which is to pursue the litigation you are threatening.
- [Roe] wants you to know that this is the substantive agreement that she will accept and she is unwilling to consider any agreement that substantially departs from these terms.

[Roe] hopes that you will agree to this so both of you can put this matter behind you. If this matter does not resolve, [Roe] is willing to proceed with a hearing. Thank you for your serious consideration of [Roe]'s proposal. If you have any questions, please let me know.

Exhibit 4, pgs. 1-2.

43. Doe responded to this email by stating the following

Hello Ms. Lutner,

Thank you for your email today. Unfortunately, it does not acknowledge the existence of the legally enforceable settlement contract that was created when you sent me the October 12th email stating [Roe] accepted my counteroffer to her initial settlement proposal.

Will you warrant the University and [Roe] agree (a) your October 12th email stating [Roe] accepted my counteroffer to her initial settlement proposal formed a legally enforceable settlement contract containing the terms outlined in my counteroffer; and (b) the proposal in your email today is an "accord and satisfaction" presented as the University and [Roe]'s request to replace the pre-existing legally enforceable settlement contract discussed in item a?

If you confirm in writing – prior to 4 pm today - that the University and [Roe] unequivocally agree that items a and b above are true, I will negotiate your accord and satisfaction from today in good faith.

Otherwise, I have no choice but to file the lawsuit I discussed in my earlier emails tomorrow morning.

Regards,
[Doe]

Id., pgs.2-3.

44. Lutner and Roe then necessitated the filing of this lawsuit by rejected Doe's requests via an email that stated: "As I previously stated, informal resolution is entirely voluntary and a student may change his or her mind at any time until the agreement is signed. In addition, as I told you, [Roe] was unaware of the additional terms presented in your counteroffer, and as a result, could not and did not agree to them." *Id.*, p.3

COUNT 1
BREACH OF CONTRACT
[Against Roe]

45. Doe realleges and incorporates all the allegations contained in preceding paragraphs as if fully set forth in this paragraph.

46. Lutner's October 11, 2023 email discussed in ¶18 above, which notified Doe that Roe wished would proceed with a mediation whereby Lutner would act as Roe's agent, represented that Lutner had the authority to bind Roe to the terms of a negotiated settlement.

47. When Roe received Lutner's October 11, 2023 email discussed in ¶18 above, which notified Doe that Lutner would act as Roe's agent, Doe understood Roe gave Lutner the authority to bind Roe to the terms of any negotiated settlement.

48. The terms set forth in Doe's October 12, 2023 counteroffer detailed ¶22 above ("Doe's Counteroffer") were certain and clear.

49. Lutner's October 12, 2023 email set forth in ¶23 above unequivocally accepted Doe's Counteroffer by telling Doe that: "[Roe] accepts your modified proposal. The Office of Equity will cancel the hearing." (emphasis added).

50. Roe's acceptance of Doe's Counteroffer created an enforceable Settlement Contract that contained the terms articulated in Doe's Counteroffer because Doe and Roe reached a meeting of the minds regarding the terms of the Settlement Contract partly because: (a) Lutner had contractual capacity via her apparent authority as Roe's agent to enter into the Settlement Contract on Roe's behalf; and (b) the Settlement Contract was supported by legal consideration.

51. Roe breached the Settlement Contract by having her Agent Lutner inform Doe that Roe would not honor the Settlement Contract's terms.

52. Roe's breach of the Settlement Contract inflicts damage on Doe which includes, but is not limited to, prejudicing Doe's educational and professional goals of entering dental school in 2024. Roe and Lutner admit Roe will suffer this damage by acknowledging the University's successful prosecution of Roe's Allegations would "negatively impact . . . [Doe's] future earnings" as a "dentist." *Exhibit 2*, p.2.

COUNT 2
BREACH OF CONTRACT
[Against the University /in the alternative to Count 3]

53. Doe realleges and incorporates all the allegations contained in preceding paragraphs as if fully set forth in this paragraph.

54. As discussed above, Doe believes Lutner's claim to be a party to the Settlement Contract is incorrect. But, assuming arguendo that the University was a party, then Lutner would have been serving a dual roles agent for both Roe and the University. In that role, Lutner

accepted Doe's Counteroffer by agreeing – among other things - to cease the prosecution of the University's Title IX charges against Doe. Doe and the University had a meeting of the minds regarding the terms of the Settlement Contract given, among other things: (a) Lutner had the contractual capacity to enter into the Settlement Contract on the University's behalf; and (b) the Settlement Contract was supported by legal consideration such as Doe forgoing her intention to use her upcoming hearing to gather additional evidence of University bias that she would have used in a lawsuit against the University if she were erroneously found responsible for violating the Title IX Policy.

55. The University breached the Settlement Contract when Lutner informed Doe that the University would not honor the Settlement Contract's terms.

56. The University's breach of the Settlement Contract inflicts damage on Doe which includes, but is not limited to Doe's (a) damaging her ability to obtain her educational and professional goals of entering dental school in 2024 thereby causing lost income; and/or (b) contributing to potential irreparable harm via a finding of misconduct and discipline in Doe's permanent academic record, which would seriously prejudice Doe's future academic and employment opportunities. The University admits Doe will suffer this damage via Lutner's acknowledgment that the University's successful prosecution of Doe's Allegations would "negatively impact . . . [Doe's] future earnings" as a "dentist." *Exhibit 2*, p.2.

COUNT 3
PROMISSORY ESTOPPEL
[Against the University / in the alternative to Count 2]

57. Doe realleges and incorporates all the allegations contained in preceding paragraphs as if fully set forth in this paragraph.

58. Lutner is the federally required Title IX Coordinator for the University. She has the actual and apparent authority and power to act on behalf of and to bind and obligate the University with regard to the investigation and disciplinary procedures of complaints of sexual misconduct made by one student against another.

59. The University's written policies and procedures make it evident that Lutner, as Title IX Coordinator, is an integral part of the process and procedures concerning the University's response to allegations of sexual misconduct. Those policies and procedures make it evident that Lutner, as Title IX Coordinator, acts on behalf of the University in the investigation and disciplinary process concerning complaints of sexual misconduct.

60. Lutner's October 12, 2023 email detailed in ¶23 above promise that the University would "cancel" Doe's disciplinary hearing involve clear and unambiguous representations and promises.

61. Lutner's promise to cease the prosecution of the University's Title IX charges against Doe was unambiguous partly because Lutner's promised complied with the University's Title IX Policy which gives the University the authority to "dismiss" the charges against Doe when Roe "notifie[d] the Title IX Coordinator in writing that [Roe's] Complaint should . . . be withdrawn. . . ." *Title IX Policy*, §II(B).

62. Lutner's promise to cease the prosecution of the University's Title IX charges against Doe were unambiguous partly because Lutner knew Roe accepted the terms of Doe's Counteroffer which required the Title IX charges against Doe "be dismissed with prejudice as a term of any settlement." *Exhibit 2*, p.2.

