

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

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JOHN DOE, :
 : **Civil Action No:**
 :
 : **Plaintiff,** :
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 : **Jury Trial Demand**
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 :
 : **CORNELL UNIVERSITY,** : **VERIFIED COMPLAINT**
 :
 :
 : **Defendant.** :
-----X

Plaintiff John Doe¹ by his attorneys Nesenoff & Miltenberg, LLP, as and for his Verified Complaint against Cornell University respectfully alleges as follows:

THE NATURE OF THIS ACTION

1. This case arises out of the actions taken and procedures employed by Defendant Cornell University (“Defendant Cornell” or “Cornell”) concerning allegations made against Plaintiff John Doe (“John Doe”), a male senior student at Cornell as a result of false allegations of nonconsensual sexual activity with fellow Cornell senior student Jane Doe.
2. These allegations purportedly refer to what was clearly consensual sexual activity that occurred on or about December 14, 2013 (the “Incident”).
3. On February 18, 2014, some two (2) months later, Jane Doe contacted Cornell’s Office of the Judicial Administrator (“JA”), and reported that she was raped by John Doe on December 14, 2013, while she was incapacitated.
4. Judicial Administrator Mary Beth Grant thereafter requested that Cornell conduct a formal investigation of the matter and that Dean of Faculty Joseph Burns appoint a

¹ Plaintiff has filed, contemporaneously with this Complaint, a Motion to proceed pseudonymously.

panel of three faculty members (the "Panel") to ultimately review the investigative report and make a determination as to the alleged misconduct.

5. After an excessively delayed investigation process, which included interviews with at least ten witnesses who observed John Doe and Jane Doe in the minutes and hours preceding the Incident, Cornell's JA prepared an Investigative Report of the Office of the Judicial Administrator dated April 30, 2014 (the "Investigative Report"). The Investigative Report consisted of a summary of the findings and a recommendation that John Doe be expelled from Cornell, or, in the alternative, that his degree be held for a period of not less than two years.

6. Upon its review of the Investigative Report and responsive statements from John Doe and Jane Doe, on May 20, 2014, the Panel issued a Report of the Reviewers, in which they unanimously agreed that "under a preponderance of the evidence, [Jane Doe] both (a) did not give consent to vaginal penetrative sexual activity nor to manipulation of her breasts, and (b) was physically and mentally incapacitated by alcohol consumption to the point that she was unable to give such consent" (the "Decision"). As John Doe's sanction, Cornell initially determined that expulsion was appropriate, and, upon reconsideration, modified John Doe's sanction to withhold his diploma for two (2) years, provided that he meets certain enumerated conditions (the "Sanction").

7. In addition to the damages sustained by John Doe at Cornell throughout the delayed investigation process, including his inability to attend his own graduation or receive his diploma on graduation day, John Doe has sustained tremendous damages to his career prospects as a result of the Decision and Sanction, including the loss of five (5) job offers to date, due to the fact that he is unable to produce his diploma upon demand to such prospective employers.

8. Throughout the investigative process, Cornell failed to abide by its own guidelines and regulations and acted in direct violation of federal and/or state law.

9. A non-exhaustive list of Cornell's wrongful actions include the following: (i) Cornell failed to conduct a timely investigation of the allegations and failed to timely bring the case to a close within sixty (60) days while requiring John Doe's compliance with same; (ii) Cornell failed to conduct a thorough and impartial investigation; (iii) Cornell employed a single-investigator model which resulted in a lack of due process for John Doe; (iv) Cornell purported to perform a Blood Alcohol Content analysis to form conclusions that were unsupported and highly prejudicial; (v) Cornell engaged in an investigation biased against John Doe as the male accused; (vi) Cornell wholly adopted Jane Doe's unsupportable theory of "sailboat community values" as evidence; (vii) Cornell relied on an investigation consisting of a skewed rendition of the facts, cherry-picked witness statements and ignored important qualifying statements; (viii) Cornell made assessments of credibility and evidentiary weight with respect to each fact witness without any ascertainable rationale or logic; (ix) Cornell failed to afford John Doe the requisite presumption of innocence required by a preponderance of the evidence standard; and (x) the sanction was unwarranted and disproportionate in light of the circumstances, all of which demonstrated substantial procedural errors in violation of Title IX.

