

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

JOHN DOE, )  
c/o Friedman & Gilbert )  
55 Public Square, Suite 1055 )  
Cleveland, Ohio 44113, )

Plaintiff, )

-vs- )

CASE WESTERN RESERVE )  
UNIVERSITY, )  
C/O Elizabeth J. Keefer, )  
10900 Euclid Avenue )  
Adelbert Hall, Room 311 )  
Cleveland, Ohio 44106-7020, )

and )

THE CLEVELAND CLINIC )  
FOUNDATION DBA CLEVELAND )  
CLINIC LERNER COLLEGE OF )  
MEDICINE OF CASE WESTERN )  
RESERVE UNIVERSITY, )  
9500 Euclid Avenue )  
Mail Code Na-4 )  
Cleveland, Ohio 44195, )

and )

KATHLEEN FRANCO, M.D., )  
Cleveland Clinic Main Campus )  
Mail Code Na21 )  
9500 Euclid Avenue )  
Cleveland, Ohio 44195, )

Defendants. )

CASE NO. \_\_\_\_\_

JUDGE \_\_\_\_\_

**COMPLAINT**

**JURY DEMAND ENDORSED  
HEREON**

**COMPLAINT FOR INJUNCTIVE RELIEF,  
DECLARATORY JUDGMENT, AND MONEY DAMAGES**

Plaintiff John Doe<sup>1</sup>, for his Complaint for Injunctive Relief, Declaratory Judgment and Money Damages against the Defendants Case Western Reserve University, The Cleveland Clinic Foundation dba Cleveland Clinic Lerner College of Medicine of Case Western Reserve University, and Kathleen Franco, M.D. (“Defendants”), states:

**NATURE OF THE ACTION**

1. This lawsuit arises out of the actions, inactions, omissions, and flawed procedures employed by Defendants Case Western Reserve University (“CWRU”) and The Cleveland Clinic Foundation dba Cleveland Clinic Lerner College of Medicine of Case Western Reserve University (“CC Lerner College”), as well as the false statements, actions, inactions, and omissions made by Defendant Dr. Kathleen Franco, concerning the wrongful allegations of sexual misconduct made against Plaintiff.

2. Plaintiff, a student at the Cleveland Clinic Lerner College of Medicine, went out with several classmates in downtown Cleveland on April 13, 2013. When the outing ended, Plaintiff and several other students took a cab back to the Coventry Road area in Cleveland Heights. Jane Roe was among the other students in the cab.

3. The cab arrived in Coventry, where many of the students lived. Though his girlfriend was out of town, Plaintiff planned on spending the night in Coventry at his girlfriend’s apartment. However, Jane Roe lived in Bratenahl, approximately fifteen to twenty minutes away from Coventry. When the cab arrived in Cleveland Heights, Jane Roe instructed Plaintiff to stay in the cab with her on the ride to her residence in Bratenahl. Plaintiff agreed. When the cab

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<sup>1</sup> Plaintiff has filed, contemporaneously with this Complaint, a Motion to proceed pseudonymously.

arrived in Bratenahl at approximately 3:30 AM, Plaintiff asked Jane Roe if he should get out of the cab. She told him that he could stay at her house. Plaintiff accepted the invitation.

4. Jane Roe agreed for Plaintiff to sleep in her bed and the two engaged in consensual sexual contact. Afterward, and again the next morning, the two discussed what had gone on between them. They were mutually concerned about the events of the evening before because they were both in long-term relationships with other people. Jane Roe told Plaintiff a couple weeks later, however, that she blamed him entirely for what happened between them. Plaintiff was shocked and hurt, but wanted to move on and mend his relationship with his girlfriend, whom he had told about his indiscretion.

5. Unbeknownst to Plaintiff, a night of indiscretion shared by two people who were in other relationships somehow morphed into an alleged sexual assault. Jane Roe eventually requested that her advisor move her to a different “small group” for her Cleveland Clinic Lerner College work so she did not have to be in the same group as Plaintiff. Jane Roe justified this request with accusations of sexual misconduct against Plaintiff in regard to their consensual sexual encounter on April 13. Jane Roe repeated this false accusation to Defendant Dr. Kathleen Franco, and on July 25, 2013, Plaintiff was charged with a violation of Case Western Reserve University’s Sexual Assault Policy and was subjected to a CWRU no-contact order regarding Jane Roe, with which he complied.

6. Plaintiff faced a hearing on August 8, 2013 in front of the CWRU University Judicial Board (“UJB”). Plaintiff was not given an opportunity to review the case file until the day before the hearing, and then, he was only allowed to review a redacted version. Further, CWRU did not present Plaintiff with the complete file, leaving out a key document (which Plaintiff later learned was penned by an individual who was pressured by Jane Roe and

Defendant Dr. Franco). Plaintiff was only allowed to have a “silent support person,” who could not participate, as his advocate at the hearing.

