

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION**

MONICA AINHORN MORRISON,

Plaintiff,

CASE NO.

v.

UNIVERSITY OF MIAMI,
a not-for-profit corporation, COLIN
McGINN, in his official and individual
capacities, and EDWARD ERWIN, in his
official and individual capacities.

Defendants.

COMPLAINT AND DEMAND FOR JURY TRIAL
(INJUNCTIVE RELIEF SOUGHT)

Plaintiff MONICA AINHORN MORRISON (“Plaintiff”), sues Defendants the UNIVERSITY OF MIAMI, a not-for-profit corporation, COLIN McGINN in his official and individual capacity and EDWARD ERWIN in his official and individual capacity. Plaintiff, complaining of the Defendants by her attorney, respectfully alleges, upon information and belief, the following:

INTRODUCTION

This action arises from Defendant UNIVERSITY OF MIAMI’s deliberately indifferent response to the severe and long running sexual harassment of a graduate student and employee by her professor and supervisor, Defendant McGINN. The Defendant University’s failure to promptly and appropriately investigate and respond to the harassment subjected Plaintiff to retaliation and a hostile sexual environment, effectively denying her

access to educational and professional opportunities. Further, Defendants McGINN and ERWIN retaliated against Plaintiff for filing a complaint with the University by disseminating defamatory statements and private information about her, which the Defendant University failed to prevent or take action against even after the Plaintiff warned that such retaliatory actions from Defendant McGINN might be expected, and notified the Defendant University of, once the actions had started. This malicious and intentional conduct has subjected the Plaintiff to significant and pervasive reputational damage and emotional distress, destroying her career and causing significant damage to her mental health.

JURISDICTION AND VENUE

1. This action is brought pursuant to Title IX of the Education Amendments of 1972, 20 U.S.C. §§ 1681-1688 (hereinafter, "Title IX").

2. The Court has jurisdiction over the Plaintiff's claims pursuant to 28 U.S.C. §1331; the Florida Civil Rights Act §§760.07 and 760.11, *et seq.*; and the common law of the State of Florida.

3. The Court also has jurisdiction over the related state claims pursuant to 28 U.S.C. §1367 because they arise from a common nucleus of operative fact and therefore form part of the same case or controversy under Article III of the U.S. Constitution.

4. Venue is proper in the Miami Division of the U.S. District Court in the Southern District of Florida pursuant to 28 U.S.C. §§ 1391 because, *inter alia*, the Defendant University is situated in the Miami Division of the Southern District, and is subject to this Court's personal jurisdiction; the unlawful conduct herein occurred within Miami-Dade County; and the individual defendants are residents of Miami-Dade County.

PARTIES

5. Plaintiff is a resident and citizen of Monroe County, Indiana. During the relevant period, Plaintiff was a student and employee of the University of Miami and resided in Coral Gables, County of Miami-Dade, State of Florida.

6. Defendant UNIVERSITY OF MIAMI (the “Defendant University”) or (“the University”) is a private educational institution and non-profit corporation with its principal place of business at 1320 South Dixie Highway, Coral Gables, Florida 33124 in the County of Miami-Dade, State of Florida.

7. The Defendant University receives federal funding and financial assistance within the meaning of 20 U.S.C. §§ 1681(a) and is otherwise subject to Title IX.

8. Defendant COLIN McGINN is a resident of Miami-Dade County, Florida, and at material times, was employed at the Defendant University in the Department of Philosophy.

9. Defendant EDWARD ERWIN is a resident of Miami-Dade County, Florida, and at all material times, was employed at the Defendant University in the Department of Philosophy.

10. Plaintiff has retained the law firm of McAllister Olivarius, and has agreed to pay their reasonable attorneys’ fees to represent Plaintiff in this action.

11. Plaintiff has retained David Pollack, Esq. as local counsel, and has agreed to pay his reasonable attorneys’ fees to represent Plaintiff in this action.

PROCEDURAL REQUIREMENTS

12. On September 8, 2014, Plaintiff filed a charge of discrimination with the Florida Commission on Human Rights (“FCHR”). A copy of Plaintiff’s FCHR charge is attached hereto as Exhibit “A”.

13. On March 12, 2014 over 180 days since the FCHR first began investigating Plaintiff's charge, the FCHR advised Plaintiff of her statutory right to withdraw her charge and file a civil suit pursuant to Rule 60Y-5.006. A copy of the letter sent the FCHR to Diane Morton of McAllister Olivarius, dated March 12, 2015, is attached as Exhibit "B".

14. On May 5, 2015, Plaintiff voluntarily withdrew her complaint in order to file a civil suit. A copy of the Election of Rights Form, signed by Plaintiff on April 29, 2015, and the cover letter submitting the form to the FCHR, dated May 5, 2015 is attached as Exhibit "C".

15. All conditions precedent to the maintenance of this suit and the Plaintiff's claims have occurred, been performed or are otherwise waived.

GENERAL ALLEGATIONS

SEXUAL HARASSMENT

Defendant McGINN used his position of power to gain Plaintiff's trust

16. Plaintiff began attending the Defendant University in the fall of 2011 as a Ph.D. student in the Philosophy Department.

17. During her first semester at Miami, Plaintiff took a class taught by Defendant McGINN. Defendant McGINN was considered by many at the time to be the most celebrated faculty member in the Philosophy Department at the Defendant University.

18. The class that Plaintiff took with Defendant McGINN was entitled "Mind, Brain, and Emotion." Defendant McGINN's research was on the evolution of the hand, and in lectures for "Mind, Body and Emotion" he frequently used the subject of the hand to make allusions to sex and sexuality, suggesting, for example, that he planned to call his upcoming book "Hand Jobs."

19. In November 2011, Defendant McGINN approached Plaintiff on campus and asked her to come into his office to discuss the topic of evolution in connection with the

“Mind, Brain and Emotion” class. Plaintiff was surprised and flattered that Defendant McGINN wanted to hear her academic opinion, as she knew of his impressive credentials and reputation in the field.

20. After this meeting, Defendant McGINN began emailing Plaintiff frequently to discuss philosophy-related books, papers and documentaries. He also began to insist that he and Plaintiff meet in person on a regular basis to discuss the role of the hand in the evolution of language – a topic they had covered in class. Plaintiff agreed to meet with him; she was excited that Defendant McGINN seemed to want to invest in her intellect and to mentor her.

Defendant McGINN groomed Plaintiff for a sexual relationship

21. During their meetings, Defendant McGINN encouraged Plaintiff to hold and touch his hand. The Defendant invented a “hand ritual” that involved holding Plaintiff’s hands in a sequence of different “grips”.

22. Plaintiff became increasingly uncomfortable with this ritual. However, so keen was she not to displease this eminent professor that she attributed it at first only to the Defendant’s unconventional teaching style. She was keen to stay in his good graces because his academic credentials were so powerful that a mentoring relationship with him could make her career. Conversely, if she offended him she feared he might deploy his considerable standing within the Defendant University and the philosophy field generally to damage her career prospects.

23. On December 12, 2011, Defendant MCGINN asked Plaintiff to be his Research Assistant (“RA”) for the spring 2012 semester. Plaintiff accepted the position, which included a stipend of \$4,000 paid by the Defendant University to compensate her for her work.

Defendant MCGINN made sexual advances toward Plaintiff

24. After Plaintiff accepted the RA position, Defendant MCGINN began to more overtly display sexual interest in Plaintiff.

25. On December 12, 2011, in response to learning that Plaintiff was in the process of painting, Defendant MCGINN sent her an email stating, "I would love to see your painting and your messy hands. It sounds somewhat erotic (I have a wide definition of the erotic)...I hope you think of me as often as I think of you." Plaintiff did not respond to this email as it made her extremely uncomfortable.

26. Before Plaintiff left campus for winter break, the Defendant insisted that she provide him with her personal cell phone number so that he could call her over the break.

27. Throughout winter break, Defendant MCGINN called Plaintiff almost daily, in addition to sending her extensive text messages and emails describing their "relationship" and demanding that she send him photos of herself, which she refused to do.

28. Gradually, Plaintiff began to suspect that the Defendant was not eccentric but that he had an inappropriate sexual interest in her, and she therefore stopped responding to his emails for several days.

29. When Defendant MCGINN realized that Plaintiff had stopped responding, he grew angry and called her by phone repeatedly, leaving multiple voice messages. By his own admission, in an email to Plaintiff on January 15, 2012, Defendant MCGINN notes that over the winter break he had "called [the Plaintiff] over 30 times and managed to speak to her once."

30. From December 19 to December 27, 2011, the Defendant sent Plaintiff 12 emails, many of which contained explicit sexual references or undertones.

31. On December 19, 2011, for example, Defendant MCGINN sent an email to Plaintiff in which he wrote: "Let's think about each other every day. We have only memories

to play with now, and words will have to fill the gap. ... I keep trying to describe our relationship and get more and more purple in my descriptions... I had my first dream about you last night -- but can't recall much of it (I do recall that you were elusive). We must distinguish palpation from palpitation -- though both words apply here." On December 22, 2011, Defendant McGINN sent an email to Plaintiff in which he wrote: "[Plaintiff], light of my..., fire of my..." – a direct reference to the opening sentence of *Lolita*, where the adult male protagonist Humbert Humbert (a professor) declares his burning sexual desire for a 12-year-old girl: "Lolita, light of my fire, fire of my loins. My sin, my soul. Lo-lee-ta." On December 24, 2011 and December 25, 2011 Defendant McGINN again sent emails to Plaintiff with explicit *Lolita* references, suggesting a likeness of the relationship between Defendant McGINN and Plaintiff to that of Humbert Humbert and Lolita. Plaintiff felt disgusted that her more than sixty-year-old professor would send this message to her, his student and employee.

32. On December 27, 2011, Defendant McGINN emailed Plaintiff, "I think you owe me unlimited hand strokes and full body grips for abandoning me over Christmas."

33. On January 12, 2012, Plaintiff returned to Miami to attend a conference for graduate students. Defendant McGINN saw her there and pulled her to the side, insisting that they talk in private. He asked Plaintiff to dinner, which she declined, explaining that she already had plans to attend the conference dinner. Defendant McGINN then followed Plaintiff to the conference dinner and sat next to her, demanding that she "only talk to him." Plaintiff was shaken by Defendant McGINN's strange, aggressive insistence that they have dinner together, notwithstanding the convention of attending conference dinners and participating with other attendees. It seemed obsessive. Defendant McGINN seemed unbalanced.

Defendant McGINN sexually assaulted Plaintiff by kissing and touching her feet

34. Plaintiff, as Defendant McGINN's RA, was required to meet with him every Tuesday and Thursday in his office prior to his lecture.

35. During each meeting, the Defendant continued to demand that Plaintiff allow him to hold her hand in different ways as part of a "hand ritual," as he had done when they had first had meetings in his office.

36. During a meeting in January 2012, Defendant McGINN insisted that Plaintiff allow him to hold her feet. Plaintiff, surprised and unsure what to do, complied with his request. Defendant McGINN then kissed Plaintiff's foot. Plaintiff felt repulsed by this action and grew increasingly frightened by Defendant McGINN's insistence on touching her. Her attempts at drawing a boundary between them only angered him.

37. On January 20, 2012, Defendant McGINN sent Plaintiff a possessive email telling her that "I feel happy today knowing you are mine. You are mine. [Plaintiff] is mine. ... You are mine, mine." In the email Defendant McGINN asserted that he owned Plaintiff's left foot, to which he gave a name that resembled the Plaintiff's name and again made reference to the novel *Lolita*. The email contained a bizarre and fetishized letter addressed to Plaintiff's left foot, recounting the previous act of sexual assault: "How I miss you already! I can still feel your soft yet firm contours in my sensitive hand. You are my Cleopatra and my Juliet! You are my rising sun astride the great lip of the earth. Do not be so coy with me! I adore your every aspect and crevice! You so graciously accepted my poor but infinitely sincere kiss, and I am thankful for your indulgence. I hope you are feeling well today, full of vigor and joy, and that your owner is taking good care of you. Soon we will be together again, my prehensile angel! Think of me, as I think of you -- so absent, yet so palpable." Defendant McGINN signed his email to Plaintiff: "I remain your humble servant (and proud owner!), Colin- of Sherwood."