10. When Cornell subjected John Doe to disciplinary action, it did so in an arbitrary and capricious way, and in discrimination against him on the basis of his male sex. Cornell failed to adhere to its own guidelines and regulations, and the guidelines and regulations themselves are insufficient to protect the rights of male students. The decision reached was discriminatory; given the evidence (or lack thereof), a discriminatory bias against males was required for a conclusion of sexual misconduct to be reached.

11. John Doe has been greatly damaged by the actions of Defendant Cornell: his career prospects have been severely compromised as he is unable to produce a diploma to potential employers; the monies spent on obtaining a college education at Defendant Cornell squandered. Specifically, John Doe has lost five (5) job offers to date, worth an estimated value of approximately \$200,000.00 each.

12. John Doe therefore 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.

THE PARTIES

13. John Doe, is a natural person, citizen of the United States, and resident of the State of California. During the events described herein, John Doe was a student at Cornell and resided at 201 Wyckoff Avenue, Ithaca, New York 14850, a private house not owned by Cornell.

14. Upon information and belief, Defendant Cornell University is a private, liberal arts college in the city of Ithaca, New York, with an address of 300 Day Hall, Ithaca, New York 14853.

15. John Doe and Defendant Cornell are sometimes hereinafter collectively referred to as the "Parties."

JURISDICTION AND VENUE

16. This Court has diversity and supplemental jurisdiction pursuant to 28 U.S.C. § 1332 and under 28 U.S.C. § 1367 because: (i) John Doe and Defendant Cornell are citizens of different states and the amount in controversy exceeds \$75,000.00, exclusive of costs and interest; and (ii) the state law claims are so closely related to the federal law claims as to form the same case or controversy under Article III of the U.S. Constitution.

17. This Court has personal jurisdiction over Defendant Cornell on the grounds that it is conducting business within the State of New York.

18. Venue for this action properly lies in this district pursuant to 28 U.S.C. §1391 because Cornell is considered to reside in this judicial district and a substantial part of the events or omissions giving rise to the claim occurred in this judicial district.

FACTUAL ALLEGATIONS COMMON TO ALL CLAIMS

I. Agreements, Representations, Covenants & Warranties Between John Doe and Cornell

19. John Doe worked diligently for four years at an esteemed public high school in Northern California, where he obtained a 3.83 GPA, scored above the 95th percentile on his SAT's, obtained perfect scores on the SAT II in math and chemistry, and took seven Advanced Placement courses. While in high school, John Doe developed a particular interest in chemistry and became involved in scientific research internships to pursue his interest in the sciences. He was also a varsity athlete in cross country, a member of the track and tennis teams, he started an NGO group on campus, was an Officer of the Astronomy Club, a member of the Science Bowl Club, played the piano for ten years and was named an AP Scholar with Distinction. John Doe's immigrant parents strived for the "American Dream" of educating John Doe at a prestigious University. His work ethic paid off when, as a result of his academic achievements, John Doe received a "Likely Letter" from Cornell University on March 14, 2010, further demonstrating his successful candidacy for an undergraduate education at Cornell.

20. Setting his sights on an Ivy League education, John Doe applied to Cornell University and was accepted to the College of Arts & Sciences class of 2014 for chemistry. He ultimately transferred to the School of Chemical and Biomolecular Engineering where he focused his studies on chemical engineering.

21. Upon his acceptance, Defendant Cornell provided John Doe with copies of its school policies, including the Campus Code of Conduct and Policy 6.4: Prohibited Discrimination, Protected-Status Harassment, Sexual Harassment, and Sexual Assault and Violence (“Policy 6.4”), available on Defendant Cornell’s Internet website.

22. Cornell’s Policy 6.4, applicable to cases involving allegations of sexual discrimination, sexual harassment, and sexual assault states in relevant part:

The university’s goal of a diverse and inclusive environment includes a commitment to maintain a university environment that is safe and free from prohibited discrimination, protected-status harassment, sexual harassment, and sexual assault/violence. The university has adopted policies in support of this goal and complies with all applicable federal, state, and local laws. Acts of discrimination, protected-status harassment, sexual harassment, and sexual assault/violence undermine the university’s mission and commitment to inclusiveness by threatening careers, educational experience, and well-being of those associated with the university. The sexual harassment or sexual assault/violence of students interferes with students’ rights to receive an education free from discrimination and, in the case of sexual assault/violence, is a crime. This policy provides expectations for a work and educational environment free from discrimination, harassment, and sexual assault/violence, and provides a process for addressing matters that impact those expectations.