63. Doe reasonably relied on Lutner's promise to cease the prosecution of the University's Title IX charges against Doe partly by continuing to pursue admission into dental programs at various universities around the country for the 2024-25 academic year.

64. Doe's reliance on Lutner's promise to cease the prosecution of the University's Title IX charges against Doe was reasonable based in part on the fact that Lutner is the University's Title IX Coordinator, who is responsible for investigating and handling sexual misconduct accusations.

65. Doe's reliance on Lutner's promise to cease the prosecution of the University's Title IX charges against Doe was reasonable in part because the University's Title IX Policy and the "informal resolution" rules promulgated in 34 CFR 106.45(b) give the University the authority to cease the prosecution of the University's Title IX charges against Doe after Roe accepted Doe's Counteroffer.

66. If the University does not honor its promise and is allowed to continue its prosecution of the University's Title IX charges against Doe, such actions would cause Doe irreparable harm, including but not limited to (a) severe emotional, mental and physical distress; (b) an inability to obtain Doe's educational and professional goals of entering dental school in 2024 thereby causing lost income; and/or (c) contributing to a potential irreparable harm of a finding of misconduct and discipline in Doe's permanent academic record, which would seriously prejudice Doe's future academic and employment opportunities. The University admits Roe will suffer this damage via Lutner's acknowledgment that the University's successful prosecution of Roe's Allegations would "negatively impact . . . [Doe's] future earnings" as a "dentist." *Exhibit 2, p.2.*

COUNT 4
TORTIOUS INTERFERENCE WITH CONTRACT
[Against the University]

67. Doe realleges and incorporates all the allegations contained in preceding paragraphs as if fully set forth in this paragraph.

68. The actions of Lutner detailed above prove the University knew the Settlement Contract existed.

69. The actions of Lutner detailed above prove the University intentionally procured the breach of the Settlement Contract in part by falsely alleging the Title IX Policy gave Roe and/or the University the right to void Settlement Contract term(s).

70. The University's intentional procurement of the breach of the Settlement Contract caused Doe irreparable harm, including but not limited to (a) severe emotional, mental and physical distress; (b) an inability to obtain Doe's educational and professional goals of entering dental school in 2024 thereby causing lost income; and/or (c) potential irreparable harm of a finding of misconduct and discipline in Doe's permanent academic record, which would seriously prejudice Doe's future academic and employment opportunities. The University admits Roe will suffer this damage via Lutner's acknowledgment that the University's successful prosecution of Roe's Allegations would "negatively impact . . . [Doe's] future earnings" as a "dentist." *Exhibit 2*, p.2.

COUNT 5
Defamation Per Se
[against Roe only]

71. Doe realleges and incorporates all the allegations contained in preceding paragraphs as if fully set forth in this paragraph.

72. Roe made and published the Non-Privileged Defamation detailed above to be heard or read by persons in Ohio and Roe intended these defamatory statements to damage Doe's personal and professional reputation by accusing Doe of engaging in criminal conduct.

73. Roe's Non-Privileged Defamation do not qualify as excited utterances because she made these statements well after March 24, 2023 - the date when she alleges Doe engaged in sexual misconduct.

74. Roe made and published the Non-Privileged Defamation with actual malice and reckless disregard of their falsity or with actual knowledge of their falsity.

75. Roe did not make the Non-Privileged Defamatory Statements, which are the subject of this Count, in support of the University-initiated investigation and complaint against Doe. Rather, Roe's Non-Privileged Defamatory Statements related to this count: (a) have no connection to the University-initiated investigation and complaint Roe made against Doe; (b) have no connection to any complaint Roe made about Doe to any governmental or quasi-governmental body; and (c) were not made in the presence of University employees or any other governmental or quasi-governmental body involved in a disciplinary action against Doe.

76. As a direct and proximate result of Roe's Non-Privileged Defamation, Doe has suffered actual monetary damages, including legal fees defending Doe's reputation.

77. As a direct result of Roe's Non-Privileged Defamatory Statements, Doe's character and reputation at the University and within the community at large have been damaged and Doe has suffered and will continue to suffer mental anguish, personal humiliation, and significant loss of reputation.

COUNT 6
Defamation Per Quod
[against Jane Roe only]

78. Doe realleges and incorporates all the allegations contained in preceding paragraphs as if fully set forth in this paragraph.

79. Roe knew and intended the Non-Privileged Defamation detailed above to be heard and/or read by persons in Ohio and intended the defamatory statements to damage the professional and personal reputation of Doe.

80. Roe made and published the Non-Privileged Defamation with actual malice and reckless disregard of its falsity or with knowledge of its falsity.

81. As alleged above, Roe did not make the Non-Privileged Defamatory Statements, which are the subject of this Count, in support of the University-initiated investigation and complaint against Doe. Roe's Non-Privileged Defamatory Statements related to this count: (a) have no connection to the University-initiated investigation and complaint Roe made about Doe; (b) have no connection to any complaint Roe made about Doe to any governmental or quasi-governmental body; and (b) were not made in the presence of University employees or any other governmental or quasi-governmental body involved in a disciplinary action against Doe.

82. As a direct and proximate result of Roe's Non-Privileged Defamation, Doe has suffered actual damage of a pecuniary nature, including legal fees defending Doe's reputation.

83. As a direct result of Roe's Non-Privileged Defamation, Doe's character and reputation at the University and within the community at large has been damaged and he has suffered and will continue to suffer mental anguish, personal humiliation, and significant loss of reputation.

84. As a further direct and proximate cause of Roe's Non-Privileged Defamation, Doe suffered consequences and damages, loss of employment opportunities and/or wages, loss of

educational opportunities, difficulty in gaining entrance to another university comparable to CCC, reduced future earning capacity, and attorneys' fees.

WHEREFORE, regarding Counts 1, 5, and 6, Doe demands judgment against Roe as follows:

- (a) for actual, special, and compensatory damages, including Doe's legal fees, in an amount to be determined at trial but no less than \$75,000.00;
- (b) where appropriate, punitive damages in an amount sufficient to deter Roe from conducting similar future conduct but no less than \$100,000;
- (c) judgment for attorneys' fees, pursuant to applicable statute;
- (d) judgment for all other reasonable and customary costs and expenses incurred in pursuit of this action;
- (e) pre-judgment interest and post judgment interest as permitted by law and statute;
and
- (f) such other and further relief as this Court finds just and equitable.

WHEREFORE, regarding Counts 2-4, Doe demands judgment against the University as follows:

- (a) for actual, special, and compensatory damages, including Doe's legal fees, in an amount to be determined at trial but no less than \$75,000.00;
- (b) where appropriate, punitive damages in an amount sufficient to deter the University from conducting similar future conduct but no less than \$100,000;
- (c) judgment for attorneys' fees, pursuant to applicable statute;
- (d) judgment for all other reasonable and customary costs and expenses incurred in pursuit of this action;
- (e) pre-judgment interest and post judgment interest as permitted by law and statute;
and
- (f) such other and further relief as this Court finds just and equitable.