38. Plaintiff felt vulnerable and upset after receiving this email. She did not respond directly to it or to its contents. Plaintiff next communicated by email with Defendant McGINN on January 21, 2012, in response to a different email chain. In this email, she ignored the lewd email of January 20, 2012 and redirected conversation back to academics: “Sorry for not being in contact with you the past couple of days. I decided that I needed to reread most of the Aufbau, and I also have been trying to read the Grunbaum text for the next meeting of Philosophy of Psychology.” Plaintiff continues to be evasive to Defendant McGINN’s demanding emails and text messages. On January 22, 2012, Defendant McGINN text messages the Plaintiff: “Email me”. Plaintiff does not reply directly to this text message. At 8:56 p.m. Plaintiff replies by email “Sorry I haven’t been checking my emails as I have been trying to finish up all of the work on Carnap and Buddhism, and trying to complete my reading for classes this coming week.” On January 23, 2012 Defendant McGINN text messages Plaintiff to “Email again.”

39. Defendant McGINN pressures Plaintiff to meet again in person. Plaintiff avoids scheduling a meeting, presenting a heavy class workload to defendant McGINN as an excuse, but after pressure agrees to meet on January 24, 2012.

40. A week after he had first kissed Plaintiff’s foot, Defendant McGINN demanded to do so a second time. She hated it but acceded. Following the second meeting, Defendant McGINN wrote to Plaintiff again, directing another fetishized email to her foot: “I am looking forward to seeing and holding you tomorrow. Meanwhile, I hope you feel my tender grip and solicitous fingers, and a faint trace of my poor kiss on your gentle upper slopes [*sic.*].” His preoccupation with Plaintiff’s feet left Plaintiff feeling violated; each time he would touch her she could feel her skin crawl. However, she felt that if she could figure out how to avoid this contact, she could still benefit from the Defendant’s academic advising.

41. After this incident, Plaintiff began to wear sneakers whenever she met with Defendant McGINN, regardless of the hot weather, so that when he demanded to fondle her feet, she could say that they were sweaty, and politely refuse to take off her shoes.

42. On January 21, 2012, Defendant McGINN demanded that Plaintiff contact him every day, sending the following message:

[Plaintiff], There's a new law in Colonica: [Plaintiff] must communicate with Colin at least one [sic.] a day! Even if it's just to say, "Can you feel my virtual grip-at-a-distance?" Otherwise Colin feels like he's falling. And anyway he misses his [Plaintiff], and his [Plaintiff's foot]. . . --yours (I am), Colin

43. Plaintiff felt trapped and frightened by this demand, but tried to comply with it by responding to his frequent messages with questions about work or philosophy.

Defendant McGINN repeatedly told Plaintiff that she gave him erections

44. At 4:04 a.m. on January 27, 2012, Defendant McGINN sent Plaintiff an email stating "... sometimes when I hold your foot (or your hand) I get a slight erection..." Plaintiff was shocked by this message, and did not respond.

45. Later that morning, Defendant McGINN sent her another email demanding to know if she had any comments on his "confession".

46. Defendant McGINN sent two further emails to the Plaintiff that night and early the next morning loaded with sexual innuendo. At 12:17 a.m., January 28, 2012, he wrote "I am always trying to penetrate (!) your mind, or stir it creatively. I want us to exist on a higher intellectual/ sensuous plane." Later, at 6:25 a.m., January 28, 2012, Defendant McGINN sent Plaintiff another email, detailing his sexual feelings for her foot. He stated that "I like to think all the while that she is mine--that I can call on her at any time...this is a very primitive--not to say "existential"--desire, which joins you to me." When Plaintiff failed to respond, he emailed again at 9:21 a.m. asking her if she had anything to confess to him, but Plaintiff remained silent.

47. On January 30, 2012, Defendant MCGINN tried to retreat from his advances by emailing Plaintiff stating that the intellectual component of their relationship was important to him. Relieved, she responded the same day, stating that she found his message reassuring, was flattered by his academic interest given his prestige and given that her confidence in her intellectual ability was “low at this point,” and turning the conversation back to a paper she was writing.

48. Defendant MCGINN responded less than thirty minutes later, suggesting that he and she “flatter each other constantly and flagrantly” and stating that he was “thinking it would be nice to kiss you.” Plaintiff did not respond.

49. For the next few weeks, Plaintiff tried to remain cordial and professional in her meetings with Defendant MCGINN in hopes that he would notice this and stop harassing her. However, he did not stop making sexual advances toward her. For example, on February 12, 2012, Defendant MCGINN sent Plaintiff an email saying “I had my first substantial dream about you last night -- pure wish fulfillment. I must be mind-preened by you... possessively, Colin.”

50. On February 17, 2012, Defendant MCGINN sent Plaintiff an email message saying that their working relationship “will not work if I am just giving you what you need all the time without my getting what I need--you will have to indulge me a bit.” Plaintiff continued to ignore the Defendant’s sexually suggestive words and behavior and focused on her work. When the Defendant sent her an inappropriate message, she responded with an academic question. On February 21, 2012 they had the following text message exchange:

McGinn: I’m here
McGinn: The [Defendant MCGINN/ Plaintiff] union is strong
Plaintiff: Yes. I am super excited about this paper.
McGinn: Good and I feel we can create great things together.
Plaintiff: I agree.
McGinn: Plus you have nice legs.
Plaintiff: I hope I am successful with the philosophy.

On March 7, 2012 they had the following text message exchange:

McGinn: I love your essence
McGinn: Plus it gives me a slight erection
Plaintiff: Can I borrow your philosophy of physics book...the
one by lange [*sic.*]
McGinn: I hope that you are glad about the slight erection
McGinn: But I don't mean to put you on the spot
McGinn: It's a sign of health and affection
Plaintiff: Sorry I'm worried about my grant.

51. On March 7, 2012, he also texted her "I had the most amazing dream about you last night...some erotic elements." Plaintiff responded, "Strange."

52. As the semester progressed, Defendant McGINN almost entirely stopped discussing philosophy during his meetings with Plaintiff, and spoke only of his personal life and sexual desires. He would often complain that his wife, Cathy Mortenson, did not sexually satisfy him and as a result he was unhappy with his marriage. Plaintiff listened in silence and did not respond when he made such comments.

53. Defendant McGINN began to demand that he and Plaintiff regularly eat lunch or dinner at restaurants together. Plaintiff always objected, but the Defendant refused to take no for an answer. On one occasion, Defendant McGINN took Plaintiff to a restaurant, sat across from Plaintiff, reached for her foot underneath the table, which was unusually not clad in a sneaker, and held it.

54. After this occasion, Plaintiff took even more care to wear tightly tied sneakers when she met Defendant McGinn so she could politely decline to remove them and not let him hold her feet. She additionally began to bring lunch to Defendant McGINN's office for their meetings, in an effort to avoid going to a restaurant with him.

55. On April 25, 2012, Defendant McGINN's advances became even more explicit. He sent the following sequence of text messages to Plaintiff:

McGinn: So I expect a hand job when I next see you.
McGinn: Yes.
McGinn: I like to amuse you.

McGinn: Now I've got a slight erection.

McGinn: I'm imagining you.

56. Plaintiff was nauseated by these messages and desperately wished that Defendant MCGINN would stop making these sexual allusions. She did not respond. She hoped that if she ignored them Defendant MCGINN would stop the harassment.

57. On April 29, 2012 at 2:07 p.m., Defendant MCGINN sent Plaintiff an explicit email stating the following: "[Plaintiff], Here's a real confession: this morning at 6 I had a handjob imagining you giving me a handjob. It was good. prehendedly, Colin." At 2:08 p.m. Defendant MCGINN sent Plaintiff a work related email. Again, Plaintiff did not respond to the explicit email. Defendant MCGINN then hounded Plaintiff by text message for a response. They had the following text message exchange, with the Plaintiff trying to direct the conversation to work or the weather, and Defendant MCGINN redirecting the conversation back to the explicit email (*sic*.throughout):

McGinn: You have two emails from me.

McGinn: Weather stinks!

Plaintiff: Yeah. but its good, I'm not tempted to go outside so I can just work.

McGinn: Me too. Both emails are very flattering to you.

Plaintiff: Its so miserable out.

McGinn: Ruined my tennis.

McGinn: In need to play!

McGinn: How about those emails?

McGinn: Both?

McGinn: I was hoping you'd get a thrill from both.

Plaintiff: Yeah, I was a bit surprised by the first and I won't really know how to respond...I suppose I should be flattered?

McGinn: It was quite meaningful for me

McGinn: You could respond by saying Would you like it?

Plaintiff did not respond.

58. In April 2012, Plaintiff found out that she had not been selected for the summer internship at the University for which she had applied, and mentioned this in one of her classes with Defendant MCGINN. Defendant MCGINN then went, without her knowledge, to talk with Otavio Bueno, Chair of the Philosophy Department, and requested

funds to employ Plaintiff throughout the break. He then told Plaintiff that she could get funding, but only if she worked with him.

59. Plaintiff felt that she had no choice but to accept the Defendant's offer of a summer position, as she needed funds to support herself throughout the summer. She agreed to continue working for Defendant McGINN on the basis that the work would not require any in-person communication and might provide her with an opportunity to have her work published. Defendant McGINN agreed that Plaintiff would receive \$2,000 from him and \$2,000 from the Philosophy Department for the position.

Defendant McGINN propositioned Plaintiff for sex and threatened to retaliate against her if she did not comply

60. As the semester drew to a close, Defendant McGINN began to pressure Plaintiff to engage in sexual activity with him over the summer.

61. On May 2 and May 14, 2012, McGinn sent Plaintiff three erotic love poems, the first of which directly expressed McGinn's desire to have sex with Plaintiff. Its crude and aggressively sexual imagery deeply disturbed her.

I want to swing from your branches
Grip your trunk
You can be my refuge at night
My protection from the sun
Don't you love the feel of my fingers
As I hold on
And brachiate your strong limbs?
My tree, my life

62. During the same period, Defendant McGINN sent threats to Plaintiff, using or relying on the professional power he held over her to prevent her from speaking out about his harassment. On May 8, 2012 he emailed her the following:

I generally have a lot of sympathy for your desire to work and do well, but it's hard not to notice that you are finding time for other social activities--movies and party. Can you appreciate how that might look to me? It hurts. I didn't want to have to say this but it's

staring me in the face. Of course you are free to do whatever you want, but I do have feelings in the matter.

63. Later that day, May 8, 2012, Defendant McGINN texted her, “I don’t want you to lose sight of how lucky you are to have me. So don't just throw it away.”

64. On May 7, 2012, Defendant McGINN sent Plaintiff text messages explaining that he wanted to ruin the career of a graduate student who had written a poor review of his work, with the implication that he would do the same to Plaintiff if she were to do something he disliked. He stated: “You have no idea of the envious resentment I create. Precisely because I am so talented. And I am so tempted to destroy that stupid bitch. Verbally.”

65. As a result of Defendant McGINN’s threats, Plaintiff did not feel she could find a way to extricate herself from his harassment without incurring his wrath and jeopardizing her career.

66. On May 14, 2012, at the end of an otherwise academic conversation, Defendant McGINN sent Plaintiff a text message saying “Ok. Then you can send my [*sic.*] some flirty poolside messages.” Plaintiff deflected this comment with: “Such a poopy pool day.” Defendant McGINN responded with the following messages: “Very flirty! You have made me into a toe fetishist. Well not really. Your poopy comment gave me a boner.”

67. On May 15, 2012, McGinn told Plaintiff he would visit her at her apartment. Plaintiff responded, “No that would not be appropriate, and I have a fellow student staying with me.”

68. On May 18, 2012, Defendant McGINN sent Plaintiff a text that said: “I feel like kissing you.” She responded the same day: “You can’t do that.”

69. On May 23, 2012, days before leaving the Defendant University to return home, Plaintiff received text messages from Defendant McGINN requesting that they meet to discuss what he hoped could be a sexual relationship between them. Plaintiff politely told him, “...that’s something that we will never have, sorry,” and he responded “Never? What

about in ten years' time? In twenty years?...I have very good reasons. In order to avoid a bad result for both of us."

70. Defendant MCGINN immediately called Plaintiff afterward, on May 23, 2012, in a highly agitated state, and tried to coerce Plaintiff into having sex with him. He threatened her and made clear that his academic support of her was contingent upon her acceding to his sexual demands, telling her that she ought to consider that it would be very difficult for him to continue to work with her if she did not seriously think about beginning a sexual relationship with him.

71. Defendant MCGINN also told her on that call that it was normal and acceptable for them to have a sexual relationship because he knew many professors who have had relationships with their graduate students, and that he had engaged in sexual relationships with his graduate students in the past, so it would not be a "big deal." He then threatened her again, saying that she should not hurt his feelings because it would have negative consequences for her.