7. The hearing deprived Plaintiff of his most basic due process and equal protection rights. He was discriminated against on the basis of his male sex. CWRU failed to conduct a material investigation into Jane Roe’s allegations. Plaintiff was not advised of all the resources available to him on and off campus. He was denied the effective assistance of any advisor. He was denied the opportunity to review all of the evidence against him. His cross-examination of his accuser was effectively denied. Plaintiff was hampered from providing essential explanations and evidence of the night of April 13 and 14, 2013. Plaintiff was met with hostility, dismissal, and pre-judgment as “guilty” before the Decision was even rendered. The University Judicial Board’s treatment of Plaintiff during the Hearing, especially by the Chairperson, Donald Kamalsky, reflected the lack of impartiality and pre-judgment against an accused male student.

8. The UJB sanctioned Plaintiff with a one-year suspension from his studies, made him persona non grata at both CWRU and the CC Lerner College for one year, continued the no contact order, required Plaintiff to create a behavioral plan, and required Plaintiff to submit to a drug and alcohol assessment. However, the UJB also specifically considered and rejected the sanction of expulsion, finding it “too severe.” Plaintiff appealed these sanctions. His appeal was denied.

9. Defendant CWRU failed to adhere to its own guidelines and regulations, and the guidelines and regulations themselves are insufficient to enable a student to have a fair hearing before an impartial tribunal. The decision reached was discriminatory, presumptive and/or arbitrary and capricious, particularly considering the contradictions in the evidence about Jane

Roe's intoxication and alleged lack of consent, and demonstrated a presumptive and/or discriminatory bias against males in cases of sexual misconduct.

10. As if the University Judicial Board Hearing were not enough, Plaintiff was subjected to double jeopardy when the Cleveland Clinic Lerner College of Medicine's Medical Student Promotion and Review Committee ("MSPRC") reconsidered the sanctions levied against Plaintiff. Plaintiff was not notified when this secondary adjudication was scheduled. Plaintiff was not invited nor allowed to attend this adjudication, nor to defend himself in any way. He was given no information about what would be discussed or considered during the adjudication. Defendant Dr. Franco presented a one-sided, inaccurate case to the MSPRC in an effort to have Plaintiff expelled, using the anonymous letter she pressured a student into writing, and which was not presented to Plaintiff as evidence against him before or during the first Hearing, as support for expelling Plaintiff.

11. On September 27, 2013, Plaintiff received a letter from the MSPRC informing him that he would be expelled. Plaintiff appealed the expulsion. An appeal hearing was held by the CC Lerner College on October 24, 2013. On October 25, 2013, Plaintiff received a letter from the CC Lerner College affirming his expulsion.

12. Plaintiff had been deprived for a second time of his most basic due process and equal protection rights. He was discriminated against on the basis of his male sex. The Cleveland Clinic Lerner College failed to conduct a material investigation into Jane Roe's allegations, and Plaintiff was not advised of all the resources available to him on and off campus. He was denied the effective assistance of any advisor. He was denied the opportunity to review all of the evidence against him. He was not allowed the opportunity cross-examine his accuser. Plaintiff was hampered from providing essential explanations and evidence of the night of April 13 and

14, 2013. Plaintiff was met with hostility, dismissal, and pre-judgment as “guilty” before the Decision was even rendered. The Cleveland Clinic Lerner College’s treatment of Plaintiff during the Hearing, especially by Defendant Dr. Franco, reflected the lack of impartiality and pre-judgment against an accused male student.

13. As with Case Western Reserve University, Defendant Cleveland Clinic Lerner College failed to adhere to its own guidelines and regulations, which were insufficient to enable a student to have a fair hearing before an impartial tribunal. The decision reached was discriminatory, presumptive and/or arbitrary and capricious, and demonstrated a presumptive and/or discriminatory bias against males in cases of sexual misconduct.

14. Plaintiff then faced a third round of jeopardy, when he received a letter from the CWRU School of Medicine’s Committee on Students, informing him that the Committee had passed a motion upholding his dismissal from the CC Lerner College. Plaintiff had received no advance notice of this adjudication, nor had he been given any notice or opportunity to submit evidence in his defense. He was not invited to be present at the adjudication, nor was he given the opportunity to present a defense. This third adjudication presented all of the same deficiencies as the previous two. Plaintiff had been denied his most basic due process and equal protection rights.

15. Despite the series of three career-ending adjudications, a Cuyahoga County Grand Jury did not find probable cause to indict Plaintiff, and instead issued a No-Bill.

16. Plaintiff has been greatly damaged by the expulsion: his educational career has been severely damaged, while his future medical career is ruined; the monies spent on obtaining a college education and medical education have been squandered; and his psychological and emotional health have been greatly compromised by the entire ordeal. Thus, Plaintiff brings this

action to obtain relief based on causes of action for, among other things, violations of Title IX of the Education Amendments of 1972 and state law.

### **PARTIES**

17. Plaintiff John Doe (“Plaintiff” or “John Doe”) is a natural person residing in Cuyahoga County, Ohio. During the events described herein, Plaintiff was a student at The Cleveland Clinic Foundation dba Cleveland Clinic Lerner College of Medicine of Case Western Reserve University which is affiliated with Case Western Reserve University.