AAA POLYGRAPH SERVICE

245 Essex Place
Pataskala, OH 43062
Ph: 614-759-0817
Cell: 614-352-0097
aaapolygraphservice@gmail.com

May 4, 2023

Rosenberg & Ball Co., LPA
Attn: Eric Rosenberg
205 S. Prospect
Granville, OH 43023

Reference: Polygraph Report 23-0502:[Doe Full Name]

Dear Mr. Rosenberg,

Enclosed is the polygraph report pertaining to [Doe Full Name] . A total of three charts were collected for analysis.

The following is a review of the total hours expended for this Examinee:

1. 1.15 hours pre-test interview
2. 21:25 minutes on chart collection
3. .30 hours post-test interview and chart interpretation

Respectfully,

John Amburgey
Owner/Examiner

PERSONAL & CONFIDENTIAL

Date of Exam: May 4, 2023
Type of Exam: MGQT- Specific Issue
Location of Exam: Law Offices, Granville, OH
Requested by: Eric Rosenberg, Esq.
Examiner: John A. Amburgey
Report: 23-0502

1. On the above date a polygraph examination was administered by means of a multi-channel Lafayette Computer System, model LX4000, serial number 344371. The instrument measures respiration, psycho-galvanic skin response, relative blood pressure, pulse, and movement by sensors recorded on a moving graph.

NAME/IDENTIFICATION OF EXAMINEE: [Doe Full Name]; [Doe Last 4 of SSN]; [Doe Address]; [Doe Ethnicity and Gender]; [Doe Date of Birth]

2. During the pre-test phase, the examinee was questioned at length regarding the issue and the examinee related substantially as follows:
 - The examinee was questioned at length about allegations of inappropriate sexual contact with a fellow student ([Roe Full Name]) while attending Case Western University. She prepared a statement detailing this incident and her interaction with [Roe] . She stated that she is not lying about or withholding any information regarding this issue at this time.
3. The examinee, during the instrumentation phase, was asked the following relevant questions three or more times after being reviewed in advance with the examinee:

Question: Regarding your statement involving the incident with [Roe Full Name], are you going to tell me the truth about that?

Response: Yes.

Question: Did you lie in your statement about anything that took place between you and [Roe] that night in March 2023?

Response: No.

Question: Did you withhold any information from your statement about what happened between you and [Roe] ?

Response: No.

Question: Did you lie to me today about anything we have discussed involving your statement and the event with [Roe] ?

Response: No.

PERSONAL & CONFIDENTIAL

Polygraph Report: #23-0502
(Continued)

4. Results of the examination: Following collection of all polygraph charts, careful and detailed review resulted in the following conclusions of the examiner:

NO SIGNIFICANT RESPONSE INDICATED - Examinee's polygrams did not contain reactions indicating abnormal physiological or significant physiological responses and in the opinion of the examiner, the examinee was being truthful in answers to the above listed relevant questions.

5. In the post-test interview the examinee offered the following information:

No further information was obtained.

It is the opinion of this examiner that truthfulness was indicated, and there are no unresolved issues that remain at the conclusion of the polygraph examination. The polygraph is an investigative aid and tool and should not be used as the only means of making final decisions of action to be taken.

John A. Amburgey
Owner/Examiner

[Roe] , [AL] (our suitemate), and I returned to the dorm around 10:50 pm the night of the 24th after eating dinner in the first-floor lounge of one of [Roe's] friend's apartment. While eating dinner, [Roe] had mentioned that she had paid someone who was 21+ to get her alcohol. We made the collective decision that it could be fun to have a few shots in celebration of her birthday. So, we got back and had a few shots and began to play some music and dance in the common room, just having a good time. Two of my other suitemates ([AS] & [TG]) were there as well doing some work for a club on their laptops, but they danced with us as well once they were done. [AS] and I were dancing together when she mentioned she wanted to go back to her room, so I let her go and said good night. [TG] left soon after, and I continued to dance for a little bit, until one of her friends ([JL]) texted her that he was outside our dorm. We let [JL] and we were having a conversation with him. He was talking about how he met his current girlfriend [JL] left and [Roe] and I were sitting on the couch, and that's when she started crying about [MV] . [Roe] had mentioned earlier that day how she was considering breaking up with him because [MV] was emotionally unavailable for her. On the couch, [Roe] was crying about how much she missed [MV] and why things had to be this way. I went to console [Roe] because she was profusely crying. I first sat there, but she leaned into my shoulder for support, so I hugged her. I was just hugging her while she was crying, just being there as a shoulder to cry on for her. I soon asked her if she was tired and she said yes. So I got up, but she was unable to and reached out for my hand for help. I helped her get up, walked her back to her room, and helped her up onto the bed. I stayed with her because I was scared she would harm herself in a vulnerable state like this. She continued to cry and I was consoling her. She was unable to stay sleeping on her side and was falling into a crevice on the side of the bed, so I put my arm around her chest and pulled her back in. She still continued to cry so I gave her a kiss on the cheek as an act of reassurance. She then started asking for her phone, saying "phone..phone.. [MV First name]" . I said no because I thought she was going to call [MV]. She kept asking for her phone by just saying "phone..phone" and [MV First Name] at times, and I kept saying no because I thought she was going to call [MV] and ask to get back together. I didn't give her the phone because I didn't want her to say anything she would regret the next day when she herself was thinking about breaking up with him. I was getting tired and could barely keep my eyes open, so I just gave her the phone and went to sleep.

I did not ever kiss [Roe] on the lips or any other part of her body. I did not touch her breast in a sexual manner, I only put my arm around her chest to pull her back onto the bed so that she wouldn't get hurt. I did not remove her clothing, put my hand over her mouth to prevent her from crying out for help, or prevent her from getting her phone to call for help by putting the weight of my body on her. I was only consoling a close friend who was going through a tough time in her life.

[Doe Signature]

DA 05/04/2023



Eric Rosenberg <erosenberg@rosenbergball.com>

Informal Resolution proposal

9 messages

Rachel Lutner <rxl768@case.edu>
To: Doe's Email Address
advocate@advocate.symplicity.com

Wed, Oct 11, 2023 at 9:04 PM

, Eric Rosenberg <erosenberg@rosenbergball.com>, T00059-2023.case-

Hello Doe,

Roe has requested, pursuant to Part II.A.2 of the Policy Against Sexual Harassment and Procedures for Supporting Faculty, Students Employees and Third Parties Who Experience It that the Title IX Coordinator contact you to explore the possibility of resolving this matter by agreement in lieu of a hearing. Note that Ms. Roe is not interested in exploring informal resolution without the assistance of the Title IX Coordinator.

Please let me know if you are interested in discussing informal resolution with the assistance of the Title IX Coordinator. If you are, Ms. Roe has identified terms of a possible agreement that might enable this matter to resolve by agreement and not a hearing, and she has authorized me to share those terms with you.