72. Plaintiff said very little during this conversation, aside from: "I don't know why we have to have this discussion" and "I don't want to talk about this." Eventually, she ended the conversation by hanging up.

73. Hours after the call, still on May 23, 2012, Defendant MCGINN sent Plaintiff an email saying: "...need compromise. Many are possible. Here's one (I'm not necessarily advocating it): we have sex 3 times over the summer when no one is around..." Plaintiff did not respond to this message.

74. The following day Defendant MCGINN sent another threatening email, asserting his power to manipulate Plaintiff's professional reputation: "Never underestimate the power of celebrity: any association with me will be perceived as reflecting well on your philosophical abilities."

75. Defendant McGINN then continued to harass Plaintiff by sending her multiple text messages and emails. He sent her an email about their “union,” suggesting a new “ritual” that would involve hugging and having their hands “simulate the more standard way romantic couples interact.”

76. Finally, he insinuated that he would not let her co-author a paper with him unless she acquiesced to his demands to have sexual relations with him.

77. Plaintiff continued to work remotely for Defendant McGINN for the remainder of the summer. When she returned to campus in September 2012, she resigned from her position as his Research Assistant. In response, Defendant McGINN sent her one final threat, on September 13, 2012:

I feel you have squandered a golden opportunity to make a name for yourself, as well as help me...the best thing for you to do now is just admit it, apologize, and move on. I am quite forgiving. But this refusal to even meet with me to talk is quite unhelpful. The last thing I want to do is think badly of you, and you are much better off with my support than without it. So please think carefully about your actions.

THE UNIVERSITY’S DELIBERATE INDIFFERENCE

The University of Miami failed to comply with Title IX

78. On September 14, 2012, Plaintiff purported to and believed she was making a formal sexual harassment complaint about the above conduct of Defendant McGINN to Amy Bowen, Associate Director of the Office of Equality Administration (“EA”) and Wilhemena Black, Executive Director of the EA and former Title IX Coordinator at the Defendant University. As part of her complaint, Plaintiff provided copies of some of the inappropriate and upsetting emails she had received from Defendant McGINN, as evidence of sexual harassment.

79. At her meeting with the EA, Plaintiff presented three requests for action from the University:

- a. to block all contact between herself and Defendant McGINN;
- b. to remove him from any committees judging her academic progress; and
- c. to provide her with protection from his retaliation.

80. The EA assured Plaintiff that they would follow through with her requests, and told her that they would arrange for her to have a meeting with the Vice Provost of Faculty Affairs soon to discuss her complaint.

81. At the Defendant University, there are two different types of sexual harassment complaints: a formal complaint and an informal complaint. Informal complaints are resolved “by appropriate administrative action...or informally and by voluntary means” (University of Miami Faculty Manual, Faculty Policy on Sexual Harassment, 103) and formal complaints are resolved by an investigation, the results of which are discussed with the Committee on Professional Conduct and reported to the Faculty Senate and Provost.

82. According to Title IX, “Grievance procedures may include voluntary informal methods (e.g., mediation) for resolving some types of sexual harassment complaints at universities. However, the complainant must be notified of the right to end the informal process at any time and begin the formal stage of the complaint process.” U. S. Department of Education Office for Civil Rights, *Know Your Rights: Title IX Prohibits Sexual Harassment and Sexual Violence Where You Go to School*. The “Dear Colleague Letter” from the U.S. Department of Education Office for Civil Rights, issued April 4, 2011 (“the DCL”) specifies that in cases involving allegations of sexual assault, an informal process is “not appropriate even on a voluntary basis.”

83. At no point during Plaintiff’s meeting with the EA did the individuals she spoke with inform her that there were these two methods of complaint or of the difference between them. She was not given the option of which to pursue. Instead, the Defendant University allocated her complaint to the informal process without her knowledge or consent.

Had Plaintiff had the two methods explained to her she would have chosen to make a formal complaint, in order to have her complaint fully and transparently investigated.

84. At no point at this meeting, or throughout the complaint process, did Defendant University direct Plaintiff to independent legal advice.

85. At no point in this meeting, or throughout the complaint process, did Defendant University provide Plaintiff with a copy of the University's Sexual Harassment Policy, or refer her to a "sexual harassment counselor," described on the EA website as "specially trained staff and faculty who have knowledge in sexual harassment laws, University of Miami policies and sexual harassment complaint resolutions."

86. At no point in this meeting, or throughout the complaint process did Defendant University notify Plaintiff of her right to file a criminal complaint against Defendant McGINN.

87. After the meeting on September 14, 2012 the EA did not take any steps to protect Plaintiff from discrimination, harassment or retaliation.

88. On September 15, 2012, Plaintiff reported Defendant McGINN's sexual harassment to Otavio Bueno, Chair of the Philosophy Department, and Amie Thomasson, Director of Graduate Studies.

89. On September 27, 2012, Plaintiff met with Wilhemena Black and David Birnbach, Vice Provost of Faculty Affairs, in the Provost's office to give them her account of Defendant McGINN's sexual harassment. The Defendant University did not provide her with a support counselor or a legal representative to be present with her during her meeting, but still required her to repeat in full the complaint and background facts she had already reported to Ms. Black at their meeting on September 14, 2012. Plaintiff provided copies of the hundreds of emails sent to her by Defendant McGINN, and also gave the EA permission to access her email account, as part of its investigation.

90. At the end of the meeting, Plaintiff was told that the University would investigate Defendant McGINN's conduct. She was not given any update as to what measures had been put in place to protect her since her meeting with the EA, on September 14, 2012, or if her requests had been granted.

91. Later that day, September 27, 2012, Plaintiff sent the EA a typed list of text messages from Defendant McGINN. The EA confirmed receipt, but did not request to see any further communications or to see Plaintiff's cell phone.

92. The following day, September 28, 2012, Plaintiff sent the EA the email address of her partner, Benjamin Yelle, in order for him to give a statement for the investigation into Defendant McGINN's conduct. The EA did not contact Mr. Yelle. Several days later, Mr. Yelle contacted the EA himself offering to give a statement and received no response. Mr. Yelle persisted in contacting the EA, but only on October 23, 2012 was he granted a short one-hour interview with Ms. Black, in which she dismissively told him "there are two sides to this story." This interview was held after material decisions relating to Plaintiff's complaint had already been made. The Defendant University had failed to provide adequate opportunity for Plaintiff to present witnesses and evidence, as required by Title IX.

93. On October 7, 2012, Defendant McGINN emailed Plaintiff, informing her that he was removing her name and any acknowledgement to her for her editorial contribution to a book he authored, even though she had provided substantial editorial input. He also informed her that he was withdrawing from publication a jointly authored paper, of which Plaintiff had written 20 out of its 25 pages. Defendant McGINN had begun his academic assault on Plaintiff, stealing the intellectual input of someone he described as "an outstandingly good student", without giving her due credit. Plaintiff immediately forwarded this email to Ms. Black and Dr. Birnbach, showing that the retaliation she feared was taking

place already and emphasizing that this directly contradicted her request that Defendant McGINN not be allowed to contact her in any way.

94. On October 12, 2012, Ms. Black contacted Plaintiff, informing her that she and Dr. Birnbach had “met with the respective parties” and wanted to meet with Plaintiff again to review their findings.

95. In line with this, on October 19, 2012, Plaintiff met with the EA for a third time. Dr. Birnbach told her that Defendant McGINN had alleged that Plaintiff had consented to his sexual advances, insinuations and propositions, and confirmed that by his own assessment, Defendant McGINN’s behavior did not amount to sexual harassment. Plaintiff found this finding incredible and contrary to reason and the evidence. This finding was made before the Defendant University had even heard the evidence of Plaintiff’s nominated witness, Mr. Yelle. The Defendant University had more than 400 emails and texts from Defendant McGINN, supporting her complaint of sexual harassment, which disclosed inappropriate touching and fondling by a professor of his student, direct requests for sex, description of his sexual arousal while thinking of her, and linking his professional appraisal of her to her willingness to “indulge” him sexually.

96. Plaintiff did not hear anything further from the EA for four weeks. On November 30, 2012, she received an email from Ms. Black, stating that “as indicated the University has filed charges with the Faculty Senate ... and are awaiting a response from the Senate on their decision to move forward on the charges.” Ms. Black did not disclose to Plaintiff the details of the charge being filed against Defendant McGINN, so that Plaintiff could check and confirm that her charge of sexual harassment had been correctly recorded and acted upon. The charge filed by the EA and/or the Vice-Provost of Faculty Affairs, with the Faculty Senate relating to Plaintiff’s complaint, did not include or reflect her charge of sexual harassment but instead, and unknown to her, converted this serious charge against

Defendant McGinn into the less serious charge of failure to report a consensual romantic relationship with a student. Plaintiff never complained that Defendant McGINN had failed to report a consensual romantic relationship with a student because she was never in a consensual romantic relationship with Defendant McGinn, and the evidence she submitted to the Defendant University plainly showed this. Contrary to its obligations in a Title IX investigation, the Defendant University failed to provide Plaintiff access to information it intended to use in determining the complaint, or even to this charge which showed how it had (incorrectly) construed her complaint.

97. On December 12, 2012, Ms. Black sent an email to Plaintiff stating that the University Faculty Senate would be “bringing charges against the faculty member” and would keep Plaintiff updated. Plaintiff did not receive any further communication from the Defendant University about the investigation, or any notification of the nature of the charge being brought against Defendant McGINN. She assumed it was a charge of sexual harassment, in line with her complaint.

98. Defendant McGINN responded to this charge by letter dated December 12, 2012. The letter contained Plaintiff’s name and false, damaging statements implying that Plaintiff had a) lied; b) stolen money from the University; c) filed a sexual harassment complaint to divert attention from work she had not completed; and, d) participated willingly in a romantic relationship with the Defendant. Defendant McGINN stated: “No mention is made in the letter of the circumstances under which Ms. [Plaintiff] made the complaint: namely, that she had been paid \$4,000 by me and the department to do work over the summer that she did not do.”

99. The letter goes on to state:

The report of Ms. [Plaintiff]’s statements contains a number of blatant falsehoods... At no point did she ever express any misgivings to me about our relationship in the spring of 2012. ...I did not at any time “insist on a romantic relationship”... In fact, at

one point (May 2012) when I suggested reducing it somewhat she was the one who expressed concern, feeling that I was withdrawing from her.

100. In January 2013, Plaintiff returned to campus from winter break, and heard from various students that Defendant MCGINN was planning to resign. Plaintiff had not heard anything from the EA to this effect, and was never informed by the University's administration of any link between the Defendant's resignation and her complaint.

101. Though Defendant MCGINN's resignation agreement was signed on February 6, 2013, he remained salaried and employed by the University until December 31, 2013, during which time he was permitted to supervise two graduate students, one of whom was female.

102. Defendant MCGINN was never required to answer to the charge submitted to the Faculty Senate. As Plaintiff later found out, the charge submitted to the Faculty Senate was not one of sexual harassment, but of "failure to report a consensual relationship with a student," which would not have carried the penalty of dismissal had Defendant MCGINN been found guilty in that forum. The formal charge, as contained in a letter to the Faculty Senate by Professor David Birnbach, dated November 29, 2012, states the following:

Pursuant to Section B4.9 (d)(ii) of the Faculty Manual, the University believes that Professor McGinn's conduct is unprofessional due to the amorous relationship that developed between a senior faculty member and his student.... The "relationship" violated the Faculty Manual's policy on Consensual Amorous, Romantic or Sexual Relationships. Pursuant to that policy, 'a faculty member who engages in amorous relationships with a person over whom he or she has evaluative authority without taking steps necessary to resolve the conflict, including reporting such a relationship at the earliest opportunity, may be subject to disciplinary action under the policies embodied in the Faculty Manual governing charges of unprofessional conduct.'... In this case, there is no dispute that...prior to and during the duration of the Independent Study Course and the research assistantship, Professor McGinn and Ms. X had a romantic relationship....

103. Contrary to assurances from the EA that the Defendant University would protect Plaintiff from retaliation, the University failed to require Defendant McGINN to enter any agreement that would prevent him from disclosing confidential information relating to the Plaintiff or her complaint or from making derogatory public statements about Plaintiff or her complaint, or from retaliating against her in any way.