18. Defendant The Cleveland Clinic Foundation dba Cleveland Clinic Lerner College of Medicine of Case Western Reserve University (“CC Lerner College” or “Cleveland Clinic”), is an Ohio hospital system, registered with the Ohio Department of Health, and a not-for-profit corporation, with its principal place of business in Cuyahoga County, Ohio.

19. Defendant Case Western Reserve University (“CWRU”) is affiliated with the CC Lerner College, and is a not-for-profit corporation, with its principal place of business in Cuyahoga County, Ohio. Defendant CWRU is a nationally-ranked private research university located in Cleveland, Ohio. Upon information and belief, CWRU receives substantial federal and state funds annually.

20. Kathleen Franco, M.D., is a licensed physician in Ohio, is the Associate Dean of Admissions and Student Affairs at the CC Lerner College and is a resident of Cuyahoga County, Ohio.

### **JURISDICTION AND VENUE**

21. This Court has jurisdiction over Plaintiff’s claims pursuant to 28 U.S.C. §§1331 and 1367 because the claims involve questions arising under Title IX of the Education

Amendments of 1972, 20 U.S.C. §§ 1681-88 (“Title IX”), as well as state law claims arising out of the same transaction or occurrences giving rise to Plaintiff’s federal law claims.

22. This Court has personal jurisdiction over the Defendants, insofar as Cleveland Clinic is an Ohio hospital system and corporation, which regularly engages in business in the State of Ohio, CWRU is an Ohio corporation, and Dr. Franco resides and works in Ohio.

23. Venue is proper pursuant to 28 U.S.C. § 1391(b)(2) because the events or omissions giving rise to this Complaint occurred in this judicial district.

### **FACTUAL ALLEGATIONS**

#### **I. Agreements, Representations, Covenants & Warranties between Plaintiff and Defendants CWRU and CC Lerner College**

24. Plaintiff was admitted to the CC Lerner College as a first year medical student in the fall of 2012 with a scholarship. He worked diligently throughout his education to prepare for eventual entry into medical school.

25. Plaintiff was also admitted to three other medical schools for admission in the fall of 2012, including the University of Michigan, where would have benefitted from in-state tuition rates, as well as the University of Southern California, Los Angeles and New York University.

26. Upon his acceptance, Defendants CWRU and CC Lerner College bound Plaintiff to abide by the Student Handbook and University policies, which include the Case Western Reserve Sexual Assault Policy. This policy provides that, should a student be accused of sexual misconduct, that student has due process rights.

27. CWRU alleges that it complies with Title IX obligations in sexual misconduct cases. *See* “Sexual Misconduct Policy,” *available at* <http://www.case.edu/diversity/sexualconduct/policies/sexualmisconduct.html>.



**II. The Evening of April 13, 2013.**

28. On the evening of April 13, 2013, Plaintiff and other students at the CC Lerner College, including Jane Roe, went to a party and to several bars in downtown Cleveland.

29. Both Plaintiff and Jane Roe were drinking alcohol.

30. At the end of the night, several students, including Plaintiff and Jane Roe, took a cab back to the Coventry area of Cleveland Heights. The other students lived near the Coventry area and though his girlfriend was out of town, Plaintiff planned on spending the night at her apartment in Coventry. Jane Roe, however, lived in Bratenahl, approximately fifteen to twenty minutes away from the Coventry area.

31. When the cab arrived in Cleveland Heights, Jane Roe instructed Plaintiff to stay in the cab with her on the ride to her residence in Bratenahl. Plaintiff agreed.

32. When the cab arrived in Bratenahl at approximately 3:30 AM, Plaintiff asked Jane Roe if he should get out of the cab with her. She told him that he could stay at her house. Plaintiff accepted the invitation.

33. Jane Roe gave Plaintiff a tour of the house and then went to change out of her dress. Plaintiff asked if he was sleeping in her bed. Jane Roe said, "Yeah sure."

34. They engaged in consensual sexual contact. Both Plaintiff and Jane Roe admitted they were active participants in this sexual encounter.

35. Immediately afterward, and again the following morning, Plaintiff and Jane Roe discussed what had happened between them. They shared mutual concern because they were both in long-term committed relationships with other people. They discussed the matter and decided not to tell anyone about their interactions that night.

36. The following morning, Plaintiff and Jane Roe took a cab back to Coventry so she could pick up her car, and so he could go home.

37. A couple weeks later, Jane Roe and Plaintiff met to talk. They discussed what had happened between them on April 13. Plaintiff was shocked and hurt when he heard that Jane Roe considered the entire event to be Plaintiff's fault.

38. Plaintiff resolved to try and move on and to continue to sort through this emotionally tumultuous experience with his girlfriend, whom he had told about his indiscretion.

39. On June 14, 2013, Plaintiff received a letter from the CC Lerner College Medical Student Promotion and Review Committee ("MSPRC") complimenting Plaintiff on his "exceptional" performance during Year 1 of medical school and promoting him to Year 2. The letter praised Plaintiff's empathic style with patients and commended him as a "gifted communicator."