I look forward to hearing from you. Also, let me know if you have any questions. Thank you.

Very truly yours,

Rachel E. Lutner
Senior Associate Vice President - Equity
Title IX Coordinator
Case Western Reserve University
rachel.lutner@case.edu
Equity - Main (216) 368-3066
Equity - Direct (216) 368-6841
Cell Phone (216) 327.4160

From: Doe's Email Address

Wed, Oct 11, 2023 at 9:54 PM

To: Rachel Lutner <rxl768@case.edu>

Cc: Eric Rosenberg <erosenberg@rosenbergball.com>, T00059-2023.case-advocate@advocate.symplicity.com

Hello Ms. Lutner,

My advisor and I are open to receiving Ananya's proposal.

Regards,

Doe

--

Doe

B.A. Candidate in [redacted] Doe's Major
[redacted] Doe's Minor
Case Western Reserve University | Class of [redacted] Year of Graduation
Pronouns: she/her/hers

[Quoted text hidden]

Rachel Lutner <rxl768@case.edu>

Thu, Oct 12, 2023 at 9:16 AM

To: Doe's Email Address

Cc: Eric Rosenberg <erosenberg@rosenbergball.com>, T00059-2023.case-advocate@advocate.symplicity.com

Hello Doe

Exhibit 2, p.1

Ms. Roe is agreeable to resolving the pending Office of Equity matter that is scheduled for a hearing on October 19, 2023, by agreement, in lieu of that hearing, that includes the following terms:

1. The No Contact Directives between you and Ms. Roe will remain in effect and force until neither you nor Ms. Roe is enrolled in an academic program at CWRU. You may contact the Office of Equity in advance of any semester to request information about whether Ms. Roe is enrolled for the upcoming semester, and the Office of Equity will provide that information to you.
2. You will refrain from living on campus so long as Ms. Roe is enrolled in any CWRU program. You may contact the Office of Equity in advance of any semester to request information about whether Ms. Roe is enrolled for the upcoming semester, and the Office of Equity will provide that information to you.
3. You agree that you will not study in KSL, the Wade Office or BRB during Ms. Roe's enrollment in any CWRU program.
4. Within 30 days of October 19, 2023, you will complete 4 hours of training on consent and healthy sexual relationships and communication, and other topics related to the reported conduct which will be considered by a hearing panel next week. The Office of Equity will provide or arrange the training for you.
5. Within 30 days of October 19, 2023, you will make to Ms. Roe a one-time, lump sum payment of \$10,000.

Ms. Roe arrived at the above terms as follows:

- Due to her emotional distress arising from the reported misconduct, Ms. Roe does not want to see you when you are on campus. Nos. 1, 2 and 3 seek to ensure that Ms. Roe is able to continue her education without worrying about being triggered by recollection of her experience, reflected in the allegations of misconduct.
- Ms. Roe hopes that No. 4 will prevent another person from experiencing what she reportedly experienced.
- Ms. Roe believes that, if this matter goes to a hearing, you will be found responsible for violating the Sexual Harassment Policy. This is something that Ms. Roe wants very much. The payment described in No. 5 is an inducement to Ms. Roe to forgo this possibility, which is important to her. The payment represents a sense of "justice" that Ms. Roe will not receive if this process does not go to a hearing. In addition, Ms. Roe states that when you and she spoke after the incident from which the allegations of misconduct arose, you expressed that your primary concern was your future as a dentist. Ms. Roe has reviewed the correspondence between you and the Title IX Coordinator and investigator that has been uploaded to Box. You frequently expressed your concern about the possible impact of this process on your future as a dentist. The requested payment, which will guarantee that the allegations of conduct that violate the sexual harassment policy do not negatively impact your future as a dentist, is a minute fraction of your future earnings unencumbered by a finding of responsibility.

Please let me know if these terms are agreeable to you or if you have any questions. Thank you.

Very truly yours,

Rachel E. Lutner
Senior Associate Vice President - Equity
Title IX Coordinator
Case Western Reserve University
rachel.lutner@case.edu
Equity - Main (216) 368-3066
Equity - Direct (216) 368-6841
Cell Phone (216) 327.4160

[Quoted text hidden]

From: Doe's Email Address

Thu, Oct 12, 2023 at 3:06 PM

To: Rachel Lutner <rxl768@case.edu>

Cc: Eric Rosenberg <erosenberg@rosenbergball.com>, T00059-2023.case-advocate@advocate.symplicity.com

Hello Ms. Lutner,

Thank you for letting me know Roe "is agreeable to resolving the pending Office of Equity matter" through a settlement that involves the five terms outlined in your email.

Even though Roe's allegations against me are untrue, I am open to working with her to find a mutually agreeable settlement that will include: (a) assurances that the pending Office of Equity matter against me that is scheduled for a hearing on October 19, 2023 will be dismissed with prejudice as a term of any settlement; (b) the rescheduling of October 19, 2023 hearing for mid-November – in necessary - to allow us time to explore settlement terms; (c) assurances that Roe will not disclose the terms of our settlement – nor the status of this matter - to anyone other than her parents and/or advisor in this proceeding; and (d) Roe's promise to permanently delete from her phone, and any other media

source or storage facility, all photos, videos, and/or materials related to me – which is something she should be willing to do since she alleges looking at these materials cause her trauma.

If Roe agrees to these additional settlement terms, I will accept the following terms from her settlement proposal:

1. The No Contact Directives between Ms. Roe and me will remain in effect and force - unless our respective academic programs mandate that we attend the same class or program at the same time - until neither of us is enrolled in an academic program at CWRU. I may contact the Office of Equity in advance of any semester to request information about whether Ms. Roe is enrolled for the upcoming semester, and the Office of Equity will provide that information to you
2. I will refrain from living on campus so long as Ms. Roe is enrolled in any CWRU program. I may contact the Office of Equity in advance of any semester to request information about whether Ms. Roe is enrolled for the upcoming semester, and the Office of Equity will provide that information to you.
3. Within 30 days of October 19, 2023, I will provide Ms. Roe a one-time, lump sum payment of \$10,000.

I am also willing to accept the following modified version of Roe's term #3: "I agree that I will not study in the Wade Office during Ms. Roe's enrollment in any CWRU program." I seek this modification because my studies require me to access University facilities in KSL and BRB.

This offer remains open only until 10 am tomorrow morning. For, my attorney is currently preparing to vindicate me at the upcoming hearing and every dollar I pay him to prepare for the hearing is a dollar I will not pay to satisfy Roe's aforementioned monetary demands.

In closing, I wish to address two related issues. First, can you confirm the University's amnesty policy applies if we reach a settlement and that neither Roe nor I will be charged with underage drinking?

Second, if Roe and I cannot reach a settlement, will you consider revisiting your decision to not investigate/adjudicate my concerns that Roe may have violated the University's policies via her interactions with witness(es) in this case?