104. On April 17, 2013, after much thought and soul-searching, Plaintiff decided to leave the Defendant University, accepting a fellowship at Indiana University. She felt forced to make this move due to the stress she was experiencing which arose from the negative and defamatory statements being made about her by Defendant McGINN and Defendant EDWARD ERWIN and from the Defendant University's failure to protect her in any way from ongoing harassment, discrimination and retaliation, in spite of her specific warning to the EA and request for protection. Though she was moving to a less prestigious university where she would be far away from her partner and lose two years of work toward completing her Ph.D., Plaintiff felt unable to live with the distress she was suffering at the Defendant University.

105. Defendant University breached its Title IX duties in various ways, taking deliberate steps to prioritize the reputation of Defendant University and protect Defendant McGINN over Plaintiff's welfare, and its obligations to her under Title IX. These deliberate failures include:

- a. Defendant University's deliberate decision not to inform Plaintiff of her right to make a formal Title IX complaint;
- b. Defendant University's deliberate decision to allocate Plaintiff's Title IX complaint to the informal track, without her consent, and failure to conduct a Title IX investigation into her complaint;

- c. Defendant University's deliberate decision not to allow Plaintiff adequate opportunity to present witnesses prior the investigation of her complaint;
- d. Defendant University's deliberate decision not to provide Plaintiff with safety measures and accommodations following her complaint, such as access to counseling services and the option of independent legal advice;
- e. Defendant University's deliberate decision not to comply with its own policies on Sexual Misconduct, Title IX and sexual harassment, as well as the legal requirements of Title IX as set forth in the OCR's 2001 Guidance and the DCL;
- f. Defendant University's deliberate decision to allow Defendant McGINN to remain on campus and supervise female graduate students after being terminated for sexual harassment of Plaintiff;
- g. The Defendant University's deliberate decision to falsely portray Defendant McGINN's conduct as within a "consensual relationship", and to attribute his resignation to "failure to report a consensual relationship" so that its and Defendant McGINN's reputation would not be harmed by a charge of sexual harassment, and the Defendant University would not have to categorize or investigate the complaint as one of sexual harassment contrary to Title IX;
- h. Defendant University's failure to inform Plaintiff that Defendant McGINN had been terminated, or update her on the charge they had filed against him and the outcome of their informal investigation;
- i. Defendant University's failure to include a non-disclosure or non-disparagement clause in its termination/resignation agreement with

Defendant MCGINN, to prevent him from retaliating against or defaming Plaintiff; and

- j. The Defendant University's deliberate decision to do nothing to eliminate the risk of or actual retaliation and/or defamation by Defendant MCGINN, prevent its recurrence and/or address its effects on Plaintiff.

CONSPIRACY

Defendants MCGINN and ERWIN, aided by the University's perverse and incorrect finding, conspire to rehabilitate MCGINN's reputation at the expense of spreading falsehoods about Plaintiff

106. In charging Defendant MCGINN with "failure to report a consensual romantic relationship" in the public forum of the Faculty Senate, the University asserted that the relationship between Plaintiff and Defendant MCGINN was consensual and romantic even though Plaintiff had specifically told the EA and the Vice-Provost that it was not consensual or romantic and that she felt herself to be the target of sexual harassment and predatory conduct by her professor (Defendant MCGINN), and had provided copious evidence of this to the Defendant University.

107. Plaintiff had also told the EA, at her meeting with Ms. Bowen and Ms. Black on September 14, 2012, that it was likely that Defendant MCGINN would retaliate against her, including trying to damage her reputation and career prospects among other philosophers and/or the University community if the Defendant University did not put in place measures to protect her from the same.

108. However, the University not only did nothing to stop Defendant MCGINN from damaging Plaintiff's reputation, but provided the basis for him to do so. Defendant MCGINN provided his department colleague, Defendant ERWIN, with a copy of Professor Birnbach's letter to the Faculty Senate, and as a result, Defendant ERWIN volunteered to assist Defendant MCGINN in a campaign to protect Defendant MCGINN's reputation – a

campaign which consisted mainly of making and publicizing false and damaging statements about Plaintiff.

109. By asserting and disseminating the Defendant University's erroneous finding, as stated in Professor Birnbach's letter, that a consensual romantic relationship existed between Plaintiff and Defendant McGINN, the University allowed Defendants McGINN and ERWIN to rely on this charge and finding as support for the falsehood that Defendant McGINN had been in a consensual romantic relationship with Plaintiff, and for denying that Plaintiff had ever made an honest and genuinely felt complaint of sexual harassment against Defendant McGINN. In doing so, they aided and abetted Defendant McGINN and Defendant ERWIN in spreading false and damaging statements about Plaintiff and the nature of her relationship with Defendant McGINN and of her complaint against him.

RETALIATION

Professors McGinn and Erwin started a defamatory campaign against the Plaintiff that forced her to leave the University,

110. In April 2013, Defendant McGINN wrote open letters denying his harassment of Plaintiff and sent them to prominent philosophers around the United States, encouraging them to write to the University to protest his removal from campus. At a minimum, he sent letters to Philosophy Professors Steven Schiffer (New York University), Stephen Neale (City University of New York), Oliver Sacks (Columbia University), Steven Pinker (Harvard University), Saul Kripke (Princeton University), Esa Saareen (Aalto University), as well as to members of the Defendant University faculty and Robert Silvers, Editor at the *New York Review of Books*.

111. In these letters, Defendant McGINN included Plaintiff's full name and selections of her personal communications.

112. In response, Defendant McGINN received letters of support from his friends and colleagues, to whom he had sent the letters, supporting and offering to help him based on the false information he provided them with about his relationship with Plaintiff and her complaint.

113. One letter, sent by Mr. Sacks (published by Defendant McGINN on his blog on July 9, 2013), stated that “wrongs have been committed against Professor McGinn and these wrongs should be rectified.”

114. A letter from Mr. Saareen on July 10, 2013 stated “if not reversed, the dismissal of Colin McGinn will set a landmark for unfairness that is likely to become historic.”

115. A letter from Prof. Stephen Neale of City University of New York and Prof. Stephen Schiffer of New York University dated May 5, 2013 stated that “Colin McGinn may be being made to suffer a grave injustice by the University of Miami.”

116. These opinions were formed based on the false information that Defendant McGINN disseminated about Plaintiff, which was lent credence and respectability by the Defendant University’s own false statements that there was “no dispute” that the Plaintiff had been in a romantic relationship with Defendant McGINN, and contributed to the harm caused to Plaintiff’s reputation by Defendants McGINN and ERWIN.

117. In June 2013, Defendant McGINN disseminated another letter among University faculty and other members of the public, entitled “Likely Consequences of my Case”. In this, he stated that Plaintiff’s complaint and his subsequent resignation “will discourage women with legitimate complaints from coming forward, because they will fear that the authorities will adopt a “zero tolerance” attitude and summarily dismiss the accused individual, when no such extreme action is warranted.” This statement both describes Plaintiff as not having a legitimate complaint, and blames her for the University’s actions in

response to her complaint, even though she had no control over how the Defendant University responded to her complaint and even though its own Title IX investigation protocol had not even been implemented properly in her case, to her own detriment.

118. On June 4, 2013, Defendant McGINN sent a letter to his students and colleagues about the Plaintiff, stating that “The student in question is a serial liar and concealer of the truth...nothing she says can be taken on faith.”

119. On July 10, 2013, Defendant McGINN published a copy of the letter he had sent to the Faculty Senate in February in response to his charge of failure to report a consensual relationship. In the letter, he gave ten reasons why he did not report the “relationship”, including that the Plaintiff had stated that disclosing their relationship would devalue his positive academic assessment of her. This is false; the Plaintiff did not have a romantic relationship with Defendant McGINN, and so never discussed revealing such a “relationship” to the administration.

Defendant ERWIN contributes to the conspiracy to retaliate against Plaintiff

120. Having agreed to help protect Defendant McGINN’s reputation any way he could, Defendant ERWIN began to speak out against anyone who believed that a complaint of sexual harassment had been made, and to attempt to intimidate Plaintiff into remaining silent.

121. On April 19, 2013 Defendant ERWIN called a Philosophy Department faculty meeting for the purposes of discussing, what he characterized as “rumors” circulating around Defendant McGINN’s resignation. He stated at this meeting, as if it were categorical fact that he personally knew to be true, that Plaintiff and Defendant McGINN had been in a consensual romantic relationship and that Defendant McGINN had been harmed by rumors to the contrary. During this meeting Defendant ERWIN named the Plaintiff and presented an extremely distorted version of the Plaintiff’s official complaint against Defendant McGINN:

attributing false motives to the Plaintiff for making such the complaint (implying that it was motivated by a disagreement about incomplete research work the Plaintiff was paid to do for Defendant McGINN); and asserting a romantic and consensual relationship between Plaintiff and Defendant McGINN. Critically, Defendant ERWIN falsely asserted that Plaintiff had never made any complaint of sexual harassment against Defendant McGINN. This is not true.

122. Dr. Thomasson, who is effectively the only female member of faculty in the Philosophy Department, in whom Plaintiff had first confided in September 2012, when she made her sexual harassment complaint against Defendant McGINN to the EA, challenged these assertions by Defendant ERWIN, including the assertion that no allegations of sexual harassment had been made against Defendant McGINN.

123. In response, Defendant ERWIN told Defendant McGINN about Dr Thomasson's challenge to his false version of the "facts." McGINN then sent Dr Thomasson an email on April 20, 2013, threatening to bring legal action against her on knowingly false grounds, stating:

I understand that you yesterday repeatedly asserted that I sexually harassed a student, by requesting a sexual favor in an email. This is demonstrably false. Let me remind you that slander is a crime, and I will consider taking legal action against you if you persist in these slanderous statements.

124. On April 23, 2013, Defendant ERWIN called Plaintiff, who was a student in one of his classes, into his office. He established an intimidating tone by instructing the Plaintiff that he would do the talking and she "need not say anything." Defendant ERWIN then demanded to know what she had "done" to Defendant McGINN. He asserted to the Plaintiff that that she had "ruined [Defendant McGINN's] career" and asked "do you even know what sexual harassment is?" Contrary to his statements to third parties that Plaintiff had never made an allegation of sexual harassment against Defendant McGINN, Defendant ERWIN hereby acknowledged to Plaintiff that he knew her complaint against Defendant

McGINN had been one of sexual harassment. Defendant ERWIN threatened Plaintiff, stating that her reputation and future career were in jeopardy, that Defendant McGINN had powerful friends and that Plaintiff “would never be able to make a career in philosophy if she did not apologize to him.” Plaintiff left this meeting feeling bullied by Defendant ERWIN, someone she had previously considered an ally and trusted member of staff. In tears, she ran out of his office and out of the building.

125. Despite Plaintiff’s obvious upset at his accusations and threats during this meeting, the following day, on April 24, 2013 at 3:09 p.m., Defendant ERWIN sent an email to Plaintiff, again threatening her that if she did not help protect Defendant McGINN’s job and reputation, she could expect to be damaged. He stated, “There is a lot at stake here and Colin and his friends intend to fight back...There is a very simple thing you can do to protect yourself: just reaffirm what you told me yesterday about not wanting to have Colin fired. I am going to send an e-mail message with one question: “Is it true that you did not want Colin fired.” You can, if you want, reply with one word: “yes”.” At 3:10 p.m., Defendant ERWIN then sent another email in his foreshadowed terms, simply stating: “Is it true that you did not want Colin fired?”

126. Plaintiff had not told Defendant ERWIN that she did not want Defendant McGINN fired, just that she “wished it could all go away”. She did not respond to either of Defendant ERWIN’s emails on April 24, 2013, feeling that he was coercing her to retract her sexual harassment complaint or pretend that it was not about conduct as serious as it was.

127. After Plaintiff moved to Indiana in May 2013, Defendants McGINN and ERWIN continued to defame her within the Defendant University and beyond.

128. In late May, 2013, an anonymous complaint was made against Defendant ERWIN for creating a “toxic environment” in the Philosophy Department by discussing Defendant McGINN’s resignation.

129. On May 25, 2013, retaliating against this complaint, Defendant ERWIN sent a letter addressed to the Faculty, urging support for Defendant McGINN and threatening that the “whole affair will be discussed in philosophy departments around the country and possibly in the media. The reputations of the accusers, once their names become known, are at risk.”

130. On May 30, 2013, Defendant ERWIN sent an email to Plaintiff, attaching the letter of May 25, 2013 to the Faculty. Defendant ERWIN asked Plaintiff if she had made a complaint against him as a result of his actions of interrogation and intimidation that occurred both at the meeting between Defendant ERWIN and Plaintiff on April 23, 2013; and further in the emails of April 24, 2013. Plaintiff ERWIN made clear his deep displeasure towards the Plaintiff if she had made such a complaint. Defendant ERWIN also reminded Plaintiff that “Someone has spread the rumor that Colin had been fired because of sexual harassment and this rumor had spread to New York.” He warned: “Your name has been mentioned.”