### **III. Jane Roe's Complaint to the CC Lerner College of Medicine**

40. On July 23, 2013, over three months after the April 13, 2013 consensual sexual contact, Jane Roe told her advisor at the CC Lerner College that she wanted to be switched to a different small group so that she would not remain in the same small group as Plaintiff for their work at the CC Lerner College. Plaintiff was not aware of this request.

41. The advisor told Jane Roe that she would need to know why Jane Roe was making the request and that Defendant Dr. Franco would have to make the final decision.

42. Jane Roe falsely told her advisor and Defendant Dr. Franco that Plaintiff sexually assaulted her and also previously sexually assaulted another student in their class.

43. Defendant Dr. Franco made arrangements to move Plaintiff from Jane Roe's small group.

#### **IV. The Disciplinary Process**

44. In response to Jane Roe's complaint, Plaintiff was charged with a violation of CWRU's Sexual Assault Policy on July 25, 2013.

45. A hearing was scheduled for August 8, 2013 in front of a three-person University Judicial Board ("UJB").

46. Plaintiff was not given an opportunity to review the case file, including Jane Roe and other students' statements, until the day before the hearing. He was only allowed to review a redacted version of the file. In addition, not all of the evidence CWRU had collected was included in the file that Plaintiff was given to review.

47. Although Plaintiff was allowed to have an advisor for the hearing, the advisor was only a "silent support person" who was not permitted to participate in the hearing. The advisor was also not permitted to review the case file until the morning of the hearing.

48. Further, upon reviewing the case file and learning about the complaint against him, Plaintiff was not given adequate time to find an attorney to act as his advisor for the hearing.

49. During the hearing, Plaintiff was not allowed to be in the same room as Jane Roe.

50. Plaintiff was also not allowed to directly cross-examine Jane Roe. Instead, Plaintiff was required to direct his questions to the UJB and they would only direct them to Jane Roe if the UJB thought the questions were relevant. The UJB refused to ask a series of Plaintiff's questions to Jane Roe allowing him to elucidate the context of written and verbal exchanges between them, as well as questions pertaining to Jane Roe's written statements and various inconsistencies in them, which undermined her credibility and the veracity of her accusations.

51. Upon information and belief, CWRU's preferential treatment of Jane Roe over Plaintiff is undeniably linked to her female gender and against Plaintiff's male gender.

#### **V. CWRU Decision and Sanctions**

52. The UJB improperly found that Plaintiff violated CWRU's sexual assault policy pursuant to its finding that Jane Roe could not consent due to intoxication. The UJB came to this finding despite the fact that Jane Roe admitted that before the sexual contact, she was able to complete the delicate task of taking out her contact lenses, and was able to move a couch, peel and eat an orange, and was able to tell Plaintiff that she did not want him to perform certain acts while they were together in bed (and Plaintiff respected those directives). This finding also contradicted other witnesses who gave statements that Jane Roe did not appear to be especially intoxicated before the group of students left downtown Cleveland.

53. The UJB sanctioned Plaintiff with a one-year suspension from his studies, made him persona non grata at both CWRU and the CC Lerner College for one year, continued the no contact order, required Plaintiff to create a behavioral plan, and required Plaintiff to submit to a drug and alcohol assessment.

54. The UJB also specifically considered and rejected the sanction of expulsion, finding it was "too severe." The UJB additionally considered and rejected disciplinary probation, reflecting the UJB's desire to avoid "ruin[ing] [Plaintiff]'s chances of ever becoming a doctor."

55. Although an appeal from the UJB was allowed, the grounds for the appeal were limited to: (1) "new information not available to the board, which, if available at the time of the hearing, may have affected the decision"; (2) "evidence that established procedures were not followed in a manner that may have affected the decision"; or (3) "the sanction was

inappropriate for the violation.” Plaintiff was not allowed to challenge the finding that he violated the sexual assault policy.

56. Plaintiff appealed on the basis that the sanction was not appropriate for the violation.

57. Plaintiff was only allowed to present a written statement to the Appeal Review Panel (“ARP”) and was not allowed to make any statement in front of the ARP.

58. The ARP summarily denied Plaintiff’s appeal without a hearing.

59. Plaintiff then began complying with the improper sanctions in an effort to remain in medical school.

60. After the UJB and ARP proceedings, Plaintiff found out that there was an anonymous letter in the evidence considered by the UJB. This letter had not been provided to Plaintiff in advance of the hearing, and he was not informed about it during the hearing. This letter detailed another evening in which Plaintiff helped a female classmate get home safe after drinking too much. Plaintiff also later learned the person who wrote the anonymous letter was pressured into writing the letter by Jane Roe and Defendant Dr. Franco.

#### **VI. Plaintiff Faced Double Jeopardy via CC Lerner College’s Second Adjudication**

61. Without any notice to Plaintiff, the CC Lerner College’s Medical Student Promotions and Review Committee (“MSPRC”) met to discuss Plaintiff and the UJB adjudication on September 26, 2013.