Sexual violence refers to physical acts perpetrated without consent when a person is incapable of giving consent. A number of different acts fall into the category of sexual violence, including rape, sexual assault, sexual battery, sexual abuse, and sexual coercion. All such acts of sexual violence are forms of sexual harassment that are covered under Title IX and should be reported as soon as possible to the [Cornell University Police Department], who will take appropriate action and inform the Title IX coordinator and deputy coordinators.

23. Cornell’s Campus Code of Conduct and Policy 6.4 set forth the procedures by which Cornell students who have been accused of violating one or more of the enumerated policies are investigated, heard, and, possibly, disciplined.

24. The JA is responsible for receiving all complaints and providing procedures to ensure a fair process for the accused and for the complainant. The JA has exclusive responsibility for accepting and processing prohibited discrimination and protected-status harassment complaints, including sexual assault/violence, and will undertake to resolve these complaints **impartially, promptly, and confidentially** through informal intervention, mediation, or formal investigation.

25. In addition, Policy 6.4 states that upon the JA's initial review of a complaint, if the JA determines that the complaint (a) describes an alleged violation of its policy, it will notify the "accused" that he or she has been named in a complaint and proceed under the policy accordingly; or (b) does not describe an alleged violation, it will notify the complainant that the complaint is dismissed.

26. According to Policy 6.4, if the JA determines that the complaint describes an alleged violation of its policy, an investigation will be commenced. The purpose of such investigation being "to gather evidence relating to the alleged discrimination, harassment, sexual assault/violence or retaliation to determine whether the accused engaged in conduct constituting discrimination, harassment, or retaliation by a preponderance of the evidence."

27. Cornell's Policy 6.4 expressly covenants to provide the following rights to the accused student in a sexual misconduct investigation:

- To have the investigation completed within 60 days;
- To seek the advice of a personal attorney or advisor, who may attend their own clients' or advisees' investigative interview;
- To be kept informed of the investigation's status;
- To receive a copy of the investigation report summary and be permitted a reasonable opportunity (ten business days) to submit written comments

and ask the reviewer to review the evidence, determination and/or recommended sanctions or remedial measures contained in the report;

- To receive a copy of the final determination in writing.

28. Pursuant to Policy 6.4, the investigator may dismiss a complaint and close the case where, *inter alia*, the complaint is not supported by sufficient facts, lacks merit based upon the available evidence, or does not fall within the jurisdiction of the investigator.

29. Upon concluding the investigation, the investigator must produce a written investigation report which includes the following: “the scope of the investigation, a summary of the findings, recommendations for any corrective actions and/or sanctions, any non-punitive, preventative remedies for the complainant...”

30. A respondent student has the right to appeal the resolution of a matter within ten business days by asking the vice president for student and academics services (“VPSAS”) or his or her designee to review the evidence, determination, and/or recommended sanctions or remedial measures (or lack thereof) contained in the report. The VPSAS will conduct a review, and may accept, modify or reject the determination or recommended sanctions and/or remedial measures. An Appeal may be based on any of the following grounds:

- The remedial actions awarded the complainant are not commensurate with the injury or is unjust;
- The sanction is not commensurate with the violation or is unjust;
- The investigator or reviewer violated the fair application of relevant university procedures and such violation may have had a prejudicial effect upon the outcome;
- The investigator or reviewer committed a prejudicial error in interpreting the policy;
- The investigator or reviewer rendered a decision clearly against the evidence;

- New evidence was discovered after the decision and could not have readily been discovered before the decision, which would change the outcome.

II. The Night of December 13-14, 2013

31. John Doe and Jane Doe had known each other since spring semester 2011 when they were in the same course. They were acquaintances and had all classes together, as they were in the same major in the School of Chemical and Biomolecular Engineering.