131. On June 5, 2013, Defendant ERWIN sent a lengthy letter (in excess of 5,000 words) to Dr. Thomasson, copying in 13 members of the Philosophy Department faculty, falsely stating that:

- a. Defendant McGINN was not guilty of sexual harassment;
- b. “there was no charge of sexual harassment by ...the student”;
- c. “there was also not even a charge of sexual harassment by anyone”;
- d. the Plaintiff was motivated by a fear of a negative appraisal by Defendant McGINN of her work, and therefore a desire to have Defendant McGINN removed from any committee that might judge her work;
- e. the University had conducted an open, transparent and fair investigation and even cited that the University had “extensively interviewed both sides”, despite the fact that no interviews, to the Plaintiff's knowledge, had

been conducted. At least, Benjamin Yelle, the one witness she had named to the EA, was not interviewed in time for his evidence to inform the University's findings, and was only interviewed when he proactively contacted the EA to offer his testimony, having not been contacted by the EA.

132. In addition, Defendant ERWIN went on to ominously forecast the retaliation and likely damage Plaintiff would suffer arising from her temerity in making a complaint against a powerful philosopher like Defendant McGINN. He confirmed Plaintiff's fear "that Colin [McGINN] was going to retaliate against her and hurt her career ... would not have been an unreasonable inference". He also confirmed that "it was extremely likely that once the discussions started, they would be repeated in many different departments around the country...it was likely that somewhere along the way, the student's name would enter the conversations with potentially terrible consequences for her that might follow her for years."

133. On June 10, 2013 at 2:14 a.m., Defendant ERWIN again emailed Plaintiff accusing her of making a complaint about his actions of interrogation and intimidation on April 23, 2013 and April 24, 2013 and now threatening her with legal and media action. He said: "Who did this to me? I have checked with Amie [Thomasson] and Peter [Lewis] and graduate students. It was not Amie, or Peter or Ben. It was you. Tuesday I see a lawyer and he will advise me about what legal action to take. But what comes next will be far worse than a law suit and will have long lasting effects. I have been asked by others about who is responsible for the lie and I will be asked in the future. What will I do? I will tell the truth and a lot of people will know." Later at 4:33 a.m., he emailed her again, stating "But you lied to somebody, did you not? Perhaps Amie, perhaps Peter. If you were not the source of the lie, I will listen, but eventually I will find out who is the source."

134. Plaintiff, although she would have been well within her rights to notify the University about Defendant ERWIN's intimidating conduct of April 23-24, 2013, felt already harassed and hounded after making a complaint against Defendant MCGINN, and so did not report Defendant ERWIN's conduct to the Defendant University's administration.

135. On June 10, 2013, Defendant ERWIN emailed Plaintiff, stating: "Are you willing to say the following? 1. I never told anyone that Professor Erwin attempted to intimidate me into apologizing to Professor McGinn. 2. I never told anyone that Professor Erwin tried to intimidate me in any way. If you are unwilling to say both of these things, then I will assume that whether you lied or not, you are the source of these charges."

136. On June 18, 2013, Defendant ERWIN sent another email to Dr. Thomasson, copying in Philosophy Professor Simon Evnine. He attached copies of a small isolated selection of Plaintiff's confidential communications to Defendant MCGINN, stating that there was "no stream of inappropriate emails" between Plaintiff and Defendant MCGINN, that only three emails had been deemed inappropriate by others, and that Plaintiff had "encouraged" Defendant MCGINN to send her emails of this sort.

137. On October 17, 2013 Defendant ERWIN sent an email addressed to "All Graduate Students" in the Philosophy Department with the subject "I hear a rumor today." The email referred to allegations against Defendant MCGINN and dismissed them as rumors. He directed: "Anyone tempted to believe any of these rumours should ask: Concerning the events of the past year, in how many other instances, have I been lied to or at least been given bits of misinformation?" This was a direct attempt to defame Plaintiff to her peers. On October 18, 2013 Defendant ERWIN was reproached by Professor Bueno for sending such an inappropriate message as it "creates a hostile academic environment" and students should not be subject to "political pressure from faculty members."

Defendants McGINN and ERWIN continue to retaliate through defamatory blog postings

138. Defendant McGINN has a personal blog on the website Philospot.com, which was active from August 2007 to November 2013. This blog was frequented by his colleagues and other members of the academic philosophy community.

139. This blog has since been archived; Defendant McGINN now uses a different blog at www.colinmcginn.net.

140. Between June 6 and October 2013, Defendant McGINN made references to the Plaintiff on his Philospot blog numerous times, as well as posting statements that had been written by Defendant ERWIN, with his consent.

141. In their blog posts, Defendants McGINN and ERWIN referred to Plaintiff as “NN”, and described her as a female graduate philosophy student at the University who had worked as Defendant McGINN’s Research Assistant.

142. It was easy for anyone in the Defendant University community reading the blog to discover the Plaintiff’s identity. Additionally, Prof. Nick Stang, a Professor in the University’s Philosophy Department, stated that he had been contacted by some of his colleagues in Philosophy departments at other universities who said they were easily able to guess who Defendant McGINN, and by extension Defendant ERWIN also, were referring to.

143. On June 7, 2013, Defendant McGINN posted on the blog three times, making false and damaging statements about the Plaintiff in each post. He stated that “I have never been charged by the university with sexual harassment; nor did the student accuse me of that”, that “I have not been guilty of sexual harassment”, that “there are no findings of any kind against me by the University”, and that “the student’s complaint occurred soon after a dispute between her and me over research work she was supposed to do over the summer (for which she was paid \$4000) that she failed to do.” He also responded to commenters in the

“comments” section of his blog, telling them that the complaint “followed an academic failing by the student.”

144. On June 9, 2013, Defendant McGINN posted on his blog that he thought the graduate program at Miami would close in the next three years, “all because a student tried to get herself out of a jam by spinning a colorful yarn.”

145. On June 10, 2013, Defendant McGINN posted on his blog a thinly veiled “fictional” account of a “possible world” in which he has a research assistant called “Jane.” “Jane” is clearly a pseudonym for Plaintiff. He writes “Then Jane and I have a falling out over a purely academic matter and she fears that I will give her a poor evaluation. In order to throw up a smokescreen and avoid the feared evaluation she goes to a university administrator ...”

146. On June 4, 2013, the *Chronicle of Higher Education* ran an article authored by Seth Zweifler titled “Prominent Philosopher to Leave U. of Miami in Wake of Misconduct Allegations”.¹ The article was about Defendant McGINN’s resignation from the University. Defendant McGINN posted on his blog on July 4, 2013 an excerpt from a letter Defendant ERWIN had sent to Seth Zweifler in response to the article. The letter stated “this was not a case of sexual harassment” and that there was no evidence “that sexual harassment was even alleged”.

147. On July 6, 2013, Defendant McGINN posted on his blog another statement written by Defendant ERWIN, which declared:

The allegations are set forth in the letter, dated November 29, 2012, sent by the investigating administrator to the Chair of the Faculty Senate. I have read a copy of this letter. There is no allegation of sexual harassment. Those who have been saying otherwise are wrong.

148. On July 8, 2013, Defendant McGINN posted the following on his blog:

¹ Zweifler, Seth. “Prominent Philosopher to Leave U. Of Miami in Wake of Misconduct Allegations” *The Chronicle of Higher Education*. June 4, 2013.

If someone invites and encourages your trust, representing him or herself as completely trustworthy, and then betrays that trust, you feel this to be especially heinous. The miscreant has solicited your trust and then betrayed it. ...We feel there is a special room in hell reserved for this kind of person... "Evil" is not too strong a word for this kind of behavior. It is the method of the true psychopath.

149. There can be no motive for this kind of language other than the malicious intent to destroy Plaintiff's reputation and to cause her distress.

150. On July 18, 2013, Defendant McGINN posted a letter on his blog written by Defendant ERWIN to a philosopher who had asked him questions about Defendant McGINN's case. The letter stated that "the relevant particulars were carefully examined by the administrators at the University of Miami, who gave both the student and the faculty member the opportunity to state any complaint and any response." It also stated that "there was no allegation by anyone of McGinn creating a hostile environment or seeking a sexual quid pro quo. There was no allegation of sexual harassment." Finally, it claimed that "no one in the department except Colin and me is aware of the contents of the administrator's letter of November 29 or has looked at the full range of e-mail messages taken into account by the examining officer."

151. On July 19, 2013 Defendant McGINN wrote a blog post falsely accusing Plaintiff of going to the media to discuss her complaint with the intent to damage his reputation. He said: "the accuser made public statements (via her representative) to the media, repeatedly – statements that were calculated to damage my reputation." Plaintiff had not made any statements to the media at this time.

152. On August 5, 2013, Defendant McGINN commented on one of his blog posts, expressing pride at the level of reputational harm his posts were causing the Plaintiff and her supporters: "One thing I predicted about this case, but which has outdone my prediction, is the level of bitterness and anger that has been produced -- I mean, toward my enemies and the

witch hunters. This will not heal and will fester for years, with untold negative consequences.

A state of war will exist.”

153. On August 7, 2013, Defendant McGINN posted the following:

Are we really to suppose that the existence of romantic feelings should constitute grounds for dismissal? These are no doubt difficult and delicate issues, in which competing values come into potential conflict. But they are the issues that should be occupying people’s attention (not bogus claims of “sexual harassment” elastically defined.

154. On August 11, 2013, Defendant McGINN posted the text of the University’s charge, as stated in the letter to the Faculty Senate by Professor David Birnbach, dated November 29, 2012, Afterward, Defendant McGINN commented:

Note that this explicitly states that an “amorous relationship” existed between Ms. X and me. (The University had access to both my and her email messages and interviewed both of us.) The relationship thus falls under “Consensual Relationships” between students and faculty, and is expressly not considered a case of sexual harassment, which is covered in another section of the Manual. There was never any allegation of sexual harassment--quite the contrary.

155. On August 15, 2013, Defendant McGINN posted a statement by Defendant ERWIN that stated “theirs was a true romance” and that there was “no charge of sexual harassment.”

156. On August 23, 2013, Defendant McGINN re-posted a letter written by Defendant ERWIN to the *New York Times* on his blog, after they had published an article about the scandal. The letter said “Your assertion is false for the simple reason, as I explained to you, that the student did not allege sexual harassment. ... She did not allege sexual harassment and he did not resign because of such an allegation.”

157. On October 22, 2013, Defendant McGINN posted the following on his blog:

So now we see that the student (“Nicole”) is a liar, her “boyfriend” is a dupe, the press (with exceptions) have been enablers, the administration has been hysterical, people have been credulous, and “feminists” have been crazed.

158. Defendant McGINN continues to make references to Plaintiff and her complaint, and any of her supporters, on his new blog www.colinmcginn.net. For example, on January 16, 2015 he commented on a post he wrote on January 12, 2015 vilifying the “initial prime culprits” Ms. Thomasson and Mr. Yelle. In the comment he again falsely asserted that he was in a “romantic relationship” with Plaintiff “which is all the university ever accused me of.”

159. On May 4, 2015 he wrote that he needed to “cultivate [his] image as a creepy old codger with ‘dangerous’ tendencies” and that the “situation is a complete tragedy for all directly involved” mentioning “the student and her family.”

160. As Defendant McGINN’s blog posts grew in popularity, local media sources began to comment on the scandal, echoing some of the false statements they had found in his blog. On August 4, 2013, the UK-based Sunday Times published an article stating:

McGinn’s penchant for erudite wordplay, and his enthusiasm for complex intellectual argument have complicated his attempts to defend a series of suggestive emails that he sent to a woman student...they have also exposed an apparent culture gap between a brilliant but slightly otherworldly British thinker and an American academic community gripped by political correctness and nervous of any form of sexual scandal.²

Defendant McGINN defamed Plaintiff in the national and international media

161. The letters that Defendant McGINN sent to his colleagues attracted the attention of national media.

162. On June 4, 2013, the *Chronicle of Higher Education* published an article about Defendant McGINN's resignation. The article, which included quotations from Defendants McGINN and ERWIN stating that the relationship was consensual, described Plaintiff as Defendant McGINN’s Research Assistant and made clear that she was the student who had filed the complaint.