62. Upon information and belief, Defendant Dr. Franco presented a one-sided, factually incorrect case to the MSPRC in an effort to have Plaintiff expelled, despite the UJB decision not to expel Plaintiff because that sanction would be “too severe.”

63. Upon information and belief, Defendant Dr. Franco used the anonymous letter she pressured a student into writing, and which was not disclosed to Plaintiff as evidence against him before or during the UJB hearing, as support for expelling Plaintiff.

64. On September 27, 2013, Plaintiff received a letter from the CC Lerner College's MSPRC informing him that the MSPRC was asked to review his performance as a CC Lerner College student based on the outcome of the UJB action of August 8, 2013, and that it determined that he should be expelled.

65. Plaintiff appealed the expulsion on the basis that he did not violate any codes or standards set by CWRU, the CC Lerner College, or laws of the State of Ohio.

66. An appeal hearing for the MSPRC adjudication was held by the CC Lerner College on October 24, 2013.

67. On October 25, 2013, Plaintiff received a letter from the CC Lerner College affirming his dismissal.

68. Plaintiff received no due process during this adjudication, and the MSPRC finding constituted double jeopardy.

69. Upon information and belief, CC Lerner College's preferential treatment of Jane Roe over Plaintiff is undeniably linked to her female gender and against Plaintiff's male gender.

**VII. Plaintiff Faced a Third Event of Jeopardy, via CWRU School of Medicine's Committee on Students**

70. Plaintiff received a letter on November 22, 2013 from the CWRU School of Medicine's Committee on Students, informing him that the Committee had passed a motion upholding his dismissal from the Lerner College. Prior to this meeting, Plaintiff received no written notice from a Society Dean that a meeting of the Committee on Students concerning his dismissal was forthcoming, as mandated by the CWRU School of Medicine's policies. Further,

he was not advised in writing that any information he wanted to submit in his defense, including any documents or witness statements, should be submitted in writing to the Committee before its meeting. This was also in contravention of the CWRU School of Medicine's policies.

71. Plaintiff received no due process during this adjudication, and the CWRU School of Medicine's Committee on Students finding constituted a third event of jeopardy.

72. Upon information and belief, CWRU's preferential treatment of Jane Roe over Plaintiff is undeniably linked to her female gender and against Plaintiff's male gender.

### **VIII. Plaintiff Was No-Billed by the Grand Jury**

73. During these events, the April incident was also reported to the police and was presented to a Cuyahoga County Grand Jury. However, the Grand Jury did not find probable cause and declined to indict Plaintiff.

### **IX. Plaintiff's Entire Future is Severely Damaged by Defendants' Actions**

74. As a result of Defendants' actions, Plaintiff's entire academic career is severely damaged, and without a medical degree, his overall professional future is completely compromised.

75. Plaintiff has worked his entire life to prepare himself to enter medical school, and when he was admitted to the CC Lerner College, he continued his hard work. He was recognized as a stellar student by the faculty when he was promoted from Year 1 to Year 2.

76. Currently, Plaintiff's education and professional path have been severely compromised by his expulsion. Plaintiff's academic and disciplinary record are completely tarnished and will not withstand scrutiny for admission to another institution. Plaintiff's ability to secure admission to any other medical school has been obliterated. Thus, his life-long pursuit of

becoming a doctor was effectively ended by this fundamentally unfair judicial process and unfounded expulsion.

77. As a result of Defendants' actions, the financial resources used to provide Plaintiff with a pre-medical college education and medical education have been squandered.

78. Without appropriate redress, the unfair outcome of the multiple adjudications will continue to cause irreversible damages to Plaintiff, with no end in sight. Plaintiff seeks redress from this Court to undo the wrongs occasioned by Defendants on his education and future.

**FIRST CLAIM FOR RELIEF**  
(Violation of Title IX)

79. All of the foregoing paragraphs are incorporated by reference and re-alleged as though fully set forth here.

80. Title IX prohibits discrimination on the basis of sex in a school's "education program or activity," which includes all of the school's operations. 20 U.S.C. §§ 1681(a), 1687.

81. Upon information and belief, CWRU receives federal financial assistance and is thus subject to Title IX.

82. Both the Department of Education and the Department of Justice have promulgated regulations under Title IX that require a school to "adopt and publish grievance procedures providing for the prompt and equitable resolution of student... complaints alleging any action which would be prohibited by" Title IX or regulations thereunder. 34 C.F.R. § 106.8(b) (Dep't of Education); 28 C.F.R. §54.135(b) (Dep't of Justice) (emphasis added). Such prohibited actions include all forms of sexual harassment, including sexual intercourse, sexual assault, and rape.<sup>2</sup>

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<sup>2</sup> See generally US Dep't of Education, Office for Civil Rights, *Revised Sexual Harassment Guidance Harassment of Students by School Employees, Other Students, or Third Parties -- Title*



83. The procedures adopted by a school covered by Title IX must not only "ensure the Title IX rights of the complainant," but must also "accord[] due process to both parties involved...."<sup>3</sup>

84. The "prompt and equitable" procedures that a school must implement must "accord due process to both parties involved."