32. On Friday, December 13, 2013, an end of semester event for Chemical Engineering students was held at the Statler Hotel. John Doe and Jane Doe, both seniors and Chemical Engineering majors, attended the event. A cocktail reception began at 6:00 p.m. and dinner was served at 7:00 p.m. The party consisted of dinner and drinks with classmates, Teaching Assistants, graduate students and professors from the Chemical Engineering school. Witness O.G. observed that Jane Doe and John Doe “seemed happy and friendly” and noticed them talking to each other at the event.

33. All students were given two drink tickets to use during the event. The gathering concluded around 8:30 p.m.

34. After the holiday party, Jane Doe and some of her friends returned to her apartment, a privately owned apartment off campus about half a block away, to drop off their purses and winter boots. They then joined their classmates, Teaching Assistants, graduate students and professors at a residence located in Collegetown at around 10:00 p.m., where they continued socializing, dancing and drinking. Even though everyone had been drinking, witness M.N. indicated that Jane Doe was *not* intoxicated to the point that she did not know what was going on.

35. While at the after party in Collegetown, John Doe and Jane Doe participated in a game of beer pong together and continued to talk. Witness M.V. noticed Jane Doe and John Doe getting close and flirting.

36. John Doe and Jane Doe continued to flirt throughout the evening, by dancing together, talking, and Jane Doe touching John Doe's hair. Witness N.N. indicated Jane Doe "wasn't drunk, maybe a couple of drinks, but not messy drunk." Additionally, Witness L.T. stated that although Jane Doe seemed to consume a lot of alcohol, she "didn't notice anyone having trouble walking or slurring [their] speech."

37. John Doe consumed approximately five or six drinks over a ten hour period throughout the evening. Jane Doe alleged she consumed approximately fifteen drinks throughout the evening, consisting of three glasses of wine, half a bottle of Malibu Rum, another third a bottle of rum, two more glasses of wine, a bottle of wine, two shots of unknown hard alcohol and one beer. Although John Doe was in Jane Doe's presence the whole evening, he did not observe her consuming fifteen drinks.

38. Jane Doe had previously teased her friends for being "lightweights," in reference to their inability to consume as much alcohol as she could. For instance, on Slope Day, she allegedly completed a "century" (a 1.5 ounce shot of beer every minute for 100 minutes), the equivalent to 12.5 beers in 1.67 hours, and was the only one of her friends who did not get sick afterwards.

39. At around 2:30 or 3:00 a.m. on December 14, 2013, John Doe, Jane Doe, and Witnesses L.T., M.N., M.V. and V.P. left the party together and walked back to Jane Doe's apartment. Some members of this group had to retrieve their belongings dropped off earlier in the evening.

40. Although everyone had been drinking, no one was very intoxicated as there had been professors present at both the holiday party and the after party. Specifically, neither John Doe nor Jane Doe had trouble walking home despite the snow and icy conditions and neither was slurring their speech. Witness V.P. indicated that everyone was “buzzed” but that Jane Doe did not appear intoxicated, let alone incapacitated. In fact, she was able to walk home through inclement weather, ascend the flight of stairs in her building and unlock the door to her apartment, without any assistance.

41. John Doe, Jane Doe and Witnesses L.T., M.N., M.V. and V.P. remained in Jane Doe’s apartment for approximately twenty five minutes. They engaged in conversation in Jane Doe’s kitchen, discussing various topics such as their previous sexual experiences. The Witnesses indicated that no member of the group appeared overly intoxicated, to the point of being incapacitated.

42. At some point during the conversation, Jane Doe removed her bra from under her shirt, in front of the whole group. As she did this, she motioned toward John Doe and got closer to him.

43. When the four friends departed, John Doe remained behind, and Jane Doe did not protest. Witness V.P. testified that Jane Doe seemed fine when he left Jane Doe and John Doe at the apartment. Additionally, Witness M.V. testified that if he felt John Doe was too drunk to be there with Jane Doe, he would have made him leave. Further, M.V. stated that “if [he] felt [Jane Doe] was in any way in danger [he] would not have left.”

44. Jane Doe claims that she agreed to let John Doe spend the night at her apartment, due to the cold weather and the distance to John Doe’s apartment. Jane Doe did not