² Allen-Mills, Tony. "I think, therefore I spark a sex row." *The Sunday Times*. August 4, 2013.

163. In the public discussion of this article on the *Chronicle of Higher Education* website, commenters posted links to Defendant MCGINN's blog. This brought him into the discussion and made his online statements the primary source for information about the scandal.

164. The public interest in the scandal was so great that on July 1, 2013, the *Chronicle of Higher Education* published a second article about it, largely populated by quotations from Defendant MCGINN. The author stated that many believed the situation to be "a high profile example of sexual harassment policing run amok," and that "Mr. McGinn says he believes that the student later complained about him because she failed to complete her work over the summer and was wary of receiving a negative report. He does not think that their sexual banter made her uncomfortable." The article quoted Defendant MCGINN as saying that he "never suggested to the student that they should have sex."³

165. On August 2, 2013, *The New York Times* published an article about the scandal. The article quoted Defendant MCGINN as saying that he and Plaintiff had shared "a warm, consensual, collaborative relationship" and that "there was no propositioning".⁴

166. The *New York Times* article generated even more public discussion about Plaintiff's role in the scandal. On August 12, 2013, an anonymous user posted the following question on an online student discussion board, "Was [Plaintiff's actual full name] the cunt who got Colin McGinn fired?" Another commenter replied "cocksuckingSKANK [Plaintiff's actual name]."

167. On October 1, 2013, reporter Katie Roiphe from *Slate* magazine contacted Plaintiff for comment on an article she was writing about her sexual harassment complaint.

³ Zweifler, Seth. "Philosopher's Downfall, From Star to 'Ruin,' Divides a Discipline." *The Chronicle of Higher Education*. July 1, 2013.

⁴ Schuessler, Jennifer. "A Star Philosopher Falls, and a Debate Over Sexism is Set Off." *The New York Times*. August 2, 2013.

Plaintiff did not comment, and wondered how Ms. Roiphe had obtained her contact information.

168. She later learned that Ms. Roiphe had gotten her information from Defendant McGINN, who had also given her confidential emails from Plaintiff.

169. On October 8, 2013, *Slate* published the article, entitled “The Philosopher and the Student: Was the saga of Colin McGinn really a clear-cut case of sexual harassment?” and used the private communications Defendant McGINN had given her to construct an alternate narrative where Plaintiff had participated willingly in the harassment. The article gave Plaintiff the pseudonym “Nicole” but included identifying information about the Plaintiff; that she is from Indiana, she was a first year Ph.D. student in 2011, and that she transferred from the Defendant University to another program; that Ben Yelle was her partner. Defendant McGINN used this article to further his thinly veiled attack on Plaintiff. Adopting the *Slate*-given pseudonym “Nicole,” on October 22, 2013, Defendant McGINN wrote on his blog “So now we see that the student (“Nicole”) is a liar, her “boyfriend” is a dupe.”

170. Plaintiff was currently living in Indiana when the *Slate* article was published, her class year was listed on the University website and she was the only woman in her year in the University’s philosophy program. The identifying information provided in the *Slate* article allowed people in Plaintiff’s immediate professional circle to identify her as the student who filed the complaint against Defendant McGINN.

171. Shortly after the *Slate* article was published, a student at Indiana University approached Plaintiff and asked her if she had been the student who “kicked Professor McGinn out of Miami.”

The University failed to stop retaliation by Defendants McGINN and ERWIN, in violation of University policy and despite requests by Plaintiff

172. The UM Equality Administration states the following:

In addition to sexual harassment being illegal, it is also against the law to retaliate against someone for complaining about sexual harassment. Retaliation is against the University's policy and any acts of retaliation should be immediately reported to Equality Administration. Retaliation is prohibited by law. Thus the University of Miami will take appropriate action to prevent retaliation and to insure [*sic.*] that all parties, including the complainant are protected from further harm.

173. The Defendant University was aware of the retaliatory conduct that Defendants McGINN and ERWIN engaged in toward the Plaintiff, as a result of the letters they distributed amongst the faculty and the complaint made against Defendant ERWIN for doing so.

174. The Defendant University was also aware of the private information, including Plaintiff's full name, that Defendant McGINN disseminated to his colleagues without Plaintiff's consent, as evidenced in the letter sent to the University by Prof. Stephen Neale of City University of New York and Prof. Stephen Schiffer of New York University on May 5, 2013, which contained her name.

175. On May 20, 2013, Dr. Thomasson wrote a letter to the President of the University, Donna Shalala, making her aware of Defendants McGINN and ERWIN's retaliatory conduct. She noted that the blogs and letters disseminated by the Defendants contained Plaintiff's full name and excerpts from her private emails. She highlights that Defendants McGINN and ERWIN were presenting "an extremely distorted version of the case, misrepresenting both the nature of the case and the actions and motives of the student" and that there had been attempts to "intimidate and threaten the student" in a manner that was "unconscionable – especially when done by a faculty member in direct power over the student". She also states that the retaliation has "created such a poisonous atmosphere in the

department” that some of the professors were considering looking for jobs elsewhere, emphasizing that “The atmosphere for women in the department is bad, and has been for some time, in ways that may have contributed to the events and their reception.” Dr. Thomasson asked President Shalala to stop the acts of retaliation by making a formal statement on behalf of the University.

176. On June 8, 2013, Plaintiff sent an email to Dr. Birnbach alerting him to Defendants McGINN’s retaliation. She stated, “I know that he [Defendant McGINN] and Professor Erwin have already leaked my name to several influential individuals. My future career is in jeopardy because I came forward about his inappropriate behavior, which is exactly what I feared at the beginning of all this.” She did not receive a response.

177. On June 12, 2013, Plaintiff instructed her then counsel, Attorney Thomas Devoe, to contact the Assistant General Counsel at the Defendant University, Attorney Ayman Rizkalla, and ask the University to “take appropriate action to ensure that Dr. McGinn does not retaliate against [Plaintiff], does not disclose publicly [Plaintiff’s] identity, and does not otherwise make disparaging statements about [Plaintiff].”

178. Mr. Rizkalla responded that the University would “review” this information and take “necessary steps, if any;” he never followed up with Mr. Devoe.

179. Mr. Devoe again contacted the University on several occasions to ask that they make an official statement in support of Plaintiff in the *Slate*, *New York Times* and *Chronicle of Higher Education* articles. Mr. Rizkalla stated once that he had “brought the matter to the management’s attention,” however, the University did not provide comment for any articles, stating that they do not comment on “personnel issues.”

180. The Defendant University’s silence throughout this period allowed Defendants McGINN and ERWIN to be the absolute authority on the scandal, silenced the Plaintiff, and

permitted news media and the public to speculate about the intricacies of this very private matter.

President Shalala denied all accountability for mishandling Plaintiff's complaint

181. On September 20, 2013, President Shalala held two meetings – one with all graduate students in the Philosophy Department, and one with all faculty and administration – to discuss the “very unfortunate and hugely public event in the Department of Philosophy.” The graduate student meeting was tape recorded.

182. At the graduate student meeting, Provost LeBlanc stated that the University had followed policy and had not done anything wrong during the investigation of Plaintiff's complaint.

183. President Shalala confirmed at the meeting that Defendant McGINN had done more than fail to report a consensual relationship. In response to a student's question about potential harm to Plaintiff's reputation as a result of the University's ruling, President Shalala said “This is a very different situation than, than, a faculty member, which is against our rules, is romantically involved with a student. This is a much more serious case than that and I would not dismiss it.”

184. When questioned about the University's inaction in response to Defendants McGINN and ERWIN's defamatory statements, she said “short of a civil action by the complainant, we have limited authority to shut someone up in higher education.”

185. A student asked President Shalala why the University had not made “a public statement in order to protect the graduate student and other students” or “come forward and defend the student in a public manner,” but she did not respond.

186. When asked why Defendant McGINN had not been officially terminated, President Shalala said “firing would have taken longer.”

187. Near the end of the meeting, the discussion turned to sexual harassment training. When it was pointed out that the University did not offer sexual harassment training to faculty, Provost LeBlanc stated:

The vast majority of cases are not misunderstandings that are going to be subject to this kind of training. These are outrageous, they are irresponsible, they are wrong, they are not in the grey zone, we're talking about just bad behavior and by bad people who probably exhibited this behavior before.

188. By making these statements at the graduate student meeting, President Shalala and Provost LeBlanc made it clear that the University knew Defendant McGINN had sexually harassed Plaintiff and recognized his defamatory statements as retaliation, but did not take action against him, and further, that they did not intend to offer faculty or students any training to prevent such unlawful conduct from occurring in future.

CLAIMS FOR RELIEF

COUNT I

TITLE IX - SEXUAL HARASSMENT As to Defendant UNIVERSITY OF MIAMI

189. Plaintiff re-alleges and incorporates the allegations set forth above in Paragraphs 18-190 as though fully set forth herein.

190. The University of Miami received federal financial assistance during the relevant period.

191. Defendant McGINN subjected Plaintiff to unwanted and unwelcome sexual harassment as more fully described in paragraphs 18-79 above.

192. The Defendant University had actual knowledge of Plaintiff's sexual harassment at the hands of Defendant McGINN from the time Plaintiff reported this harassment to the EA on September 14, 2012.

193. The Defendant University's failure to conduct a formal investigation and take steps to protect Plaintiff from further sexual harassment were clearly unreasonable in light of the known circumstances.

194. Plaintiff was subjected to discrimination based on sex because of the Defendant University's deliberate indifference to known acts of harassment and sexual grooming, including, without limitation:

- a. The Defendant University's deliberate decision not to inform Plaintiff of her right to make a formal Title IX complaint;
- b. The Defendant University's deliberate decision to allocate Plaintiff's Title IX complaint to the informal track, without her consent, and failure to conduct a Title IX investigation into her complaint;
- c. Defendant University's deliberate decision not to allow Plaintiff adequate opportunity to present witnesses prior to the investigation of her complaint;
- d. Defendant University's deliberate decision not to provide Plaintiff with safety measures and accommodations following her complaint, such as access to counseling services;
- e. The Defendant University's deliberate decision not to comply with its own policies on Sexual Misconduct, Title IX and sexual harassment, as well as the legal requirements of Title IX as set forth in the OCR's 2001 Guidance and the DCL;
- f. The Defendant University's deliberate decision to allow Defendant MCGINN to remain on campus and supervise female graduate students after being terminated for sexual harassment of Plaintiff;

- g. The Defendant University's deliberate decision to falsely portray Defendant MCGINN's conduct as within a "consensual relationship", and to attribute his resignation to "failure to report a consensual relationship" so that its and Defendant MCGINN's reputation would not be harmed by a charge of sexual harassment, and the Defendant University would not have to categorize or investigate the complaint as one of sexual harassment contrary to Title IX;
- h. The Defendant University's failure to inform Plaintiff that Defendant MCGINN had been terminated, or update her on the charge they had filed against him and the outcome of their informal investigation;
- i. The Defendant University's failure to include a non-disclosure or non-disparagement clause in their termination/resignation agreement with Defendant MCGINN, to prevent him from retaliating against or defaming Plaintiff; and
- j. The Defendant University's deliberate decision to do nothing to eliminate the risk of and/or actual retaliation and/or defamation posed by Defendant MCGINN, prevent its recurrence and address its effects on Plaintiff.

195. Had the Defendant University not been deliberately indifferent to Plaintiff's harassment, discrimination and retaliation, Plaintiff would have remained on campus and completed her Ph.D. Instead, Plaintiff was forced to leave campus while Defendant MCGINN received a substantial severance package, left the University with no charge of harassment on his record, and remains living in Miami, having suffered no reputational harm.

196. Because of the Defendant University's deliberate indifference, Plaintiff has suffered losses of educational opportunities and benefits, along with general and special

damages including but not limited to: emotional distress, loss of earnings, loss of future earnings and earning capacity, and damage to and delays in her pursuit of education.

WHEREFORE, Plaintiff respectfully demands judgment against Defendant UNIVERSITY OF MIAMI awarding:

- a. Damages in amounts to be established at trial, including, without limitation, reimbursement and prepayment for all of Plaintiff's tuition and related expenses; payment of Plaintiff's expenses incurred as a consequence of the sexual harassment; damages for deprivation of equal access to the educational benefits and opportunities provided by the Defendant University; and damages for past, present and future emotional pain and suffering, ongoing and severe mental anguish, loss of past, present and future enjoyment of life, and past and present lost earnings and earning capacity;
- b. Injunctive relief to be determined at trial requiring the Defendant University to comply with federal law under Title IX, to issue a formal statement in support of Plaintiff, and to report Defendant MCGINN to the appropriate authorities for sexual harassment;
- c. Pre-and post-judgment interest;
- d. Costs;
- e. Attorneys' fees pursuant to 42 U.S.C. §1988(b); and
- f. Such other and further relief as the Court may deem just and proper.