85. A school also has an obligation under Title IX to make sure that all employees involved in the conduct of the procedures have "adequate training as to what conduct constitutes sexual harassment, which includes "alleged sexual assaults."

86. Based on the foregoing, Defendant CWRU has deprived Plaintiff, on the basis of his sex, of his rights to due process and equal protection through the improper administration of and/or the existence, in its current state, of Defendant CWRU's guidelines and regulations.

87. Based on the foregoing, Jane Roe was supported by the university, while Plaintiff was forced to put together his own defense against all odds and was treated as "guilty until proven innocent."

88. Based on the foregoing, the sanctions against Plaintiff demonstrate bias against the male being accused insofar as the CWRU UJB, CC Lerner College's MSPRC, and the CWRU School of Medicine's Committee on Students (which affirmed the CC Lerner College expulsion) failed to credit Plaintiff in the same regard as Jane Roe. These bodies accepted Jane Roe's changing story, but entirely discredited Plaintiff's recall of the evening and the statements of other witnesses.

89. The CWRU UJB, CC Lerner College's MSPRC, and the CWRU School of Medicine's Committee on Students (which affirmed the CC Lerner College expulsion) were not

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IX (2001) at 19-20,21 & nn.98-101.

<sup>3</sup> *Id.* at 22.

impartial and were inadequately trained. The adjudications against Plaintiff were conducted in a manner that was slanted against the male accused. The UJB's line of questioning, tone, demeanor and overall conduct demonstrated bias against Plaintiff. In stark contrast, the UJB was supportive of Jane Roe, who escaped meaningful questioning about her conduct, conversations, and inconsistencies.

90. Based on the foregoing, Defendants imposed sanctions on Plaintiff that were disproportionate to the severity of the charges levied against him and without any consideration of his clean disciplinary record at CWRU and the CC Lerner College of Medicine.

91. Based on the foregoing, Defendant CWRU's guidelines and regulations disproportionately affect the male student population of the CWRU community as a result of the higher incidence of female complainants of sexual misconduct against male complainants of sexual misconduct.

92. Based on the foregoing, male respondents in sexual misconduct cases at CWRU are discriminated against solely on the basis of sex. CWRU has created an environment in which Plaintiff, an accused male student, was fundamentally denied due process as to be virtually assured of a finding of guilt. Such a biased and one-sided process deprived Plaintiff, as a male student, of educational opportunities on the basis of sex.

93. As a direct result of CWRU's discriminatory practices, Plaintiff was denied a fundamentally fair hearing, the CWRU UJB, CC Lerner College's MSPRC, and the CWRU School of Medicine's Committee on Students (which affirmed the CC Lerner College expulsion) reached an erroneous outcome and Plaintiff has been damaged in an amount to be determined at trial.

**SECOND CLAIM FOR RELIEF**

(Violation of Title IX – Deliberate Indifference)

94. All of the foregoing paragraphs are incorporated by reference and re-alleged as though fully set forth here.

95. CWRU had actual notice of the irresponsible, improper, and sexually-biased manner in which the allegations against Plaintiff were being investigated and adjudicated.

96. CWRU, despite having the authority to institute corrective measures to stop the misconduct, was deliberately indifferent to the misconduct.

97. CWRU's deliberate indifference was motivated by Plaintiff's gender. CWRU tolerated and endorsed procedures and policies which effectively deprived Plaintiff, a male student accused of sexual assault, of his right to a fair hearing on the basis of his sex.

98. As a direct result of CWRU's deliberate indifference, Plaintiff has been damaged in an amount to be determined at trial.

**THIRD CLAIM FOR RELIEF**

(Breach of Contract against CWRU)

99. All of the foregoing paragraphs are incorporated by reference and re-alleged as though fully set forth here.

100. The CWRU Student Handbook is a valid, binding and enforceable contract between CWRU and Plaintiff.

101. The CWRU Student Handbook is and was supported by valid consideration.

102. Plaintiff fully complied with all of his obligations under the CWRU Handbook.

103. CWRU breached its obligations under the CWRU Handbook by, among other things, conducting a fundamentally unfair hearing, improperly placing the burden of proof on

Plaintiff, and failing to have University Judicial Board members properly trained and prepared to adjudicate sexual assault allegations.

104. CWRU further breached its obligations by, among other things, conducting a fundamentally unfair hearing where Plaintiff's expulsion was affirmed, of which Plaintiff was not notified and which he was not allowed to attend or present any testimony or evidence, and failing to have CWRU School of Medicine Committee on Students members properly trained and prepared to adjudicate sexual assault allegations.

105. Plaintiff has incurred, and will continue to incur, significant damages as a direct result of CWRU's breaches of the CWRU Handbook in an amount to be determined at trial.

**FOURTH CLAIM FOR RELIEF**  
(Breach of Contract against CC Lerner College)

106. All of the foregoing paragraphs are incorporated by reference and re-alleged as though fully set forth here.

107. The CC Lerner College Student Handbook is a valid, binding, and enforceable contract between the CC Lerner College and Plaintiff.