I ask because of the terms of the University's recent settlement agreement with the United States Department of Education ("Dept. of Ed. Settlement Agreement") suggest you should reverse your decision. For instance, the settlement supports the accuracy of the following acknowledgment in your October 9th email: the "[s]haring information when the purpose of the disclosure is to harm another person . . . may constitute possible retaliation" prohibited by the University's Title IX policies.

Moreover, the Dept. of Ed. Settlement Agreement requires the University define "Retaliation" as any "coercive action directed at any individual as a result of their protected activity. . . in a Title IX-related investigation or proceeding." The Dept. of Ed. Settlement Agreement also requires the University to:

"[d]efine and provide clear examples of conduct that constitutes . . . retaliation and explain what may provide the basis for a complaint and potential consequences under the University's grievance procedures. The explanation of retaliation should include examples of protected activities, adverse actions in response to protected activities, and the consequences for individuals found to have engaged in retaliatory conduct . . ."

The Dept. of Ed. Settlement Agreement also mandates the University: "[e]stablish a clear reporting pathway for students . . . seeking to report retaliation for engaging in protected activity under the Title IX process, including in the grievance process, regardless of their role in the process." *Id.*, p.36. And, it requires the University:

1. identify "the types of evidence to be obtained and reviewed and when and how the University will consider . . . reports of retaliation.;"
2. "[s]ummarize the policies and procedures for the resolution of formal complaints of . . . retaliation.;"
3. Publish on "The CWRU Equity webpage . . . accurate definitions of . . . retaliation, as well as an overview of the grievance process and definitions of prohibited conduct . . .";
4. provide training to students and employees regarding "University procedures for reporting and responding to complaints . . . retaliation.;" and
5. "[d]efine and provide clear examples of conduct that constitutes . . . retaliation and explain what may provide the basis for a complaint under the University's grievance procedures. . . ."

Therefore, if Roe and I cannot reach a mutually agreeable settlement, I respectfully request you consider the aforementioned information and reverse your rejection of my request that the University investigate/adjudicate Roe's potential violations of the University's policies. I also ask that this investigation/adjudication be conducted concurrently with Roe's complaint against me so as to avoid prejudicing me in the ways described in my previous emails to you.

Regards,

Exhibit 2, p.3

Doe

--
Doe

B.A. Candidate in [REDACTED] Doe's Major
[REDACTED] Doe's Minor
Case Western Reserve University | Class of [REDACTED] Year of Graduation
Pronouns: she/her/hers

[Quoted text hidden]

Rachel Lutner <rxl768@case.edu>

Thu, Oct 12, 2023 at 4:06 PM

To: Doe Email Address

Cc: Eric Rosenberg <erosenberg@rosenbergball.com>, T00059-2023.case-advocate@advocate.symplicity.com

Hello Doe

Ms. Roe accepts your modified proposal. The Office of Equity will cancel the hearing. I will prepare a resolution agreement and send it to you in draft to review on Monday or Tuesday. If you have any questions in the meantime, please let me know. Thank you.

Very truly yours,

Rachel E. Lutner
Senior Associate Vice President - Equity
Title IX Coordinator
Case Western Reserve University
rachel.lutner@case.edu
Equity - Main (216) 368-3066
Equity - Direct (216) 368-6841
Cell Phone (216) 327.4160

[Quoted text hidden]

Doe's Email Address

Thu, Oct 12, 2023 at 6:07 PM

To: Rachel Lutner <rxl768@case.edu>

Cc: Eric Rosenberg <erosenberg@rosenbergball.com>, T00059-2023.case-advocate@advocate.symplicity.com

Hello Ms. Lutner,

In my previous email, I asked if the amnesty policy also applies to this settlement and that neither Roe nor I would be charged for underage drinking. Can you please confirm if this is the case?

Regards,

Doe

--
Doe

B.A. Candidate in [REDACTED] Doe's Major
[REDACTED] Doe's Minor
Case Western Reserve University | Class of [REDACTED] Year of Graduation
Pronouns: she/her/hers

[Quoted text hidden]

Rachel Lutner <rxl768@case.edu>

Thu, Oct 12, 2023 at 9:07 PM

To: Doe's Email Address

Cc: Eric Rosenberg <erosenberg@rosenbergball.com>, T00059-2023.case-advocate@advocate.symplicity.com

Exhibit 2, p.4

neither of you will be charged for underage drinking.

Rachel Lutner
Sent from my iPhone
[Quoted text hidden]

Rachel Lutner <rxl768@case.edu>

Fri, Oct 13, 2023 at 6:58 AM

To: Doe's Email Address

Cc: Eric Rosenberg <erosenberg@rosenbergball.com>, T00059-2023.case-advocate@advocate.symplicity.com

Hello Doe,

Ms. Roe did not originally see the following as terms that would go into the agreement:

(c) assurances that Roe will not disclose the terms of our settlement – nor the status of this matter - to anyone other than her parents and/or advisor in this proceeding; and (d) Roe's promise to permanently delete from her phone, and any other media source or storage facility, all photos, videos, and/or materials related to me – which is something she should be willing to do since she alleges looking at these materials cause her trauma.

Ms. Roe responds as follows:

(c) She will only discuss the informal resolution "with persons who support her" and she does not agree to the provision prohibiting her from discussing the "status of the matter". (d) She does not agree to your final term.

As you consider Ms. Roe's response, consider the following. The Office of Equity, which will be a party to this agreement, cannot prevent any person from sharing information with the persons who support them, and Title IX prohibits a school from preventing a student from discussing a Title IX case. Given that this is not a private agreement, Ms.

Roe's response, above, is the most that an agreement to which the Office of Equity is a party, can agree to on the subject of limiting disclosure. As to (d), the Office of Equity does not have any way to enforce this or assess for compliance. The Office of Equity does not include informal resolution terms which are unenforceable.

Please let me know your response.

Very truly yours,

Rachel E. Lutner
Senior Associate Vice President - Equity
Title IX Coordinator
Case Western Reserve University
rachel.lutner@case.edu
Equity - Main (216) 368-3066
Equity - Direct (216) 368-6841
Cell Phone (216) 327.4160

[Quoted text hidden]

Doe's Email Address

Fri, Oct 13, 2023 at 9:04 AM

To: Rachel Lutner <rxl768@case.edu>

Cc: Eric Rosenberg <erosenberg@rosenbergball.com>, T00059-2023.case-advocate@advocate.symplicity.com

Hello Ms. Lutner,

Unfortunately, Roe created a legally enforceable contract yesterday when she told you to tell me that she accepted my counteroffer to her offer. That said, I am open to discussing a possible accord and satisfaction to our legally enforceable contract.

Specifically, I may consider substituting Roe's version of (c) if she identifies the names of the "support persons" that she will talk to about the informal resolution and/or "status of the matter." If the University would rather not be involved in accord and satisfaction discussions regarding this legally enforceable promise that Roe made to me, she can provide the names of these "support persons" to my attorney outside the informal resolution process. He is cc'd on this email.