COUNT II

TITLE IX - HOSTILE EDUCATIONAL ENVIRONMENT As to Defendant UNIVERSITY OF MIAMI

197. Plaintiff re-alleges and incorporates the allegations set forth above in Paragraphs 18-190 as though fully set forth herein.

198. Plaintiff was subjected to sexual harassment so severe, pervasive and objectively offensive that she was denied access to educational opportunities and benefits as described in paragraphs 18-79 above.

199. The Defendant University was deliberately indifferent to Plaintiff's known sexual harassment and the sexually hostile environment from which she suffered. As a result, it failed to institute any accommodations for Plaintiff's safety, including, but not limited to:

- a. dismissing Defendant McGINN from campus and all teaching and supervising responsibilities;
- b. reporting his dismissal as due to sexual harassment of a student, and publicizing this matter to the campus community;
- c. requiring that Defendant McGINN not come within a certain distance of Plaintiff or contact her by email or telephone; and/or
- d. taking steps to prevent Defendants McGINN and ERWIN from publicly defaming Plaintiff and creating a scandal which added to the hostile environment she was subjected to at the University.

200. Because of the Defendant University's deliberate indifference, Plaintiff has suffered losses of educational opportunities and benefits, along with general and special damages including but not limited to: emotional distress, loss of earnings, loss of future earnings and earning capacity, and damage to and delays in her pursuit of education.

WHEREFORE, Plaintiff respectfully demands judgment against Defendant UNIVERSITY OF MIAMI awarding:

- a. Damages in amounts to be established at trial as described in COUNT I;
- b. Injunctive relief as described in COUNT I;
- c. Pre- and post-judgment interest;
- d. Costs;
- e. Attorneys' fees pursuant to 42. U.S.C. §1988 (b); and
- f. Such other and further relief as the Court may deem just and proper.

COUNT III

**TITLE IX - RETALIATION
As to Defendant UNIVERSITY OF MIAMI**

201. Plaintiff re-alleges and incorporates the allegations set forth above in Paragraphs 18-190 as though fully set forth herein.

202. Defendant McGINN subjected Plaintiff to unwanted and unwelcome sexual harassment as more fully described in paragraphs 18-79 above.

203. Plaintiff engaged in an activity protected by Title IX when she made a complaint against Defendant McGINN for sexually harassing her and filed it with the EA on September 14, 2012. On the same date, Plaintiff expressly informed the Defendant University by statements to the EA that she feared retaliation from Defendant McGINN and asked for protection from such retaliation which the Defendant University promised her.

204. After Plaintiff filed her complaint with the University, Defendants McGINN and ERWIN deliberately and intentionally subjected Plaintiff to adverse actions because she engaged in these protected activities.

205. The Defendant University became aware of this retaliation when:

- a. it received the letter from Professors Neale and Schiffer in New York asking for support for Defendant McGINN on May 5, 2013;
- b. it received the letter from Dr. Thomasson alerting the administration to Defendants McGINN and ERWIN's retaliation on May 20, 2013;
- c. Plaintiff contacted them and asked them to put an end to the retaliation on June 8, 2013; and
- d. Plaintiff's counsel contacted them repeatedly asking them to put an end to the retaliation on June 12, 2013 among other dates.

206. The Defendant University had a duty to put an end to the retaliation being committed by Defendants MCGINN and ERWIN in the course of their employment. Their failure to do so is in violation of Title IX.

207. As a direct and proximate result of the Defendant University's unlawful acts, Plaintiff has sustained general and special damages including but not limited to: emotional distress, loss of earnings, loss of future earnings and earning capacity, and damage to and delays in her career.

WHEREFORE, Plaintiff respectfully demands judgment against Defendant UNIVERSITY OF MIAMI awarding:

- a. Damages in amounts to be established at trial as described in COUNT I;
- b. Injunctive relief to be determined at trial as described in COUNT I;
- c. Pre- and post-judgment interest;
- d. Costs;
- e. Attorneys' fees pursuant to 42. U.S.C. §1988 (b); and
- f. Such other and further relief as the Court may deem just and proper.

COUNT IV

FCRA - SEXUAL HARASSMENT As to Defendant UNIVERSITY OF MIAMI

208. Plaintiff re-alleges and incorporates the allegations set forth above in Paragraphs 18-190 as though fully set forth herein.

209. Plaintiff is female, and is thus a member of a protected class under the Florida Civil Rights Act as amended.

210. Defendant MCGINN was at all relevant times employed as a Professor by the Defendant University.

211. Plaintiff was employed by Defendant University as a Research Assistant to Defendant McGINN from December 2011 to September 2012. Defendant McGINN was the Plaintiff's supervisor during this period of time.

212. While employed by Defendant UNIVERSITY, Plaintiff was subjected to unwanted and unwelcome sexual harassment by her supervisor Defendant McGINN, as more fully described in paragraphs 18-79 above.

213. Defendant McGINN's harassment was based on Plaintiff's gender.

214. The harassment was sufficiently severe and pervasive as to adversely affect the terms, conditions and privileges of Plaintiff's employment, and to create an abusive and hostile work environment.

215. Defendant McGINN's sexual harassment of Plaintiff was done knowingly and intentionally, and in willful, wanton and reckless disregard of her rights under the FCRA, and therefore entitles the Plaintiff to punitive damages.

216. The University had actual notice of Defendant McGINN's harassment of Plaintiff when Plaintiff filed a complaint with the EA on September 14, 2012.

217. The Defendant University discriminated against Plaintiff in violation of the FCRA, by failing to take remedial action against Defendant McGINN or protect Plaintiff from further harassment.

218. The conduct alleged herein was performed by employees of the Defendant University acting within the scope of their employment for which the Defendant University is liable to Plaintiff for damages she sustained as a result of such conduct.

219. Alternatively, the Defendant University has ratified the actions of its employees and agents for which it is liable to Plaintiff for damages she sustained as a result of this discrimination.

220. As a direct and proximate result of the Defendant University's conduct and the unlawful actions of its employees, Plaintiff has been injured and suffered past, present and future wage loss, pain and suffering, mental anguish, humiliation, loss of capacity for enjoyment of life, expenses of psychiatric treatment, loss of dignity, loss of career opportunities and other non-pecuniary losses and intangible injuries.

WHEREFORE, Plaintiff respectfully demands judgment against the Defendant University pursuant to the Florida Civil Rights Act, awarding:

- a. Damages in amounts to be established at trial, including, without limitation, payment of Plaintiff's expenses incurred as a consequence of the sexual harassment; and damages for past, present and future emotional pain and suffering, ongoing and severe mental anguish, loss of past, present and future enjoyment of life, past and present lost earnings and earning capacity; and punitive damages;
- b. Injunctive relief to be determined at trial as described in COUNT I ;
- c. Pre- and post-judgment interest;
- d. Costs;
- e. Attorneys' fees; and
- f. Such other and further relief as the Court may deem just and proper.

COUNT V

FCRA RETALIATION As to Defendant UNIVERSITY OF MIAMI

221. Plaintiff re-alleges and incorporates the allegations set forth above in Paragraphs 18-190 as though fully set forth herein.

222. As a woman, Plaintiff is a member of a protected class.

223. Defendant McGINN was at all relevant times employed as a Professor by the Defendant University.

224. Plaintiff was employed by Defendant University as a Research Assistant to Defendant McGINN from December 12, 2011 to September 11, 2012. Defendant McGINN was the Plaintiff's supervisor during this period of time.

225. While employed by Defendant University, Plaintiff was subjected to unwanted and unwelcome sexual harassment by her supervisor Defendant McGINN, as more fully described in paragraphs 18-79 above.

226. Defendant McGINN's harassment of Plaintiff was based upon Plaintiff's gender.

227. Plaintiff engaged in a protected activity when she reported her sexual harassment to the EA on September 14, 2012.

228. After Plaintiff filed her complaint, the Defendant University retaliated against Plaintiff by failing to rule that she had been sexually harassed by Defendant McGINN and failing to protect her from Defendants McGINN and ERWIN's defamatory and retaliatory statements.

229. Defendant's actions were motivated because of Plaintiff's protected objections.

230. As a direct and proximate result of the University's retaliation against Plaintiff, Plaintiff has suffered and continues to suffer loss of income, loss of enjoyment of life, emotional distress, pain and suffering, embarrassment, humiliation, and physical distress.

WHEREFORE, Plaintiff respectfully requests judgment against Defendant UNIVERSITY OF MIAMI, awarding:

- a. Damages in amounts to be established at trial as described in Count IV;
- b. Pre- and post-judgment interest;
- c. Costs; and
- d. Such other and further relief as the court may deem just and proper.

COUNT VI

**Breach of Contract
As to Defendant UNIVERSITY OF MIAMI**

231. Plaintiff re-alleges and incorporates the allegations set forth above in Paragraphs 18-190 as though fully set forth herein.

232. The Defendant University had a contractual duty to Plaintiff, as set out in the *Student Rights & Responsibilities Handbook*, which details the University's responsibilities to students.

233. The Defendant University also had a contractual duty to Plaintiff as set out in her scholarship award contract, which stated that "continuation of this scholarship is contingent upon your adhering to University, College and Department policy and standards." The policies and standards referred to include the "the right to be treated equally in academic and social settings, the right to live and/or attend classes in a physically safe environment, the right to privacy, the right to learn without disruption, and the expectation of a positive living/learning environment."

234. The Defendant University breached its contractual duty to Plaintiff by:
- a. failing to adequately and promptly respond to Plaintiff's complaint of sexual harassment;
 - b. failing to provide Plaintiff with support services, such as sexual harassment counselors or complaint facilitators;
 - c. failing to carry out a full and fair investigation of her complaint;
 - d. failing to inform her of her right to legal representation;
 - e. failing to update her on the progress and outcome of her complaint;
 - f. failing to uphold its standard of confidentiality within and after the complaint process;
 - g. failing to charge Defendant MCGINN with sexual harassment;

- h. failing to stop Defendant McGINN from engaging in acts of retaliation and/or defamation against Plaintiff.

235. As a proximate result of the Defendant University's breach of said contractual duties, Plaintiff has suffered compensable injury.

WHEREFORE, Plaintiff respectfully requests judgment against Defendant UNIVERSITY OF MIAMI, awarding:

- a. Remuneration for the breach of contract, in an amount to be established at trial, that puts the Plaintiff in the place she would be in if the contract had been completed, including but not limited to: lost wages, compensation for pain, suffering, and mental anguish, relocation costs, and tuition;
- b. Such other and further relief as the court may deem just and proper.

COUNT VII

Breach of Fiduciary Duty As to Defendant UNIVERSITY OF MIAMI

236. Plaintiff re-alleges and incorporates the allegations set forth above in Paragraphs 18-190 as though fully set forth herein.

237. Defendant UNIVERSITY OF MIAMI had a fiduciary relationship with Plaintiff; by accepting her as a student they entered a relationship where she trusted and relied upon them.

238. This reliance invokes a duty of a moral, social, domestic or personal nature that is viewed as a fiduciary duty for the purposes of this claim.

239. As Plaintiff's fiduciary, the Defendant University had ongoing duties to protect the health and safety of Plaintiff.

240. The Defendant University breached said fiduciary duties by engaging in the behaviors listed in paragraph 236.

241. As a proximate result of the Defendant University's breach of said fiduciary duties, Plaintiff has suffered compensable injury.

WHEREFORE, Plaintiff respectfully requests judgment against Defendant UNIVERSITY OF MIAMI, awarding:

- a. Damages in amounts to be established at trial, including pecuniary and non-pecuniary compensatory damages for pain, suffering, and mental anguish caused by Defendant's unlawful actions, and punitive damages;
- b. Pre- and post-judgment interest;
- c. Costs; and
- d. Such other and further relief as the court may deem just and proper.

COUNT VIII

CIVIL BATTERY

As to Defendants COLIN McGINN and the UNIVERSITY OF MIAMI

242. Plaintiff re-alleges and incorporates the allegations set forth above in Paragraphs 18-190 as though fully set forth herein.