108. The CC Lerner College Student Handbook is and was supported by valid consideration.

109. Plaintiff fully complied with all of his obligations under the CC Lerner College Handbook.

110. CC Lerner College breached its obligations under the CC Lerner College Handbook by, among other things, expelling Plaintiff after a hearing of which Plaintiff was not notified and which he was not allowed to attend or present any testimony or evidence, conducting a fundamentally unfair hearing, and failing to have MSPRC members properly trained and prepared to adjudicate sexual assault allegations.

111. Plaintiff has incurred, and will continue to incur, significant damages as a direct result of the CC Lerner College's breaches of the CC Lerner College Handbook in an amount to be determined at trial.

**FIFTH CLAIM FOR RELIEF**  
(Covenant of Good Faith and Fair Dealing)

112. All of the foregoing paragraphs are incorporated by reference and re-alleged as though fully set forth here.

113. Based on the aforementioned facts and circumstances, Defendants CWRU and CC Lerner College breached and violated a covenant of good faith and fair dealing implied in the agreement(s) with Plaintiff by meting out a disproportionate sanction of expulsion against Plaintiff, notwithstanding the lack of evidence in support of Jane Roe's claim of sexual assault.

114. As a direct and foreseeable consequence of these breaches, Plaintiff sustained tremendous damages, including, without limitation, emotional distress, psychological damages, loss of educational opportunities, economic injuries and other direct and consequential damages.

115. Plaintiff is entitled to recover damages for Defendants CWRU's and CC Lerner College's breach of the express and/or implied contractual obligations described above.

116. As a result of the foregoing, Plaintiff is entitled to damages in an amount to be determined at trial, plus prejudgment interest, attorneys' fees, expenses, costs and disbursements.

**SIXTH CLAIM FOR RELIEF**  
(Estoppel and Reliance)

117. All of the foregoing paragraphs are incorporated by reference and re-alleged as though fully set forth here.

118. Defendants CWRU's and CC Lerner College's various policies constitute representations and promises that Defendants should have reasonably expected to induce action

or forbearance by Plaintiff. Defendants expected or should have expected Plaintiff to accept its offer of admission, incur expenses, and choose not to attend other medical schools based on its express and implied promises that Defendants would not tolerate, and Plaintiff would not suffer, harassment by fellow students and would not deny Plaintiff his procedural rights should he be accused of a violation of Code.

119. Plaintiff relied to his detriment on these express and implied promises and representations made by Defendants.

120. Based on the foregoing, Defendants are liable to Plaintiff based on Estoppel.

121. As a direct and proximate result of the above conduct, Plaintiff sustained tremendous damages, including, without limitation, emotional distress, psychological damages, loss of educational opportunities, economic injuries, and other direct and consequential damages.

122. As a result of the foregoing, Plaintiff is entitled to damages in an amount to be determined at trial, plus prejudgment interest, attorneys' fees, expenses, costs and disbursements.

**SEVENTH CLAIM FOR RELIEF**

(Intentional Infliction of Emotional Distress against All Defendants)

123. All of the foregoing paragraphs are incorporated by reference and re-alleged as though fully set forth here.

124. CWRU acted in a shocking, outrageous, and extreme manner by, among other things, conducting a flawed investigation, refusing to consider exculpatory evidence, and holding two separate adjudications that were fundamentally unfair and flawed, resulting in decisions that permanently damaged Plaintiff.

125. The CC Lerner College acted in a shocking, outrageous, and extreme manner by, among other things, conducting a hearing at which a decision to expel Plaintiff was made

without any notice, and without any opportunity to be heard provided to him. The hearing and expulsion were fundamentally unfair and flawed, and permanently damaged Plaintiff.

126. Defendant Dr. Franco acted in a shocking, outrageous, and extreme manner by, among other things, proceeding with disciplinary proceedings based on a known false accusation of sexual assault, by coercing another female student to write an anonymous letter related to the investigation, and by presenting a misleading and inaccurate case to the CC Lerner College's MSPRC for expulsion without notice to Plaintiff. Defendant Franco's actions permanently damaged Plaintiff.

127. As a direct and proximate result of the actions of Defendants, Plaintiff has been publicly humiliated and felt ashamed, emotionally distraught, and violated. The conduct of Defendants demonstrated the intent to cause, or disregarded a substantial probability of causing, Plaintiff severe emotional distress.

128. Defendants' actions were a direct and proximate cause of Plaintiff's severe emotional distress.

129. Plaintiff has incurred, and will continue to incur, significant damage as a direct result of Defendants' intentional infliction of emotional distress in an amount to be determined at trial.

**EIGHTH CLAIM FOR RELIEF**  
(Slander per se against Defendant Dr. Franco)

130. All of the foregoing paragraphs are incorporated by reference and re-alleged as though fully set forth here.

131. Defendant Dr. Franco made false statements to others that Plaintiff committed sexual assault.

132. Defendant Dr. Franco's statements were not privileged in any manner.

133. Defendant Dr. Franco's statements were made with reckless disregard of their truth or falsity and/or with malice.

134. Defendant Dr. Franco's statements were slander per se because they imported a charge of an indictable offense involving moral turpitude and injured Plaintiff's personal and professional reputation.