Exhibit 2, p.5

10/16/23, 9:02 AM

Rosenberg & Ball Co, LPA Mail - Informal Resolution proposal

Likewise, I will agree to an accord and satisfaction regarding Roe's attempt to delete section (d) from our legally enforceable promise if Roe agrees to reduce her monetary demand to \$5,000.00. This reduction is necessary because I fear Roe may attempt to use the photos, videos, and/or materials - that she is contractually obligated to destroy - to extort money from me in the future.

I feel this way partly because I do not see any other reasons for Roe to want to hold on to these materials since she claims that they cause her trauma when she looks at them.

My accord and satisfaction regarding these terms will remain until 12 pm today. After that, I will consider other legal options for enforcing the legally enforceable contract that I have with Roe .

Regards,

Doe

--

Doe

B.A. Candidate in [REDACTED]

Doe's Major
Doe's Minor

Case Western Reserve University | Class of [REDACTED]

Year of Graduation

Pronouns: she/her/hers

[Quoted text hidden]

Exhibit 2, p.6



Eric Rosenberg <erosenberg@rosenbergball.com>

mediation

4 messages

Rachel Lutner <rxl768@case.edu>
 To: Doe Email Address _
 advocate@advocate.symplicity.com

Fri, Oct 13, 2023 at 4:04 PM

, Eric Rosenberg <erosenberg@rosenbergball.com>, T00059-2023.case-

Hello Doe,

I think you and Ms. Roe are very close to coming to an agreement. Would you agree to participate in a mediation with her on Thursday morning, October 19, 2023, in place of the hearing. I think that some direct communication about what each person wants out of this process will likely result in an agreement.

As for whether there is already an enforceable agreement, there is not:

1. Ms. Roe did not agree to your terms because, at the time she "accepted", she only saw a summary of them that, due to an error, did not include the terms in the paragraph that included the limitations on disclosure and the deletion of all videos and pictures. When she did see those terms, she did not agree to them. So, there was no meeting of the minds as to that initial acceptance. The statements in this paragraph can be established as fact by review of the email chain.
2. The Sexual Harassment Policy states that informal resolution agreements are fully voluntary. The Office of Equity permits parties to withdraw from or request modification to an informal resolution at any time until the agreement is signed. It is very common, given the nature of the difficult issues facing parties to such agreements, that parties are conflicted and this process plays out in how parties come to such agreements over time.

I read that you believe there is an enforceable agreement, but understand that the Office of Equity does not agree, and will proceed with this case accordingly. That is why I am proposing mediation. Please let me know.

Very truly yours,

Rachel E. Lutner
 Senior Associate Vice President - Equity
 Title IX Coordinator
 Case Western Reserve University
 rachel.lutner@case.edu
 Equity - Main (216) 368-3066
 Equity - Direct (216) 368-6841
 Cell Phone (216) 327.4160

From: Doe Email Address _

Mon, Oct 16, 2023 at 9:56 AM

To: Rachel Lutner <rxl768@case.edu>

Cc: Eric Rosenberg <erosenberg@rosenbergball.com>, T00059-2023.case-advocate@advocate.symplicity.com, Peter Giano Poulos <peter.poulos@case.edu>

Dear Ms. Lutner,

Thank you for your October 13th email. You responded to my offer to give Ms. Roe until noon on October 13th to accept my proposed "accord and satisfaction" modifications to the legally enforceable contract she and I entered into on October 10th. Ms. Roe did not timely accept my proposed "accord and satisfaction" modifications. Therefore, I withdraw them and expect her to honor the terms of our contract.

If Ms. Roe fails to do so, I will file a lawsuit against her and the University which will include a request for injunctive relief to prohibit the University from proceeding with the disciplinary action your October 10th email promised had been "cancel[ed]."

My lawsuit will include, but not be limited to, breach of contract claims against Ms. Roe. This claim will be based in part on your October 10th email which unequivocally stated Ms. Roe "accept[ed]" my counteroffer to her settlement

Exhibit 3, p.1

proposal. Your email bound Ms. **ROE** partly because she authorized you to serve as her agent in our settlement discussions.

You allege an "error" caused Ms. **ROE** to become confused about the terms of my counteroffer. The facts suggest otherwise. But, even if the University contributed to this alleged error, Ms. **ROE** has legal remedy – she can sue the University for breaching its fiduciary duties as Ms. **ROE**'s agent.

Ms. **ROE** could bring this claim against the University in the lawsuit the University appears intent on forcing me to file against it. If forced to bring this lawsuit, my claims against the University will include, but not necessarily be limited to, the following claims which will be pleaded in the alternative: (a) breach of contract; (b) promissory estoppel; and (c) tortious interference with contract.

I will include a breach of contract claim partly because your October 13th email alleges the University was a party to my contact with Ms. **ROE**. Assuming that you are correct for the purpose of argument, your October 10th and October 11th emails prove the University accepted the terms of my counteroffer to Ms. **ROE**'s offer. It did so by explicitly stating the University (a) "cancel[ed]" the Title IX hearing, and (b) promised that neither Ms. **ROE** nor I would "be charged for underage drinking."

In the alternative to a breach of contract claim, my lawsuit will include a promissory estoppel claim because I reasonably relied on your promises in items a and b in the preceding paragraph. I did so because my counteroffer required Ms. **ROE** to promise that her Title IX complaint would be "dismissed with prejudice as a term of any settlement." As an attorney, you knew- or should have known – the legal significance of this requirement. And, your emails proved you understood the contract terms unambiguously by "cancel[ing]" the Title IX hearing, getting the actual agreement ready for signatures (and) promising that neither Ms. **ROE** nor I would "be charged for underage drinking."

Instead of honoring your promises and/or contractual obligations, you weaponized your authority over me by threatening to prosecute me if I did not honor your demand that I renegotiate a contract that you unequivocally stated Ms. **ROE** "accept[ed]." This is further evidence of the University's bias in favor of accusing students that has repeatedly prejudiced my ability to expose Ms. **ROE**'s false claims against me. It also proves the University is tortiously interfering with my contract with Ms. **ROE**.

Nevertheless, I will entertain the University and/or Ms. **ROE**'s "accord and satisfaction" proposals to my legally enforceable contact with Ms. **ROE** until 10 am tomorrow. These proposals may come via email or in a meeting. But, I must be assured I will not have to interact personally with Ms. **ROE**. Moreover, I want guarantees that my advisor Eric Rosenberg will be permitted to speak on my behalf to avoid being further traumatized by the University and Ms. **ROE**.

In closing, I am cc'ing the University's General Counsel Peter Poulos in the event he wants to speak directly to Mr. Rosenberg about the lawsuit that I plan on filing later this week if the parties are not able to reach mutually acceptable "accord and satisfaction" provision to my legally enforceable contact with Ms. **ROE**.