243. During the course of Plaintiff's employment at the Defendant University, Defendant McGINN repeatedly touched Plaintiff without her consent, including fondling her hands and feet in a manner that he had made clear was sexually stimulating to him, which constitutes a battery upon Plaintiff's person.

244. As a result of the master-servant relationship between the Defendant University and Defendant McGINN, the Defendant University is vicariously liable for the acts of its employee, Defendant McGINN.

245. Therefore, as a result of the acts committed against Plaintiff as set forth in paragraphs 18-79, the Defendant University is liable for the batteries committed upon Plaintiff by its employee, Defendant McGINN, in the course of said employment.

246. As a result of the aforementioned batteries committed upon the Plaintiff and for which the Defendant University is liable, Plaintiff suffered severe emotional distress, pain and suffering, and loss of the capacity for enjoyment of life, and loss of earnings and earning capacity.

WHEREFORE, Plaintiff respectfully requests judgment against Defendant UNIVERSITY OF MIAMI, awarding:

- a. Damages in amounts to be established at trial, including back pay in the form of lost wages, compensatory damages for pain, suffering, and mental anguish caused by Defendant's unlawful actions, and punitive damages;
- b. Pre- and post-judgment interest;
- c. Costs; and
- d. Such other and further relief as the court may deem just and proper.

COUNT IX

CIVIL ASSAULT

As to Defendants COLIN McGINN and UNIVERSITY OF MIAMI

247. Plaintiff re-alleges and incorporates the allegations set forth above in Paragraphs 18-190 as though fully set forth herein.

248. Defendant McGINN's unwelcome touching during the course of his supervision of Plaintiff occurred so frequently that Plaintiff feared meeting with him for work-related purposes and changed her appearance and the locations of their meetings to avoid being touched inappropriately by him. In his communications with the Plaintiff, he would demand to fondle her feet, sexually proposition her and describe his erections to her, demanding that she respond positively.

249. Defendant McGINN also repeatedly threatened to harm Plaintiff if she did not respond positively to his advances, which caused her to fear immediate physical injury. This conduct constitutes an assault upon Plaintiff's person.

250. As a result of the master-servant relationship between the Defendant University and Defendant McGINN, the Defendant University is vicariously liable for the acts of its employee, Defendant McGINN.

251. Therefore, as a result of the acts committed against Plaintiff as set forth in paragraphs 17-79 above, the Defendant University is liable for the assaults committed upon Plaintiff by its employee, Defendant McGINN, in the course of said employment.

252. As a result of the aforementioned assaults committed upon the Plaintiff and for which the Defendant University is liable, Plaintiff suffered severe emotional distress, pain and suffering, and loss of the capacity for enjoyment of life, and loss of earnings and earning capacity.

WHEREFORE, Plaintiff respectfully requests judgment against Defendant UNIVERSITY OF MIAMI, awarding:

- a. Damages in amounts to be established at trial, including back pay in the form of lost wages, compensatory damages for pain, suffering, and mental anguish caused by Defendant's unlawful actions, and punitive damages;
- b. Pre- and post-judgment interest
- c. Costs; and
- d. Such other and further relief as the court may deem just and proper.

COUNT X

Intentional Infliction of Emotional Distress As to Defendants COLIN McGINN and UNIVERSITY OF MIAMI

253. Plaintiff re-alleges and incorporates the allegations set forth above in Paragraphs 18-190 as though fully set forth herein.

254. At various times while Plaintiff was employed under the supervision of Defendant McGINN, Defendant McGINN made unwelcome sexual advances toward Plaintiff and threatened to damage her reputation if she did not comply with these advances, which

was an exhibition of outrageous conduct intended to cause, and which did, in fact, cause the Plaintiff severe emotional distress.

255. As a result of the aforementioned intentional infliction of emotional distress caused by Defendant McGINN, upon Plaintiff, she suffered mental anguish, pain and suffering and the loss of the capacity for enjoyment of life.

256. Furthermore, as a result of the outrageous and unreasonable conduct of Defendant McGINN in intentionally causing emotional distress to Plaintiff, Plaintiff was caused to separate from her employment involuntarily. As a result, Plaintiff has lost wages in the past and has lost the ability to earn future wages.

257. These egregious acts of wrongful touching without Plaintiff's consent, and threats to defame her as well as acts of malicious defamation, i.e., the offensive conduct, occurred on campus at the Defendant University during working hours and while Defendant McGINN was performing work which he was employed by the Defendant University to perform - the supervision of graduate students.

258. As a result of Defendant McGINN's unlawful conduct, and the Defendant University's failure to take remedial action, Plaintiff was caused to separate from her employment involuntarily. But for the unlawful actions of Defendants McGINN and UNIVERSITY OF MIAMI, coupled with Defendant University's failure to take appropriate remedial action, Plaintiff would continue to be employed by the Defendant University.

259. In addition, as a result of the aforementioned intentional infliction of emotional distress caused by Defendant McGINN, upon Plaintiff, she suffered mental anguish, pain and suffering and loss of the capacity for enjoyment of life, and these actions are conferred on the Defendant University by the master-servant employee-employer relationship between Defendant McGINN and the Defendant University.

WHEREFORE, Plaintiff respectfully requests judgment against Defendants COLIN McGINN and UNIVERSITY OF MIAMI, awarding:

- a. Damages in amounts to be established at trial, including back pay in the form of lost wages, compensatory damages for pain, suffering, and mental anguish caused by Defendant's unlawful actions, and punitive damages;
- b. Pre- and post-judgment interest
- c. Costs; and
- d. Such other and further relief as the court may deem just and proper.

COUNT XI

Defamation

As to Defendants COLIN McGINN, EDWARD ERWIN and the UNIVERSITY OF MIAMI

260. Plaintiff re-alleges and incorporates the allegations set forth above in Paragraphs 18-193 as though fully set forth herein.

261. Defendants McGINN and ERWIN made numerous false statements concerning Plaintiff, orally and in writing, from June 6, 2013 to May 4, 2015, as stated in paragraphs 139-173.

262. The Defendants distributed these statements by email, on blogs and in letters, and were quoted in newspaper articles published by third parties between June 2013 to May 2015.

263. The defamatory statements targeted influential actors in the Plaintiff's field of work, and were intended to damage this audience's perception of the Plaintiff.

264. Some of the defamatory statements disseminated by the Defendants contained the Plaintiff's full name and other identifying information, such as her class year and job title at the University.

265. The statements that did not include Plaintiff's name used other information about Plaintiff to convey her identity to their intended audience.

266. The Defendants included these identifying details intentionally so that their intended audience would be able to discover the Plaintiff's identity.

267. The Defendants' statements included false information, including but not limited to, that Plaintiff did not file a sexual harassment complaint against Defendant MCGINN, that he did not harass her, that she had filed the complaint in retaliation for not doing her work or for fear of getting a bad grade, that she had made a false allegation against him, and that she was "evil", "a liar", and "a psychopath".

268. Defendant MGINN knew that the statements he disseminated were false, and did so intentionally to damage the Plaintiff's reputation.

269. Defendant ERWIN should have known that the statements were false, and acted with reckless disregard for the falsity of his statements about the Plaintiff.

270. During the relevant period, Defendants MCGINN and ERWIN were acting within the course of their employment at the Defendant University. As a result, the Defendant University is vicariously liable for the defamatory conduct of Defendants MCGINN and ERWIN.

271. Plaintiff and her counsel notified the Defendant University about the falsity of the information being disseminated, and the Defendant University failed to take remedial action against Defendants MCGINN and ERWIN or to issue any statement in support of the Plaintiff.

272. Furthermore, the Defendant University's false statement that Defendant MCGINN had been terminated for "failure to report a consensual relationship" is the basis for the defamatory statements made by Defendants MCGINN and ERWIN about the Plaintiff's character. The Defendant University's failure to identify and report Defendant MCGINN's

conduct as sexual harassment allowed him to spread false information about the Plaintiff among his colleagues and have complete control over public discussion of his case.

273. As a result of the Defendants' defamatory conduct, the Plaintiff has suffered injury to her reputation.

WHEREFORE, Plaintiff respectfully requests judgment against Defendant UNIVERSITY OF MIAMI, awarding:

- a. Damages in amounts to be established at trial, including damage to reputation, back pay in the form of lost wages, loss of future earnings, and punitive damages;
- b. Pre- and post-judgment interest;
- c. Costs; and
- d. Such other and further relief as the court may deem just and proper.

COUNT XII

Invasion of Privacy by Publication of Private Facts As to Defendants COLIN MCGINN, EDWARD ERWIN and UNIVERSITY OF MIAMI

274. Plaintiff re-alleges and incorporates the allegations set forth above in Paragraphs 18-190 as though fully set forth herein.

275. Defendants MCGINN and ERWIN disseminated private information relating to Plaintiff, including excerpts from her personal emails, her name and other identifying information, to a wide audience of her colleagues and superiors.

276. Defendants MCGINN and ERWIN disseminated this information to such a broad audience – four major newspapers and magazines, a blog, and targeted letters to high ranking academics – that it is reasonable to assume they expected it to become public knowledge.

277. The information that the Defendants disseminated was offensive to a reasonable person, as it was used to make false allegations about Plaintiff's conduct by implying that she had engaged in a consensual relationship with her professor and supervisor, Defendant MCGINN and then made a false complaint against him in anticipated retaliation for receiving a poor grade or unfavorable feedback on work.

278. Defendants' use and disclosure of confidential personal information constituted an unreasonable, substantial or serious interference with and invasion of Plaintiff's privacy.

279. The matters and information disseminated are of no legitimate concern to the persons and entities to whom the information was released and/or the public.

280. At the time of their dissemination of private information about Plaintiff, both Defendants were employed by the Defendant University.

281. The Defendant University is vicariously liable for Defendants MCGINN and ERWIN's unlawful conduct committed within the course of their employment.

282. Additionally, the Defendant University did not take any steps to stop this invasion of privacy, either a) in advance, by including a non-disparagement clause in their agreement with Defendant MCGINN or b) afterward, upon request by Plaintiff and her counsel.

283. Plaintiff has suffered and continues to suffer damage as a result of the Defendants' interference with and invasion of her privacy.

WHEREFORE, Plaintiff respectfully requests judgment against Defendants COLIN MCGINN and EDWARD ERWIN, awarding:

- a. Damages in amounts to be established at trial, including compensatory damages for pain, suffering, and emotional distress, and punitive damages;
- b. Pre- and post-judgment interest
- c. Costs; and

d. Such other and further relief as the court may deem just and proper.

COUNT XIII

Civil Conspiracy

As to Defendants COLIN McGINN, EDWARD ERWIN and the UNIVERSITY OF MIAMI

284. Plaintiff re-alleges and incorporates the allegations set forth above in Paragraphs 18-190 as though fully set forth herein.

285. The aforementioned defamatory acts of Defendants McGINN, ERWIN and the UNIVERSITY OF MIAMI constitute a cause of action against all Defendants for civil conspiracy.

286. There was a conspiracy between Defendants McGINN and ERWIN, the purpose of which was to unlawfully defame the Plaintiff and cause her reputational harm.

287. The purpose of this conspiracy was to unlawfully disseminate false statements about the Plaintiff with an intent to harm her.

288. The Defendant University aided their conspiracy by providing them with false information about the content of Plaintiff's relationship with Defendant McGINN and the nature of her complaint against him, and by failing to prevent Defendants McGINN and ERWIN from publishing defamatory material about her despite being repeatedly put on notice of the defamation by Plaintiff and her counsel, who asked Defendant University to take some steps curb, control or prevent their employees' unlawful activity.

289. As a direct or proximate result of the Defendants' conspiracy, the Plaintiff has suffered and continues to suffer damages.

WHEREFORE, Plaintiff respectfully requests judgment against Defendants COLIN McGINN, EDWARD ERWIN and the UNIVERSITY OF MIAMI, awarding:

a. Damages in amounts to be established at trial, including reputational harm and back pay in the form of lost wages, and punitive damages;

- b. Pre- and post-judgment interest
- c. Costs; and
- d. Such other and further relief as the court may deem just and proper.

RELIEF SOUGHT

WHEREFORE, having set forth the above-described legally sufficient causes of action against the Defendants, Plaintiff prays for the entry of Final Judgment against all Defendants jointly and severally, for damages in an amount not yet quantified but to be proven at trial; for costs and attorneys' fees; and for any other and further relief which is just and proper.

DEMAND FOR JURY TRIAL

Plaintiff respectfully demands a trial by jury as to all matters so triable pursuant to Rule 38 of the Federal Rules of Civil Procedure.

Respectfully submitted,

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