135. Defendant Dr. Franco's statements forever falsely taint and permanently damage Plaintiff as a student who was expelled from his university for a sexual assault that did not occur. Plaintiff has worked his entire life to develop his personal standing and his admission to medical school.

136. Defendant Dr. Franco's statements permanently damaged Plaintiff's personal and professional reputation and will prevent him from attending another medical school.

**NINTH CLAIM FOR RELIEF**  
(Negligence)

137. All of the foregoing paragraphs are incorporated by reference and re-alleged as though fully set forth here.

138. Defendants owed Plaintiff a duty to exercise reasonable care to avoid foreseeable injury.

139. CWRU breached its duty to Plaintiff by, among other things, conducting a fundamentally flawed investigation, failing properly to analyze and consider the evidence, making prejudicial and improper decisions about which questions would be asked of Jane Roe, subjecting Plaintiff to double jeopardy, and sanctioning Plaintiff without any legitimate grounds to do so.

140. The CC Lerner College breached its duty to Plaintiff by, among other things, conducting a fundamentally flawed investigation and hearing of which Plaintiff was not given



notice or an opportunity to be heard, subjecting Plaintiff to double jeopardy, and by expelling Plaintiff without any legitimate grounds to do so.

141. Dr. Franco breached her duty to Plaintiff by, among other things, failing to act reasonably in blindly accepting Jane Roe's accusations as truth, pressuring another student into manufacturing allegations against Plaintiff, and then using those unfounded and unproven allegations against Plaintiff to pursue his expulsion from the CC Lerner College even after CWRU deemed that outcome "too severe," all without any legitimate grounds for her continued persecution of Plaintiff.

142. As a direct and proximate result of defendants CWRU and the CC Lerner College's actions, Plaintiff has been damaged in an amount to be determined at trial.

**TENTH CLAIM FOR RELIEF**  
(Declaratory Judgment)

143. All of the foregoing paragraphs are incorporated by reference and re-alleged as though fully set forth here.

144. Plaintiff was improperly found to have violated CWRU's sexual misconduct policy and the CC Lerner College's Professionalism Competency based on violations of due process, discrimination based on sex, negligence, and the false statements made by Jane Roe and Defendant Dr. Franco.

145. The decisions of the CWRU UJB, the CC Lerner College MSPRC, and the CWRU School of Medicine Committee on Students are invalid.

146. The declaration and relief sought are necessary to preserve the rights of Plaintiff.

147. This is a proper case for which the Court may exercise jurisdiction and declare that the CWRU UJB, the CC Lerner College MSPRC, and the CWRU School of Medicine Committee on Students decisions are invalid.

**ELEVENTH CLAIM FOR RELIEF**  
(Injunctive Relief)

148. All of the foregoing paragraphs are incorporated by reference and re-alleged as though fully set forth here.

149. The CWRU UJB, the CC Lerner College MSPRC, and the CWRU School of Medicine Committee on Students decisions were invalid because they violated Plaintiff's rights to due process, discriminated against Plaintiff based on sex, were negligent, and were based on the false statements made by Jane Roe and Defendant Dr. Franco.

150. These invalid decisions remain on Plaintiff's education record and prevent him from completing his medical education and training.

151. Plaintiff thus seeks an injunction requiring CWRU and the CC Lerner College to remove all references of any violations from Plaintiff's educational record.

152. Plaintiff further seeks an injunction requiring CWRU and the CC Lerner College to fully reinstate Plaintiff's student status and full scholarship, thus restoring Plaintiff to the position, benefits, and standing he achieved before these events began, and allowing him to return to his professional path, so that the harm done by these institutions can be somewhat ameliorated.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff prays that this Court enter judgment in his favor and demands the following relief:

- A. Compensatory damages for the injuries suffered, including, but not limited to, consequential and incidental damages, as a result of defendants' wrongful conduct in an amount to be determined at trial;

- B. Special damages, including, but not limited to loss of future income, in an amount to be determined at trial;
- C. Punitive damages in a just amount for defendants' willful and wanton conduct;
- D. Pre-judgment and post-judgment interest;
- E. A declaration that the CWRU UJB, CC Lerner College, and CWRU School of Medicine Committee on Students decisions are invalid;
- F. An injunction requiring CWRU and the CC Lerner College to remove all references of any violations from Plaintiff's educational record;
- G. An injunction requiring CWRU and the CC Lerner College to fully reinstate Plaintiff's student status and full scholarship; and
- H. Additional damages, including attorney fees, litigation costs, and any other equitable and further relief this Court deems just and equitable.

**JURY DEMAND**

Plaintiff hereby demands a trial by jury on all issues so triable.

s/ Terry H. Gilbert  
Terry H. Gilbert (0021948)

Respectfully submitted,

s/ Terry H. Gilbert  
Terry H. Gilbert (0021948)  
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