I also include General Counsel Poulos because I want him to know why I feel I've been left with no choice but to sue the University even though my concerns so far are mostly limited to the actions of The Office of Equity. Simply put, the Office of Equity's bias and rejection of my best efforts to work in good faith with them for the last six months has led me to this point. Consequently, I ask that the General Counsel's office ensure the biased/retaliatory conduct I've experienced at the hands of the Office of Equity does not extend outside that office and further prejudice my present and future interactions with the University.

Regards,

Doe

--

Doe

B.A. Candidate in [REDACTED]

Doe's Major
Doe's Minor
Year of Graduation

Case Western Reserve University | Class of [REDACTED]
Pronouns: she/her/hers

[Quoted text hidden]

Rachel Lutner <rxl768@case.edu>
To: Doe Email Address

Mon, Oct 16, 2023 at 2:55 PM

Cc: Eric Rosenberg <erosenberg@rosenbergball.com>, T00059-2023.case-advocate@advocate.symplicity.com, Peter Giano Poulos <peter.poulos@case.edu>

Exhibit 3, p.2

Hello Doe ,

I will be unable to meet your deadline in terms of assessing this, sharing with Ms. Roe or preparing a response. The reason is demands relating to other matters. Let me know if you have any questions. Thank you.

Very truly yours,

Rachel E. Lutner
Senior Associate Vice President - Equity
Title IX Coordinator
Case Western Reserve University
rachel.lutner@case.edu
Equity - Main (216) 368-3066
Equity - Direct (216) 368-6841
Cell Phone (216) 327.4160

[Quoted text hidden]

Doe Email Address

Mon, Oct 16, 2023 at 5:54 PM

To: Rachel Lutner <rxl768@case.edu>

Cc: Eric Rosenberg <erosenberg@rosenbergball.com>, T00059-2023.case-advocate@advocate.symphlicity.com, Peter Giano Poulos <peter.poulos@case.edu>

Hello Ms. Lutner,

Thank you for your email. Since you and Ms. Roe allege an inability to timely satisfy my request for any "accord and satisfaction," I will begin preparing the lawsuit mentioned in my earlier email. That said, if you and/or Ms. Roe wish to propose an "accord and satisfaction" for any term(s) of the enforceable contract created in part by your October 10th email, I reserve the right to entertain said proposal until my lawsuit is filed.

Regards,

Doe

--

Doe

B.A. Candidate in [REDACTED] Doe's Major
[REDACTED] Doe's Minor
Case Western Reserve University | Class of [REDACTED] Year of Graduation
Pronouns: she/her/hers

[Quoted text hidden]

Re: Alternative Resolution Proposal

Rachel Lutner <rxl768@case.edu>

Wed 10/18/2023 1:32 PM

To: [Doe] <[Doe email]>

Cc: Eric Rosenberg <erosenberg@rosenbergball.com>; T00059-2023.case-advocate@advocate.symplicity.com <T00059-2023.case-advocate@advocate.symplicity.com>; Peter Giano Poulos <peter.poulos@case.edu>

Hello [Doe] ,

As I previously stated, informal resolution is entirely voluntary and a student may change his or her mind at any time until the agreement is signed. In addition, as I told you, Ms. [Roe] was unaware of the additional terms presented in your counteroffer, and as a result, could not and did not agree to them.

Very truly yours,

Rachel E. Lutner
Senior Associate Vice President - Equity
Title IX Coordinator
Case Western Reserve University
rachel.lutner@case.edu
Equity - Main (216) 368-3066
Equity - Direct (216) 368-6841
Cell Phone (216) 327.4160

On Wed, Oct 18, 2023 at 1:26 PM [Doe Full Name] <[Doe Email]> wrote:

Hello Ms. Lutner,

Thank you for your email today. Unfortunately, it does not acknowledge the existence of the legally enforceable settlement contract that was created when you sent me the October 12th email stating [Roe] accepted my counteroffer to her initial settlement proposal.

Will you warrant the University and [Roe] agree (a) your October 12th email stating [Roe] accepted my counteroffer to her initial settlement proposal formed a legally enforceable settlement contract containing the terms outlined in my counteroffer; and (b) the proposal in your email today is an "accord and satisfaction" presented as the University and [Roe] 's request to replace the pre-existing legally enforceable settlement contract discussed in item a?

If you confirm in writing – prior to 4 pm today - that the University and [Roe] unequivocally agree that items a and b above are true, I will negotiate your accord and satisfaction from today in good faith.

Otherwise, I have no choice but to file the lawsuit I discussed in my earlier emails tomorrow morning.

Regards,

Exhibit 4, p.1

[Doe]

--

[Doe]

[Doe's major]

[Doe's minor]

Case Western Reserve University [[Doe year of graduation]

Pronouns: she/her/hers

On Wed, Oct 18, 2023 at 9:35 AM Rachel Lutner <rxl768@case.edu> wrote:

Hello [Doe],

Ms. [Roe] has authorized me to share the following proposal:

1. The No Contact Directives between Ms.[Doe] and Ms. [Roe] will remain in effect and force until neither is enrolled in an academic program at CWRU. Ms. [Doe] may contact the Office of Equity in advance of any semester to request information about whether Ms. [Roe] is enrolled for the upcoming semester, and the Office of Equity will provide that information on request.
2. Ms. [Doe] will refrain from living on campus so long as Ms. [Roe] is enrolled in any CWRU program. Ms. [Doe] may contact the Office of Equity in advance of any semester to request information about whether Ms. [Roe] is enrolled for the upcoming semester, and the Office of Equity will provide that information to her.
3. Ms. [Doe] agrees that she will not study in KSL, the Wade Office or BRB during Ms. Shashi's enrollment in any CWRU program. Ms. [Doe] may, however, attend classes and programs in these campus buildings, but must leave the building within 15 minutes of the end of the program or class that she attended.
4. Within 30 days of October 19, 2023, Ms.[Doe] will complete 4 hours of training on consent and healthy sexual relationships and communication, and other topics related to the reported conduct which will be considered by a hearing panel next week. The Office of Equity will provide or arrange the training for Ms.[Doe]
5. The Office of Equity will not initiate or cause another office on campus to initiate charges against Ms.[Doe] or Ms.[Roe] for underage drinking.
6. Ms.[Roe] and Ms. [Doe] will limit disclosure of the terms of this agreement to the persons who support either of them, and it will be a violation of the agreement for either to share information about this agreement with the intention that (1) the information shared harms the other person or (2) the other person learns of the sharing and is distressed by it.
7. Within 30 days of October 18, 2023, Ms.[Doe] will make to Ms.[Roe] a one-time, lump sum payment of \$10,000. This payment is necessary because Ms.[Roe] insists on being compensated for (1) agreeing not to discuss this agreement with others, except those who support her; and (2) to refrain from sharing the information on her phone about Ms.[Doe]
8. Ms.[Roe] will not send, share or otherwise disclose any videos, pictures or materials related to Ms.[Doe] to any person or entity except the CWRU Title IX Coordinator or designee.
9. If these terms are documented in an agreement to be prepared by the Title IX Coordinator, and both parties sign the agreement, the pending matter alleging violation

Exhibit 4, p.2

of the Policy will be closed and will only be reopened in the event of a breach of the agreement.

Ms.[Roe] makes this proposal for the following reasons:

- You and Ms.[Roe] previously came close to an agreement along the lines of these terms.
- As previously stated, the sum of \$10,000 is sought to entice Ms.[Roe] to give up her right to a hearing, which she believes will result in a finding that your conduct towards her violated the sexual harassment policy. On learning that you demand that she (1) limit disclosure of this agreement, and (2) agree not to share the pictures and videos and related material, if any, on her phone relating to you, Ms.[Roe] advised me that she sought an additional \$5,000, for a total of \$15,000. After discussion about your correspondence, and in seeking \$10,000 at this time, Ms.[Roe] incorporates your demand that you pay her only \$5,000 so that you have money for any future litigation relating to the sharing of these materials (which Ms.[Roe] assures you is unnecessary) and reduces her \$15,000 by \$5,000.
- Ms.[Roe] notes that resolving this matter pursuant to an agreement along the lines of the above enables the parties to achieve a resolution that is less expensive and more certain than your alternative, which is to pursue the litigation you are threatening.
- Ms.[Roe] wants you to know that this is the substantive agreement that she will accept and she is unwilling to consider any agreement that substantially departs from these terms.

Ms.[Roe] hopes that you will agree to this so both of you can put this matter behind you. If this matter does not resolve, Ms.[Roe] is willing to proceed with a hearing. Thank you for your serious consideration of Ms.[Roe] proposal. If you have any questions, please let me know.

Very truly yours,

Rachel E. Lutner
Senior Associate Vice President - Equity
Title IX Coordinator
Case Western Reserve University
rachel.lutner@case.edu
Equity - Main (216) 368-3066
Equity - Direct (216) 368-6841
Cell Phone (216) 327.4160



Common Pleas Court of Cuyahoga County, Ohio

DESIGNATION FORM TO BE USED TO INDICATE THE CLASSIFICATION OF THE CAUSE

FILED

JANK DUG

Plaintiff

2023 OCT 19 A 10:20

Judge: SHERRIE MIDAY

Vs.

CASE WESTERN REGIONAL UNIVERSITY

CLERK OF COURTS
CUYAHOGA COUNTY

CV 23 987214

Defendant

Has this case been previously filed and dismissed? Yes No

Case #: _____ Judge: _____

Is this case related to any new cases now pending or previously filed? Yes No

Case #: _____ Judge: _____

CIVIL CLASSIFICATIONS: Place an (X) In ONE Classification Only.

Professional Torts:

- 1311 Medical Malpractice
- 1315 Dental Malpractice
- 1316 Optometric Malpractice
- 1317 Chiropractic Malpractice
- 1312 Legal Malpractice
- 1313 Other Malpractice

Product Liability:

- 1330 Product Liability

Other Torts:

- 1310 Motor Vehicle Accident
- 1314 Consumer Action
- 1350 Misc. Tort

Workers Compensation:

- 1550 Workers Compensation
- 1531 Workers Comp. Asbestos

Foreclosures:

- Utilize Separate Foreclosure Designation Form

Commercial Docket:

- 1386 Commercial Docket
- 1387 Commercial Docket with Foreclosure

Administrative Appeals:

- 1540 Employment Services
- 1551 Other

Other Civil:

- 1500 Replevin/Attachment
- 1382 Business Contract
- 1384 Real Estate Contract
- 1388 Consumer Debt
- 1390 Cognovit
- 1391 Other Contracts
- 1490 Foreign Judgment
- 1491 Stalking Civil Protection Order
- 1501 Misc. Other
- 1502 Petition to Contest Adam Walsh Act
- 1503 Certificate of Qualification for Employment

Amount of Controversy:

- None Stated
- Less than \$25,000
- Prayer Amount 25,000 plus

Parties have previously attempted one of the following prior to filing:

- Arbitration
- Early Neutral Evaluation
- Mediation
- None

I certify that to the best of my knowledge the within case is not related to any now pending or previously filed, except as noted above.

ROSENBERG & BAK
 Firm Name (Print or type)
205 S. PROSPECT ST
 Address
GRANDVILLE OHIO 43023
 Address
740.644.0227
 Phone

ERIC ROSENBERG
 Attorney of Record (Print or Type)
0069958
 Supreme Court #
EROS @ ROSENBERG & BAK.COM
 Email Address
[Signature]
 Signature

PRAECIPE

FILED

IN THE CUYAHOGA COUNTY COURT OF COMMON PLEAS
CIVIL DIVISION

2023 OCT 19 A 10:34

JANE DOE,

Plaintiff,

v.

CASE WESTERN RESERVE
UNIVERSITY and JANE ROE,

Defendants.

CLERK OF COURTS
CUYAHOGA COUNTY

Judge: SHERRIE MIDAY

CV 23 987214

JURY DEMAND
ENDORSED HEREIN

To: The Clerk of Court Cuyahoga County

**Please serve the documents described below on
the above named party in the following manner:**

- Regular Mail with Certificate of Mailing [Civil Rule 4.1(A)]
- Personal Service by Cuyahoga County Sheriff [Civil Rule 4.1(B)]

Serve the Following Defendant

Defendant Jane Roe: Village at 115 House 3A, 144D 1677 E 115th St., Cleveland Ohio ~~444106~~

44106

AND

Defendant Jane Roe: 3 Lane St. Morris Plains, NJ 07950

Pleadings to Be Served

1. VERIFIED COMPLAINT FOR PRELIMINARY AND PERMANENT INJUNCTIVE RELIEF AND DAMAGES;
2. PLAINTIFF'S MOTION FOR TEMPORARY RESTRAINING ORDER
3. PLAINTIFF'S MOTION TO PROCEED BY PSEUDONYM
4. ATTORNEY'S CERTIFICATION OF NOTICE OF MOTION FOR TRO
5. PLAINTIFF JANE ROE'S MOTION FOR EXPEDITED DISCOVERY.

PRAECIPE

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CV 23 987214

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- Personal Service by Cuyahoga County Sheriff [Civil Rule 4.1(B)]

Serve the Following Defendant

Case Western Reserve University; c/o Statutory Agent Peter M. Poulos General Counsel, 10900
Euclid Ave., Adelbert Hall, Room 311, Cleveland, Ohio 44106.

Pleadings to Be Served

1. VERIFIED COMPLAINT FOR PRELIMINARY AND PERMANENT INJUNCTIVE RELIEF AND DAMAGES;
2. PLAINTIFF'S MOTION FOR TEMPORARY RESTRAINING ORDER
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